

SEAWORLD ENTERTAINMENT, INC.

FORM S-1 (Securities Registration Statement)

Filed 12/27/12

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

**FORM S-1
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

SeaWorld Entertainment, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

7990
(Primary Standard Industrial
Classification Code Number)

27-1220297
(I.R.S. Employer
Identification Number)

9205 South Park Center Loop, Suite 400
Orlando, Florida 32819
(407) 226-5011

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

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box:

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

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

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

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

Large accelerated filer
Non-accelerated filer

(Do not check if a smaller reporting company)

Accelerated filer
Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Common Stock, par value \$0.01 per share	\$100,000,000	\$13,640

(1) This amount represents the proposed maximum aggregate offering price of the securities registered hereunder to be sold by the Registrant and the selling stockholders. These figures are estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes offering price of shares of common stock that the underwriters have the option to purchase. See "Underwriting (Conflicts of Interest)."

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

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The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor do we or the selling stockholders seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion. Dated December 27, 2012.

Shares



SeaWorld Entertainment, Inc.

Common Stock

This is an initial public offering of shares of common stock of SeaWorld Entertainment, Inc.

SeaWorld Entertainment, Inc. is offering _____ of the shares to be sold in the offering. The selling stockholders identified in this prospectus are offering an additional _____ shares. SeaWorld Entertainment, Inc. will not receive any of the proceeds from the sale of the shares being sold by the selling stockholders.

Prior to this offering, there has been no public market for the common stock. It is currently estimated that the initial public offering price per share will be between \$ _____ and \$ _____. SeaWorld Entertainment, Inc. intends to list the common stock on _____ under the symbol "SEAS." After the completion of this offering, affiliates of The Blackstone Group L.P. will continue to own a majority of the voting power of all outstanding shares of the common stock. As a result, we will be a "controlled company" within the meaning of the corporate governance standards of _____. See "Principal and Selling Stockholders."

See "[Risk Factors](#)" beginning on page 17 to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
Initial public offering price	\$ _____	\$ _____
Underwriting discount	\$ _____	\$ _____
Proceeds, before expenses, to SeaWorld Entertainment, Inc.	\$ _____	\$ _____
Proceeds, before expenses, to the selling stockholders	\$ _____	\$ _____

To the extent that the underwriters sell more than _____ shares of common stock, the underwriters have the option to purchase up to an additional _____ shares from the selling stockholders at the initial public offering price less the underwriting discount.

The underwriters expect to deliver the shares against payment in New York, New York on _____, 2013.

Goldman, Sachs & Co.

J.P. Morgan

Citigroup

BofA Merrill Lynch

Barclays

Wells Fargo Securities

Prospectus dated _____, 2013.

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Through and including _____, 2013 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

Unless otherwise indicated or the context otherwise requires, financial data in this prospectus reflects the consolidated business and operations of SeaWorld Entertainment, Inc. and its consolidated subsidiaries.

We have not authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.

MARKET AND INDUSTRY DATA

Market data and industry statistics and forecasts used throughout this prospectus are based on the good faith estimates of management, which in turn are based upon management's reviews of independent industry publications, reports by market research firms and other independent and publicly available sources. Although we believe that these third-party sources are reliable, we do not guarantee the accuracy or completeness of this information and have not independently verified this information. Similarly, internal Company surveys, while believed by us to be reliable, have not been verified by any independent sources. Unless we indicate otherwise, market data and industry statistics used throughout this prospectus are for the year ended December 31, 2011.

Although we are not aware of any misstatements regarding the industry data that we present in this prospectus, our estimates involve risks and uncertainties and are subject to change based on various factors, including those discussed under "Risk Factors," "Special Note Regarding Forward-Looking Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this prospectus.

TRADEMARKS, SERVICE MARKS AND TRADENAMES

We own or have rights to use a number of registered and common law trademarks, service marks and trade names in connection with our business in the United States and in certain foreign jurisdictions, including SeaWorld Entertainment™, SeaWorld Parks & Entertainment™, SeaWorld®, Shamu®, Busch Gardens®, Aquatica™, Discovery Cove®, Sea Rescue™ and other names and marks that identify our theme parks, characters, rides, attractions and other businesses. In addition, we have certain rights to use Sesame Street® marks, characters and related indicia through certain license agreements with Sesame Workshop (f/k/a Children's Television Workshop) ("Sesame Workshop").

Solely for convenience, the trademarks, service marks, and trade names referred to in this prospectus are without the ® and ™ symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensors to these trademarks, service marks, and trade names. This prospectus contains additional trademarks, service marks and trade names of others, which are the property of their respective owners. All trademarks, service marks and trade names appearing in this prospectus are, to our knowledge, the property of their respective owners.

BASIS OF PRESENTATION

On December 1, 2009, investment funds affiliated with The Blackstone Group L.P. and certain co-investors, through SeaWorld Entertainment, Inc. and its wholly-owned subsidiary, SeaWorld Parks & Entertainment, Inc. ("SWPEI"), acquired 100% of the equity interests of Sea World LLC (f/k/a SeaWorld, Inc.) and SeaWorld Parks & Entertainment LLC (f/k/a Busch Entertainment Corporation) from certain subsidiaries of Anheuser-Busch Companies, Inc. We refer to this acquisition and related financing transactions as the "2009 Transactions." As a result of the 2009 Transactions, Blackstone and the other co-investors currently own, through SW Cayman L.P., SW Cayman A L.P., SW Cayman B L.P., SW Cayman C L.P., SW Delaware D L.P., SW Cayman E L.P., SW Cayman F L.P., SW Cayman Co-Invest L.P., SW Cayman (GS) L.P. and SW Cayman (GSO) L.P. (collectively, the "Partnerships"), 100% of the common stock of SeaWorld Entertainment, Inc., the issuer in this offering. The Partnerships are the selling stockholders in this offering. For a more complete description of the Partnerships, see "Principal and Selling Stockholders" and "Certain Relationships and Related Party Transactions—Limited Partnership Agreements and Equityholders Agreement."

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As used in this prospectus, unless otherwise noted or the context otherwise requires, (i) references to the “Company,” “we,” “our” or “us” refer to SeaWorld Entertainment, Inc. and its consolidated subsidiaries, (ii) references to the “Issuer” refer to SeaWorld Entertainment, Inc. exclusive of its subsidiaries, (iii) references to “Blackstone” or the “Sponsor” refer to certain investment funds affiliated with The Blackstone Group L.P., (iv) references to the “Investor Group” refer, collectively, to Blackstone and other co-investors in the Partnerships, (v) references to the “2009 Advisory Agreement” refer to the Transaction and Advisory Fee Agreement, dated as of December 1, 2009, among SeaWorld Parks & Entertainment, Inc. (f/k/a SW Acquisitions Co., Inc.), Sea World LLC and affiliates of Blackstone, (vi) references to “ABI” refer to Anheuser-Busch, Incorporated and (vii) references to the “underwriters” are to the firms listed on the cover page of this prospectus.

All references herein to a fiscal year refer to the 12 months ended December 31 of such year, and references to the first, second, third and fourth fiscal quarters refer to the three months ended March 31, June 30, September 30 and December 31, respectively.

Information presented as of and for the fiscal years ended December 31, 2011 and December 31, 2010 is derived from our audited consolidated financial statements for those periods included elsewhere in this prospectus. Information presented for the one month period ended December 31, 2009 is derived from our audited consolidated statements of operations and comprehensive income (loss), stockholders’ equity and cash flows for the one month period ended December 31, 2009 included elsewhere in this prospectus. The results for the one month period ended December 31, 2009 include the results of operations of the Company from December 1, 2009, the date of the 2009 Transactions, to December 31, 2009. Information presented for the nine months ended September 30, 2012 and September 30, 2011 is derived from our unaudited condensed consolidated financial statements for those periods included elsewhere in this prospectus.

The historical consolidated financial statements and financial data included in this prospectus are those of SeaWorld Entertainment, Inc. and its consolidated subsidiaries. The historical consolidated financial information and financial data for the periods prior to the 2009 Transactions (the “Predecessor Financial Information”) is not presented in this prospectus because it is not comparable and therefore not meaningful to a prospective investor. The Predecessor Financial Information does not fully reflect our operations on a stand-alone basis and we believe would not materially contribute to an investor’s understanding of our historical financial performance. The Predecessor Financial Information prepared on a basis comparable with our consolidated financial statements included in this prospectus is not available and cannot be provided without unreasonable effort and expense. We believe that the omission of the Predecessor Financial Information will not have a material impact on an investor’s understanding of our financial results and condition and related trends.

PROSPECTUS SUMMARY

This summary highlights certain significant aspects of our business and this offering. This is a summary of information contained elsewhere in this prospectus, is not complete and does not contain all of the information that you should consider before making your investment decision. You should carefully read the entire prospectus, including the information presented under the section entitled "Risk Factors" and the consolidated financial statements and the notes thereto, before making an investment decision. This summary contains forward-looking statements that involve risks and uncertainties. Our actual results may differ significantly from future results contemplated in the forward-looking statements as a result of certain factors such as those set forth in "Risk Factors" and "Special Note Regarding Forward-Looking Statements." When making an investment decision, you should also read the discussion under "Basis of Presentation" above for the definition of certain terms used in this prospectus and a description of certain transactions and other matters described in this prospectus.

Company Overview

We are a leading theme park and entertainment company delivering personal, interactive and educational experiences that blend imagination with nature and enable our customers to celebrate, connect with and care for the natural world we share. We own or license a portfolio of globally recognized brands including such iconic brands as SeaWorld, Shamu and Busch Gardens. Over our more than 50 year history, we have built a diversified portfolio of 11 premier destination and regional theme parks that are grouped in key markets across the United States, many of which showcase our one-of-a-kind collection of approximately 67,000 marine and terrestrial animals. Our theme parks feature a diverse array of rides, shows and other attractions with broad demographic appeal which deliver extraordinary experiences and a strong value proposition for our guests. In addition to our theme parks, we have recently begun to leverage our brands into media, entertainment and consumer products.

During the 12 months ended September 30, 2012, we hosted more than 24 million guests in our theme parks, including approximately 2.7 million international guests from over 55 countries and six continents, and generated an estimated 5.6 billion impressions through television and digital platforms. In the year ended December 31, 2011 and the nine months ended September 30, 2012, we had total revenues of \$1,330.8 million and \$1,160.6 million, respectively. Our strong revenue and operating performance and stable profit margins, combined with our disciplined approach to capital expenditures and working capital management, enable us to generate strong and recurring cash flow.

Our portfolio of branded theme parks includes the following marquee names:

- **SeaWorld** . SeaWorld is widely recognized as the leading marine-life theme park brand in the world. Our SeaWorld theme parks, located in Orlando, San Antonio and San Diego, each rank among the most highly attended theme parks in the industry and offer up-close interactive experiences and a variety of live performances, including shows featuring Shamu in specially designed amphitheaters. We offer our guests numerous animal encounters, including the opportunity to work with trainers and feed marine animals, as well as themed thrill rides and theatrical shows that uniquely incorporate our one-of-a-kind animal collection.
- **Busch Gardens** . Our Busch Gardens theme parks are family-oriented destinations designed to immerse guests in foreign geographic settings. They are renowned for their beauty and award-winning landscaping and gardens and allow our guests to discover the natural side of

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fun by offering a family experience featuring a variety of attractions and world class rollercoasters in a richly-themed environment. Busch Gardens Tampa presents our collection of exotic animals from Africa, Asia and Australia. Busch Gardens Williamsburg, which has been named the Most Beautiful Park in the World by the National Amusement Park Historical Association for 22 consecutive years, showcases European-themed cultural and culinary experiences, including high-quality theatrical productions.

- **Aquatica .** Our Aquatica branded water parks are premium, family-oriented destinations that are based in a South Seas-themed tropical setting. Aquatica water parks build on the aquatic theme of our SeaWorld brand and feature high-energy rides, water attractions, white-sand beaches and an innovative and entertaining presentation of marine and terrestrial animals. We position our Aquatica water parks as companion water parks to our SeaWorld theme parks in Orlando and San Diego and we have an Aquatica water park situated within our SeaWorld San Antonio theme park.
- **Discovery Cove .** Discovery Cove is a reservations only, all-inclusive, marine-life day resort adjacent to SeaWorld Orlando. Discovery Cove offers guests personal, signature experiences, including the opportunity to swim and interact with dolphins, take an underwater walking reef tour and enjoy pristine white-sand beaches and landscaped private cabanas. Discovery Cove presently limits its attendance to approximately 1,300 guests per day and features premium culinary offerings in order to provide guests with a more relaxed, intimate and high-end luxury resort experience.
- **Sesame Place .** Sesame Place is the only U.S. theme park based entirely on the award-winning television show Sesame Street. Located between Philadelphia and New York City, Sesame Place is a destination where parents and children can share in the spirit of imagination and experience Sesame Street together through whirling rides, water slides, colorful shows and furry friends. In addition, we have introduced Sesame Street brands in our other theme parks through Sesame Street-themed rides, shows, children's play areas and merchandise.

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Our theme parks are consistently recognized among the top theme parks in the world and rank among the most highly-attended in the industry. We generally locate our theme parks in geographical clusters, which improves our ability to serve guests by providing them with a varied, comprehensive vacation experience and valuable multi-park pricing packages, as well as improving our operating efficiency through shared overhead costs. The following table summarizes our theme park portfolio:

Location	Theme Park	Year Opened	Season	Animal Attractions (2)	Rides (3)	Shows (4)	Play Areas (5)	Events (6)	Distinctive Experiences (7)
Orlando, FL		1973	Year-round	19	14	18	2	7	17
		2000	Year-round	5	0	0	0	0	5
		2008	Year-round	5	13	0	2	0	2
Tampa, FL		1959	Year-round	16	31	17	10	9	14
		1980	Mar-Oct	0	12	0	4	1	2
San Diego, CA		1964	Year-round	26	10	18	2	4	11
		1996 (1)	May-Sep	2	11	0	0	0	0
San Antonio, TX		1988	Feb-Dec	12	23	29	11	7	22
Williamsburg, VA		1975	Mar-Oct & Dec	7	38	16	8	6	27
		1984	May-Sep	1	15	1	4	0	6
Langhorne, PA		1980	May-Oct & Dec	0	26	14	6	4	7
Total				93	193	113	49	38	113

- (1) On November 20, 2012, we acquired the Knott's Soak City Chula Vista water park from a subsidiary of Cedar Fair, L.P. We plan to rebrand this water park as Aquatica San Diego before it re-opens in 2013.
- (2) Represents animal attractions without a ride or show element, often adjacent to a similarly themed attraction.
- (3) Represents rides, including mechanical rides and water slides.
- (4) Represents annual and seasonal shows with live entertainment, animals, characters and/or 3-D or 4-D experiences.
- (5) Represents pure play areas, typically designed for children or seasonal special event oriented, often without a queue (such as water splash areas, Halloween mazes).
- (6) Represents special limited time events.
- (7) Represents special experiences, such as educational tours, immersive dining experiences and swimming with animals, often limited to small groups and individuals and/or requiring a supplemental fee.

Our Competitive Strengths

- **Iconic Brands That Consumers Know and Love.** Our brands are internationally recognized cultural touch points representing the intersection of “where imagination meets nature.” Our brand portfolio is highly stable, reducing our exposure to changing consumer tastes. We use our brands and intellectual property to increase awareness of our theme parks, deepen connections with our guests and drive attendance to our theme parks. The popularity of our brands is evidenced by over 30 million unique visitors to our websites from January 2012 through November 2012. In addition to our theme parks, we have recently begun to leverage our brands into media, entertainment and consumer products, and our Sea Rescue television program was seen by more than 27 million viewers in its first season and has been extended for a second season.
- **World-Class, Differentiated Theme Parks.** We own and operate 11 theme parks, including five of the top 20 theme parks in the United States as measured by attendance. Our theme parks are beautifully themed and deliver high-quality entertainment, aesthetic appeal, shopping and dining and have won numerous awards, including Amusement Today’s Golden Ticket Awards for Best Landscaping. Our theme parks feature seven of the 50 highest rated steel rollercoasters in the world, led by Apollo’s Chariot, the #4 rated steel rollercoaster in the world. Our SeaWorld theme parks have won the top three spots in Amusement Today’s annual Golden Ticket Award for Best Marine Life Park since the award’s inception in 2006. We have approximately 600 attractions that appeal to guests of all ages, including 93 animal attractions, 113 shows and 193 rides. In addition, we have over 300 restaurants and specialty shops . Our theme parks appeal to the entire family and offer a broad range of experiences, ranging from emotional and educational animal encounters to thrilling rides and exciting shows.
- **Diversified Business Portfolio.** Our portfolio of theme parks is diversified in a number of important respects. Our theme parks are located across the United States, which helps protect us from the impact of localized events. Each theme park showcases a different mix of zoological, thrill-oriented and family-friendly attractions. This varied portfolio of entertainment offerings attracts guests from a broad range of demographics and geographies. Our theme parks appeal to both regional and destination guests, which provides us with a stable attendance base while allowing us to benefit from improvements in macroeconomic conditions, including increased consumer spending and international travel.
- **One of the World’s Largest Zoological Collections.** We are uniquely positioned in the industry due to our ability to display our extensive animal collection in a differentiated and interactive manner. We have one of the world’s largest zoological collections with approximately 67,000 animals, including approximately 7,000 marine and terrestrial animals and approximately 60,000 fish. With 28 killer whales, we have the largest group of killer whales in human care. We have established successful and innovative breeding programs that have produced 29 killer whales, 151 dolphins and 115 sea lions, among other species, and our marine animal populations are characterized by their substantial genetic diversity. More than 80% of our marine mammals were born in human care.
- **Strong Competitive Position .** Our competitive position is protected by the combination of our powerful brands, extensive animal collection and expertise and premier in-park assets located on valuable real estate. Our animal collection and zoological expertise, which have evolved over our more than four decades of caring for animals, would be very difficult to replicate. Over the past two years, we have made extensive investments in new marketable attractions and infrastructure and we believe that our theme parks are well capitalized. The limited supply of real estate suitable for theme park development coupled with high initial capital investment, long development lead-times and zoning and other land use restrictions

constrain the number of large theme parks that can be constructed. We estimate that the replacement value of our current assets and owned land (approximately 2,000 acres) exceeds \$5 billion.

- **Proven and Experienced Management Team and Employees with Specialized Animal Expertise.** Our senior management team, led by Jim Atchison, our Chief Executive Officer and President, includes some of the most experienced theme park executives in the world, with an average tenure of more than 28 years in the industry. The management team is comprised of highly skilled and dedicated professionals with wide ranging experience in theme park operations, zoological operations, product development, business development and marketing. In addition, we are one of the world's foremost zoological organizations with approximately 1,550 employees dedicated to animal welfare, training, husbandry and veterinary care.
- **Proximity of Complementary Theme Parks.** Our theme parks are grouped in key locations near large population centers across the United States, which allows us to realize revenue and operating expense efficiencies. Having theme parks located within close proximity to each other enables us to cross market and offer bundled ticket and travel packages. In addition, closely located theme parks provide operating efficiencies including sales, marketing, procurement and administrative synergies as overhead expenses are shared among the theme parks within each region. We intend to continue to capitalize on this strength through our recent acquisition of Knott's Soak City in Chula Vista, CA, which will complement our SeaWorld San Diego theme park.
- **Attractive, Stable Profit Margins and Strong Cash Flow Generation.** Our attractive, stable profit margins, combined with our disciplined approach to capital expenditures and working capital management, enable us to generate strong and recurring cash flow. Five of our 11 theme parks are open year-round, reducing our seasonal cash flow volatility. In addition, we have substantial tax assets which we expect to be available to defer a portion of our cash tax burden going forward.
- **Care for Our Community and the Natural World.** Caring for our community and the natural world is a core part of our corporate identity and resonates with our guests. We focus on three core philanthropic areas: children, environment, and education. Through the power of entertainment, we are able to inspire children and educate guests of all ages. We support numerous charities and organizations across the country. For example, we are the primary supporter and corporate member of the SeaWorld & Busch Gardens Conservation Fund, a non-profit conservation foundation, which makes grants to wildlife research and conservation projects that protect wildlife and wild places worldwide. In addition, in collaboration with the government and other members of accredited stranding networks, we operate one of the world's most respected programs to rescue ill and injured marine animals, with the goal to rehabilitate and return them back to the wild. Our animal experts have helped more than 22,000 ill, injured, orphaned and abandoned animals for more than four decades.

Our Strategies

We plan to grow our business by increasing our existing theme park revenues through strategies designed to drive higher attendance and increase in-park per capita spending, as well as by creating new sources of revenue through expansion of our theme parks, new theme park development and extending our brands into new media, entertainment and consumer products. We believe that our strategies complement each other as they lead to increased brand strength and awareness and drive revenue growth and profitability. Our strategies include the following components:

- **Continue to Create Memorable Experiences for Our Guests.** Our mission is to use the power of educational entertainment to continue to inspire our guests to celebrate, connect with

and care for the natural world we share. We provide our guests with innovative and immersive theme park experiences, such as our 3-D, 360 degree TurtleTrek attraction at SeaWorld Orlando, which opened in 2012. We also offer guests exciting rides, animal encounters and beautifully-themed entertainment that are difficult to replicate, such as in-water experiences with beluga whales at SeaWorld Orlando and our Cheetah Hunt ride, which is a launch coaster opened in 2011 that runs alongside a cheetah habitat at Busch Gardens Tampa. As a result of these distinctive offerings, our guest surveys routinely report very high "Overall Satisfaction" scores, with 97% of recent respondents in 2012 ranking their experience good or excellent. Going forward, we will continue to develop high-quality experiences for our guests, focused on integrating our impressive animal collection with uniquely themed settings and products that our guests will remember long after they leave our theme parks.

- **Drive Increased Attendance to Our Theme Parks .** We plan to drive increased attendance to our theme parks by continually introducing new attractions, differentiated experiences and enhanced service offerings. Because of the historic correlation between capital investment and increased attendance, we plan to add to our award-winning portfolio of assets and spend capital in support of marketable events, such as SeaWorld's 50th Anniversary Celebration. We also plan to increase awareness of our theme parks and brands through effective media and marketing campaigns, including the targeted use of online and social media platforms. For example, since their introduction in 2006, our YouTube channels have attracted approximately 16 million views, and we believe that we can continue to use traditional and new media to increase awareness of our brands and drive attendance to our theme parks.
- **Expand In-Park Per Capita Spending through New and Enhanced Offerings.** We believe that by providing our guests additional and enhanced offerings at various price points, we can drive further spending in our theme parks. For example, we recently introduced an "all-day-dining deal" for a supplemental fee, which we believe has resulted in increased in-park per capita spending. In addition, we have developed iPhone and Android smartphone applications for our SeaWorld and Busch Gardens theme parks, which offer GPS navigation through the theme parks and interactive theme park maps that show the nearest dining locations, gift shops and ATMs and provide real-time updates on wait times for rides. Our guests have quickly adopted these products with over one million downloads of our iPhone applications from June 2011 through December 2012. We believe that going forward, there are significant avenues to expand guest offerings in ways that both increase guest satisfaction and provide us with incremental revenue.
- **Grow Revenue through Disciplined and Dynamic Pricing.** We are focused on increasing our revenues through a variety of ticket options and disciplined pricing and promotional strategies. We offer an array of tailored admission options, including season passes and multi-park tickets to motivate the purchase of higher value products and increase in-park per capita spending. In addition, to increase non-peak demand we offer seasonal and special events and concerts, some of which are separately priced. We have begun deploying a dynamic pricing model, which will enable us to adjust admission prices for our theme parks based on expected demand.
- **Increase Profitability through Operating Leverage and Rigorous Cost Management.** Adding incremental attendance and driving additional in-park per capita spending affords us with an opportunity to realize gains in profitability because of the fixed cost base and high operating leverage of our business. We also employ rigorous cost management techniques to drive additional operating efficiencies. For example, we utilize a centralized procurement and strategic sourcing team and participate in several cooperative buying

organizations to leverage our purchases company-wide and have also recently consolidated our marketing spending with a single agency to streamline our marketing efforts.

- ***Pursue Disciplined Capital Deployment, Expansion and Acquisition Opportunities*** . We pursue a disciplined capital deployment strategy focused on the development and improvement of rides, attractions and shows, as well as seek to leverage our strong brands and expertise to pursue selective domestic and international expansion and acquisition opportunities. As part of this strategy, we seek to replicate successful capital investments in particular attractions across multiple theme parks, as we did with our Journey to Atlantis watercoaster that premiered in SeaWorld Orlando and was later introduced in the other SeaWorld theme parks. We have been successful in grouping our theme parks and water parks near each other, which allows us to operate companion theme parks with reduced overhead costs and creates revenue opportunities through multi-park tickets and other joint marketing initiatives. For example, in November 2012, we acquired Knott's Soak City Chula Vista, which is located near our SeaWorld San Diego theme park. We plan to re-launch the water park as Aquatica San Diego by mid-2013. We also evaluate new domestic theme park opportunities as well as potential joint venture opportunities that would allow us to expand internationally by combining our brands and zoological and operational expertise with third-party capital.
- ***Leverage and Expand Our Brands to Increase Awareness and Create New Opportunities*** . Our brands are highly regarded and are primarily based on our own intellectual property, which provides us with opportunities to leverage our intellectual property portfolio and develop new media, entertainment and consumer products. For example, in 2013 we will open Antarctica: Empire of the Penguin at our SeaWorld Orlando theme park that will feature a new animated penguin character, Puck, and coincide with the launch of new in-park merchandise, mobile gaming, and consumer products designed around the Puck character. In addition, we are able to expand into new media platforms by partnering with others to create new, powerful entertainment opportunities. For example, in 2012, we launched Sea Rescue, a Saturday morning television show airing on the ABC Network featuring our work to rescue injured animals in coordination with various government agencies and other rescue organizations, which attracted over 27 million viewers in its first season and has been rated as the number one show in its timeslot in most major U.S. markets since its debut.
- ***Continue our Support of Species Conservation, Sustainability and Animal Welfare***. Our zoological know-how and coast-to-coast presence provide us with significant opportunities to contribute to global species conservation, sustainability and animal welfare initiatives. For example, our employees regularly assist in animal rescue efforts, and the non-profit SeaWorld & Busch Gardens Conservation Fund, of which we are the primary supporter and corporate member, makes grants to wildlife research and species conservation projects worldwide. Our species conservation efforts and philanthropic activities generate positive awareness and goodwill for our business. These efforts are a core part of our corporate culture and identity and resonate with our customers.

Our Industry

We believe that the theme park industry is an attractive sector characterized by a proven business model that generates significant cash flow and has clear avenues for growth. Theme parks offer a strong consumer value proposition, particularly when compared to other forms of out-of-home entertainment such as concerts, sporting events, cruises and movies. As a result, theme parks attract a broad range of guests and generally exhibit strong margins across regions, operators, park types and macroeconomic conditions.

The U.S. theme park industry, which hosts approximately 315 million visitors per year, is comprised of a large number of venues ranging from a small group of high attendance, heavily-themed destination theme parks to a large group of lower attendance local theme parks and family entertainment centers. The United States is the largest theme park market in the world with six of the ten largest theme park operators and 12 of the 25 most-visited theme parks in the world. In 2011, the U.S. theme park industry generated approximately \$11.0 billion in revenues, which represented a 3.0% compounded annual growth rate since 2003.

Risks Related to Our Business and this Offering

Investing in our common stock involves substantial risks, and our ability to successfully operate our business is subject to numerous risks, including those that are generally associated with operating in the theme park industry and the broader entertainment industry. Any of the factors set forth under "Risk Factors" in this prospectus may limit our ability to successfully execute our business strategy. Some of the more significant challenges and risks include the following:

- various factors beyond our control that impact, among other things, discretionary consumer spending could adversely affect attendance figures at our theme parks, the frequency with which our guests choose to visit our theme parks and guest spending patterns at our theme parks;
- damage to our brands or reputation could adversely affect the Company;
- our intellectual property rights are valuable, and any inability to protect them could adversely affect our business;
- we may be subject to claims for infringing the intellectual property rights of others, which could be costly and result in the loss of significant intellectual property rights;
- incidents or adverse publicity concerning our theme parks or the theme park industry generally could harm our reputation as well as negatively impact our revenues and profitability;
- catastrophic events, bad weather and even forecasts of bad weather can substantially and adversely impact attendance at our theme parks which would in turn negatively affect our revenues and profitability; and
- you will incur immediate and substantial dilution in the net tangible book value of the shares you purchase in this offering.

Before you participate in this offering, you should carefully consider all of the information in this prospectus, including matters set forth under the heading "Risk Factors."

Recent Developments

On November 20, 2012, we acquired the Knott's Soak City Chula Vista water park from a subsidiary of Cedar Fair, L.P. We plan to rebrand this water park as Aquatica San Diego before it re-opens in mid-2013.

Corporate History and Information

SeaWorld Entertainment, Inc. was incorporated in Delaware on October 2, 2009 in connection with the 2009 Transactions and changed its name from "SW Holdco, Inc." to SeaWorld Entertainment, Inc. on December 13, 2012.

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Our principal executive offices are located at 9205 South Park Center Loop, Suite 400, Orlando, Florida 32819, and our telephone number is (407) 226-5011. We maintain a corporate website at [www.blackstone.com](#), as well as a number of other theme park specific and marketing websites. The information contained on our websites or that can be accessed through our websites neither constitutes part of this prospectus nor is incorporated by reference herein.

Our Sponsor

Blackstone is one of the world's leading investment and advisory firms. Blackstone's alternative asset management businesses include the management of corporate private equity funds, real estate funds, hedge fund solutions, credit-oriented funds and closed-end mutual funds. Blackstone also provides various financial advisory services, including financial and strategic advisory, restructuring and reorganization advisory and fund placement services. Through its different investment businesses, as of September 30, 2012, Blackstone had total assets under management of approximately \$204.6 billion.

	THE OFFERING
Common stock offered by SeaWorld Entertainment, Inc.	shares.
Common stock offered by the selling stockholders	shares.
Common stock to be outstanding immediately after this offering	shares.
Option to purchase additional shares of common stock from the selling stockholders	shares.
Use of proceeds	<p>We estimate that the net proceeds to us from this offering, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, will be approximately \$ million, based on the assumed initial public offering price of \$ per share, which is the mid-point of the range set forth on the cover page of this prospectus. For a sensitivity analysis as to the initial public offering price and other information, see “Use of Proceeds.”</p> <p>We intend to use a portion of the net proceeds received by us from this offering to redeem \$ million in aggregate principal amount of our 11% Senior Notes due 2016 (the “Senior Notes”) at a redemption price of 111.0% pursuant to a provision in the indenture governing the Senior Notes that permits us to redeem up to 35% of the aggregate principal amount of the Senior Notes with the net cash proceeds of certain equity offerings and to pay estimated premiums and accrued interest thereon.</p> <p>Approximately \$ million of the net proceeds received by us from this offering will be used to make a one-time payment to an affiliate of Blackstone in connection with the termination of the 2009 Advisory Agreement as described in “Use of Proceeds.”</p> <p>We intend to use the remaining proceeds received by us from this offering for other general corporate purposes.</p> <p>We will not receive any proceeds from the sale of shares of common stock offered by the selling stockholders, including upon the sale of shares if the underwriters exercise their option to purchase additional shares from the selling stockholders in this offering. The selling stockholders will distribute all of the net proceeds they receive to investment funds affiliated with Blackstone and other members of the Investor Group in accordance with the agreements governing the Partnerships. See “Use of Proceeds” and “Certain Relationships and Related Party Transactions—Limited Partnership Agreements and Equityholders Agreement.”</p>

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Risk factors		See “Risk Factors” beginning on page 17 and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common stock.
Dividend policy		We intend to pay cash dividends on our common stock, subject to our compliance with applicable law, and depending on, among other things, our results of operations, financial condition, level of indebtedness, capital requirements, contractual restrictions, restrictions in our debt agreements and in any preferred stock, business prospects and other factors that our Board of Directors may deem relevant. Our ability to pay dividends on our common stock is limited by the covenants of our senior secured credit facilities (the “Senior Secured Credit Facilities”) and the indenture governing the Senior Notes and may be further restricted by the terms of any future debt or preferred securities. See “Dividend Policy” and “Description of Indebtedness.”
Proposed	ticker symbol	“SEAS.”
Conflicts of interest		Affiliates of Goldman, Sachs & Co. hold \$300.0 million in aggregate principal amount of the Senior Notes. As described under “Use of Proceeds,” a portion of the net proceeds from this offering will be used to redeem \$ million in aggregate principal amount of the Senior Notes and such affiliates of Goldman, Sachs & Co. will receive their pro rata share of such redemption amount. Affiliates of Goldman, Sachs & Co. also own Class A and Class B Units in one of the Partnerships that collectively own 100% of our common stock and such affiliates will receive a portion of the net proceeds to the selling stockholders. Because Goldman, Sachs & Co. is an underwriter and its affiliates are expected to receive more than 5% of the net proceeds of this offering due to the redemption and the proceeds to the selling stockholders, Goldman, Sachs & Co. is deemed to have a “conflict of interest” under Rule 5121 (“Rule 5121”) of the Financial Industry Regulatory Authority, Inc. (“FINRA”). Accordingly, this offering will be conducted in accordance with Rule 5121, which requires, among other things, that a “qualified independent underwriter” has participated in the preparation of, and has exercised the usual standards of “due diligence” with respect to, the registration statement and this prospectus. Citigroup Global Markets Inc. has agreed to act as qualified independent underwriter for this offering and to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, as amended (the “Securities Act”), specifically including those inherent in Section 11 of the Securities Act.

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The number of shares of our common stock to be outstanding immediately after the consummation of this offering is based on _____ shares of common stock outstanding as of _____, and does not give effect to _____ shares of common stock reserved for future issuance under the new incentive plan (the “2013 Omnibus Incentive Plan”).

Unless we indicate otherwise or the context otherwise requires, all information in this prospectus:

- assumes (1) no exercise of the underwriters’ option to purchase additional shares and (2) an initial public offering price of \$ _____ per share, which is the mid-point of the range set forth on the cover page of this prospectus;
- reflects a _____ for one stock split of our common stock, to be effected prior to the consummation of this offering; and
- assumes the filing and effectiveness of our amended and restated certificate of incorporation immediately prior to the consummation of this offering.

SUMMARY HISTORICAL CONSOLIDATED FINANCIAL DATA

The following tables set forth our summary historical consolidated financial and operating data for the periods and as of the dates indicated.

We derived the summary consolidated statements of operations data for the years ended December 31, 2011 and December 31, 2010 and the one month period ended December 31, 2009 from our audited consolidated financial statements included elsewhere in this prospectus. The financial information for the one month period ended December 31, 2009 is presented because the Company became a stand-alone entity on December 1, 2009 in connection with the 2009 Transactions. See “Basis of Presentation.”

We derived the unaudited statement of operations data for the nine months ended September 30, 2012 and September 30, 2011 and the balance sheet data as of September 30, 2012 from our unaudited condensed consolidated financial statements included elsewhere in this prospectus. In the opinion of management, such unaudited condensed consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of our results for those periods. The results of operations for these interim periods are not necessarily indicative of the results to be expected for a full year or any future period. Our historical operating results are not necessarily indicative of future operating results.

The consolidated balance sheet data as of September 30, 2012 is presented:

- on an actual basis;
- on an as adjusted basis to reflect (i) the issuance and sale of _____ shares of our common stock in this offering based on the assumed initial public offering price of \$ _____ per share, which is the mid-point of the range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, (ii) the redemption of \$ _____ million in aggregate principal amount of the Senior Notes at a redemption price of 111.0% and (iii) the payment of \$ _____ million to Blackstone in connection with the termination of the 2009 Advisory Agreement as described in “Use of Proceeds.”

The summary historical consolidated financial data set forth below should be read in conjunction with “Capitalization,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the consolidated financial statements and the notes thereto included elsewhere in this prospectus.

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	Nine Months Ended September 30,		Year Ended December 31,		One Month Period Ended December 31,
	2012	2011	2011	2010	2009 ⁽¹⁾
(Amounts in thousands, except per share and per capita amounts)					
Statement of operations data:					
(unaudited)					
Net revenues					
Admissions	\$ 715,842	\$ 666,097	\$ 824,937	\$ 730,368	\$ 45,060
Food, merchandise and other	444,737	412,637	505,837	465,735	27,918
Total revenues	1,160,579	1,078,734	1,330,774	1,196,103	72,978
Costs and expenses					
Cost of food, merchandise and other revenues	99,109	89,736	112,498	97,871	5,472
Operating expenses	560,145	521,390	687,999	673,829	51,957
Selling, general and administrative	150,571	142,447	172,368	159,506	11,544
Depreciation and amortization	122,085	154,862	213,592	207,156	17,973
Acquisition-related expenses	—	—	—	—	67,966
Total costs and expenses	931,910	908,435	1,186,457	1,138,362	154,912
Operating income (loss)	228,669	170,299	144,317	57,741	(81,934)
Other income (expense), net	2,110	(1,661)	(1,679)	1,937	30
Interest expense	86,263	83,960	110,097	134,383	11,501
Income (loss) before income taxes	144,516	84,678	32,541	(74,705)	(93,405)
Provision for (benefit from) income taxes	58,273	34,719	13,428	(29,241)	(35,664)
Net income (loss)	\$ 86,243	\$ 49,959	\$ 19,113	\$ (45,464)	\$ (57,741)
Net income (loss) attributable to common stockholders	\$ 86,243	\$ 49,959	\$ 19,113	\$ (45,464)	\$ (57,741)
Per share data:					
Basic and diluted income (loss) per share	\$ 8.36 \$8.28	\$ 4.93 \$4.90	\$ 1.88 \$1.86	\$ (4.50) \$(4.50)	\$ (5.72) \$(5.72)
Weighted-average number of shares used in per share amounts—basic and diluted	10,310 10,413	10,138 10,205	10,174 10,253	10,100 10,100	10,100 10,100
Other financial and operating data:					
Adjusted EBITDA ⁽²⁾	\$ 365,749	\$ 337,893	\$ 382,059	\$ 343,276	\$ 8,379
Capital expenditures	154,976	163,551	225,316	112,438	3,149
Attendance	19,862	19,040	23,631	22,433	1,402
Total revenue per capita	\$ 58.43	\$ 56.66	\$ 56.31	\$ 53.32	\$ 52.05
As of September 30, 2012					
Consolidated balance sheet data (at end of period):					
	Actual		As adjusted		
	(unaudited)				
Cash and cash equivalents	\$ 142,843				(3)
Total assets	2,611,240				
Total long-term debt	1,827,665				
Total equity	458,410				
<p>(1) Reflects our financial results from December 1, 2009 to December 31, 2009, which is the period in which we first became an independent, stand-alone entity following the 2009 Transactions.</p> <p>(2) Under the indenture governing the Senior Notes and under our Senior Secured Credit Facilities, our ability to engage in activities such as incurring additional indebtedness, making investments, refinancing certain indebtedness, paying dividends and entering into certain merger transactions is governed, in part, by our ability to satisfy tests based on Adjusted EBITDA.</p>					

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The Senior Notes and our Senior Secured Credit Facilities generally define "Adjusted EBITDA" as net income (loss) before interest expense, income tax expense (benefit), depreciation and amortization, as further adjusted to exclude certain unusual, non-cash, and other items permitted in calculating covenant compliance under the indenture governing the Senior Notes and our Senior Secured Credit Facilities.

We believe that the presentation of Adjusted EBITDA is appropriate to provide additional information to investors about the calculation of, and compliance with, certain financial covenants in the indenture governing the Senior Notes and in our Senior Secured Credit Facilities. Adjusted EBITDA is a material component of these covenants. In addition, investors, lenders, financial analysts and rating agencies have historically used EBITDA-related measures in our industry, along with other measures to evaluate a company's ability to meet its debt service requirement, to estimate the value of a company and to make informed investment decisions. We also use Adjusted EBITDA in connection with certain components of our executive compensation program as described under "Management—Compensation Discussion and Analysis."

Adjusted EBITDA is not a recognized term under generally accepted accounting principles in the United States ("GAAP"), and should not be considered in isolation or as a substitute for a measure of our liquidity or performance prepared in accordance with GAAP and is not indicative of income from operations as determined under GAAP. Adjusted EBITDA and other non-GAAP financial measures have limitations which should be considered before using these measures to evaluate our liquidity or financial performance. Adjusted EBITDA, as presented by us, may not be comparable to similarly titled measures of other companies due to varying methods of calculation.

We believe that the most directly comparable GAAP measure to Adjusted EBITDA is net income (loss). The following table sets forth a reconciliation of net income (loss) to Adjusted EBITDA:

	Nine Months Ended September 30,		Years Ended December 31,		One Month Period Ended December 31,
	2012	2011	2011	2010	2009
	(Dollars in thousands)				
Net income (loss)	\$ 86,243	\$ 49,959	\$ 19,113	\$ (45,464)	\$ (57,741)
Provision for (benefit from) income taxes	58,273	34,719	13,428	(29,241)	(35,664)
Interest expense	86,263	83,960	110,097	134,383	11,501
Depreciation and amortization expense	122,085	154,862	213,592	207,156	17,973
Deferred revenue write-downs ^(a)	—	—	—	17,348	2,678
Non-cash compensation expense ^(b)	1,361	437	823	—	—
Acquisition-related adjustments ^(c)	—	—	—	—	67,966
Advisory fee ^(d)	5,075	4,948	6,012	4,704	290
Carve-out costs ^(e)	—	5,679	6,085	45,330	—
Non-cash expenses ^(f)	5,282	2,888	12,468	9,060	1,376
Debt refinancing costs ^(g)	1,000	441	441	—	—
Chula Vista acquisition ^(h)	167	—	—	—	—
Adjusted EBITDA	\$365,749	\$337,893	\$ 382,059	\$ 343,276 ⁽ⁱ⁾	\$ 8,379

(a) Reflects amortization of deferred revenue that would have occurred absent purchase accounting relating to the 2009 Transactions.

(b) Reflects non-cash compensation expense associated with the grants of partnership interests in the Partnerships recorded under "Equity-based Compensation" in our consolidated financial statements.

(c) Reflects charges related to the 2009 Transactions, including third-party professional fees relating to the purchase of the Company by the Investor Group and related financing transactions.

(d) Reflects historical fees paid to an affiliate of the Sponsor under the 2009 Advisory Agreement. In connection with this offering, we intend to terminate the 2009 Advisory Agreement in accordance with its terms. See "Certain Relationships and Related Party Transactions—Advisory Agreement and Support and Services Agreement."

(e) Reflects certain carve-out costs and savings related to our separation from ABI and the establishment of certain operations at the Company on a stand-alone basis. These amounts primarily consist of the cost of third-party professional services, relocation expenses, severance costs and cost savings related to the termination of certain employees.

(f) Reflects non-cash expenses related to miscellaneous asset write-offs and non-cash gains/losses on foreign currencies.

(g) Reflects certain costs related to the 2012 and 2011 amendments to our Senior Secured Credit Facilities.

(h) Reflects certain costs related to our acquisition of the Chula Vista water park.

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- (i) The adjustments for the year ended December 31, 2010 include approximately \$20.9 million of adjustments permitted under our debt covenants related to our separation from ABI and certain restructuring costs. As we established some of the services provided to us by ABI at the Company, such services became part of our ongoing cost structure and accordingly, we did not use these adjustments for any periods subsequent to the year ended December 31, 2010. Adjusted EBITDA excluding such adjustments would have been \$322,376 for the year ended December 31, 2010.
- (3) The as adjusted amount is calculated based on the mid-point of the range set forth on the cover of this prospectus and reflects the receipt of the net proceeds to us from this offering, the payment of \$ million to Blackstone in connection with the termination of the 2009 Advisory Agreement and the redemption of \$ million in aggregate principal amount of the Senior Notes as described in "Use of Proceeds."

RISK FACTORS

An investment in our common stock involves a high degree of risk. You should carefully consider each of the following risks as well as the other information included in this prospectus, including “Selected Historical Consolidated Financial Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes, before investing in our common stock. Any of the following risks could materially and adversely affect our business, financial condition or results of operations. However, the selected risks described below are not the only risks facing us. Additional risks and uncertainties not currently known to us or those we currently view to be immaterial may also materially and adversely affect our business, financial condition or results of operations. In such a case, the trading price of the common stock could decline and you may lose all or part of your investment in the Company.

Risks Related to Our Business and Our Industry

Various factors beyond our control could adversely affect attendance figures at our theme parks, the frequency with which our guests choose to visit our theme parks and guest spending patterns at our theme parks.

Our success depends to a significant extent on discretionary consumer spending, which is heavily influenced by general economic conditions and the availability of discretionary income. The recent severe economic downturn, coupled with high volatility and uncertainty as to the future global economic landscape, including risks relating to the so-called “fiscal cliff,” has had and continues to have an adverse effect on consumers’ discretionary income and consumer confidence.

The difficult regional economic conditions and recessionary periods in the locations of our theme parks may adversely impact attendance figures, the frequency with which guests choose to visit our theme parks and guest spending patterns at our theme parks. The actual or perceived weakness in the economy could also lead to decreased spending by our guests. Both attendance and total per capita spending at our theme parks are key drivers of our revenue and profitability, and reductions in either can materially adversely affect our business, financial condition and results of operations.

In addition, other factors beyond our control could adversely affect attendance and guest spending patterns at our theme parks. These factors could also affect our suppliers, vendors, insurance carriers and other contractual counterparties. Such factors include:

- war, terrorist activities or threats and heightened travel security measures instituted in response to these events;
- outbreaks of pandemic or contagious diseases or consumers’ concerns relating to potential exposure to contagious diseases;
- natural disasters, such as hurricanes, fires, earthquakes, tsunamis, tornados, floods and volcanic eruptions and man-made disasters such as the oil spill in the Gulf of Mexico, which may deter travelers from scheduling vacations or cause them to cancel travel or vacation plans;
- bad weather and even forecasts of bad weather, including abnormally hot, cold and/or wet weather;
- changes in the desirability of particular locations or travel patterns of our guests;
- low consumer confidence;
- oil prices and travel costs and the financial condition of the airline, automotive and other transportation-related industries, any travel-related disruptions or incidents and their impact on travel; and
- actions or statements by U.S. and foreign governmental officials related to travel and corporate travel-related activities (including changes to the U.S. visa rules) and the resulting public perception of such travel and activities.

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Any one or more of these factors could adversely affect attendance and total per capita spending at our theme parks, which could materially adversely affect our business, financial condition and results of operations.

Our intellectual property rights are valuable, and any inability to protect them could adversely affect our business.

Our intellectual property, including our trademarks, service marks, domain names, copyrights, patent and other proprietary rights, constitutes a significant part of the value of the Company. To protect our intellectual property rights, we rely upon a combination of trademark, copyright, patent, trade secret and unfair competition laws of the United States and other countries, as well as contract provisions and third-party policies and procedures governing internet/domain name registrations. However, there can be no assurance that these measures will be successful in any given case, particularly in those countries where the laws do not protect our proprietary rights as fully as in the United States. We may be unable to prevent the misappropriation, infringement or violation of our intellectual property rights, breaching any contractual obligations to us, or independently developing intellectual property that is similar to ours, any of which could reduce or eliminate any competitive advantage we have developed, adversely affect our revenues or otherwise harm our business.

We have obtained and applied for numerous U.S. and foreign trademark and service mark registrations and will continue to evaluate the registration of additional trademarks and service marks or other intellectual property, as appropriate. We cannot guarantee that any of our pending applications will be approved by the applicable governmental authorities. Moreover, even if the applications are approved, third parties may seek to oppose or otherwise challenge these registrations. A failure to obtain registrations for our intellectual property in the United States and other countries could limit our ability to protect our intellectual property rights and impede our marketing efforts in those jurisdictions.

We are actively engaged in enforcement and other activities to protect our intellectual property rights. If it became necessary for us to resort to litigation to protect these rights, any proceedings could be burdensome, costly and divert the attention of our personnel, and we may not prevail. In addition, any repeal or weakening of laws or enforcement in the United States or internationally intended to protect intellectual property rights could make it more difficult for us to adequately protect our intellectual property rights, negatively impacting their value and increasing the cost of enforcing our rights.

We may be subject to claims for infringing the intellectual property rights of others, which could be costly and result in the loss of significant intellectual property rights.

We cannot be certain that we do not and will not infringe the intellectual property rights of others. We have been in the past, and may be in the future, subject to litigation and other claims in the ordinary course of our business based on allegations of infringement or other violations of the intellectual property rights of others. Regardless of their merits, intellectual property claims can divert the efforts of our personnel and are often time-consuming and expensive to litigate or settle. In addition, to the extent claims against us are successful, we may have to pay substantial money damages or discontinue, modify, or rename certain products or services that are found to be in violation of another party's rights. We may have to seek a license (if available on acceptable terms, or at all) to continue offering products and services, which may significantly increase our operating expenses.

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Incidents or adverse publicity concerning our theme parks or the theme park industry generally could harm our brands or reputation as well as negatively impact our revenues and profitability.

Our brands and our reputation are among our most important assets. Our ability to attract and retain customers depends, in part, upon the external perceptions of the Company, the quality of our theme parks and services and our corporate and management integrity. The operation of theme parks involves the risk of accidents, illnesses, environmental incidents and other incidents which may negatively affect the perception of guest and employee safety, health, security and guest satisfaction and which could negatively impact our brands or reputation and our business and results of operations. An accident or an injury at any of our theme parks or at theme parks operated by competitors, particularly accidents or injuries involving the safety of guests and employees, and the media coverage thereof, may harm our brands or reputation, cause a loss of consumer confidence in the Company, reduce attendance at our theme parks and negatively impact our results of operations. Such incidents have occurred in the past and may occur in the future. The considerable expansion in the use of social media over recent years has compounded the potential scope of the negative publicity that could be generated by such incidents. If any such incident occurs during a time of high seasonal demand, the effect could disproportionately impact our results of operations for the year.

Animals in our care are important to our theme parks, and they could be exposed to infectious diseases.

Many of our theme parks are distinguished from those of our competitors in that we offer guest interactions with animals. Individual animals, specific species of animals or groups of animals in our collection could be exposed to infectious diseases. While we have never had any such experiences, an outbreak of an infectious disease among any animals in our theme parks or the public's perception that a certain disease could be harmful to human health may materially adversely affect our animal collection, our business, financial condition and results of operations.

We are subject to complex federal and state regulations governing the treatment of animals which can change and to claims and lawsuits by activist groups before government regulators and in the courts.

We operate in a complex and evolving regulatory environment and are subject to various federal and state statutes and regulations and international treaties implemented by federal law. The states in which we operate also regulate zoological activity involving the import and export of exotic and native wildlife, endangered and/or otherwise protected species, zoological display and anti-cruelty statutes. We incur significant compliance costs in connection with these regulations and violation of such regulations could subject us to fines and penalties and result in the loss of our licenses and permits, which, if occurred, could impact our ability to display certain animals. Future amendments to existing statutes, regulations and treaties or new statutes, regulations and treaties may potentially restrict our ability to maintain our animals, or to acquire new ones to supplement or sustain our breeding programs or otherwise adversely affect our business.

Additionally, from time to time, animal activist and other third-party groups may make claims before government agencies and/or bring lawsuits against us. Such claims and lawsuits sometimes are based on allegations that we do not properly care for some of our marquee animals. On other occasions, such claims and/or lawsuits are specifically designed to change existing law or enact new law in order to impede our ability to retain, exhibit, acquire or breed animals. While we seek to structure our operations to comply with all applicable federal and state laws and vigorously defend ourselves when sued, there are no assurances as to the outcome of future claims and lawsuits that could be brought against us. In addition, associated negative publicity could adversely affect our reputation and results of operations.

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Featuring animals at our theme parks involves risks.

Our theme parks feature numerous displays and interactions that include animals. All animal enterprises involve some degree of risk. All animal interaction by our employees and our guests in attractions in our theme parks, where offered, involves risk. While we maintain strict safety procedures for the protection of our employees and guests, injuries or death, while rare, have occurred in the past and may occur in the future, which may harm our reputation, reduce attendance and negatively impact our business, financial condition and results of operations.

We maintain insurance of the type and in amounts that we believe is commercially reasonable and that is available to animal enterprise related businesses in the theme park industry. We cannot predict the level of the premiums that we may be required to pay for subsequent insurance coverage, the level of any self-insurance retention applicable thereto, the level of aggregate coverage available, or the availability of coverage for specific risks.

If we lose licenses and permits required to exhibit animals and/or violate laws and regulations, our business will be adversely affected.

We are required to hold government licenses and permits, some of which are subject to yearly or periodic renewal, for purposes of possessing, exhibiting and maintaining animals. Although our theme parks' licenses and permits have always been renewed in the past, in the event that any of our licenses or permits are not renewed or any of our licenses or permits are revoked, portions of the affected theme park might not be able to remain open for purpose of displaying or retaining the animals covered by such license or permit. Such an outcome could materially adversely affect our business, financial condition and results of operations.

In addition, we are subject to periodic inspections by federal and state agencies and the subsequent issuance of inspection reports. While we believe that we comply with, or exceed, requisite care and maintenance standards that apply to our animals, government inspectors can cite us for alleged statutory or regulatory violations. In unusual instances when we are cited for an alleged deficiency, we are most often given the opportunity to correct any purported deficiencies without penalty. It is possible, however, that in some cases a federal or state regulator could seek to impose monetary fines on us. In the past, when we have been subjected to governmental claims for fines, the amounts involved were not material to our business, financial condition or results of operations. However, while highly unlikely, we cannot predict whether any future fines that regulators might seek to impose would materially adversely affect our business, financial condition or results of operations.

Moreover, many of the statutes under which we operate allow for the imposition of criminal sanctions. While neither of the foregoing situations are likely to occur, either could negatively affect the business, financial condition or results of operations at our theme parks.

A significant portion of our revenues are generated in the State of Florida and in the Orlando market.

Approximately 56% of our revenues are generated in the State of Florida. In addition, our revenues and results of operations depend significantly on the results of our Orlando theme parks. The Orlando theme park market is extremely competitive, with a high concentration of theme parks operated by several companies. As a result, any risks described in this prospectus affecting the State of Florida generally or our Orlando theme parks in particular may materially adversely affect our business, financial condition or results of operations.

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Because we operate in a highly competitive industry, our revenues, profits or market share could be harmed if we are unable to compete effectively.

The entertainment industry, and the theme park industry in particular, is highly competitive. Our theme parks compete with other theme, water and amusement parks and with other types of recreational facilities and forms of entertainment, including movies, home entertainment options, sports attractions, restaurants and vacation travel.

Principal direct competitors of our theme parks include theme parks operated by The Walt Disney Company, Universal Studios, Six Flags, Cedar Fair, Merlin Entertainments and Hershey Entertainment and Resorts Company. The principal competitive factors of a theme park include location, price, uniqueness and perceived quality of the rides and attractions, the atmosphere and cleanliness of the theme park, the quality of its food and entertainment, weather conditions, ease of travel to the theme park (including direct flights by major airlines), and availability and cost of transportation to a theme park. Certain of our direct competitors have substantially greater financial resources than we do, and they may be able to adapt more quickly to changes in guest preferences or devote greater resources to promotion of their offerings and attractions than us. Our competitors may be able to attract customers to their theme parks in lieu of our own through the development or acquisition of new rides, attractions or shows that are perceived by customers to be of a higher quality and entertainment value. As a result, we may not be able to compete successfully against such competitors.

If we lose key personnel, our business may be adversely affected.

Our success depends in part upon a number of key employees, including members of our senior management team who have extensive experience in the industry. The loss of the services of our key employees could have a materially adverse effect on our business. Presently, we do not have employment agreements with any of our key employees.

Increased labor costs and employee health and welfare benefits may reduce our results of operations.

Labor is a primary component in the cost of operating our business. We devote significant resources to recruiting and training our managers and employees. Increased labor costs due to competition, increased minimum wage or employee benefit costs or otherwise, would adversely impact our operating expenses. The Patient Protection and Affordable Care Act of 2010 and proposed amendments thereto contain provisions which could materially impact our future healthcare costs. While the legislation's ultimate impact is not yet known, it is possible that these changes could significantly increase our compensation costs, which would reduce our net income and adversely affect our cash flows.

Unionization activities or labor disputes may disrupt our operations and affect our profitability.

Although none of our employees are currently covered under collective bargaining agreements, we cannot guarantee that our employees will not elect to be represented by labor unions in the future. If some or all of our employees were to become unionized and collective bargaining agreement terms were significantly different from our current compensation arrangements, it could adversely affect our business, financial condition or results of operations. In addition, a labor dispute involving some or all of our employees may disrupt our operations and reduce our revenues, and resolution of disputes may increase our costs.

Although we maintain binding policies that require employees to submit to a mandatory alternative dispute resolution procedure in lieu of other remedies, as employers, we may be subject to

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various employment-related claims, such as individual or class actions or government enforcement actions relating to alleged employment discrimination, employee classification and related withholding, wage-hour, labor standards or healthcare and benefit issues. Such actions, if brought against us and successful in whole or in part, may affect our ability to compete or materially adversely affect our business, financial condition or results of operations.

Our business depends on our ability to meet our workforce needs.

Our success depends on our ability to attract, train, motivate and retain qualified employees to keep pace with our needs, including employees with certain specialized skills in the field of animal training and care. If we are unable to do so, our results of operations and cash flows may be adversely affected.

In addition, we employ a significant seasonal workforce. We recruit year-round to fill thousands of seasonal staffing positions each season and work to manage seasonal wages and the timing of the hiring process to ensure the appropriate workforce is in place. There is no assurance that we will be able to recruit and hire adequate seasonal personnel as the business requires or that we will not experience material increases in the cost of securing our seasonal workforce in the future. Increased seasonal wages or an inadequate workforce could materially adversely affect our business, financial condition or results of operations.

Our growth strategy may not achieve the anticipated results.

Our future success will depend on our ability to grow our business, including through capital investments to improve existing and create new theme parks, rides, attractions and shows, as well as in-park product offerings and product offerings outside of our theme parks. Our growth and innovation strategies require significant commitments of management resources and capital investments and may not grow our revenues at the rate we expect or at all. As a result, we may not be able to recover the costs incurred in developing our new projects and initiatives or to realize their intended or projected benefits, which could materially adversely affect our business, financial condition or results of operations.

We may not be able to fund theme park capital expenditures and investment in future attractions and projects.

A principal competitive factor for a theme park is the uniqueness and perceived quality of its rides and attractions. We need to make continued capital investments through maintenance and the regular addition of new rides and attractions. Our ability to fund capital expenditures will depend on our ability to generate sufficient cash flow from operations and to raise capital from third parties. We cannot assure you that our operations will be able to generate sufficient cash flow to fund such costs, or that we will be able to obtain sufficient financing on adequate terms, or at all, which could cause us to delay or abandon certain projects or plans.

The high fixed cost structure of theme park operations can result in significantly lower margins if revenues decline.

A large portion of our expenses is relatively fixed because the costs for full-time employees, maintenance, animal care, utilities, advertising and insurance do not vary significantly with attendance. These fixed costs may increase at a greater rate than our revenues and may not be able to be reduced at the same rate as declining revenues. If cost-cutting efforts are insufficient to offset declines in revenues or are impracticable, we could experience a material decline in margins, revenues,

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profitability and reduced or negative cash flows. Such effects can be especially pronounced during periods of economic contraction or slow economic growth, such as the recent economic recession.

If we are unable to maintain certain commercial licenses, our business, reputation and brand could be adversely affected.

We rely on licenses from Sesame Workshop to use the Sesame Place tradename and trademark and certain other intellectual property rights, including titles, marks, characters, logos and designs from the Sesame Street television series within our Sesame Place theme park and with respect to Sesame Street themed areas within certain areas of some of our other theme parks, as well as in connection with the sales of certain Sesame Street themed products. Our use of these intellectual property rights is subject to the approval of Sesame Workshop and the licenses may be terminated in certain limited circumstances or in the event of our bankruptcy. Furthermore, the current term of both the Sesame Place theme park license and the multi-park license expire on December 31, 2021, and there is no assurance that we will be able to renegotiate the use of such intellectual property on commercially acceptable terms or at all. The new terms of the licenses may significantly increase our operating expenses, or otherwise adversely affect our business.

ABI is the owner of the Busch Gardens trademarks and domain names. ABI has granted us a perpetual, exclusive, worldwide, royalty-free license to use the Busch Gardens trademark and certain related domain names in connection with the operation, marketing, promotion and advertising of certain of our theme parks, as well as in connection with the production, use, distribution and sale of merchandise sold in connection with such theme parks. Under the license, we are required to indemnify ABI against losses related to our use of the marks. If we were to lose or have to renegotiate this license, our business may be adversely affected.

Changes in consumer tastes and preferences for entertainment and consumer products could reduce demand for our entertainment offerings and products and adversely affect the profitability of our business.

The success of our business depends on our ability to consistently provide, maintain and expand theme park attractions as well as create and distribute media programming, online material and consumer products that meet changing consumer preferences. In addition, consumers from outside the United States constitute an increasingly important portion of our theme park attendance, and our success depends in part on our ability to successfully predict and adapt to tastes and preferences of this consumer group. If our entertainment offerings and products do not achieve sufficient consumer acceptance or if consumer preferences change, our business, financial condition or results of operations could be materially adversely affected.

Our existing debt agreements contain, and future debt agreements may contain, restrictions that may limit our flexibility in operating our business.

Our existing debt agreements contain, and documents governing our future indebtedness may contain, numerous financial and operating covenants that limit the discretion of management with respect to certain business matters. These covenants place restrictions on, among other things, our ability to incur additional indebtedness, pay dividends and other distributions, make capital expenditures, make certain loans, investments and other restricted payments, enter into agreements restricting our subsidiaries' ability to pay dividends, engage in certain transactions with stockholders or affiliates, sell certain assets or engage in mergers, acquisitions and other business combinations, amend or otherwise alter the terms of our indebtedness, alter the business that we conduct, guarantee indebtedness or incur other contingent obligations and create liens. Our existing debt agreements also require, and documents governing our future indebtedness may require, us to meet certain financial

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ratios and tests. Our ability to comply with these and other provisions of the existing debt agreements is dependent on our future performance, which will be subject to many factors, some of which are beyond our control. The breach of any of these covenants or non-compliance with any of these financial ratios and tests could result in an event of default under the existing debt agreements, which, if not cured or waived, could result in acceleration of the related debt and the acceleration of debt under other instruments evidencing indebtedness that may contain cross-acceleration or cross-default provisions. Variable rate indebtedness subjects us to the risk of higher interest rates, which could cause our future debt service obligations to increase significantly.

Our substantial leverage could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry, expose us to interest rate risk to the extent of our variable rate debt and prevent us from meeting our obligations under our indebtedness.

We are highly leveraged. As of September 30, 2012, as adjusted to give effect to the completion of this offering and the use of proceeds therefrom to repay a portion of the Senior Notes, our total indebtedness would have been approximately \$ million. Our high degree of leverage could have important consequences, including the following: (i) a substantial portion of our cash flow from operations is dedicated to the payment of principal and interest on indebtedness, thereby reducing the funds available for operations, future business opportunities and capital expenditures; (ii) our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, acquisitions and general corporate purposes in the future may be limited; (iii) certain of the borrowings are at variable rates of interest, which will increase our vulnerability to increases in interest rates; (iv) we are at a competitive disadvantage to lesser leveraged competitors; (v) we may be unable to adjust rapidly to changing market conditions; (vi) the debt service requirements of our other indebtedness could make it more difficult for us to satisfy our financial obligations; and (vii) we may be vulnerable in a downturn in general economic conditions or in our business and we may be unable to carry out activities that are important to our growth.

Our ability to make scheduled payments of the principal of, or to pay interest on, or to refinance indebtedness depends on and is subject to our financial and operating performance, which in turn is affected by general and regional economic, financial, competitive, business and other factors beyond our control, including the availability of financing in the international banking and capital markets. If unable to generate sufficient cash flow to service our debt or to fund our other liquidity needs, we will need to restructure or refinance all or a portion of our debt, which could cause us to default on our obligations and impair our liquidity. Any refinancing of our indebtedness could be at higher interest rates and may require us to comply with more onerous covenants that could further restrict our business operations. We from time to time may increase the amount of our indebtedness, modify the terms of our financing arrangements, issue dividends, make capital expenditures and take other actions that may substantially increase our leverage.

Despite our significant leverage, we may be able to incur significant additional amounts of debt, which could further exacerbate the risks associated with our significant leverage.

Our operating results are subject to seasonal fluctuations.

We have historically experienced and expect to continue to experience seasonal fluctuations in our annual theme park attendance and revenue, which are typically higher in our second and third quarters, partly because six of our theme parks are only open for a portion of the year. Approximately two-thirds of our attendance and revenues are generated in the second and third quarters of the year and we typically incur a net loss in the first and fourth quarters. In addition, school vacations and school start dates also cause fluctuations in our quarterly theme park attendance and revenue.

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Furthermore, the operating season at some of our theme parks, including Adventure Island, Aquatica San Diego, Busch Gardens Williamsburg, Water Country USA and Sesame Place, is of limited duration. In addition, most of our expenses for maintenance and costs of adding new attractions at our seasonal theme parks are incurred when the operating season is over, which may increase the need for borrowing to fund such expenses during such periods.

When conditions or events described in this section occur during the operating season, particularly during the second and third quarters, there is only a limited period of time during which the impact of those conditions or events can be mitigated. Accordingly, such conditions or events may have a disproportionately adverse effect on our revenues and cash flow.

We may not realize the benefits of acquisitions or other strategic initiatives.

Our business strategy may include selective expansion, both domestically and internationally, through acquisitions of assets or other strategic initiatives, such as joint ventures, that allow us to profitably expand our business and leverage our brands. The success of our acquisitions depends on effective integration of acquired businesses and assets into our operations, which is subject to risks and uncertainties, including realization of anticipated synergies and cost savings, the ability to retain and attract personnel, the diversion of management's attention from other business concerns, and undisclosed or potential legal liabilities of an acquired businesses or assets. Additionally, any international transactions are subject to additional risks, including the impact of economic fluctuations in economies outside of the United States, difficulties and costs of staffing and managing foreign operations due to distance, language and cultural differences, as well as political instability and lesser degree of legal protection in certain jurisdictions, currency exchange fluctuations and potentially adverse tax consequences of overseas operations.

Adverse litigation judgments or settlements resulting from legal proceedings in which we may be involved in the normal course of our business could reduce our profits or limit our ability to operate our business.

We are subject to allegations, claims and legal actions arising in the ordinary course of our business, which may include claims by third parties, including guests who visit our theme parks, our employees or regulators. The outcome of many of these proceedings cannot be predicted. If any of these proceedings were to be determined adversely to us, a judgment, a fine or a settlement involving a payment of a material sum of money were to occur, or injunctive relief were issued against us, our business, financial condition and results of operations could be materially adversely affected.

Our insurance coverage may not be adequate to cover all possible losses that we could suffer and our insurance costs may increase.

We seek to maintain comprehensive insurance coverage at commercially reasonable rates. Although we maintain various safety and loss prevention programs and carry property and casualty insurance to cover certain risks, our insurance policies do not cover all types of losses and liabilities. There can be no assurance that our insurance will be sufficient to cover the full extent of all losses or liabilities for which we are insured, and we cannot guarantee that we will be able to renew our current insurance policies on favorable terms, or at all. In addition, if we or other theme park operators sustain significant losses or make significant insurance claims, then our ability to obtain future insurance coverage at commercially reasonable rates could be materially adversely affected.

We may be unable to purchase or contract with third-party manufacturers for our theme park rides and attractions.

We may be unable to purchase or contract with third parties to build high quality rides and attractions and to continue to service and maintain those rides and attractions at competitive or

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beneficial prices, or to provide the replacement parts needed to maintain the operation of such rides. In addition, if our third-party suppliers' financial condition deteriorates or they go out of business, we may not be able to obtain the full benefit of manufacturer warranties or indemnities typically contained in our contracts or may need to incur greater costs for the maintenance, repair, replacement or insurance of these assets.

Our operations and our ownership of property subject us to environmental requirements, and to environmental expenditures and liabilities.

We incur costs to comply with environmental requirements, such as those relating to water use, wastewater and storm water management and disposal, air emissions control, hazardous materials management, solid and hazardous waste disposal, and the clean-up of properties affected by regulated materials.

We have been required and continue to investigate and clean-up hazardous or toxic substances or chemical releases, and other releases, from current or formerly owned or operated facilities. In addition, in the ordinary course of our business, we generate, use and dispose of large volumes of water, including saltwater, which requires us to comply with a number of federal, state and local regulations and to incur significant expenses. Failure to comply with such regulations could subject us to fines and penalties and/or require us to incur additional expenses. Although we are not now classified as a large quantity generator of hazardous waste, we do store and handle hazardous materials to operate and maintain our equipment and facilities and have done so historically.

We cannot assure you that we will not be required to incur substantial costs to comply with new or expanded environmental requirements in the future or to investigate or clean-up new or newly identified environmental conditions, which could also impair our ability to use or transfer the affected properties and to obtain financing.

Cyber security risks and the failure to maintain the integrity of internal or guest data could result in damages to our reputation and/or subject us to costs, fines or lawsuits.

We collect and retain large volumes of internal and guest data, including credit card numbers and other personally identifiable information, for business purposes, including for transactional or target marketing and promotional purposes, and our various information technology systems enter, process, summarize and report such data. We also maintain personally identifiable information about our employees. The integrity and protection of our guest, employee and Company data is critical to our business and our guests and employees have a high expectation that we will adequately protect their personal information. The regulatory environment, as well as the requirements imposed on us by the credit card industry, governing information, security and privacy laws is increasingly demanding and continue to evolve. Maintaining compliance with applicable security and privacy regulations may increase our operating costs and/or adversely impact our ability to market our theme parks, products and services to our guests. Furthermore, a penetrated or compromised data system or the intentional, inadvertent or negligent release or disclosure of data could result in theft, loss, fraudulent or unlawful use of guest, employee or Company data which could harm our reputation or result in remedial and other costs, fines or lawsuits.

The suspension or termination of any of our business licenses may have a negative impact on our business.

We maintain a variety of business licenses issued by federal, state and local authorities that are renewable on a periodic basis. We cannot guarantee that we will be successful in renewing all of our licenses on a periodic basis. The suspension, termination or expiration of one or more of these licenses could materially adversely affect our revenues and profits. In addition, any changes to the licensing requirements for any of our licenses could affect our ability to maintain the licenses.

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We have a limited operating history as a stand-alone company, which makes it difficult to predict our future prospects and financial performance.

We began operating as a stand-alone company in December 2009, following the 2009 Transactions, and, as a result, have a limited operating history as an independent company. Accordingly, you should consider our future prospects in light of the risks and challenges encountered by a company with a limited operating history. There can be no assurance that we will be able to successfully meet the challenges, uncertainties, expenses and difficulties encountered by us or that we will be successful in accomplishing our objectives. Our limited operating history as a stand-alone company makes it difficult to predict our future prospects and financial performance.

Affiliates of Blackstone control us and their interests may conflict with ours or yours in the future.

Immediately following this offering of common stock, affiliates of Blackstone will beneficially own approximately % of our common stock, or approximately % if the underwriters exercise in full their option to purchase additional shares. As a result, investment funds associated with or designated by affiliates of Blackstone will have the ability to elect all of the members of our Board of Directors and thereby control our policies and operations, including the appointment of management, future issuances of our common stock or other securities, the payment of dividends, if any, on our common stock, the incurrence or modification of debt by us, amendments to our amended and restated certificate of incorporation and amended and restated bylaws and the entering into of extraordinary transactions, and their interests may not in all cases be aligned with your interests. In addition, Blackstone may have an interest in pursuing acquisitions, divestitures and other transactions that, in its judgment, could enhance its investment, even though such transactions might involve risks to you. For example, Blackstone could cause us to make acquisitions that increase our indebtedness or cause us to sell revenue-generating assets. Additionally, in certain circumstances, acquisitions of debt at a discount by purchasers that are related to a debtor can give rise to cancellation of indebtedness income to such debtor for U.S. federal income tax purposes.

Blackstone is in the business of making investments in companies and may from time to time acquire and hold interests in businesses that compete directly or indirectly with us. For example, Blackstone owns a substantial stake in Merlin Entertainments Group, which operates the Legoland theme parks, and certain other investments in the leisure and hospitality industries.

Our amended and restated certificate of incorporation will provide that none of Blackstone, any of its affiliates or any director who is not employed by us (including any non-employee director who serves as one of our officers in both his director and officer capacities) or his or her affiliates will have any duty to refrain from engaging, directly or indirectly, in the same business activities or similar business activities or lines of business in which we operate. Blackstone also may pursue acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us. So long as Blackstone continues to own a significant amount of our combined voting power, even if such amount is less than 50%, Blackstone will continue to be able to strongly influence or effectively control our decisions and, so long as Blackstone and its affiliates collectively own at least 5% of all outstanding shares of our stock entitled to vote generally in the election of directors, it will be able to appoint individuals to our Board of Directors under a stockholders agreement which we expect to adopt in connection with this offering. In addition, Blackstone will be able to determine the outcome of all matters requiring stockholder approval and will be able to cause or prevent a change of control of the Company or a change in the composition of our Board of Directors and could preclude any unsolicited acquisition of the Company. The concentration of ownership could deprive you of an opportunity to receive a premium for your shares of common stock as part of a sale of the Company and ultimately might affect the market price of our common stock.

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Furthermore, under our stockholders agreement and amended and restated certificate of incorporation, which we expect to adopt in connection with this offering, so long as Blackstone and its affiliates collectively own at least 25% of our outstanding common stock, approval by Blackstone is required for certain actions including certain mergers, consolidations, recapitalizations, asset sales, dissolutions and entering into a business that is materially different from our existing business. These consent rights held by Blackstone could prevent us from engaging in beneficial transactions and adversely affect the market price of our common stock.

Risks Related to this Offering and Ownership of Our Common Stock

No market currently exists for our common stock, and an active, liquid trading market for our common stock may not develop, which may cause our common stock to trade at a discount from the initial offering price and make it difficult for you to sell the common stock you purchase.

Prior to this offering, there has not been a public market for our common stock. We cannot predict the extent to which investor interest in the Company will lead to the development of a trading market on _____ or otherwise or how active and liquid that market may become. If an active and liquid trading market does not develop or continue, you may have difficulty selling any of our common stock that you purchase. The initial public offering price for the shares will be determined by negotiations between us, the selling stockholders and the underwriters and may not be indicative of prices that will prevail in the open market following this offering. The market price of our common stock may decline below the initial offering price, and you may not be able to sell your shares of our common stock at or above the price you paid in this offering, or at all.

You will incur immediate and substantial dilution in the net tangible book value of the shares you purchase in this offering.

Prior stockholders have paid substantially less per share of our common stock than the price in this offering. The initial public offering price of our common stock will be substantially higher than the net tangible book value per share of outstanding common stock prior to completion of the offering. Based on our net tangible book value as of September 30, 2012 and upon the issuance and sale of _____ shares of common stock by us at an assumed initial public offering price of \$ _____ per share, which is the mid-point of the range set forth on the cover page of this prospectus, if you purchase our common stock in this offering, you will pay more for your shares than the amounts paid by our existing stockholders for their shares and you will suffer immediate dilution of approximately \$ _____ per share in net tangible book value. Dilution is the amount by which the offering price paid by purchasers of our common stock in this offering will exceed the pro forma net tangible book value per share of our common stock upon completion of this offering. If the underwriters exercise their option to purchase additional shares, you will experience additional dilution. You may experience additional dilution upon future equity issuances or the exercise of stock options to purchase common stock granted to our employees, executive officers and directors under our current and future stock incentive plans, including our 2013 Omnibus Incentive Plan. See "Dilution."

Our stock price may change significantly following the offering, and you may not be able to resell shares of our common stock at or above the price you paid or at all, and you could lose all or part of your investment as a result.

The trading price of our common stock is likely to be volatile. The stock market recently has experienced extreme volatility. This volatility often has been unrelated or disproportionate to the operating performance of particular companies. We, the selling stockholders and the underwriters will negotiate to determine the initial public offering price. You may not be able to resell your shares at or

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above the initial public offering price due to a number of factors such as those listed in “—Risks Related to Our Business and Our Industry” and the following:

- results of operations that vary from the expectations of securities analysts and investors;
- results of operations that vary from those of our competitors;
- changes in expectations as to our future financial performance, including financial estimates and investment recommendations by securities analysts and investors;
- declines in the market prices of stocks generally, or those of amusement and theme parks companies;
- strategic actions by us or our competitors;
- announcements by us or our competitors of significant contracts, new products, acquisitions, joint marketing relationships, joint ventures, other strategic relationships or capital commitments;
- changes in general economic or market conditions or trends in our industry or markets;
- changes in business or regulatory conditions;
- future sales of our common stock or other securities;
- investor perceptions or the investment opportunity associated with our common stock relative to other investment alternatives;
- the public’s response to press releases or other public announcements by us or third parties, including our filings with the Securities and Exchange Commission (the “SEC”);
- announcements relating to litigation;
- guidance, if any, that we provide to the public, any changes in this guidance or our failure to meet this guidance;
- the development and sustainability of an active trading market for our stock;
- changes in accounting principles; and
- other events or factors, including those resulting from natural disasters, war, acts of terrorism or responses to these events.

These broad market and industry fluctuations may adversely affect the market price of our common stock, regardless of our actual operating performance. In addition, price volatility may be greater if the public float and trading volume of our common stock is low.

In the past, following periods of market volatility, stockholders have instituted securities class action litigation. If we were involved in securities litigation, it could have a substantial cost and divert resources and the attention of executive management from our business regardless of the outcome of such litigation.

We cannot assure you that we will pay dividends on our common stock, and our indebtedness could limit our ability to pay dividends on our common stock.

After completion of this offering, we intend to pay cash dividends on our common stock, subject to our compliance with applicable law, and depending on, among other things, our results of operations, financial condition, level of indebtedness, capital requirements, contractual restrictions, restrictions in our debt agreements and in any preferred stock, business prospects and other factors that our Board of Directors may deem relevant. For more information, see “Dividend Policy.” There can be no assurance that we will pay a dividend in the future or continue to pay any dividend if we do commence paying dividends.

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If securities analysts do not publish research or reports about our business or if they downgrade our stock or our sector, our stock price and trading volume could decline.

The trading market for our common stock will rely in part on the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts. Furthermore, if one or more of the analysts who do cover us downgrade our stock or our industry, or the stock of any of our competitors, or publish inaccurate or unfavorable research about our business, the price of our stock could decline. If one or more of these analysts ceases coverage of the Company or fail to publish reports on us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

Future sales, or the perception of future sales, by us or our existing stockholders in the public market following this offering could cause the market price for our common stock to decline.

After this offering, the sale of shares of our common stock in the public market, or the perception that such sales could occur, could harm the prevailing market price of shares of our common stock. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

Upon consummation of this offering we will have a total of _____ shares of common stock outstanding. Of the outstanding shares, the _____ shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except that any shares held by our affiliates, as that term is defined under Rule 144 of the Securities Act (“Rule 144”), including our directors, executive officers and other affiliates (including affiliates of Blackstone) may be sold only in compliance with the limitations described in “Shares Eligible for Future Sale.”

The remaining _____ shares, representing _____ % of our total outstanding shares of common stock following this offering, will be “restricted securities” within the meaning of Rule 144 and subject to certain restrictions on resale following the consummation of this offering. Restricted securities may be sold in the public market only if they are registered under the Securities Act or are sold pursuant to an exemption from registration such as Rule 144, as described in “Shares Eligible for Future Sale.”

In connection with this offering, we, our directors and executive officers, and holders of substantially all of our common stock prior to this offering have each agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of our or their common stock or securities convertible into or exchangeable for shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of the representatives of the underwriters. See “Underwriting (Conflicts of Interest)” for a description of these lock-up agreements.

Upon the expiration of the lock-up agreements described above, the remaining _____ shares will be eligible for resale, of which _____ would be subject to volume, manner of sale and other limitations under Rule 144. In addition, pursuant to a registration rights agreement entered into in connection with the 2009 Transactions, we granted the Partnerships the right, subject to certain conditions, to require us to register the sale of their shares of our common stock under the Securities Act. By exercising their registration rights and selling a large number of shares, the Partnerships could cause the prevailing market price of our common stock to decline. Following completion of this offering, the shares covered by registration rights would represent approximately _____ % of our outstanding common stock (or _____ %, if the underwriters exercise in full their option to purchase additional shares). Registration of any of these outstanding shares of common stock would result in such shares becoming freely tradable without compliance with Rule 144 upon effectiveness of the registration statement. See “Shares Eligible for Future Sale.”

As restrictions on resale end or if these stockholders exercise their registration rights, the market price of our shares of common stock could drop significantly if the holders of these shares sell them or are perceived by the market as intending to sell them. These factors could also make it more difficult for us to raise additional funds through future offerings of our shares of common stock or other securities.

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In the future, we may also issue our securities in connection with investments or acquisitions. The amount of shares of our common stock issued in connection with an investment or acquisition could constitute a material portion of our then-outstanding shares of our common stock. Any issuance of additional securities in connection with investments or acquisitions may result in additional dilution to you.

Anti-takeover provisions in our organizational documents could delay or prevent a change of control.

Certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws may have an anti-takeover effect and may delay, defer or prevent a merger, acquisition, tender offer, takeover attempt or other change of control transaction that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders.

These provisions provide for, among other things:

- a classified Board of Directors with staggered three-year terms;
- the ability of our Board of Directors to issue one or more series of preferred stock;
- advance notice for nominations of directors by stockholders and for stockholders to include matters to be considered at our annual meetings;
- certain limitations on convening special stockholder meetings;
- the removal of directors only for cause and only upon the affirmative vote of holders of at least 75% of the shares of common stock entitled to vote generally in the election of directors if Blackstone and its affiliates cease to hold a majority of our outstanding shares of common stock; and
- that certain provisions may be amended only by the affirmative vote of at least 75% of the shares of common stock entitled to vote generally in the election of directors if Blackstone and its affiliates cease to hold a majority of our outstanding shares of common stock.

These anti-takeover provisions could make it more difficult for a third party to acquire us, even if the third-party's offer may be considered beneficial by many of our stockholders. As a result, our stockholders may be limited in their ability to obtain a premium for their shares. See "Description of Capital Stock."

We will be a "controlled company" within the meaning of the applicable exchange rules and the rules of the SEC. As a result, we will qualify for, and intend to rely on, exemptions from certain corporate governance requirements that provide protection to stockholders of other companies.

After completion of this offering, Blackstone will continue to control a majority of the voting power of our outstanding common stock. As a result, we will be a "controlled company" within the meaning of the corporate governance standards of . Under these rules, a company of which more than 50% of the voting power is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements, including:

- the requirement that a majority of our Board of Directors consist of "independent directors" as defined under the rules of ;
- the requirement that our director nominees be selected, or recommended for our Board of Directors' selection, either (1) by a majority of independent directors in a vote by independent

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directors, pursuant to a nominations process adopted by a Board of Directors resolution, or (2) by a nominating/governance committee comprised solely of independent directors with a written charter addressing the nominations process;

- the requirement that the compensation of our executive officers be determined, or recommended to our Board of Directors for determination, by a majority of independent directors in a vote by independent directors, or a compensation committee comprised solely of independent directors; and
- the requirement for an annual performance evaluation of the nominating/corporate governance and compensation committees.

Following this offering, we intend to utilize these exemptions. As a result, we will not have a majority of independent directors, our nominating/corporate governance committee, if any, and compensation committee will not consist entirely of independent directors and such committees will not be subject to annual performance evaluations. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of

In addition, on June 20, 2012, the SEC passed final rules implementing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 pertaining to compensation committee independence and the role and disclosure of compensation consultants and other advisers to the compensation committee. The SEC's rules direct each of the national securities exchanges (including the _____ on which we intend to list our common stock) to develop listing standards requiring, among other things, that:

- compensation committees be composed of fully independent directors, as determined pursuant to new independence requirements;
- compensation committees be explicitly charged with hiring and overseeing compensation consultants, legal counsel and other committee advisors; and
- compensation committees be required to consider, when engaging compensation consultants, legal counsel or other advisors, certain independence factors, including factors that examine the relationship between the consultant or advisor's employer and us.

As a "controlled company," we will not be subject to these compensation committee independence requirements if and when they are adopted by _____ under the SEC's rules.

We may be unsuccessful in implementing required internal controls over financial reporting.

We are not currently required to comply with the SEC's rules implementing Section 404 of the Sarbanes-Oxley Act of 2002, and are therefore not required to make a formal assessment of the effectiveness of our internal controls over financial reporting for that purpose. Upon becoming a public company, our management will be required to report on, and our independent registered public accounting firm to attest to, the effectiveness of our internal controls over financial reporting.

In connection with the audit for the year ended December 31, 2011, we identified certain significant deficiencies in our internal controls over financial reporting. If we fail to remediate the significant deficiencies identified, fail to remediate any significant deficiencies or material weaknesses that may be identified in the future, or encounter problems or delays in the implementation of internal controls over financial reporting, we may be unable to conclude that our internal controls over financial reporting are effective. Any failure to develop or maintain effective controls or any difficulties encountered in our implementation of our internal controls over financial reporting could result in

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material misstatements that are not prevented or detected on a timely basis, which could potentially subject us to sanctions or investigations by the SEC or other regulatory authorities. Ineffective internal controls could cause investors to lose confidence in us and the reliability of our financial statements and cause a decline in the price of our common stock.

Non-U.S. holders who own or owned more than a certain ownership threshold may be subject to United States federal income tax on gain realized on the disposition of our common stock.

We believe that we are currently a U.S. real property holding corporation for U.S. federal income tax purposes. So long as our common stock continues to be regularly traded on an established securities market, a non-U.S. holder (as defined in “Material United States Federal Income and Estate Tax Consequences to Non-U.S. Holders”) who purchases common stock in this offering and holds or held (at any time during the shorter of the five year period preceding the date of disposition or the holder’s holding period) more than 5% of our common stock will be subject to United States federal income tax on the disposition of our common stock. Non-U.S. holders should consult their own tax advisors concerning the consequences of disposing of shares of our common stock.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains “forward-looking statements” within the meaning of the federal securities laws. All statements, other than statements of historical facts included in this prospectus, including statements concerning our plans, objectives, goals, beliefs, business strategies, future events, business conditions, our results of operations, financial position and our business outlook, business trends and other information referred to under “Prospectus Summary,” “Risk Factors,” “Dividend Policy,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business” are forward-looking statements. When used in this prospectus, the words “estimates,” “expects,” “contemplates,” “anticipates,” “projects,” “plans,” “intends,” “believes,” “forecasts,” “may,” “should” and variations of such words or similar expressions are intended to identify forward-looking statements. The forward-looking statements are not historical facts, and are based upon our current expectations, estimates and projections, and various assumptions, many of which, by their nature, are inherently uncertain and beyond our control. Our expectations, beliefs and projections are expressed in good faith and we believe there is a reasonable basis for them. However, there can be no assurance that management’s expectations, beliefs and projections will result or be achieved and actual results may vary materially from what is expressed in or indicated by the forward-looking statements.

There are a number of risks, uncertainties and other important factors, many of which are beyond our control, that could cause our actual results to differ materially from the forward-looking statements contained in this prospectus. Such risks, uncertainties and other important factors include, among others, the risks, uncertainties and factors set forth above under “Risk Factors,” and the following risks, uncertainties and factors:

- various factors beyond our control adversely affecting discretionary spending and attendance at our theme parks;
- inability to protect our intellectual property or the infringement on intellectual property rights of others;
- incidents or adverse publicity concerning our theme parks;
- outbreak of infectious disease affecting our animals;
- change in federal and state regulations governing the treatment of animals;
- featuring animals at our theme parks;
- the loss of licenses and permits required to exhibit animals;
- significant portion of revenues generated in the State of Florida and the Orlando market;
- inability to compete effectively;
- loss of key personnel;
- increased labor costs;
- unionization activities or labor disputes;
- inability to meet workforce needs;
- inability to execute our growth strategy;
- inability to fund theme park capital expenditures;
- high fixed cost structure of theme park operations;
- changing consumer tastes and preferences;
- restrictions in our debt agreements and our substantial leverage;

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- seasonal fluctuations;
- inability to realize the benefits of acquisitions or other strategic initiatives;
- adverse litigation judgments or settlements;
- inadequate insurance coverage;
- inability to purchase or contract with third-party manufacturers for rides and attractions;
- environmental regulations, expenditures and liabilities;
- cyber security risks;
- suspension or termination of any of our business licenses;
- our limited operating history as stand-alone company; and
- Blackstone's control of us.

There may be other factors that may cause our actual results to differ materially from the forward-looking statements, including factors disclosed under the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this prospectus. You should evaluate all forward-looking statements made in this prospectus in the context of these risks and uncertainties.

We caution you that the risks, uncertainties and other factors referenced above may not contain all of the risks, uncertainties and other factors that are important to you. In addition, we cannot assure you that we will realize the results, benefits or developments that we expect or anticipate or, even if substantially realized, that they will result in the consequences or affect us or our business in the way expected. All forward-looking statements in this prospectus apply only as of the date made and are expressly qualified in their entirety by the cautionary statements included in this prospectus. We undertake no obligation to publicly update or revise any forward-looking statements to reflect subsequent events or circumstances.

USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately \$ million from the sale of shares of our common stock in this offering, based on the assumed initial public offering price of \$ per share, which is the mid-point of the range set forth on the cover page of this prospectus, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders.

We intend to use a portion of the net proceeds received by us from this offering to redeem \$ million in aggregate principal amount of the Senior Notes at a redemption price of 111.0% pursuant to a provision in the indenture governing the Senior Notes that permits us to redeem up to 35% of the aggregate principal amount of the Senior Notes with the net cash proceeds of certain equity offerings and to pay estimated premiums and accrued interest thereon. As of September 30, 2012, \$400.0 million aggregate principal amount of the Senior Notes was outstanding. The Senior Notes mature on December 1, 2016 and have an interest rate of 11.0%. See “Description of Indebtedness.”

In connection with this offering, we intend to terminate the 2009 Advisory Agreement in accordance with its terms. We will use approximately \$ million of the net proceeds to us from this offering to pay a one-time termination fee to an affiliate of Blackstone in connection with the termination of the 2009 Advisory Agreement. See “Certain Relationships and Related Party Transactions—Advisory Agreement and Support and Services Agreement.”

We intend to use the remaining proceeds received by us from this offering for other general corporate purposes.

An increase (decrease) of 1,000,000 shares from the expected number of shares to be sold by us in this offering, assuming no change in the assumed initial public offering price per share, which is the mid-point of the range set forth on the cover page of this prospectus, would increase (decrease) our net proceeds from this offering by \$ million. A \$1.00 increase (decrease) in the assumed initial public offering price of \$ per share, based on the mid-point of the range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by \$ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

DIVIDEND POLICY

In 2011 and 2012, we paid special dividends of \$110.1 million and \$500.0 million, respectively, to our stockholders (net of required withholdings).

After completion of this offering, we intend to pay cash dividends on our common stock, subject to our compliance with applicable law, and depending on, among other things, our results of operations, financial condition, level of indebtedness, capital requirements, contractual restrictions, restrictions in our debt agreements and in any preferred stock, business prospects and other factors that our Board of Directors may deem relevant.

Our ability to pay dividends depends on our receipt of cash dividends from our operating subsidiaries, which may further restrict our ability to pay dividends as a result of the laws of their jurisdiction of organization, agreements of our subsidiaries or covenants under any existing and future outstanding indebtedness we or our subsidiaries incur. In particular, the ability of our subsidiaries to distribute cash to SeaWorld Entertainment, Inc. to pay dividends is limited by covenants in our Senior Secured Credit Facilities and the indenture governing the Senior Notes. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Description of Indebtedness" for a description of the restrictions on our ability to pay dividends.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of September 30, 2012:

- on an actual basis; and
- on an as adjusted basis to give effect to (1) the sale by us of approximately _____ shares of our common stock in this offering, after deducting estimated underwriting discounts and commissions and offering expenses payable by us, and (2) the application of the estimated net proceeds from the offering, as described in “Use of Proceeds,” at an assumed initial public offering price of \$ _____ per share, which is the mid-point of the range set forth on the cover page of this prospectus.

You should read this table in conjunction with the information contained in “Use of Proceeds,” “Selected Historical Consolidated Financial Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Description of Indebtedness,” as well as the consolidated financial statements and the notes thereto included elsewhere in this prospectus.

	As of September 30, 2012	
	Actual (Dollars in thousands, except per share amounts)	As adjusted for this offering ⁽¹⁾
Cash and cash equivalents	\$ 142,843	\$ _____
Long-term debt, including current portion of long-term debt:		
Senior Secured Credit Facility:		
Revolving Credit Facility	—	
Tranche A Term Loans	153,875	
Tranche B Term Loans	1,297,128	
Senior Notes	400,000	
Unamortized discount on long term-debt	(23,338)	
Total debt	1,827,665	
Stockholders’ equity:		
Common stock, \$0.01 par value, 12,000,000 shares authorized, actual; 10,310,266 shares issued and outstanding, actual; _____ shares authorized, as adjusted; and _____ shares issued and outstanding, as adjusted)	103	
Additional paid-in capital	457,328	
Accumulated other comprehensive loss	(1,172)	
Retained earnings	2,151	
Total stockholders’ equity (deficit)	458,410	
Total capitalization	\$ 2,286,075	

(1) To the extent we change the number of shares of common stock sold by us in this offering from the shares we expect to sell or we change the initial public offering price from the assumed initial offering price of \$ _____ per share, which is the mid-point of the range set forth on the cover page of this prospectus, or any combination of these events occurs, the net proceeds to us from this offering and each of total stockholders’ equity deficit and total capitalization may increase or decrease. A \$1.00 increase (decrease) in the assumed initial public offering price per share of the common stock, assuming no change in the number of shares of common stock to be sold, would increase (decrease) the net proceeds that we receive in this offering and each of total stockholders’ equity deficit and total capitalization by approximately \$ _____ million. An increase (decrease) of 1,000,000 shares in the expected number of shares to be sold in the offering, assuming no change in the assumed initial offering price per share, would increase (decrease) our net proceeds from this offering and our total stockholders’ equity and total capitalization by approximately \$ _____ million. To the extent we raise less than \$ _____ million of proceeds in this offering, we will reduce the amount of indebtedness that will be repaid.

DILUTION

If you invest in our common stock in this offering, your ownership interest in us will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma net tangible book value per share of our common stock as adjusted to give effect to this offering. Dilution results from the fact that the per share offering price of the common stock is substantially in excess of the book value per share attributable to the shares of common stock held by existing stockholders.

Our net tangible book value as of September 30, 2012 was approximately \$ million, or \$ per share of our common stock. We calculate net tangible book value per share by taking the amount of our total tangible assets, reduced by the amount of our total liabilities, and then dividing that amount by the total number of shares of common stock outstanding.

After giving effect to our sale of the shares in this offering at an assumed initial public offering price of \$ per share, which is the mid-point of the range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and offering expenses payable by us, our pro forma net tangible book value per share of our common stock as adjusted to give effect to this offering on September 30, 2012 would have been \$ million, or \$ per share of our common stock. This amount represents an immediate increase in net tangible book value (or a decrease in net tangible book deficit) of \$ per share to existing stockholders and an immediate and substantial dilution in net tangible book value of \$ per share to new investors purchasing shares in this offering at the assumed initial public offering price.

The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share	\$
Net tangible book value (deficit) per share as of September 30, 2012	
Increase in net tangible book value per share attributable to new investors purchasing shares in this offering	
Pro forma net tangible book value (deficit) per share of common stock, as adjusted to give effect to this offering	
Dilution per share to new investors in this offering	\$

Dilution is determined by subtracting pro forma net tangible book value per share of common stock, as adjusted to give effect to this offering, from the initial public offering price per share of common stock.

Assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting estimated underwriting discounts and commissions and offering expenses payable by us, a \$1.00 increase or decrease in the assumed initial public offering price of \$ per share, which is the mid-point of the range set forth on the cover page of this prospectus, would increase or decrease the net tangible book value attributable to new investors purchasing shares in this offering by \$ per share and the dilution to new investors by \$ per share and increase or decrease the pro forma net tangible book value per share, as adjusted to give effect to this offering, by \$ per share.

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The following table summarizes, as of September 30, 2012, the differences between the number of shares purchased from us, the total consideration paid to us, and the average price per share paid by existing stockholders and by new investors. As the table shows, new investors purchasing shares in this offering will pay an average price per share substantially higher than our existing stockholders paid. The table below assumes an initial public offering price of \$ _____ per share, which is the mid-point of the range set forth on the cover page of this prospectus, for shares purchased in this offering and excludes underwriting discounts and commissions and estimated offering expenses payable by us:

	Shares Purchased		%	Total Consideration		%	Average Price Per Share
	Number	Percent		Amount	Percent		
Existing stockholders			%	\$		%	\$
New investors							
Total			%	\$		%	\$

If the underwriters were to fully exercise the underwriters' option to purchase _____ additional shares of our common stock, the percentage of shares of our common stock held by existing stockholders who are directors, officers or affiliated persons would be _____ % and the percentage of shares of our common stock held by new investors would be _____ %.

Assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting estimated underwriting discounts and commissions and offering expenses payable by us, a \$1.00 increase or decrease in the assumed initial public offering price of \$ _____ per share, which is the mid-point of the range set forth on the cover page of this prospectus, would increase or decrease total consideration paid by new investors and total consideration paid by all stockholders by approximately \$ _____ million.

SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA

The following tables set forth our selected historical consolidated financial and operating data as of the dates and for the periods indicated:

- for each of the fiscal years ended December 31, 2011 and December 31, 2010 and for the one month period ended December 31, 2009;
- as of and for the nine months ended September 30, 2012; and
- for the nine months ended September 30, 2011.

The selected financial data for each of the fiscal years ended December 31, 2011 and December 31, 2010 and for the one month period ended December 31, 2009 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The selected financial data as of September 30, 2012 and for the nine months ended September 30, 2012 and September 30, 2011 have been derived from our unaudited condensed consolidated financial statements included elsewhere in this prospectus. In the opinion of management, such unaudited condensed consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of the results for those periods. The results of operations for these interim periods are not necessarily indicative of the results to be expected for a full year or any future period. Our historical operating results are not necessarily indicative of future operating results.

On December 1, 2009, investment funds affiliated with Blackstone and certain co-investors, through SeaWorld Entertainment, Inc. and its wholly-owned subsidiary, SWPEI, acquired 100% of the equity interests of Sea World LLC and SeaWorld Parks & Entertainment LLC (f/k/a Busch Entertainment Corporation) from subsidiaries of Anheuser-Busch Companies, Inc. The Predecessor Financial Information is not presented in this prospectus because it is not comparable and therefore not meaningful to a prospective investor. The Predecessor Financial Information does not fully reflect our operations on a stand-alone basis and we believe would not materially contribute to an investor's understanding of our historical financial performance. The Predecessor Financial Information prepared on a basis comparable with our consolidated financial statements included in this prospectus is not available and cannot be provided without unreasonable effort and expense. We believe that the omission of the Predecessor Financial Information would not have a material impact on an investor's understanding of our financial results and condition, cash flows and related trends.

The following tables should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the notes thereto included elsewhere in this prospectus.

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	Nine Months Ended September 30,		Year Ended December 31,		One Month Period Ended December 31,
	2012	2011	2011	2010	2009 ⁽¹⁾
(Amounts in thousands, except per share and per capita amounts)					
(Unaudited)					
Statement of operations data:					
Net revenues					
Admissions	\$ 715,842	\$ 666,097	\$ 824,937	\$ 730,368	\$ 45,060
Food, merchandise and other	444,737	412,637	505,837	465,735	27,918
Total revenues	1,160,579	1,078,734	1,330,774	1,196,103	72,978
Costs and expenses					
Cost of food, merchandise and other revenues	99,109	89,736	112,498	97,871	5,472
Operating expenses	560,145	521,390	687,999	673,829	51,957
Selling, general and administrative	150,571	142,447	172,368	159,506	11,544
Depreciation and amortization	122,085	154,862	213,592	207,156	17,973
Acquisition-related expenses	—	—	—	—	67,966
Total costs and expenses	931,910	908,435	1,186,457	1,138,362	154,912
Operating income (loss)	228,669	170,299	144,317	57,741	(81,934)
Other income (expense), net	2,110	(1,661)	(1,679)	1,937	30
Interest expense	86,263	83,960	110,097	134,383	11,501
Income (loss) before income taxes	144,516	84,678	32,541	(74,705)	(93,405)
Provision for (benefit from) income taxes	58,273	34,719	13,428	(29,241)	(35,664)
Net income (loss)	\$ 86,243	\$ 49,959	\$ 19,113	\$ (45,464)	\$ (57,741)
Net income (loss) attributable to common stockholders	\$ 86,243	\$ 49,959	\$ 19,113	\$ (45,464)	\$ (57,741)
Per share data :					
Basic and diluted income (loss) per share	\$ 8.36 \$8.28	\$ 4.93 \$4.90	\$ 1.88 \$1.86	\$(4.50) \$(4.50)	\$(5.72) \$(5.72)
Weighted-average number of shares used in per share amounts—basic and diluted	10,310 10,413	10,138 10,205	10,174 10,253	10,100 10,100	10,100 10,100
Other financial and operating data:					
Capital expenditures	\$ 154,976	\$ 163,551	\$ 225,316	\$ 112,438	\$ 3,149
Attendance	19,862	19,040	23,631	22,433	1,402
Total revenue per capita	\$ 58.43	\$ 56.66	\$ 56.31	\$ 53.32	\$ 52.05

As of
September 30, 2012
(In thousands)
(Unaudited)

Consolidated balance sheet data (at end of period):

Cash and cash equivalents	\$ 142,843
Total assets	2,611,240
Total long-term debt	1,827,665
Total equity	458,410

(1) Reflects our financial results from December 1, 2009 to December 31, 2009, which is the period in which we first became an independent, stand-alone entity in connection with the 2009 Transactions.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion contains management's discussion and analysis of our financial condition and results of operations and should be read together with "Selected Historical Consolidated Financial Data" and the historical consolidated financial statements and the notes thereto included elsewhere in this prospectus. This discussion contains forward-looking statements that reflect our plans, estimates and beliefs and involve numerous risks and uncertainties, including but not limited to those described in the "Risk Factors" section of this prospectus. Actual results may differ materially from those contained in any forward-looking statements. You should carefully read "Special Note Regarding Forward-Looking Statements" and "Risk Factors."

Business Overview

We are a leading theme park and entertainment company delivering personal, interactive and educational experiences that blend imagination with nature and enable our customers to celebrate, connect with and care for the natural world we share. We own or license a portfolio of globally recognized brands with broad demographic appeal including such iconic brands as SeaWorld, Shamu and Busch Gardens. Over our more than 50 year history, we have built a diversified portfolio of 11 premier destination and regional theme parks that are grouped in key markets across the United States, many of which showcase our one-of-a-kind collection of approximately 67,000 marine and terrestrial animals. Our theme parks feature a diverse array of rides, shows and other attractions with broad demographic appeal which deliver extraordinary experiences and a strong value proposition for our guests. In addition to our theme parks, we have recently begun to leverage our brands into media, entertainment and consumer products. During the 12 months ended September 30, 2012, we hosted more than 24 million guests in our theme parks, including approximately 2.7 million international guests from over 55 countries and six continents, and generated an estimated 5.6 billion impressions through television and digital media platforms. During the year ended December 31, 2011 and the nine months ended September 30, 2012, we had total revenues of \$1,330.8 million and \$1,160.6 million, respectively.

Key Business Metrics Evaluated by Management

Attendance

We define attendance as the number of guest visits to our theme parks. Increased attendance drives increased admission revenue to our theme parks as well as total in-park spending. The level of attendance at our theme parks is a function of many factors, including the opening of new attractions and shows, weather, global and regional economic conditions, competitive offerings and overall consumer confidence in the economy.

Total Revenue Per Capita

Total revenue per capita consists of admission per capita and in-park per capita spending:

- *Admission Per Capita.* We calculate admission per capita for any period as total admission revenue divided by total attendance. Theme park admissions accounted for approximately 62% of our revenue for the nine months ended September 30, 2012. Over the same period of time, we reported \$36.04 in admission per capita, representing an increase of 3.0%. Admission per capita is driven by ticket pricing, the mix of tickets purchased (such as single day, multi-day and annual pass) and the mix of attendance by theme parks visited.
- *In-Park Per Capita Spending.* In-park per capita spending represents the amount each guest spends on purchases of food, merchandise and other spending. For the nine months ended September 30, 2012, in-park per capita spending accounted for approximately 38% of our

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revenue. Over the same time period, we reported \$22.39 of in-park per capita spending, representing an increase of 3.3%. In-park per capita spending is driven by pricing changes, penetration levels (percentage of guests purchasing), new product offerings, the mix of guests and the mix of in-park spending.

Trends Affecting Our Results of Operations

Our success depends to a significant extent on discretionary consumer spending, which is heavily influenced by general economic conditions and the availability of discretionary income. The recent severe economic downturn, coupled with high volatility and uncertainty as to the future global economic landscape has had and continues to have an adverse effect on consumers' discretionary income and consumer confidence. The difficult regional economic conditions and recessionary periods in the locations of our theme parks may adversely impact attendance figures, the frequency with which guests choose to visit our theme parks and guest spending patterns at our theme parks. Both attendance and total per capita spending at our theme parks are key drivers of our revenue and profitability, and reductions in either can materially adversely affect our business, financial condition, results of operations and cash flows.

Seasonality

The theme park industry is seasonal in nature. Based upon historical results, we generate the highest revenues in the second and third quarters of each year, in part because six of our theme parks are only open for a portion of the year. Approximately two-thirds of our attendance and revenues are generated in the second and third quarters of the year and we typically incur a net loss in the first and fourth quarters. The mix of revenues by quarter is relatively constant, but revenues can shift between the first and second quarters due to the timing of Easter or between the first and fourth quarters due to the timing of Christmas and New Year's. Even for our five theme parks open year-round, attendance patterns have significant seasonality, driven by holidays, school vacations and weather conditions. One of our goals in managing our business is to continue to generate cash flow throughout the year and minimize the effects of seasonality. In recent years, we have begun to encourage attendance during non-peak times by offering a variety of seasonal programs and events, such as a winter kids festival, spring concert series, and Halloween and Christmas events. In addition, during seasonally slow times, operating costs are controlled by reducing operating hours and show schedules. Employment levels required for peak operations are met largely through part-time and seasonal hiring.

Principal Factors Affecting Our Results of Operations

Revenues

Our revenues are driven primarily by attendance in our theme parks and the level of per capita spending for admission to the theme parks and per capita spending inside the theme parks for culinary, merchandise and other in-park experiences. The level of attendance in our theme parks is a function of many factors, including the opening of new attractions and shows, weather, global and regional economic conditions, competitive offerings and consumer confidence. The per capita spending for admission to the theme parks is driven by ticket pricing, the mix of ticket type purchased (such as single day, multi-day, and annual pass) and the mix of attendance by theme parks visited. In-park per capita spending is driven by pricing changes, penetration levels (percentage of guests purchasing), new product offerings, the mix of guests and the mix of in-park spending. For other factors affecting our revenues, see "Risk Factors—Risks Related to Our Business and Our Industry."

In addition to the theme parks, we are also involved in entertainment, media, and consumer product businesses that leverage our intellectual property. While these businesses currently do not represent a material percentage of our revenue, they are important strategic drivers in terms of consumer awareness and brand building. We aim to expand these businesses into a greater source of revenue in the future.

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Costs and Expenses

The principal costs of our operations are employee salaries, employee benefits, advertising, maintenance, animal care, utilities and insurance. Factors that affect our costs and expenses include commodity prices, costs for construction, repairs and maintenance, other inflationary pressures and attendance levels. A large portion of our expenses is relatively fixed because the costs for full-time employees, maintenance, animal care, utilities, advertising and insurance do not vary significantly with attendance. For factors affecting our costs and expenses, see "Risk Factors—Risks Related to Our Business and Our Industry."

We barter theme park admission products for advertising and various other products and services. The fair value of the admission products is recognized into revenue and related expenses at the time of the exchange and approximates the fair value of the goods or services received, and such amounts are included within the theme park admission revenue and selling, general, and administrative expenses of our consolidated statements of operations related to bartered ticket transactions.

Results of Operations

The following discussion provides an analysis of our operating results for the nine months ended September 30, 2012 and 2011 and our audited consolidated financial data for the years ended December 31, 2011 and 2010, and the one month period ended December 31, 2009. This data should be read in conjunction with our consolidated financial statements and the notes thereto included elsewhere in this prospectus.

Comparison of the Nine Months Ended September 30, 2012 and 2011

The following table presents key operating and financial information for the nine months ended September 30, 2012 and 2011:

	<u>Nine Months Ended September 30,</u>	
	<u>2012</u>	<u>2011</u>
	(Amounts in thousands, except per capita amounts) (Unaudited)	
Statement of operations data:		
Net revenues		
Admissions	\$ 715,842	\$ 666,097
Food, merchandise and other	444,737	412,637
Total revenues	1,160,579	1,078,734
Costs and expenses		
Cost of food, merchandise and other revenues	99,109	89,736
Operating expenses	560,145	521,390
Selling, general and administrative	150,571	142,447
Depreciation and amortization	122,085	154,862
Total costs and expenses	931,910	908,435
Operating income	228,669	170,299
Other income (expense), net	2,110	(1,661)
Interest expense	86,263	83,960
Income before income taxes	144,516	84,678
Provision for income taxes	(58,273)	(34,719)
Net income	<u>\$ 86,243</u>	<u>\$ 49,959</u>
Other data:		
Attendance	19,862	19,040
Total revenue per capita	\$ 58.43	\$ 56.66

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Admission revenue. Admission revenue for the nine months ended September 30, 2012 increased \$49.7 million (7%) to \$715.8 million as compared to \$666.1 million for the nine months ended September 30, 2011. The increase in revenue was a result of a 4% increase in attendance and a 3% increase in per capita spending from \$34.98 in 2011 to \$36.04 in 2012. The increase in admission revenue per capita was primarily a result of higher pricing while the increased attendance was primarily driven by the introduction of new attractions at our three SeaWorld theme parks and Busch Gardens Williamsburg.

Food, merchandise and other revenue. Food, merchandise and other revenue for the nine months ended September 30, 2012 increased \$32.1 million (8%) to \$444.7 million as compared to \$412.6 million for the nine months ended September 30, 2011. The increase in revenue was a result of a 4% increase in attendance and a 3% increase in per capita spending from \$21.67 in 2011 to \$22.39 in 2012. The increase in food, merchandise and other revenue per capita was driven primarily by price increases and product promotion.

Costs of food, merchandise and other revenues. Costs of food, merchandise and other revenues for the nine months ended September 30, 2012 increased \$9.4 million (10%) to \$99.1 million as compared to \$89.7 million for the nine months ended September 30, 2011. These costs represent 22.3% of related revenue earned for the nine months ended September 30, 2012 and 21.7% of related revenue earned for the nine months ended September 30, 2011. The increase in these costs as a percentage of revenue is primarily due to general commodity price increases and the impact of inflation.

Operating expenses. Operating expenses for the nine months ended September 30, 2012 increased \$38.7 million (7%) to \$560.1 million as compared to \$521.4 million for the nine months ended September 30, 2011. These expenses reflected 48.3% of total revenues for the nine months ended September 30, 2012 and the nine months ended September 30, 2011. The increase was primarily driven by increased operating costs relating to new attractions and increased variable costs due to our higher sales volume.

Selling, general and administrative. Selling, general and administrative expenses for the nine months ended September 30, 2012 increased \$8.2 million (6%) to \$150.6 million as compared to \$142.4 million for the nine months ended September 30, 2011. This increase primarily reflects an increase in marketing expenditures and higher corporate expenses resulting from the build-out of our corporate office staff.

Depreciation and amortization. Depreciation and amortization expense for the nine months ended September 30, 2012 decreased \$32.8 million (21%) to \$122.1 million as compared to \$154.9 million for the nine months ended September 30, 2011. The decrease was primarily attributable to the partial year impact of assets designated with two-year lives at the December 1, 2009 transaction date, which are now fully depreciated, partially offset by asset additions.

Other income (expense), net. Other income for the nine months ended September 30, 2012 was \$2.1 million as compared to other expense of \$1.7 million for the nine months ended September 30, 2011. This primarily reflects the net gain or loss resulting from capital expenditures denominated in a foreign currency for the nine months ended September 30, 2012.

Interest expense. Interest expense for the nine months ended September 30, 2012 increased \$2.3 million (3%) to \$86.3 million as compared to \$84.0 million for the nine months ended September 30, 2011, primarily reflecting the effects of our March 2012 debt refinancing, which increased the amount of our outstanding principal balance of our long-term debt and reduced the interest rates on our long-term debt. See our unaudited condensed consolidated financial statements and the notes thereto included elsewhere in this prospectus for a further description of the terms of the refinancing.

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Provision for income taxes. Provision for income taxes for the nine months ended September 30, 2012 increased \$23.6 million (68%) to \$58.3 million as compared to \$34.7 million for the nine months ended September 30, 2011, which primarily reflects an increase in taxable earnings and was partially offset by a 70 basis point decrease in our effective income tax rate (from 41.0% to 40.3%).

Comparison of the Years Ended December 31, 2011 and 2010

The following table presents key operating and financial information for the years ended December 31, 2011 and 2010:

	Years Ended December 31,	
	2011	2010
(Amounts in thousands, except per capita amounts)		
Statement of operations data:		
Net revenues		
Admissions	\$ 824,937	\$ 730,368
Food, merchandise and other	505,837	465,735
Total revenues	1,330,774	1,196,103
Costs and expenses		
Cost of food, merchandise and other revenues	112,498	97,871
Operating expenses	687,999	673,829
Selling, general and administrative	172,368	159,506
Depreciation and amortization	213,592	207,156
Total costs and expenses	1,186,457	1,138,362
Operating income	144,317	57,741
Other (expense) income, net	(1,679)	1,937
Interest expense	110,097	134,383
Income (loss) before income taxes	32,541	(74,705)
Provision for (benefit from) income taxes	13,428	(29,241)
Net income (loss)	\$ 19,113	\$ (45,464)
Other data:		
Attendance	23,631	22,433
Total revenue per capita	\$ 56.31	\$ 53.32

Admission revenue. Admission revenue in 2011 increased \$94.5 million (13%) to \$824.9 million as compared to \$730.4 million in 2010. The increase in revenue was a result of a 5% increase in attendance and a 7% increase in per capita spending from \$32.56 in 2010 to \$34.91 in 2011. The increase in admission revenue per capita was primarily due to increased admission pricing. The attendance growth was primarily driven by new attractions and an improved economic environment.

Food, merchandise and other revenue. Food, merchandise and other revenue in 2011 increased \$40.1 million (9%) to \$505.8 million as compared to \$465.7 million in 2010. The increase in revenue was a result of a 5% increase in attendance and a 3% increase in food, merchandise and other revenue per capita from \$20.76 in 2010 to \$21.41 in 2011. The increase in food, merchandise and other revenue per capita was driven primarily by an increased focus on product promotion at our theme parks and strategic price increases in both food and merchandise. The attendance growth was primarily driven by new attractions and an improved economic environment.

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Costs of food, merchandise and other revenues. Costs of food, merchandise and other revenues in 2011 increased \$14.6 million to \$112.5 million as compared to \$97.9 million in 2010. These costs represent 22.2% of related revenue earned in 2011 as compared to 21.0% of related revenue in 2010 driven primarily by commodity price increases and the impact of inflation.

Operating expenses. Operating expenses for 2011 increased \$14.2 million (2%) to \$688.0 million as compared to \$673.8 million in 2010. These expenses represent 51.7% of total revenues in 2011 as compared to 56.3% in 2010. The year-over-year dollar increase was primarily driven by increased operating costs relating to new attractions and increases in compensation expense, partially offset by strategic cost reductions, such as staffing and scheduling changes and streamlined operating hours at our theme parks. The reduction in operating expenses as a percentage of total revenues year-over-year represents increased operating leverage.

Selling, general and administrative. Selling, general and administrative expenses for 2011 increased \$12.9 million (8%) to \$172.4 million as compared to \$159.5 million in 2010. This increase primarily reflects the separation from ABI and establishment of certain stand-alone corporate operations, including legal, payroll, and procurement, partially offset by a reduction in marketing expenditures.

Depreciation and amortization. Depreciation and amortization expense for 2011 increased \$6.4 million (3%) to \$213.6 million as compared to \$207.2 million in 2010. The increase was primarily attributable to asset additions related to the introduction of several new attractions at our theme parks.

Interest expense. Interest expense for 2011 decreased \$24.3 million (18%) to \$110.1 million as compared to \$134.4 million in 2010, driven primarily by a reduction in our interest rates on our long-term debt as a result of our refinancings in February and April 2011. See our consolidated financial statements and the notes thereto included elsewhere in this prospectus for a further description of the terms of the refinancing.

Provision for (benefit from) income taxes. Provision for income taxes was \$13.4 million for 2011 as compared to an income tax benefit of \$29.2 million for 2010, which primarily reflects an increase in taxable earnings increasing our effective income tax rate from 39.1% to 41.3%.

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One Month Period Ended December 31, 2009

The following table presents key operating and financial information for the period from December 1, 2009 to December 31, 2009:

	One Month Period Ended December 31, 2009 (Amounts in thousands, except per capita amounts)
Statement of operations data:	
Net revenues	
Admissions	\$ 45,060
Food, merchandise and other	27,918
Total revenues	<u>72,978</u>
Costs and expenses	
Cost of food, merchandise and other revenues	5,472
Operating expenses	51,957
Selling, general and administrative	11,544
Depreciation and amortization	17,973
Acquisition-related expenses	67,966
Total costs and expenses	<u>154,912</u>
Operating loss	(81,934)
Other income, net	30
Interest expense	11,501
Loss before income taxes	(93,405)
Benefit from income taxes	(35,664)
Net loss	<u>\$ (57,741)</u>
Other data:	
Attendance	1,402
Total revenue per capita	\$ 52.05

Liquidity and Capital Resources

Overview

Our principal sources of liquidity are cash generated from operations, funds from borrowings and existing cash on hand. Our principal uses of cash include the funding of working capital obligations, debt service, investments in theme parks (including capital projects), and common stock dividends.

As market conditions warrant and subject to our contractual restrictions and liquidity position, we, our affiliates and/or our major stockholders, including Blackstone and its affiliates, may from time to time repurchase our outstanding equity and/or debt securities, including the Senior Notes and/or our outstanding bank loans in privately negotiated or open market transactions, by tender or otherwise. Any such repurchases may be funded by incurring new debt, including additional borrowings under our Senior Secured Credit Facilities. Any new debt may also be secured debt. We may also use available cash on our balance sheet. The amounts involved in any such transactions, individually or in the aggregate, may be material. Further, since some of our debt may trade at a discount to the face amount, any such purchases may result in our acquiring and retiring a substantial amount of any particular series, with the attendant reduction in the trading liquidity of any such series.

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The following table presents a summary of our cash flows provided by (used in) operating, investing, and financing activities for the periods indicated:

	Nine Months Ended September 30,		Years Ended December 31,		One Month Period Ended December 31,
	2012	2011	2011	2010	2009
	(Unaudited)				
	(Dollars in thousands)				
Net cash provided by (used in) operating activities	\$ 302,648	\$ 271,793	\$ 268,249	\$ 202,281	\$ (31,864)
Net cash used in investing activities	(154,976)	(163,551)	(225,316)	(120,196)	(2,285,500)
Net cash (used in) provided by financing activities	(71,492)	(127,766)	(99,967)	(20,500)	2,379,476
Net increase (decrease) in cash and cash equivalents	<u>\$ 76,180</u>	<u>\$ (19,524)</u>	<u>\$ (57,034)</u>	<u>\$ 61,585</u>	<u>\$ 62,112</u>

Cash Flows from Operating Activities

Net cash provided by operating activities increased during the nine months ended September 30, 2012 as compared to the nine months ended September 30, 2011 primarily as a result of the following: (i) an increase in cash generated from theme park operations due to increased theme park attendance, increased theme park admission fees and higher in-park spending per capita on food, merchandise and other in-park spending, (ii) lower costs and expenses as a percentage of sales due to our labor efficiency initiatives and greater economies of scale and (iii) changes in our deferred income tax provision. The increase in net cash provided by operating activities was partially offset by unfavorable changes in our working capital accounts.

Net cash provided by operating activities increased during the year ended December 31, 2011 as compared to the year ended December 31, 2010 primarily as a result of the following: (i) an increase in cash generated from theme park operations due to increased theme park attendance, increased theme park admission fees and higher in-park spending per capita on food, merchandise and other in-park spending; (ii) lower costs and expenses as a percentage of sales due to our labor efficiency initiatives and greater economies of scale; and (iii) changes in our deferred income tax provision. The increase in net cash provided by operating activities was partially offset by unfavorable changes in our working capital accounts.

Cash Flows from Investing Activities

Investing activities consist principally of capital investments we make in our theme parks for future attractions and infrastructure. Net cash used in investing activities during the nine months ended September 30, 2012 consisted of capital expenditures of \$155.0 million largely related to future attractions and zoological safety infrastructure. Net cash used in investing activities during the nine months ended September 30, 2011 consisted of \$163.6 million of capital expenditures largely related to future attractions and infrastructure.

Net cash used in investing activities during the year ended December 31, 2011 consisted of capital expenditures of \$225.3 million. The level of spending in 2011 was elevated as a result of costs related to building out our corporate infrastructure as a stand-alone company following our separation from ABI, one-time in-park infrastructure enhancements, and catch-up spending due to under-investment in our theme parks prior to the acquisition by Blackstone on December 1, 2009. We do not expect the level of spending in 2011 to be indicative of our capital needs in future years.

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Net cash used in investing activities during the year ended December 31, 2010 consisted of capital expenditures of \$120.2 million. Our most significant capital expenditure items during the period included future attractions, exhibits and corporate infrastructure projects.

The amount of our capital expenditures may be affected by general economic and financial conditions, among other things, including restrictions imposed by our borrowing arrangements. We generally expect to fund our 2012 capital expenditures through our operating cash flow.

Cash Flows from Financing Activities

In 2011 and 2012, we declared special dividends of \$110.1 million and \$500.0 million, respectively, to our stockholders.

Net cash used in financing activities during the nine months ended September 30, 2012 was attributable to the following: (i) the payment of a \$463.2 million portion of our dividends described above (net of required withholdings), (ii) repayment of \$88.5 million of debt under our Senior Secured Credit Facilities and (iii) costs of \$7.0 million related to an amendment to the indenture governing our Senior Notes and an amendment to our Senior Secured Credit Facilities. This was partially offset by proceeds of \$487.2 million from the term loan borrowings under our Senior Secured Credit Facilities.

Net cash used in financing activities during the nine months ended September 30, 2011 was attributable to the following: (i) repayment of \$582.1 million of our long-term debt in connection with a refinancing of our Senior Secured Credit Facilities, (ii) the payment of a \$103.1 million portion of our \$110.1 million dividend described above (net of required withholdings) and (iii) costs of \$5.9 million related to an amendment to the indenture governing our Senior Notes and an amendment to our Senior Secured Credit Facilities. This was partially offset by the proceeds of \$550.3 million from the term loan borrowings under our Senior Secured Credit Facilities and \$13.0 million of proceeds from the issuance of common stock to the Partnerships.

Net cash used in financing activities during the year ended December 31, 2011 was primarily attributable to the following: (i) repayment of \$586.2 million of our long-term debt in connection with a refinancing of our Senior Secured Credit Facilities, (ii) the payment of a \$106.9 million portion of our \$110.1 million dividend (net of required withholdings) and (iii) debt issuance costs of \$5.9 million related to an amendment to the indenture governing our Senior Notes and an amendment to our Senior Secured Credit Facilities. This was partially offset by the proceeds of \$550.3 million from the term loan borrowings under our Senior Secured Credit Facilities, a draw on our revolving credit facility of \$36.0 million and \$12.8 million of proceeds (net of issuance costs) from the issuance of common stock to the Partnerships described above.

Net cash used in financing activities during the year ended December 31, 2010 consisted of repayment of long-term debt of \$20.5 million.

Our Indebtedness

The Issuer is a holding company and conducts its operations through its subsidiaries, which have incurred or guaranteed indebtedness as described below.

Senior Secured Credit Facilities

SWPEI is the borrower under our Senior Secured Credit Facilities. The obligations under our Senior Secured Credit Facilities are fully, unconditionally and irrevocably guaranteed by each of the Issuer, any subsidiary of the Issuer that directly or indirectly owns 100% of the issued and outstanding

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equity interests of SWPEI, and, subject to certain exceptions, each of SWPEI's existing and future material domestic wholly-owned subsidiaries (collectively, the "Guarantors"). Our Senior Secured Credit Facilities are collateralized by first priority or equivalent security interests in (i) all the capital stock of, or other equity interests in, substantially all SWPEI's direct or indirect domestic subsidiaries (other than a domestic subsidiary that is a subsidiary of a foreign subsidiary) and 65% of the capital stock of, or other equity interests in, any of SWPEI's foreign subsidiaries and any of SWPEI's domestic subsidiaries that are treated as disregarded entities for U.S. federal income tax purposes if substantially all the assets of such domestic subsidiary consist of equity interests of one or more "controlled foreign corporations" within the meaning of the Code and (ii) certain tangible and intangible assets of SWPEI and those of the Guarantors (subject to certain exceptions and qualifications).

Our Senior Secured Credit Facilities consist of:

- a \$153.9 million senior secured term loan facility (the "Tranche A Term Loans"), which will mature on February 17, 2016;
- a \$1,297.1 million senior secured term loan facility (the "Tranche B Term Loans"), which will mature on the earlier of (i) August 17, 2017 and (ii) the 91st day prior to the maturity of the Senior Notes, if more than \$50 million of debt with respect to the Senior Notes is outstanding as of such date; and
- a \$172.5 million senior secured revolving credit facility (the "Revolving Credit Facility"), which will mature on February 17, 2016, including borrowing capacity available for letters of credit and for short-term borrowings referred to as the swingline borrowings. As of September 30, 2012, we had approximately \$11.6 million of outstanding letters of credit.

In addition, our Senior Secured Credit Facilities also provide us with the option to raise incremental credit facilities, refinance the loans with debt incurred outside our Senior Secured Credit Facilities and extend the maturity date of the revolving loans and term loans, subject to certain limitations.

Borrowings under our Senior Secured Credit Facilities, other than swingline loans, bear interest at a rate per annum equal to, at SWPEI's option, (a) a base rate determined by reference to the higher of either (1) the administrative agent's prime lending rate and (2) the federal funds effective rate plus 1/2 of 1%; subject to a base rate floor of 2.00% and a LIBOR floor of 1.00% for Tranche B Term Loans or (b) a LIBOR rate determined by reference to the BBA LIBOR rate for the interest period relevant to such borrowing, in each case plus an applicable margin. Swingline loans bear interest at the interest rate applicable to base rate loans. The applicable margin for (i) Tranche A Term Loans and the revolving credit facility (to include letter of credit fees) is (a) 1.75% for base rate loans and (b) 2.75% for LIBOR rate loans and (ii) Tranche B Term Loans is (a) 2.00% for base rate loans and (b) 3.00% for LIBOR rate loans.

In addition to paying interest on outstanding principal under our Senior Secured Credit Facilities, SWPEI is required to pay a commitment fee to the lenders under the Revolving Credit Facility in respect of the unutilized commitments thereunder. The commitment fee rate is 0.50% per annum. SWPEI is also required to pay customary letter of credit fees.

SWPEI is required to prepay outstanding term loans, subject to certain exceptions, with:

- 50% of SWPEI's annual "excess cash flow" (with step-downs to 25% and 0%, as applicable, based upon SWPEI's total leverage ratio), subject to certain exceptions;
- 100% of the net cash proceeds of certain non-ordinary course asset sales or other dispositions subject to reinvestment rights and certain exceptions; and

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- 100% of the net cash proceeds of any incurrence of debt by SWPEI or any of its restricted subsidiaries, other than debt permitted to be incurred or issued under our Senior Secured Credit Facilities.

SWPEI may voluntarily repay amounts outstanding under our Senior Secured Credit Facilities at any time without premium or penalty, other than prepayment premium on voluntary prepayment of Tranche B Term Loans on or prior to March 30, 2013 and customary “breakage” costs with respect to LIBOR loans.

SWPEI is currently required to repay installments on the term loans in quarterly installments equal to approximately \$1.9 million with respect to Tranche A Term Loans and approximately \$3.5 million with respect to Tranche B Term Loans, with the remaining amount payable on the applicable maturity date with respect to such term loans.

Our Senior Secured Credit Facilities contain a number of significant affirmative and negative covenants. Such covenants, among other things, restrict, subject to certain exceptions, the ability of SWPEI and its restricted subsidiaries to:

- incur additional indebtedness, make guarantees and enter into hedging arrangements;
- create liens on assets;
- enter into sale and leaseback transactions;
- engage in mergers or consolidations;
- sell assets;
- make fundamental changes;
- pay dividends and distributions or repurchase SWPEI’s capital stock;
- make investments, loans and advances, including acquisitions;
- engage in certain transactions with affiliates;
- make changes in nature of the business; and
- make prepayments of junior debt.

Our Senior Secured Credit Facilities also contain covenants requiring SWPEI to maintain a specified maximum net total leverage ratio and a minimum interest coverage ratio. In addition, our Senior Secured Credit Facilities contain certain customary representations and warranties, affirmative covenants and events of default.

As of September 30, 2012, we were in compliance in all material respects with all covenants in the provisions contained in the documents governing our Senior Secured Credit Facilities.

See “Description of Indebtedness—Senior Secured Credit Facilities” for further information on our Senior Secured Credit Facilities.

The Senior Notes

On December 1, 2009, SWPEI issued \$400.0 million aggregate principal amount of 13.5% Senior Notes due 2016. On March 30, 2012, pursuant to an amendment to the indenture governing the Senior Notes, the interest rate was reduced from 13.5% to 11.0%. As of September 30, 2012, we had \$400.0 million aggregate principal amount in 11.0% Senior Notes due 2016 outstanding. Interest on the Senior Notes is payable semi-annually in arrears. The obligations under the Senior Notes are guaranteed by the same entities as those that guarantee our Senior Secured Credit Facilities.

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The Senior Notes are senior unsecured obligations and:

- rank senior in right of payment to all existing and future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the Senior Notes;
- rank equally in right of payment to all existing and future senior debt and other obligations that are not, by their terms, expressly subordinated in right of payment to the Senior Notes; and
- are effectively subordinated in right of payment to all existing and future secured debt (including obligations under our Senior Secured Credit Facilities), to the extent of the value of the assets securing such debt, and are structurally subordinated to all obligations of each of our subsidiaries that is not a guarantor of the Senior Notes.

The indenture governing the Senior Notes contains a number of covenants that, among other things, restrict SWPEI's ability and the ability of its restricted subsidiaries to, among other things:

- dispose of certain assets;
- incur additional indebtedness;
- pay dividends;
- prepay subordinated indebtedness;
- incur liens;
- make capital expenditures;
- make investments or acquisitions;
- engage in mergers or consolidations; and
- engage in certain types of transactions with affiliates.

These covenants are subject to a number of important limitations and exceptions.

The indenture governing the Senior Notes provides for certain events of default which, if any of them were to occur, would permit or require the principal of and accrued interest, if any, on the Senior Notes to become or be declared due and payable (subject, in some cases, to specified grace periods).

We intend to use a portion of the net proceeds received by us from this offering to redeem \$ million in aggregate principal amount of the Senior Notes at a redemption price of 111.0% pursuant to a provision in the indenture governing the Senior Notes that permits us to redeem up to 35% of the aggregate principal amount of the Senior Notes with the net cash proceeds of certain equity offerings and to pay estimated premiums and accrued interest thereon. See "Use of Proceeds."

As of September 30, 2012, we were in compliance in all material respects with all covenants and the provisions contained in the indenture governing the Senior Notes. See "Description of Indebtedness" for further information on the Senior Notes.

Covenant Compliance

Under the indenture governing the Senior Notes and under our Senior Secured Credit Facilities, our ability to engage in activities such as incurring additional indebtedness, making investments, refinancing certain indebtedness, paying dividends and entering into certain merger transactions is governed, in part, by our ability to satisfy tests based on Adjusted EBITDA.

The Senior Notes and our Senior Secured Credit Facilities generally define "Adjusted EBITDA" as net income (loss) before interest expense, income tax expense (benefit), depreciation and

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amortization, as further adjusted to exclude certain unusual, non-cash, and other items permitted in calculating covenant compliance under the indenture governing the Senior Notes and our Senior Secured Credit Facilities.

We believe that the presentation of Adjusted EBITDA is appropriate to provide additional information to investors about the calculation of, and compliance with, certain financial covenants in the indenture governing the Senior Notes and in our Senior Secured Credit Facilities. Adjusted EBITDA is a material component of these covenants. In addition, investors, lenders, financial analysts and rating agencies have historically used EBITDA related measures in our industry, along with other measures, to evaluate a company's ability to meet its debt service requirements to estimate the value of a company and to make informed investment decisions. We also use Adjusted EBITDA in connection with certain components of our executive compensation program as described under "Management—Compensation Discussion and Analysis." Adjusted EBITDA eliminates the effect of certain non-cash depreciation of tangible assets and amortization of intangible assets, along with the effects of interest rates and changes in capitalization which management believes may not necessarily be indicative of a company's underlying operating performance.

Adjusted EBITDA is not a recognized term under GAAP, and should not be considered in isolation or as a substitute for a measure of our liquidity or performance prepared in accordance with GAAP and is not indicative of income from operations as determined under GAAP. Adjusted EBITDA and other non-GAAP financial measures have limitations which should be considered before using these measures to evaluate our liquidity or financial performance. Adjusted EBITDA, as presented by us, may not be comparable to similarly titled measures of other companies due to varying methods of calculation.

The following table reconciles net income (loss) to Adjusted EBITDA:

	Nine Months Ended		Years Ended December 31,		One Month
	September 30,	2011	2011	2010	Period Ended
	2012		(Dollars in thousands)		December 31,
					2009
Net income (loss)	\$ 86,243	\$ 49,959	\$ 19,113	\$ (45,464)	\$ (57,741)
Provision for (benefit from) income taxes	58,273	34,719	13,428	(29,241)	(35,664)
Interest expense	86,263	83,960	110,097	134,383	11,501
Depreciation and amortization expense	122,085	154,862	213,592	207,156	17,973
Deferred revenue write-downs ^(a)	—	—	—	17,348	2,678
Non-cash compensation expense ^(b)	1,361	437	823	—	—
Acquisition-related adjustments ^(c)	—	—	—	—	67,966
Advisory fee ^(d)	5,075	4,948	6,012	4,704	290
Carve-out costs ^(e)	—	5,679	6,085	45,330	—
Non-cash expenses ^(f)	5,282	2,888	12,468	9,060	1,376
Debt refinancing costs ^(g)	1,000	441	441	—	—
Chula Vista acquisition ^(h)	167	—	—	—	—
Adjusted EBITDA	\$365,749	\$337,893	\$ 382,059	\$ 343,276 ⁽ⁱ⁾	\$ 8,379

- (a) Reflects amortization of deferred revenue that would have occurred absent purchase accounting relating to the 2009 Transactions.
- (b) Reflects non-cash compensation expense associated with the grants of partnership interests in the Partnerships recorded under "Equity-based compensation" in our consolidated financial statements.
- (c) Reflects charges related to the 2009 Transactions, including third-party professional fees relating to the purchase of the Company by the Investor Group and related financing transactions.

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- (d) Reflects historical fees paid to an affiliate of the Sponsor under the 2009 Advisory Agreement. In connection with this offering, we intend to terminate the 2009 Advisory Agreement in accordance with its terms. See “Certain Relationships and Related Party Transactions—Advisory Agreement and Support and Services Agreement.”
- (e) Reflects certain carve-out costs and savings related to our separation from ABI and the establishment of certain operations at the Company on a stand-alone basis. These amounts primarily consist of the cost of third-party professional services, relocation expenses, severance costs and cost savings related to the termination of certain employees.
- (f) Reflects non-cash expenses related to miscellaneous asset write-offs and non-cash gains/losses on foreign currencies.
- (g) Reflects certain costs related to the 2012 and 2011 amendments to our Senior Secured Credit Facilities.
- (h) Reflects certain costs related to our acquisition of the Chula Vista water park.
- (i) The adjustments for the year ended December 31, 2010 include approximately \$20.9 million of adjustments permitted under our debt covenants, related to our separation from ABI and certain restructuring costs. As we established some of the services provided to us by ABI, such services became part of our ongoing cost structure and accordingly, we did not use these adjustments for any periods subsequent to the year ended December 31, 2010. Adjusted EBITDA excluding such adjustments would have been \$322,376 for the year ended December 31, 2010.

Contractual Obligations

The following table summarizes our principal contractual obligations as of December 31, 2011 (in thousands):

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Long-term debt (including current portion) ⁽¹⁾	\$1,439,543	\$ 52,500	\$ 33,000	\$1,354,043	\$ —
Interest ⁽²⁾	441,897	93,994	184,665	163,237	—
Operating leases ⁽³⁾	357,544	13,393	21,900	20,035	302,216
Purchase obligations ⁽⁴⁾	148,494	146,683	1,811	—	—
Total contractual obligations	\$2,387,478	\$306,570	\$241,376	\$1,537,315	\$302,216

- (1) The Senior Notes are reflected in this table at their principal amount. We intend to use a portion of the net proceeds received by us from this offering to redeem \$ million in aggregate principal amount of the outstanding Senior Notes and pay approximately \$ million of redemption premium, plus accrued interest thereon. As a result of the redemption, our annual interest expense is expected to be reduced by \$ million.
- (2) Estimated future interest payments for our Senior Secured Credit Facilities are based on interest rates in effect at December 31, 2011 and estimated future interest payments for the Senior Notes are based on interest rates in effect at December 31, 2011. Interest obligations also include letter of credit and commitment fees for the used and unused portions of our Revolving Credit Facility. In addition, interest expense associated with deferred financing fees was excluded from the table as the expense is non-cash in nature.
- (3) Represents commitments under long-term operating leases, primarily consisting of the lease for the land of our SeaWorld theme park in San Diego, California, requiring annual minimum lease payments.
- (4) We have minimum purchase commitments with various vendors through May 2013. Outstanding minimum purchase commitments consist primarily of capital expenditures related to future attractions, infrastructure enhancements for existing facilities and information technology products and services.

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Off-Balance Sheet Arrangements

We had no off-balance sheet arrangements as of September 30, 2012.

Quantitative and Qualitative Disclosures about Market Risk

Inflation

The impact of inflation has affected, and will continue to affect, our operations significantly. Our costs of food, merchandise and other revenues are influenced by inflation and fluctuations in global commodity prices. In addition, costs for construction, repairs and maintenance are all subject to inflationary pressures.

Interest Rate Risk

We are exposed to market risks from fluctuations in interest rates, and to a lesser extent on currency exchange rates, from time to time, on imported rides and equipment. The objective of our financial risk management is to reduce the potential negative impact of interest rate and foreign currency exchange rate fluctuations to acceptable levels. We do not acquire market risk sensitive instruments for trading purposes.

We manage interest rate risk through the use of a combination of fixed-rate long-term debt and interest rate swaps that fix a portion of our variable-rate long-term debt.

The effective portion of changes in the fair value of derivatives designated and that qualify as cash flow hedges is recorded in accumulated other comprehensive income and is subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. The ineffective portion of the change in fair value of the derivatives is recognized directly in earnings. Amounts reported in accumulated other comprehensive income related to derivatives will be reclassified to interest expense as interest payments are made on our variable-rate debt. During the next 12 months, our estimate is that an additional \$1.4 million will be reclassified as an increase to interest expense.

After considering the impact of interest rate swap agreements, at September 30, 2012, approximately \$950.0 million of our outstanding long-term debt represents fixed-rate debt and approximately \$901.0 million represents variable-rate debt. Assuming an average balance on our revolving credit borrowings of approximately \$40.0 million, a hypothetical 100 bps increase in 30-day LIBOR on our variable-rate debt would lead to an increase of approximately \$3.1 million in annual cash interest costs due to the impact of our fixed-rate swap agreements.

Critical Accounting Policies

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of certain assets and liabilities, revenues and expenses, and disclosure of contingencies during the reporting period. Significant estimates and assumptions include the valuation and useful lives of long-lived tangible and intangible assets, the valuation of goodwill and other indefinite-lived intangible assets, the accounting for income taxes, the accounting for self-insurance, revenue recognition and equity-based compensation. Actual results could differ from those estimates. We believe that the following discussion addresses our critical accounting policies which require management's most difficult, subjective and complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.

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Property and Equipment

Property and equipment additions are recorded at cost and the carrying value is depreciated on a straight-line basis over the estimated useful lives of those assets. Internal development costs associated with rides and equipment are capitalized after feasibility studies have been completed and substantially all product development is complete. Interest is capitalized on all major construction projects. It is possible that changes in circumstances such as technological advances, changes to our business model or changes in capital strategy could result in the actual useful lives differing from estimates. In those cases in which we determine that the useful life of property and equipment should be shortened, we depreciate the remaining net book value in excess of the salvage value over the revised remaining useful life, thereby increasing depreciation expense evenly through the remaining expected life.

Impairment of Long-Lived Assets

All long-lived assets, including property and equipment and finite-lived intangible assets, are reviewed for impairment upon the occurrence of events or changes in circumstances that would indicate that the carrying value of the assets may not be recoverable. The impairment indicators considered important that may trigger an impairment review, if significant, include the following:

- underperformance relative to historical or projected future operating results;
- changes in the manner of use of the assets;
- changes in management, strategy or customers;
- negative industry or economic trends; and
- macroeconomic conditions.

An impairment loss may be recognized when estimated undiscounted future cash flows expected to result from the use of the asset, including disposition, are less than the carrying value of the asset. The measurement of the impairment loss to be recognized is based upon the difference between the fair value and the carrying amounts of the assets. Fair value is generally determined based upon a discounted cash flow analysis. In order to determine if an asset has been impaired, assets are grouped and tested at the lowest level for which identifiable, independent cash flows are available.

The determination of both undiscounted and discounted future cash flows requires management to make significant estimates and consider an anticipated course of action as of the balance sheet date. Subsequent changes in estimated undiscounted and discounted future cash flows arising from changes in anticipated actions could impact the determination of whether impairment exists, the amount of the impairment charge recorded and whether the effects could materially impact the consolidated financial statements included elsewhere in this prospectus.

Goodwill and Other Indefinite-Lived Intangible Assets

Goodwill and other indefinite-lived intangible assets are reviewed for impairment annually for ongoing recoverability based on applicable reporting unit performance and consideration of significant events or changes in the overall business environment.

In assessing goodwill for impairment, we initially evaluate qualitative factors to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying amount. We consider several factors, including macroeconomic conditions, industry and market conditions, overall financial performance of the reporting unit, changes in management, strategy or customers, and relevant reporting unit specific events such as a change in the carrying amount of net assets, a more-likely-

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than-not expectation of selling or disposing all, or a portion, of a reporting unit, and the testing of recoverability of a significant asset group within a reporting unit. If the qualitative assessment is not conclusive, then the recorded value of the reporting unit is compared to the fair value of the reporting unit, which is determined using a discounted future cash flow analysis. If the recorded amount exceeds the fair value, the impairment write-down is quantified by comparing the current implied value of goodwill to the recorded goodwill balance.

Significant judgments required in this testing process may include projecting future cash flows, determining appropriate discount rates and other assumptions. Projections are based on management's best estimates given recent financial performance, market trends, strategic plans and other available information which in recent years have been materially accurate. Although not currently anticipated, changes in these estimates and assumptions could materially affect the determination of fair value or impairment. It is possible that our assumptions about future performance, as well as the economic outlook and related conclusions regarding the valuation of our assets, could change adversely, which may result in impairment that would have a material effect on our financial position and results of operations in future periods. At December 1, 2011, a qualitative assessment was performed and we determined, after assessing the totality of relevant events and circumstances, that it was not more likely than not that the carrying value exceeded the fair value of the reporting units. Accordingly, based upon the qualitative assessment test that was performed in 2011 and the quantitative assessment that was performed as of December 1, 2010, we had no reporting units that were considered at risk of failing step one of the goodwill impairment test.

Our indefinite-lived intangible assets consist of certain trade names which, after considering legal, regulatory, contractual, and other competitive and economic factors, are determined to have indefinite lives and are valued annually using the relief from royalty method. Significant estimates required in this valuation method include estimated future revenues impacted by the trade names, royalty rate by park, appropriate discount rates, remaining useful life, and other assumptions. Projections are based on management's best estimates given recent financial performance, market trends, strategic plans, brand awareness, operating characteristics by park, and other available information which in recent years have been materially accurate. Changes in these estimates and assumptions could materially affect the fair value determination used in the assessment of impairment. At December 1, 2011, the fair value of trade names was substantially in excess of their carrying values.

Accounting for Income Taxes

We are required to estimate income taxes in each of the jurisdictions in which we operate. This process involves estimating actual current tax exposure together with assessing temporary differences resulting from differing treatment of items, such as depreciation periods for property and equipment and deferred revenue, for tax and financial accounting purposes. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheet. We must then assess the likelihood that deferred tax assets (primarily net operating and capital loss carryforwards) will be recovered from future taxable income. To the extent that we believe that recovery is not likely, a valuation allowance against those amounts is recognized. To the extent that we recognize a valuation allowance or an increase in the valuation allowance during a period, we recognize these amounts as income tax expense in the consolidated statements of operations. If we undergo an ownership change in the future, as described in Section 382(g) of the Code, our ability to recover certain deferred tax assets (including loss carryforwards) may be limited. This limitation may have the effect of reducing our after-tax cash flow in future years and may affect our need for a valuation allowance on our deferred tax assets.

Significant management judgment is required in determining our provision or benefit for income taxes, deferred tax assets and liabilities and any valuation allowance recorded against net deferred tax

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assets. Management has analyzed the positive and negative evidence and has determined that it is more likely than not that our deferred tax assets will be realized, and, therefore, no valuation allowances are needed.

Self-Insurance Reserves

Reserves are recorded for the estimated amounts of guest and employee claims and expenses incurred each period that are not covered by insurance. Reserves are established for both identified claims and incurred but not reported (“IBNR”) claims. Such amounts are accrued for when claim amounts become probable and estimable. Reserves for identified claims are based upon our own historical claims experience and third-party estimates of settlement costs. Reserves for IBNR claims are based upon our own claims data history, as well as industry averages. All reserves are periodically reviewed for changes in facts and circumstances and adjustments are made as necessary.

Revenue Recognition

We recognize revenue upon admission into a theme park or when products are delivered to customers. For season passes and other multiuse admissions, revenue is deferred and recognized based on the terms of the admission product and the estimated number of visits expected and is adjusted periodically.

We have entered into agreements with certain external theme park, zoo and other attraction operators, to jointly market and sell admission products. These joint products allow admission to both a Company park and an external park, zoo or other attraction. The agreements with the external parks specify the allocation of revenue to us from any jointly sold products. Deferred revenue is recorded based on the terms of the respective agreement and the related revenue is recognized upon admission.

Equity-Based Compensation

ASC 718, *Stock Compensation*, requires all share-based payments to employees, including the grants of employee units made by the Partnerships to certain of our key employees, to be recognized in the financial statements, based on their grant date fair value, over the requisite service period (generally the vesting period of the grant) or based upon the achievement of certain performance criteria. Because we are privately held and there is no public market for our common stock, management estimated the fair value of our employee units granted with assistance from a third party valuation firm. Such valuations were then approved by our Board of Directors at the time the employee units were awarded.

One of the key inputs utilized in calculating the fair value of share-based payments is the fair value of the underlying common stock on the grant date. For privately held companies, such valuation requires significant estimates and assumptions due to the lack of an active public market on which such stock trades.

During 2011, the fair value of our equity was estimated on the grant date using a composite of the income approach, which is based upon a discounted cash flow method, and the market approach, which is based upon a guideline public company method. The discounted cash flow method utilizes certain significant inputs that are not observable in the market. Key assumptions utilized in our discounted cash flow model included projected cash flows, a discount rate of 10.5%, and a terminal value. The guideline public company approach uses relevant public company valuation multiples to determine fair value, but requires judgment in selecting the appropriate multiple at which to value the company’s equity from the range of market multiples noted in the group of comparable public companies.

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During 2012, the fair value of our equity was estimated on the date of grant using the market approach, which consisted of a composite of the guideline public company method and the guideline transactions method. The guideline transactions method involves determining valuation multiples from sales of enterprises with similar financial and operating characteristics and applying those multiples to the subject enterprise. Such approach requires judgment in selecting the appropriate multiple at which to value the company's equity from the range of multiples noted in comparable market transactions. The guideline transactions method was not utilized in 2011 due to a lack of recent, comparable transactions that could be used in a comparable valuation at that time. The income approach was not utilized in 2012 due to the availability of the transactions method.

The fair value of the individual tranches of units granted to our employees was estimated based upon the option pricing method using the Option-Pricing Method model. Expected volatilities were based on historical volatilities of the stock, or implied volatilities of market-traded options, of comparable companies. The expected term of the units granted represented the period of time that such units are expected to be outstanding. The risk-free rate was based on the U.S. Treasury yield curve in effect at the time of grant over the expected term of the units. The discount for the lack of marketability of the underlying common stock was estimated using the Asian Put method, which is a widely used method that quantifies a discount based on the time to liquidity and expected volatility for the shares.

The fair value of all tranches of the employee units awarded in May 2011 and June 2012 approximated \$9.2 million and \$1.3 million, respectively, on the date of grant. The resulting compensation expense relating to the time-vesting units is recognized over the five year vesting period (20% per year), while the compensation expense for the performance vesting units will be recognized only when the performance criteria required for vesting of such units actually occurs. In the event of a change in control, all time vesting units will vest immediately and all unrecognized compensation cost will be recognized at the time of such change in control.

While management believes that the estimates and assumptions utilized in calculating the fair value of the employee units granted were reasonable and based upon accepted valuation techniques, valuation results can vary, sometimes significantly, depending on the assumptions applied within an option pricing model.

A 10% change in the fair value of employee units granted in 2011 and 2012 would have had an immaterial impact on our consolidated financial statements as of and for the year ended December 31, 2011 and on its condensed consolidated financial statements as of and for the nine month period ended September 30, 2012.

Recently Issued Financial Accounting Standards

In May 2011, the Financial Accounting Standards Board ("FASB") issued guidance clarifying how to measure and disclose fair value. This guidance amends the application of the "highest and best use" concept to be used only in the measurement of fair value of nonfinancial assets, clarifies that the measurement of the fair value of equity-classified financial instruments should be performed from the perspective of a market participant who holds the instrument as an asset, clarifies that an entity that manages a group of financial assets and liabilities on the basis of its net risk exposure can measure those financial instruments on the basis of its net exposure to those risks, and clarifies when premiums and discounts should be taken into account when measuring fair value. The fair value disclosure requirements were also amended. This new guidance is effective for fiscal years and interim periods beginning after December 15, 2011. We adopted the amended guidance effective January 1, 2012 and it did not have a material effect on our consolidated financial statements included elsewhere in this prospectus.

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In June 2011, the FASB issued guidance that revises the manner in which entities present comprehensive income in their financial statements. The guidance requires entities to report the components of comprehensive income in either a single, continuous statement or two separate but consecutive statements. In December 2011, the FASB issued guidance which defers certain requirements set forth in June 2011. These amendments were made to allow the FASB time to redeliberate whether to present on the face of the financial statements the effects of reclassifications out of accumulated other comprehensive income on the components of net income and other comprehensive income in all periods presented. Both sets of guidance were effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 and are required to be applied retrospectively. We adopted this guidance on January 1, 2012 and accordingly applied to the new guidance retrospectively. Such adoption only resulted in a change in how we present the components of comprehensive income.

In September 2011, the FASB issued guidance related to testing goodwill for impairment. Under the amended guidance, entities testing goodwill for impairment have the option of performing a qualitative assessment before calculating the fair value of the reporting units. If the entities determine, based on the qualitative assessment, that it is more likely than not an impairment has not occurred, no further quantitative testing is necessary. The guidance is effective for fiscal years beginning after December 15, 2011, with early adoption permitted. We early adopted the guidance and performed a qualitative assessment as our initial step for the 2011 annual review of goodwill impairment. The adoption of this guidance did not have a material impact on our consolidated financial statements.

In July 2012, the FASB issued new accounting guidance relating to impairment testing for indefinite-lived intangible assets. In accordance with this guidance, an entity has the option first to assess qualitative factors to determine whether events and circumstances indicate that it is more likely than not that an indefinite-lived intangible asset is impaired. If after such assessment an entity concludes that the indefinite-lived intangible asset is not impaired, then the entity is not required to take further action. However, if an entity concludes otherwise, then it is required to determine the fair value of the indefinite-lived intangible asset and perform the quantitative impairment test as required by existing standards. This guidance is effective for annual and interim impairment tests for fiscal years beginning after September 15, 2012 and early adoption is permitted. We are in the process of evaluating this guidance, which is not expected to have a material impact on our consolidated financial statements included elsewhere in this prospectus.

BUSINESS

Company Overview

We are a leading theme park and entertainment company delivering personal, interactive and educational experiences that blend imagination with nature and enable our customers to celebrate, connect with and care for the natural world we share. We own or license a portfolio of globally recognized brands, including such iconic brands as SeaWorld, Shamu and Busch Gardens. Over our more than 50 year history, we have built a diversified portfolio of 11 premier destination and regional theme parks that are grouped in key markets across the United States, many of which showcase our one-of-a-kind collection of approximately 67,000 marine and terrestrial animals. Our theme parks feature a diverse array of rides, shows and other attractions with broad demographic appeal which deliver extraordinary experiences and a strong value proposition for our guests. In addition to our theme parks, we have recently begun to leverage our brands into media, entertainment and consumer products.

During the 12 months ended September 30, 2012, we hosted more than 24 million guests in our theme parks, including approximately 2.7 million international guests from over 55 countries and six continents, and generated an estimated 5.6 billion impressions through television and digital media platforms. In the year ended December 31, 2011 and the nine months ended September 30, 2012, we had total revenues of \$1,330.8 million and \$1,160.6 million, respectively. Our strong revenue operating performance and stable profit margins, combined with our disciplined approach to capital expenditures and working capital management, enable us to generate strong and recurring cash flow.

Our legacy started in 1959 with the opening of our first Busch Gardens theme park in Tampa, Florida. Since then, we have built our portfolio of iconic brands and have strategically expanded our portfolio of theme parks across five states and approximately 2,000 acres of owned land, including through acquisitions. We most recently acquired Knott's Soak City Chula Vista in California, which we are in the process of rebranding as Aquatica San Diego before it re-opens in 2013. We estimate that the replacement value of our current assets and owned land exceeds \$5 billion.

Our portfolio of branded theme parks includes the following marquee names:

- **SeaWorld** . SeaWorld is widely recognized as the leading marine-life theme park brand in the world. Our SeaWorld theme parks, located in Orlando, San Antonio and San Diego, each rank among the most highly attended theme parks in the industry and offer up-close interactive experiences and a variety of live performances, including shows featuring Shamu in specially designed amphitheaters. We offer our guests numerous animal encounters, including the opportunity to work with trainers and feed marine animals, as well as themed thrill rides and theatrical shows that uniquely incorporate our one-of-a-kind animal collection.
- **Busch Gardens** . Our Busch Gardens theme parks are family-oriented theme park destinations designed to immerse guests in foreign geographic settings. They are renowned for their beauty and award-winning landscaping and gardens and allow our guests to discover the natural side of fun by offering a family experience featuring a variety of attractions and world class rollercoasters in a richly-themed environment. Busch Gardens Tampa presents our collection of animals from Africa, Asia and Australia. Busch Gardens Williamsburg, which has been named the Most Beautiful Park in the World by the National Amusement Park Historical Association for 22 consecutive years, showcases European-themed cultural and culinary experiences, including high-quality theatrical productions.
- **Aquatica** . Our Aquatica branded water parks are premium, family-oriented destinations that are based in a South Seas-themed tropical setting. Aquatica water parks build on the aquatic theme of our SeaWorld brand and feature high-energy rides, water attractions, white-sand

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beaches and an innovative and entertaining presentation of marine and terrestrial animals. We position our Aquatica water parks as companion water parks to our SeaWorld theme parks in Orlando and San Diego and we have an Aquatica water park situated within our SeaWorld San Antonio theme park.

- **Discovery Cove** . Discovery Cove is a reservations only, all-inclusive, marine-life day resort adjacent to SeaWorld Orlando. Discovery Cove offers guests personal, signature experiences, including the opportunity to swim and interact with dolphins, take an underwater walking reef tour and enjoy pristine white-sand beaches and landscaped private cabanas. Discovery Cove presently limits its attendance to approximately 1,300 guests per day and features premium culinary offerings in order to provide guests with a more relaxed, intimate and high-end luxury resort experience.
- **Sesame Place** . Sesame Place is the only U.S. theme park based entirely on the award-winning television show Sesame Street. Located between Philadelphia and New York City, Sesame Place is a destination where parents and children can share in the spirit of imagination and experience Sesame Street together through whirling rides, water slides, colorful shows and furry friends. In addition, we have introduced Sesame Street brands in our other theme parks through Sesame Street-themed rides, shows, children's play areas and merchandise.

We generate revenue primarily from selling admission to our theme parks and from purchases of food, merchandise and other spending. For the nine months ended September 30, 2012, theme park admissions accounted for approximately 62% of our revenue, and purchases of food, merchandise and other spending accounted for approximately 38% of our revenue. Over the same period of time, we reported \$36.04 in admission per capita and \$22.39 in-park per capita spending, representing an increase of 3.0% and 3.3%, respectively, compared to the same period of 2011. For more information, see “—Our Brands” and “—Our Products and Services” below.

As one of the world's foremost zoological organizations and a global leader in animal welfare, training, husbandry and veterinary care, we are committed to helping protect and preserve the environment and the natural world. For more information, see “—Our Animals” and “—Philanthropy and Community Relations” below.

Our Competitive Strengths

- **Iconic Brands That Consumers Know and Love.** Our brands are internationally recognized cultural touch points representing the intersection of “where imagination meets nature.” Our brand portfolio is highly stable, reducing our exposure to changing consumer tastes. We use our brands and intellectual property to increase awareness of our theme parks, deepen connections with our guests and drive attendance to our theme parks. The popularity of our brands is evidenced by over 30 million unique visitors to our websites from January 2012 through November 2012. In addition to our theme parks, we have recently begun to leverage our brands into media, entertainment and consumer products, and our Sea Rescue television program was seen by more than 27 million viewers in its first season and has been extended for a second season.
- **World-Class, Differentiated Theme Parks.** We own and operate 11 theme parks, including five of the top 20 theme parks in the United States as measured by attendance. Our theme parks are beautifully themed and deliver high-quality entertainment, aesthetic appeal, shopping and dining and have won numerous awards, including Amusement Today's Golden Ticket Awards for Best Landscaping. Our theme parks feature seven of the top 50 rated steel rollercoasters, led by Apollo's Chariot, the #4 rated steel rollercoaster in the world. Our SeaWorld theme parks have won the top three spots in Amusement Today's annual Golden Ticket Award for Best Marine Life Park since the award's inception in 2006. We have approximately 600 attractions that appeal to guests of all ages, including 93 animal attractions,

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113 shows and 193 rides. In addition, we have over 300 restaurants and specialty shops . Our theme parks appeal to the entire family and offer a broad range of experiences, ranging from emotional and educational animal encounters to thrilling rides and exciting shows.

- **Diversified Business Portfolio.** Our portfolio of theme parks is diversified in a number of important respects. Our theme parks are located across the United States, which helps protect us from the impact of localized events. Each theme park showcases a different mix of zoological, thrill-oriented and family-friendly attractions. This varied portfolio of entertainment offerings attracts guests from a broad range of demographics and geographies. Our theme parks appeal to both regional and destination guests, which provides us with a stable attendance base while allowing us to benefit from improvements in macroeconomic conditions, including increased consumer spending and international travel.
- **One of the World's Largest Zoological Collections.** We are uniquely positioned in the industry due to our ability to display our extensive animal collection in a differentiated and interactive manner. We have one of the world's largest zoological collections with approximately 67,000 animals, including approximately 7,000 marine and terrestrial animals and approximately 60,000 fish. With 28 killer whales, we have the largest group of killer whales in human care. We have established successful and innovative breeding programs that have produced 29 killer whales, 151 dolphins and 115 sea lions, among other species, and our marine animal populations are characterized by their substantial genetic diversity. More than 80% of our marine mammals were born in human care.
- **Strong Competitive Position .** Our competitive position is protected by the combination of our powerful brands, extensive animal collection and expertise and premier in-park assets located on valuable real estate. Our animal collection and zoological expertise, which have evolved over our more than four decades of caring for animals, would be very difficult to replicate. Over the past two years, we have made extensive investments in new marketable attractions and infrastructure and we believe that our theme parks are well capitalized. The limited supply of real estate suitable for theme park development coupled with high initial capital investment, long development lead-times and zoning and other land use restrictions constrain the number of large theme parks that can be constructed. We estimate that the replacement value of our current assets and owned land (approximately 2,000 acres) exceeds \$5 billion.
- **Proven and Experienced Management Team and Employees with Specialized Animal Expertise.** Our senior management team, led by Jim Atchison, our Chief Executive Officer and President, includes some of the most experienced theme park executives in the world, with an average tenure of more than 28 years in the industry. The management team is comprised of highly skilled and dedicated professionals with wide ranging experience in theme park operations, zoological operations, product development, business development and marketing. In addition, we are one of the world's foremost zoological organizations with approximately 1,550 employees dedicated to animal welfare, training, husbandry and veterinary care.
- **Proximity of Complementary Theme Parks .** Our theme parks are grouped in key locations near large population centers across the United States, which allows us to realize revenue and operating expense efficiencies. Having theme parks located within close proximity to each other enables us to cross market and offer bundled ticket and travel packages. In addition, closely located theme parks provide operating efficiencies including sales, marketing, procurement and administrative synergies as overhead expenses are shared among the theme parks within each region. We intend to continue to capitalize on this strength through our recent acquisition of Knott's Soak City in Chula Vista, CA, which will complement our SeaWorld San Diego theme park.
- **Attractive, Stable Profit Margins and Strong Cash Flow Generation.** Our attractive, stable profit margins, combined with our disciplined approach to capital expenditures and working

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capital management, enable us to generate strong and recurring cash flow. Five of our 11 theme parks are open year-round, reducing our seasonal cash flow volatility. In addition, we have substantial tax assets which we expect to be available to defer a portion of our cash tax burden going forward.

- **Care for Our Community and the Natural World.** Caring for our community and the natural world is a core part of our corporate identity and resonates with our guests. We focus on three core philanthropic areas: children, environment, and education. Through the power of entertainment, we are able to inspire children and educate guests of all ages. We support numerous charities and organizations across the country. For example, we are the primary supporter and corporate member of the SeaWorld & Busch Gardens Conservation Fund, a non-profit conservation foundation, which makes grants to wildlife research and conservation projects that protect wildlife and wild places worldwide. In addition, in collaboration with the government and other members of accredited stranding networks, we operate one of the world's most respected programs to rescue ill and injured marine animals, with the goal to rehabilitate and return them back to the wild. Our animal experts have helped more than 22,000 ill, injured, orphaned and abandoned animals for more than four decades.

Our Strategies

We plan to grow our business by increasing our existing theme park revenues through strategies designed to drive higher attendance and increase in-park per capita spending, as well as by creating new sources of revenue through expansion of our theme parks, new theme park development and extending our brands into new media, entertainment and consumer products. We believe that our strategies complement each other as they lead to increased brand strength and awareness and drive revenue growth and profitability. Our strategies include the following components:

- **Continue to Create Memorable Experiences for Our Guests.** Our mission is to use the power of educational entertainment to continue to inspire our guests to celebrate, connect with and care for the natural world we share. We provide our guests with innovative and immersive theme park experiences, such as our 3-D, 360-degree TurtleTrek attraction at SeaWorld Orlando, which opened in 2012. We also offer guests exciting rides, animal encounters and beautifully-themed entertainment that are difficult to replicate, such as in-water experiences opened in 2011 with beluga whales at SeaWorld Orlando and our Cheetah Hunt ride, which is a launch coaster that runs alongside a cheetah habitat at Busch Gardens Tampa. As a result of these distinctive offerings, our guest surveys routinely report very high "Overall Satisfaction" scores, with 97% of recent respondents in 2012 ranking their experience good or excellent. Going forward, we will continue to develop high-quality experiences for our guests, focused on integrating our impressive animal collection with uniquely themed settings and products that our guests will remember long after they leave our theme parks.
- **Drive Increased Attendance to Our Theme Parks .** We plan to drive increased attendance to our theme parks by continually introducing new attractions, differentiated experiences and enhanced service offerings. Because of the historic correlation between capital investment and increased attendance, we plan to add to our award-winning portfolio of assets and spend capital in support of marketable events, such as SeaWorld's 50th Anniversary Celebration. We also plan to increase awareness of our theme parks and brands through effective media and marketing campaigns, including the targeted use of online and social media platforms. For example, since their introduction in 2006, our YouTube channels have attracted approximately 16 million views, and we believe that we can continue to use traditional and new media to increase awareness of our brands and drive attendance to our theme parks.
- **Expand In-Park Per Capita Spending through New and Enhanced Offerings.** We believe that by providing our guests additional and enhanced offerings at various price points, we can

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drive further spending in our theme parks. For example, we recently introduced an “all-day-dining deal” for a supplemental fee, which we believe has resulted in increased in-park per capita spending. In addition, we have developed iPhone and Android smartphone applications for our SeaWorld and Busch Gardens theme parks, which offer GPS navigation through the theme parks and interactive theme park maps that show the nearest dining locations, gift shops and ATMs and provide real-time updates on wait times for rides. Our guests have quickly adopted these products with over one million downloads of our iPhone applications from June 2011 through December 2012. We believe that going forward, there are significant avenues to expand guest offerings in ways that both increase guest satisfaction and provide us with incremental revenue.

- **Grow Revenue through Disciplined and Dynamic Pricing.** We are focused on increasing our revenues through a variety of ticket options and disciplined pricing and promotional strategies. We offer an array of tailored admission options, including season passes and multi-park tickets to motivate the purchase of higher value products and increase in-park per capita spending. In addition, to increase non-peak demand we offer seasonal and special events and concerts, some of which are separately priced. We have begun deploying a dynamic pricing model, which will enable us to adjust admission prices for our theme parks based on expected demand.
- **Increase Profitability through Operating Leverage and Rigorous Cost Management.** Adding incremental attendance and driving additional in-park per capita spending affords us with an opportunity to realize gains in profitability because of the fixed cost base and high operating leverage of our business. We also employ rigorous cost management techniques to drive additional operating efficiencies. For example, we utilize a centralized procurement and strategic sourcing team and participate in several cooperative buying organizations to leverage our purchases company-wide and have recently consolidated our marketing spending with a single agency to streamline our marketing efforts.
- **Pursue Disciplined Capital Deployment, Expansion and Acquisition Opportunities .** We pursue a disciplined capital deployment strategy focused on the development and improvement of rides, attractions and shows, as well as seek to leverage our strong brands and expertise to pursue selective domestic and international expansion and acquisition opportunities. As part of this strategy, we seek to replicate successful capital investments in particular attractions across multiple theme parks, as we did with our Journey to Atlantis watercoaster that premiered in SeaWorld Orlando and was later introduced in the other SeaWorld theme parks. We have been successful in grouping our theme parks and water parks near each other, which allows us to operate companion theme parks with reduced overhead costs and creates revenue opportunities through multi-park tickets and other joint marketing initiatives. For example, in November 2012, we acquired Knott’s Soak City Chula Vista, which is located near our SeaWorld San Diego theme park. We plan to re-launch the water park as Aquatica San Diego by mid-2013. We also evaluate new domestic theme park opportunities as well as potential joint venture opportunities that would allow us to expand internationally by combining our brands and zoological and operational expertise with third-party capital.
- **Leverage and Expand Our Brands to Increase Awareness and Create New Opportunities .** Our brands are highly regarded and are primarily based on our own intellectual property, which provides us with opportunities to leverage our intellectual property portfolio and develop new media, entertainment and consumer products. For example, in 2013 we will open Antarctica: Empire of the Penguin at our SeaWorld Orlando theme park that will feature a new animated penguin character, Puck, and coincide with the launch of new in-park merchandise, mobile gaming, and consumer products designed around the Puck character. In addition, we are able to expand into new media platforms by partnering with others to create new, powerful entertainment opportunities. For example, in 2012, we launched Sea Rescue, a

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Saturday morning television show airing on the ABC Network featuring our work to rescue injured animals in coordination with various government agencies and other rescue organizations, which attracted over 27 million viewers in its first season and has been rated as the number one show in its timeslot in most major U.S. markets since its debut.

- **Continue our Support of Species Conservation, Sustainability and Animal Welfare.** Our zoological know-how and coast-to-coast presence provide us with significant opportunities to contribute to global species conservation, sustainability and animal welfare initiatives. For example, our employees regularly assist in animal rescue efforts, and the non-profit SeaWorld & Busch Gardens Conservation Fund, of which we are the primary supporter and corporate member, makes grants to wildlife research and species conservation projects worldwide. Our species conservation efforts and philanthropic activities generate positive awareness and goodwill for our business. These efforts are a core part of our corporate culture and identity and resonate with our customers.

Our Industry

We believe that the theme park industry is an attractive sector characterized by a proven business model that generates significant cash flow and has clear avenues for growth. Theme parks offer a strong consumer value proposition, particularly when compared to other forms of out-of-home entertainment such as concerts, sporting events, cruises and movies. As a result, theme parks attract a broad range of guests and generally exhibit strong margins across regions, operators, park types and macroeconomic conditions.

The U.S. theme park industry, which hosts approximately 315 million visitors per year, is comprised of a large number of venues ranging from a small group of high attendance, heavily-themed destination theme parks to a large group of lower attendance local theme parks and family entertainment centers. The United States is the largest theme park market in the world with six of the ten largest theme park operators and 12 of the 25 most-visited theme parks in the world. In 2011, the U.S. theme park industry generated approximately \$11.0 billion in revenues, which represented a 3.0% compounded annual growth rate since 2003.

Our Brands

We own or license a portfolio of globally recognized brands, including SeaWorld, Shamu, Busch Gardens and Sesame Place. By focusing on nature-based themes, our theme parks distinguish themselves from traditional theme parks and are able to attract a diverse geographic and demographic mix of guests. Our brand portfolio is highly stable, reducing our exposure to changing consumer tastes.

Our strong brands allow us to command higher admissions prices, drive in-park per capita spending and generate out-of-park revenue. We are focused on developing proprietary brands and intellectual property that we can leverage through a variety of media and entertainment platforms and consumer products to deepen connections with our guests and drive attendance to our theme parks. Our brands are among our most important assets, and we are actively engaged in enforcement and other activities to protect our intellectual property rights.

Our Theme Parks

We are best known for our theme parks, which hosted more than 24 million guests during the twelve months ended September 30, 2012. Our theme parks offer guests a variety of exhilarating experiences, from animal encounters that invite exploration and appreciation of the natural world, to thrilling rides and spectacular shows. The theme parks are beautifully themed venues that are consistently recognized among the top theme parks in the world and rank among the most highly attended in the industry. In

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2011, SeaWorld Orlando, Busch Gardens Tampa and SeaWorld San Diego each ranked among the top 25 theme parks worldwide based on attendance, and Aquatica Orlando and Water Country USA each ranked among the top 20 water parks worldwide based on attendance. We generally locate our theme parks in geographical clusters, which improves our ability to serve guests by providing them with a varied, comprehensive vacation experience and valuable multi-park pricing packages, as well as improving our operating efficiency through shared overhead costs.

The following table summarizes our theme park portfolio:

Location	Theme Park	Year Opened	Season	Animal Habitats (2)	Rides (3)	Shows (4)	Play Areas (5)	Events (6)	Distinctive Experiences (7)
Orlando, FL	 SeaWorld Orlando	1973	Year-round	19	14	18	2	7	17
	 DISCOVERY COVE	2000	Year-round	5	0	0	0	0	5
	 AQUATICA Orlando	2008	Year-round	5	13	0	2	0	2
Tampa, FL	 Busch Gardens Tampa, FL	1959	Year-round	16	31	17	10	9	14
	 Adventure Island	1980	Mar-Oct	0	12	0	4	1	2
San Diego, CA	 SeaWorld San Diego	1964	Year-round	26	10	18	2	4	11
	 AQUATICA San Diego	1996 ⁽¹⁾	May-Sep	2	11	0	0	0	0
San Antonio, TX	 SeaWorld San Antonio	1988	Feb-Dec	12	23	29	11	7	22
Williamsburg, VA	 Busch Gardens Williamsburg, VA	1975	Mar-Oct & Dec	7	38	16	8	6	27
	 Water Country USA	1984	May-Sep	1	15	1	4	0	6
Langhorne, PA	 SESAME PLACE	1980	May-Oct & Dec	0	26	14	6	4	7
Total	 SEAWORLD ENTERTAINMENT			93	193	113	49	38	113

- (1) On November 20, 2012, we acquired the Knott's Soak City Chula Vista water park from Cedar Fair, L.P. We plan to rebrand this water park as Aquatica San Diego before it re-opens in 2013.
- (2) Represents animal attractions without a ride or show element, often adjacent to a similarly themed attraction.
- (3) Represents rides, including mechanical rides and water slides.
- (4) Represents annual and seasonal shows with live entertainment, animals, characters and/or 3-D or 4-D experiences.
- (5) Represents pure play areas, typically designed for children or seasonal special event oriented, often without a queue (such as water splash areas, Halloween mazes).
- (6) Represents special limited time events.
- (7) Represents special experiences, such as educational tours, immersive dining experiences and swimming with animals, often limited to small groups and individuals and/or requiring a supplemental fee.

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- **SeaWorld** . SeaWorld is globally recognized as the leading marine-life theme park brand in the world. Our SeaWorld theme parks offer a truly unique experience for guests of all ages: up-close animal encounters, thrilling attractions and lavish performances that immerse guests in the marine-life theme. Each SeaWorld theme park showcases the iconic killer whale, Shamu, at Shamu Stadium, which features inspiring shows, underwater viewing and special dining experiences. We currently own and operate the following SeaWorld branded theme parks:
 - *SeaWorld Orlando* is a 279 acre theme park in Orlando, Florida and is open year-round. It is our largest theme park as measured by attendance and revenue. SeaWorld Orlando is home to the original Journey to Atlantis watercoaster ride and Kraken, a floorless rollercoaster. In 2009, SeaWorld Orlando opened Manta, integrating animals and a beautiful aquarium into the theming of a flying rollercoaster. In April 2012, we opened TurtleTrek, one of the first attractions with two extensive naturalistic habitats, home to manatees and sea turtles, and a 3-D, 360-degree dome theater, which allows a 3-D movie to be shown all around guests and even above them.
 - *SeaWorld San Antonio* is one of the world's largest marine-life theme parks, encompassing 416 acres in San Antonio, Texas. Open 11 months of the year, SeaWorld San Antonio features thrilling rollercoasters, including the Steel Eel and The Great White, along with a collection of marine-themed shows and experiences, including the killer whale show One Ocean. Our guests can upgrade their experience for an additional fee to also enjoy our Aquatica water park located within SeaWorld San Antonio.
 - *SeaWorld San Diego* is the original SeaWorld theme park spanning 190 acres of waterfront property on Mission Bay in San Diego, California. SeaWorld San Diego is open year-round and is one of the most visited paid attractions in San Diego. Its newest attraction is Manta, built in 2012 and modeled on the successful Manta ride in SeaWorld Orlando, which includes animal habitats featuring bat rays and other marine-life as well as a launch rollercoaster shaped like a giant manta ray.

Collectively, our SeaWorld theme parks have won the top three spots in Amusement Today's annual Golden Ticket Award for Best Marine Life Park since the award's inception in 2006. We have over 48 years of experience developing techniques for reproducing, maintaining and showing marine mammals.

- **Busch Gardens** . Our Busch Gardens theme parks are family-oriented theme parks designed to immerse guests in foreign geographic settings and they feature a combination of world class rollercoasters, exotic animals and high-energy theatrical productions that appeal to all ages. Our Busch Gardens theme parks are renowned for their beauty and cleanliness with award-winning landscaping and gardens. We currently own and operate the following Busch Gardens theme parks:
 - *Busch Gardens Tampa* features exotic animals, thrill rides and shows on 414 acres of lush natural landscape. With more than 12,000 animals representing more than 300 species, Busch Gardens Tampa offers more opportunities to learn about and interact with amazing animals than any other of our theme parks. Our zoological collection is a marquee attraction for families, and its portfolio of rides, including three of the world's top 30 steel rollercoasters, broaden the theme park's appeal to teens and thrill seekers of all ages. Our newest attractions include the award winning Iceploration show, state-of-the-art Animal Care Center and Christmas Town, which opened in 2012.
 - *Busch Gardens Williamsburg* is regularly recognized as one of the highest quality theme parks in the world, capturing dozens of awards over its 37-year history for attraction and show quality, design, landscaping, culinary operations and theming. This 422 acre theme park has been named the Most Beautiful Park in the World by the National Amusement Park Historical

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Association for 22 consecutive years and has earned the Golden Ticket for Best Landscaping each year since the category's inception in 1998. It features some of the industry's top thrill rides with three steel rollercoasters, Apollo's Chariot, Alpengeist and Griffon, ranked in the top 50 in Amusement Today's annual survey. Its newest steel rollercoaster, Verbolten, a multi-launch, indoor/outdoor rollercoaster that ends with an 88-foot drop toward the theme park's Rhine River, opened in 2012.

- **Aquatica** . Aquatica are high-end water parks that place an equal emphasis on high-energy water rides and innovative presentations of marine and terrestrial animals, while leveraging our unique brand and aquatic mammal expertise. We position our Aquatica water parks as companions to our SeaWorld theme parks and currently own and operate the following Aquatica branded theme parks:
 - Aquatica Orlando is an 81 acre South Seas-themed water park adjacent to SeaWorld Orlando. It was the 3rd most attended water park in North America in 2011 and is open year-round. The theme park features state-of-the-art attractions for guests of all ages and swimming abilities, including some that pass by or through animal habitats, including the signature Dolphin Plunge that carries guests through a Commerson's dolphin habitat.
 - Aquatica San Diego is the latest theme park to be added to our portfolio. This theme park was acquired from Cedar Fair in November 2012 and is being extensively renovated and rebranded as Aquatica San Diego before it re-opens in 2013.
 - Aquatica San Antonio is a newly-added water park located within SeaWorld San Antonio and accessible to guests for an additional fee. It features a variety of waterslides, rivers, lagoons, more than 42,000 square feet of beach area, private cabanas and more than 500 stingrays and tropical fish.
- **Discovery Cove**. Located next to SeaWorld Orlando, Discovery Cove is a reservations only, all-inclusive marine-life theme park that is open year-round to guests. The theme park restricts its attendance to approximately 1,300 guests per day in order to assure a more intimate experience. Discovery Cove provides guests with a full day of activities, including a 30-minute dolphin swim session and the opportunity to snorkel with thousands of tropical fish, wade in a lush lagoon with stingrays, and hand-feed birds in a free flight aviary. We opened new attractions at Discovery Cove in the last two years, The Grand Reef, which includes SeaVenture, an underwater walking tour where guests can get up close to exotic fish and sharks, and Freshwater Oasis, which offers wading adventures and face-to-face encounters with otters and marmosets.
- **Sesame Place** . Located between Philadelphia and New York City, Sesame Place is the only theme park in America entirely dedicated to Sesame Street's spirit of imagination. The theme park shares SeaWorld's "education and learning through entertainment" philosophy and allows parents to rediscover their own childhood. Our rights to the Sesame Street brand in the United States extend through 2021. Despite its small size and seasonal operating schedule, Sesame Place attracts more than one million guests annually due to its strong family appeal. Sesame Place debuted the Neighborhood Street Party Parade and an annual Christmas event in 2011.
- **Water Country USA**. Virginia's largest family water play park, Water Country USA, features state-of-the-art water rides and attractions, all set to a 1950s and 1960s surf theme. Water Country USA is the sixth most attended water park in North America and features a 23,000 square-foot wave pool, a science fiction themed interactive children's play area, kid-sized water slides, live shows and several other attractions. Its newest attraction is Vanish Point, a thrilling drop slide, which opened in 2011.
- **Adventure Island**. Located adjacent to Busch Gardens Tampa, Adventure Island's 56 acres are filled with water rides, dining and other attractions that incorporate a Key West

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theme. The theme park is the seventh most attended water park in North America and features a friendly wave pool and children's water playground that appeal to its core constituency, local families with young children.

Our New Attractions

Our theme parks feature a variety of attractions for our guests, including the following attractions added in 2012:

- **Animal Care Center (Busch Gardens Tampa):** At our Animal Care Center guests have the opportunity to observe and take part in the animal care experience. From nutrition to x-rays and surgeries, much of the animal care is conducted within guest view in this unique state-of-the-art animal care facility.
- **Aquatica San Antonio (SeaWorld San Antonio):** Aquatica San Antonio is a resort style water park opened inside SeaWorld San Antonio and available for an additional fee. It features thrilling water slides, rivers, lagoons, more than 42,000 square feet of beach area, private cabanas and more than 500 stingrays and tropical fish. The water park's signature attraction, Stingray Falls, takes four-seat rafts down twists and turns to an underwater grotto, where guests view stingrays and tropical fish. In addition, Walhalla Wave, a family raft ride, sends guests to the top of a zero-gravity wall, giving riders the sense of weightlessness.
- **Christmas Town (Busch Gardens Tampa):** Christmas Town allows guests to experience the Christmas season with a separate admission evening event offering more than a million holiday lights, special entertainment, shopping, dining and seasonal attractions.
- **Entwined: Tales of Good and Grimm (Busch Gardens Williamsburg):** Entwined is Busch Gardens' new storytelling show in Das Festhaus, a restaurant and entertainment venue.
- **Freshwater Oasis (Discovery Cove):** Freshwater Oasis offers wading adventures and face-to-face encounters with otters and marmosets.
- **Iceploration (Busch Gardens Tampa):** Iceploration is a new ice show set in the 1,100-seat Moroccan Palace Theater. It combines skaters, oversized puppets, atmospheric special effects, original music and animals to tell the story of a young boy and his grandfather exploring the world.
- **Just for Kids (SeaWorld Orlando):** Just for Kids is an event that provides children with an opportunity to sing, dance and play. Guests experience live shows, kid-sized rides and some of today's favorite children's music artists at this popular festival.
- **Let's Play Together (Sesame Place):** Let's Play Together is the newest addition to Sesame Place. Elmo, Cookie Monster, Grover, Rosita, Bert, Ernie and Abby Cadabby play, sing and dance while learning all about the wonderful things that friends do together.
- **Manta (SeaWorld San Diego):** Manta is an attraction that includes animal habitats featuring bat rays and other marine-life, as well as a launch rollercoaster shaped like a giant manta ray.
- **TurtleTrek (SeaWorld Orlando):** TurtleTrek is a realistic 3-D, 360 degree movie, providing guests with an opportunity to find out what it is like to "be a turtle" on an epic journey where they encounter hardships and challenges as they try to make it back to their home beach. TurtleTrek also features two large saltwater and freshwater habitats that are home to endangered sea turtles and manatees.
- **Verbolten (Busch Gardens Williamsburg):** Verbolten is a multi-launch, indoor/outdoor rollercoaster that ends with an 88-foot drop toward the theme park's Rhine River.

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Capital Improvements

We make annual investments to support our existing theme park facilities and attractions, as well as enable the development of new theme park attractions and infrastructure. Maintaining and improving our theme parks, as well as opening new attractions, is critical to remain competitive and increase attendance and our guests' length of stay.

In 2012, we opened new attractions in seven of our theme parks. In 2013, we will open one of our biggest new attractions: Antarctica: Empire of the Penguin, a realm within our SeaWorld Orlando park themed to the snowy continent that will include a new attraction with innovative industry-leading ride technology. Antarctica will immerse guests into a penguin's habitat and will allow them to stroll with a colony of penguins. Also in 2013, we plan to re-open the Knott's Soak City Chula Vista water park, which we acquired in November 2012, as Aquatica San Diego, after making capital investments to upgrade its facilities.

During 2014 and 2015, we plan to celebrate the 50th anniversary of the SeaWorld brand at all three of our SeaWorld theme parks with a variety of new events, attractions, decors and musical features that celebrate our leadership in the marine-life theme park segment. SeaWorld's 50th Anniversary Celebration will be highlighted by major new attractions, such as Explorer's Reef in SeaWorld San Diego, which features an opportunity for our guests to experience hands-on interactions with sea creatures. Beyond the new products and experiences that we will be offering to our guests, we believe that we will be able to capitalize on the strong brand recognition and widespread appeal of our theme parks by raising public awareness of the anniversary celebration across traditional and digital media.

Maintenance and Inspection

Maintenance at our theme parks is a key component of guest service and safety and includes two areas of focus: facilities and infrastructure and rides and attractions. Facilities and infrastructure consists of all functions associated with upkeep, repair, preventative maintenance, code compliance, and improvement of theme park infrastructure. This area is staffed with a combination of external contractors/suppliers and our employees.

Rides and attractions maintenance represents all functions dedicated to the inspection, upkeep, repair and testing of guest experiences, particularly rides. Rides and attractions maintenance is also staffed with a combination of external suppliers, inspectors and our employees, who work to assure that ride experiences are operating within the manufacturer's criteria and that maintenance is conducted according to internal standards, industry best practice and standards (such as ASTM International), state or jurisdictional requirements, as well as the ride designer or manufacturer's specifications. All ride maintenance personnel are trained to perform their duties according to internal training processes, in addition to recognized industry certification programs for maintenance leadership. Every ride at our theme parks is inspected regularly, according to daily, weekly, monthly, and annual schedules, by both park maintenance experts or external consultants. Additionally, all rides are inspected daily by maintenance personnel before use by guests to ensure proper and safe operation.

All maintenance activities are planned and tracked using a networked enterprise software system, in order to schedule and request work, track completion progress and manage costs of parts and materials.

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Our Animals

We are one of the world's foremost zoological organizations and a global leader in animal welfare, training, husbandry and veterinary care. Our mission is to inspire guests through education and up-close experiences and to care for and protect animals. We care for one of the largest animal collections in the world, with approximately 67,000 animals, including 7,000 marine and terrestrial animals and 60,000 fish. Animals in our care include certain rare species such as the cheetah, Bengal tiger, West Indian manatee, black rhinoceros and polar bear.

The well-being of the animals in our care is a top priority. Our zoological staff has been caring for animals for more than five decades, and our expertise is a resource for zoos, aquariums and conservation organizations worldwide. Our expertise and innovation in animal husbandry have led to advances in the care of species in zoological facilities and in the conservation of wild populations.

We operate successful zoological breeding programs that help maintain a large and genetically-diverse animal collection. Those efforts have produced 29 killer whales, 151 dolphins and 115 sea lions, among other species. More than 80% of the marine mammals living in our zoological theme parks were born in human care.

Many of our programs represent pioneering contributions to the zoological community. Until the birth of our first killer whale calf in 1985, no zoological institution had successfully bred killer whales. We care for the largest killer whale population in zoological facilities worldwide and today have the most genetically diverse killer whale and dolphin collection in our history.

Our commitment to animals also extends beyond our theme parks and throughout the world. We actively participate in species conservation and rescue efforts as discussed in “—Conservation Efforts” and “—Philanthropy and Community Relations” below.

Our Products and Services

Admission Tickets

We generate most of our revenue from selling admission to our theme parks. For the nine months ended September 30, 2012, theme park admissions accounted for approximately 62% of our revenue. We work with travel agents, ticket resellers and travel agencies, as well as maintain an online presence to promote advanced sales and provide guest convenience and ease of entry. Approximately 30% of our admission ticket purchases are made online.

Guests who visit our theme parks have the option of purchasing multiple types of admission tickets, from single and multi-day tickets to season, annual and two year passes. We also offer a Fun Card at select theme parks that allows additional visits throughout that calendar year. In addition, visitors can purchase vacation packages with preferred hotels, behind-the-scenes tours, specialty dining packages and front of the line access to enhance their experience.

We also participate in joint programs that are designed to provide visitors to Florida and Southern California with options, flexibility and value in creating their vacation itineraries. For example, we have partnered with several theme parks in Orlando to create the Orlando FlexTicket, which allows guests to purchase a ticket providing access to our theme parks in Orlando and Tampa as well as Universal Studios' Universal Orlando, Islands of Adventure and Wet 'n Wild. We also created the 2-Park FlexTicket in conjunction with Universal Studios, which allows guests to purchase a ticket providing access to SeaWorld San Diego and Universal Studios Hollywood. In addition, we partner with independent third parties who sell tickets and/or packages to our theme parks.

We provide discounts, actively run promotions and use dynamic pricing models to adjust to changes in demand during targeted periods to maximize revenue and manage capacity.

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Theme Park Operations

Our theme park operations strive to deliver a high level of service, safety and security at our theme parks. Comprised of rides, shows and attractions operations, safety, security, environmental, water park and guest arrival services (including parking, tolls, admissions, guest relations, entry and exit), the theme park operations team manages the planning and execution of the overall theme park experience on a daily basis. In pursuit of continuous improvement at our guest touch points, theme park operations identify and leverage internal best practices across all of our theme parks in order to create a seamless and enjoyable guest experience throughout the entire visit.

Culinary Offerings

We strive to deliver a variety of high quality, creative and memorable culinary experiences to our guests. Our culinary operations are strategically organized into five key guest-oriented disciplines designed to drive in-park per capita spending: restaurants, catering, carts and kiosks, specialty snacks and vending. Our culinary team focuses on providing creative menu offerings that appeal to our diverse guest base.

We offer a variety of dining programs that provide value to our guests while driving incremental revenues. While our menu offerings have broad appeal, they also cater to guests who desire healthy options and those with special allergy-related needs. Our successful all-day-dining program delivers convenience and value to our guests with numerous restaurant choices for one price. We also offer creative immersive dining experiences that allow guests to dine up-close with our animals and characters. Our commitment to care for the natural world extends to the food that we serve. Some of our menus feature sustainable, organic, seasonal and locally grown ingredients that aim to minimize environmental impacts to animals and their habitats. In addition, through culinary supply chain management initiatives, we are well-positioned to take advantage of changing economic and market conditions.

Merchandise

We offer guests the opportunity to capture memories through our products and services, including through traditional retail shops, game venues and customized photos and videos. We make a focused effort to leverage the emotional connection of the theme park experiences, capitalize on trends and optimize brand alignment with our merchandise product offerings.

We operate more than 200 specialty shops at our theme parks, and our retail business encompasses the entire value chain, from product design to production and sourcing, importing and logistics and visual presentation up to the point of sale. Our products encompass more than 55,000 unique SKUs across five divisions. Whether a plush toy, a stylish apparel item showcasing an attraction, a commemorative memento or a tote to carry it all, we create items both big and small so that every guest has a chance to find that perfect item that is a reminder of the memories made in our theme parks.

Through real time photo and video technologies, guests can purchase visual memories to commemorate their experience with us. Whether on a traditional ride or during one of our numerous animal experiences, we capture the moment through the use of state-of-the-art processes and technologies. We continue to explore and develop our photo and retail business to extend beyond the visit with online opportunities to further create customized products.

In-park games span from traditional theme park operations to arcade experiences, all with the goal of creating positive family experiences for guests of every age.

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Our merchandise teams also focus on making a visit to our theme parks easy, convenient and comfortable. This includes offering lockers or service vehicle rentals such as strollers, electric personal carts and wheelchairs.

Licensing and Consumer Products

To capitalize on our popular brands, we have begun to leverage our intellectual property and content through media and consumer strategic licensing arrangements. We extended the reach of our brands through outbound media licensing in areas such as films, television programs and digital e-books, as well as our first-ever multi-platform mobile app game, TurtleTrek, which launched on iTunes in November 2012. We have also expanded into the development of licensed consumer products to drive consumer sales through retail channels beyond our theme parks. Our licensed consumer product offerings currently include toys, books, apparel, and technology accessories, among many other product types. For example, we worked with Mattel to develop our first Barbie I Can Be: SeaWorld Trainer Doll playset, which debuted to the public in 2008. By 2013, we believe that our licensees will have an aggregate of over 250 SKUs across more than 25,000 retail stores. Upcoming new product launches in 2013 are anticipated for direct to retail products, consumer packaged goods, office supplies, puzzles, board games and pet products. We believe that by leveraging our brands and our intellectual property through media and consumer products, we will create new revenue streams and enhance the value of our brands through greater consumer awareness and increased consumer loyalty.

In addition, we have expanded our brand appeal through strategic alliances with well-known external brands, including Sesame Street and The Polar Express. Recently, we entered into an exclusive theme park license with Nelvana Enterprises, a division of Corus Entertainment, for the animated character and series Franklin and Friends, which includes in-park character appearances, DVD specials, custom publishing and co-branded merchandise.

Group Events and Conventions

We host a variety of different group events, meetings and conventions at our theme parks both during the day and at night. Our venues offer indoor and outdoor space for meetings, special events, entertainment shows, picnics, teambuilding events, group tours and special group ticket packages. Park buy-outs allow groups to enjoy exclusive itineraries, including meetings and shows, up-close encounters with animals and behind the scenes tours. Each of our theme parks offers unique venues, such as SeaWorld Orlando's Ports of Call, a 70,000 square foot dedicated special events complex and banquet facility at the theme park, which is themed as a nautical wharf-side warehouse district, complete with two miniature submarines. The facility offers more than 30,000 square feet of dining space, with a ballroom that provides seating for more than 750 guests and a larger outdoor garden reception area that can accommodate additional guests. In 2011, we hosted more than 1,200 group events at our theme parks across the country.

Corporate Sponsorships and Strategic Alliances

We seek to secure long-term corporate sponsorships and strategic alliances with leading companies and brands that share our core values, deliver significant brand marketing value and influence and drive mutual business gains. We identify prospective corporate sponsors based on their industry and industry-leading position among Fortune 1000 companies, and we select them based on their ability to deliver impactful marketing value to our theme parks and our brands, as well as to consumer products and various entertainment platforms. Our current corporate sponsors include, among others, Southwest Airlines, which has been a sponsor for over 20 years, and The Coca-Cola Company. Our corporate sponsors contribute to us in a multitude of ways, such as through direct

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marketing, advertising, media exposure and licensing opportunities, as well as through the non-for-profit SeaWorld & Busch Gardens Conservation Fund. For example, in 2012, The Coca-Cola Company and Southwest Airlines launched new channel marketing programs and consumer promotions on our behalf with Walmart, Wendy's, Dunkin Donuts, Regal Cinemas, Cinemark, NASCAR, MyCokeRewards, and Southwest Vacations.

Our Corporate Culture

Our corporate culture is built on our mission to deliver personal, interactive and educational experiences that enable our customers to celebrate, connect with and care for the natural world we share. Our management team and our employees are passionate about connecting people to nature and animals and are committed to working in a socially responsible and environmentally sustainable manner. We teach our employees to be welcoming, friendly and attentive and to create an environment that allows our guests to build lasting memories with their family and friends. Our consumer-oriented corporate culture is integral to our organization and the cornerstone of our success.

Conservation Efforts

We contribute to species conservation, wildlife rescue, education and environmental stewardship programs around the world. Through SeaWorld & Busch Gardens Conservation Fund, a non-profit organization, we support wildlife research, habitat protection, animal rescue and conservation education. We also work with and support environmental organizations, including the National Wildlife Federation, World Wildlife Fund and The Nature Conservancy and contribute funds in support of efforts to ensure the sustainability of animal species in the wild. Some of our animals also serve as ambassadors in helping raise awareness for species in danger through numerous national media and public appearances. Through our theme parks' up-close animal encounters, educational exhibits and innovative entertainment, we strive to inspire each guest who visits one of our parks to care for and conserve the natural world.

In addition, in collaboration with federal, state and local governments, among others, we operate one of the world's most respected rescue programs for ill and injured marine animals, with the goal of rehabilitating and returning them to the wild. Over four decades, our animal experts have helped more than 22,000 ill, injured, orphaned and abandoned animals.

Our commitment to research and conservation also has led to advances in the care of animals in both zoological facilities and in conserving wild populations. We have pioneered new ways to rehabilitate animals in need. For example, we helped to create nutritional formulas and custom nursing bottles to hand-feed orphaned animals and developed techniques to help save sea turtles with cracked shells, created prosthetic beaks for injured birds and outfitted injured manatees with an "animal wetsuit" allowing them to stay afloat and warm.

Most recently, we have undertaken major sustainability initiatives in our theme parks. For example, we are in the process of discontinuing the use of plastic bags in all our gift shops, and in 2013, we expect to be using only paper and reusable bags. In doing so, we will keep an estimated four million plastic bags from entering landfills and the environment each year.

Philanthropy and Community Relations

We focus our philanthropic efforts in three areas: children, education, and the environment. We are committed to the communities in which we live, learn, work, and play. We also partner with charities across the country whose values and missions are aligned with our own, including hospitals, organizations that serve children with disabilities and animal shelter and rescue groups. Through long-term strategic support to advance the missions of these groups, financial support, in-kind resources or hands-on volunteer work, service is an active part of the work we do.

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Our theme parks inspire and educate children and guests of all ages through the power of entertainment and our philanthropic efforts reflect this commitment. We extend educational outreach visits to inner-city schools, host “special wish” children to enjoy theme park adventures and create Skype visits with our animals for children too ill to travel.

Finally, a key component of our community outreach is our long-term commitment to honoring the service of members of the U.S. military and acknowledging the sacrifices that their families have made. Currently, we offer a free admission program, which provided approximately 735,000 free single day passes to active military personnel and their families in 2011.

Our Customers

Our theme parks are located near a number of large metropolitan areas, with a total population of over 55 million people located within 150 miles. Additionally, because our theme parks are divided between regional and destination theme parks, our guests are further diversified among a more stable base of local visitors, non-local domestic visitors and international tourists. All of our theme parks are world-class entertainment venues and able to attract a highly desirable demographic: young, affluent families. Families comprise 58% of our attendance with an average party size of 3.8 people.

Seasonality

The theme park industry is seasonal in nature. Based upon historical results, we generate the highest revenues in the second and third quarters of each year, in part because six of our theme parks are only open for a portion of the year. Approximately two-thirds of the Company’s attendance and revenues are generated in the second and third quarters of the year. The percent mix of revenues by quarter is relatively constant each year, but revenues can shift between the first and second quarters due to the timing of Easter and between the first and fourth quarters due to the timing of Christmas and New Year’s. Even for our five theme parks open year-round, attendance patterns have significant seasonality, driven by holidays, school vacations, and weather conditions. One of our goals in managing our business is to continue to generate cash flow throughout the year and minimize the effects of seasonality. In recent years, we have begun to encourage attendance during non-peak times by offering a variety of seasonal programs and events, such as a winter kids festival, spring concert series, and Halloween and Christmas events. In addition, during seasonally slow times, operating costs are controlled by reducing operating hours and show schedules. Employment levels required for peak operations are met largely through part-time and seasonal hiring.

Marketing

Our marketing and sales efforts are focused on generating profitable attendance, in-park per capita spending and building the value of our brands. Through advertising, including local customization, promotions, retail and corporate partners, digital platforms, public relations and sales initiatives, we drive awareness of and intent to visit our theme parks, attendance and higher in-park per capita spending on an international, national and regional level. Our attractive destination locations and strategy of grouping parks together creates high appeal for multi-day visits. Our strategic priorities include: (i) building our brands, (ii) improving guest loyalty, (iii) expanding digital expertise and (iv) broadening appeal (among multi-cultural consumers, kids and domestic markets). With great brands and a diverse team, marketing and sales will play a significant role in driving future growth.

Intellectual Property

Our business is affected by our ability to protect against infringement of our intellectual property, including our trademarks, service marks, domain names, copyrights and other proprietary rights.

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Important intellectual property includes rights in names, logos, character likenesses, theme park attractions, content of television programs and systems related to the study and care of certain of our animals. In addition, we are party to key license agreements as licensee, including our agreements with Sesame Workshop and ABI as discussed below. To protect our intellectual property rights, we rely upon a combination of trademark, copyright, trade secret and unfair competition laws of the United States and other countries, as well as contract provisions and third-party policies and procedures governing internet/domain name registrations.

Busch Gardens License Agreement

Our subsidiary, SeaWorld Parks & Entertainment LLC, is a party to a trademark license agreement with ABI, which governs our use of the Busch Gardens name and logo. Under the license agreement, ABI granted to us a perpetual, exclusive, worldwide, royalty-free license to use the Busch Gardens trademark and certain related domain names in connection with the operation, marketing, promotion and advertising of our theme parks, as well as in connection with the production, use, distribution and sale of merchandise sold in connection with such theme parks.

The license extends to our Busch Gardens theme parks located in Williamsburg, Virginia and Tampa, Florida, and may also include any amusement or theme park anywhere in the world that we acquire, build or rebrand with the Busch Gardens name in the future, subject to certain conditions. ABI may not assign, transfer or sell the Busch Gardens mark without first granting us a reasonable right of first refusal to purchase such mark.

We have agreed to indemnify ABI from and against third party claims and losses arising out of or in connection with the operation of the theme parks and the related marketing or promotion thereof, any merchandise branded with the licensed marks and the infringement of a third party's intellectual property. We are required to carry certain insurance coverage throughout the term of the license.

The license agreement can be terminated by ABI under certain limited circumstances, including in connection with certain types of change of control of SeaWorld Parks & Entertainment LLC.

Sesame Licenses

Sesame Place Theme Park License Agreements

Our subsidiary, SeaWorld Parks & Entertainment LLC (f/k/a SPI, Inc.), is a party to a license agreement with Sesame Workshop (f/k/a Children's Television Workshop). Under the license agreement, we were granted the right to use titles, marks, names, and characters from the Sesame Street and The Electric Company television series, as well as certain characters and elements created by the Muppets for the Sesame Street series, related marketing materials, and the Sesame Place design trademark in connection with the children's play parks in Langhorne, Pennsylvania. We pay specified royalties based on receipts from business conducted on the premises of the theme park to Sesame Workshop. We are required to include Sesame Workshop and the Muppets as insured parties under any relevant insurance policies, and have agreed to indemnify Sesame Workshop from and against certain claims and expenses arising out of any personal or property injury at our Sesame Place park or breach of the license agreement. The license agreement can be terminated by Sesame Workshop under certain circumstances, including in connection with a specified change of control of SeaWorld Parks & Entertainment LLC, specified uncured breaches of the license agreement or specified bankruptcy events.

Under a separate agreement, Sesame Workshop granted SeaWorld Parks & Entertainment LLC a license to develop, manufacture, and produce in the United States (and, in some circumstances, elsewhere in the world) and to distribute and sell at Sesame Place branded play parks, certain

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products bearing Sesame Place, Sesame Street, and Sesame Street Muppet characters, likenesses, logos, marks and materials, including apparel, flags, bags, mugs, buttons, pens, wristbands and other miscellaneous products. The parties have agreed to indemnify each other from and against claims and expenses in connection with our respective performance under the license agreement and any breach thereof. Sesame Workshop may terminate the license under certain circumstances, including our uncured breach or bankruptcy.

Both agreements are scheduled to remain in effect until December 31, 2021.

Multi-Park License

Under a separate agreement, Sesame Workshop granted SeaWorld Parks & Entertainment LLC rights to use the Sesame Place and Sesame Workshop names and logos, certain Sesame Street characters (including Elmo, Big Bird and Cookie Monster), and granted a limited term right of first negotiation to utilize characters from other Sesame Workshop television series at SeaWorld San Diego, SeaWorld San Antonio, SeaWorld Orlando, and our two Busch Gardens theme parks. Within these theme parks we have rights to use the marks and characters in connection with Sesame Street themed attractions, Sesame Street shows and character appearances, and the marketing, advertising and promotion of the theme parks.

Sesame Workshop has also granted us the right to develop, manufacture, distribute and sell products within our SeaWorld and Busch Gardens theme parks, but also other parks in the United States that are owned or operated by SeaWorld Parks & Entertainment LLC, its subsidiaries or affiliates.

Pursuant to this agreement we pay a specified annual license fee, as well as a specified royalty based on revenues earned in connection with sales of licensed products, all food and beverage items utilizing the licensed elements and any events utilizing such elements if a separate fee is paid for such event.

The parties have agreed to indemnify each other from and against third party claims and expenses arising from their respective performance under the agreement or any breach thereof. Sesame Workshop has the right to terminate the agreement under certain limited circumstances, including a change of control of SeaWorld Parks & Entertainment LLC, SeaWorld Parks & Entertainment LLC's bankruptcy or uncured breach of the agreement, or the termination of the license agreement regarding our Sesame Place theme park.

The agreement is scheduled to remain in effect until December 31, 2021 unless earlier terminated or extended.

Competition

Our theme parks and other product and entertainment offerings compete directly for discretionary spending with other destination and regional theme parks and water and amusement parks and indirectly with other types of recreational facilities and forms of entertainment, including movies, home entertainment options, sports attractions, restaurants and vacation travel. Principal direct competitors of our theme parks include theme parks operated by The Walt Disney Company, Universal Studios, Six Flags, Cedar Fair, Merlin Entertainments and Hershey Entertainment and Resorts Company. Our highly differentiated products provide a complementary experience to those offered by fantasy-themed Disney and Universal parks. In addition, we benefit from the significant capital investments made in developing the tourism industry in the Orlando area. The Orlando theme park market is extremely competitive, with a high concentration of theme parks operated by several companies.

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Competition is based on multiple factors including location, price, the uniqueness and perceived quality of the rides and attractions, the atmosphere and cleanliness of the theme park, the quality of food and entertainment, weather conditions, ease of travel to the theme park (including direct flights by major airlines), and availability and cost of transportation to a theme park. We believe we compete effectively, and our competitive position is protected, due to our strong brand recognition, extensive animal collection, high historical capital investment and valuable real estate. Additionally, we believe that our theme parks feature a sufficient quality and variety of rides and attractions, educational and interactive experiences, merchandise locations, restaurants and family orientation to make them highly competitive with other destination and regional theme parks, as well as other forms of entertainment.

Employees

We currently employ approximately 22,109 employees, approximately 4,400 of whom are employed on a full-time basis. The number of part-time and seasonal employees, many of whom are high school and college students, increases during our peak operating season. None of our employees are covered by a collective bargaining agreement, and we consider our employee relations to be good.

Regulatory

Our operations are subject to a variety of federal, state and local laws, regulations and ordinances including, but not limited to, those regulating the environmental, display, possession and care of our animals, amusement park rides, building and construction, health and safety, labor and employment, workplace safety, zoning and land use and alcoholic beverage and food service. Key statutes and treaties relating to the display, possession and care of our animal collection include the Endangered Species Act, Marine Mammal Protection Act, Animal Welfare Act, Convention on International Trade in Endangered Species and Fauna Protection Act and the Lacey Act. We must also comply with the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, Wild Bird Conservation Act and National Environmental Policy Act, among other laws and regulations. We believe that we are in substantial compliance with applicable laws, regulations and ordinances; however, such requirements may change over time, and there can be no assurance that new requirements, changes in enforcement policies or newly discovered conditions relating to our properties or operations will not require significant expenditures in the future.

Insurance

We maintain insurance of the type and in the amounts that we believe to be commercially reasonable for businesses in our industry. We maintain primary and excess casualty coverage of up to \$100 million. As part of this coverage, we retain deductible/self-insured retention exposures of \$1 million per occurrence for general liability claims, \$250,000 for property claims, \$250,000 per accident for automobile liability claims, and \$750,000 per occurrence for workers compensation claims. We maintain employers' liability and all coverage required by law in the states in which we operate. Defense costs are included in the insurance coverage we obtain against losses in these areas. Based upon our historical experience of reported claims and an estimate for incurred-but-not-reported claims, we accrue a liability for our deductible/self-insured retention contingencies regarding general liability, automobile liability and workers compensation exposures. We maintain additional forms of special casualty coverage appropriate for businesses in our industry. We also maintain commercial property coverage against fire, natural perils, so-called "extended coverage" perils such as civil commotion, business interruption and terrorism exposures for protection of our real and personal properties (other than land). We generally renegotiate our insurance policies on an annual basis. We cannot predict the amounts of premium cost that we may be required to pay for future insurance coverage, the level of any deductibles/self-insured retentions we may retain applicable thereto, the level of aggregate excess coverage available or the availability of coverage for special or specific risks.

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Properties

The following table summarizes our principal properties, which includes undeveloped land.

<u>Location</u>	<u>Size</u>	<u>Use</u>
Orlando, FL	111,679 sq ft	Leased Office Space (corporate headquarters)
Orlando, FL	9,636 sq ft	Leased Office Space (call center)
San Diego, CA	190 acres	Leased Land
Chula Vista, CA	66 acres	Owned Water Park
Orlando, FL	279 acres	Owned Theme Park
Orlando, FL	58 acres	Owned All-inclusive Interactive Park
Orlando, FL	81 acres	Owned Water Park
Tampa, FL	56 acres	Owned Water Park
Tampa, FL	306 acres	Owned Theme Park
Dade City, FL	109 acres	Owned Breeding Farm
Langhorne, PA	55 acres	Owned Theme Park
San Antonio, TX	416 acres	Owned Theme Park
Williamsburg, VA	222 acres	Owned Water Park
Williamsburg, VA	422 acres	Owned Theme Park
Williamsburg, VA	5 acres	Owned Warehouse Space
Williamsburg, VA	5 acres	Owned Seasonal Worker Lodging

Our Senior Secured Credit Facilities are collateralized by first priority or equivalent security interests in, among other things, certain tangible and intangible assets, including our fee-owned properties. See “Description of Indebtedness.”

Legal Proceedings

We are subject to various allegations, claims and legal actions arising in the ordinary course of business. While it is impossible to determine with certainty the ultimate outcome of any of these proceedings, lawsuits and claims, management believes that adequate provisions have been made and insurance secured for all currently pending proceedings so that the ultimate outcomes will not have a material adverse effect on our financial position.

MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information regarding our executive officers and directors as of December 1, 2012:

<u>Name</u>	<u>Age</u>	<u>Position</u>
David F. D'Alessandro	61	Chairman of the Board of the Directors
Jim Atchison	46	Chief Executive Officer and President, Director
James M. Heaney	49	Chief Financial Officer
Daniel B. Brown	58	Chief Operating Officer—SeaWorld & Discovery Cove
Donald W. Mills Jr.	54	Chief Operating Officer—Busch Gardens & Sesame Place
Scott D. Helmstedter	48	Chief Creative Officer
G. Anthony (Tony) Taylor	47	Chief Legal Officer, General Counsel and Corporate Secretary
Dave Hammer	52	Chief Administrative Officer
Marc Swanson	41	Chief Accounting Officer
Brad Andrews	63	Chief Zoological Officer
Joseph P. Baratta	41	Director
Bruce McEvoy	35	Director
Peter F. Wallace	37	Director

David F. D'Alessandro has been the chairman of the Board of Directors of the Company since 2010. He served as Chairman, President and Chief Executive Officer of John Hancock Financial Services from 2000 to 2004, having served as President and Chief Operating Officer of the same entity from 1996 to 2000, and guided the company through a merger with ManuLife Financial Corporation in 2004. Mr. D'Alessandro served as President and Chief Operating Officer of ManuLife in 2004. He is a former Partner of the Boston Red Sox. A graduate of Syracuse University, he holds honorary doctorates from three colleges and serves as vice chairman of Boston University.

Jim Atchison has been a director, Chief Executive Officer and President of the Company since 2009. He served as President and Chief Operating Officer of Busch Entertainment Corporation from 2007 to 2009, as Executive Vice President and General Manager of SeaWorld Orlando from 2003 to 2007 and as Vice President of Marketing of the same entity from 2002 to 2003. Prior to that, Mr. Atchison was the Vice President of Finance of Busch Gardens Tampa from 1998 to 2002. Mr. Atchison is also a member of the board of directors of the SeaWorld & Busch Gardens Conservation Fund and Hubbs-SeaWorld Research Institute, and he is also a member of the University of Central Florida Board of Trustees. Mr. Atchison holds a bachelor's degree in marketing from the University of South Florida and a master's degree in business administration from the University of Central Florida.

James M. Heaney has been our Chief Financial Officer since January 2012. Prior to that, he served as the Chief Financial Officer and Senior Vice President of Finance of the Walt Disney Company, and from 1990 to 1994 he was the Finance Manager and Financial Analyst of Royal Caribbean Cruises. From 1989 to 1990 he served as Financial Analyst of Pueblo Xtra International, and from 1988 to 1989 as Financial Systems Analyst of Gould, Inc CSD. Mr. Heaney holds a bachelor's degree in operations management from Texas Tech University and a master's degree in business administration with an academic emphasis in finance from University of Florida.

Daniel B. Brown has been the Chief Operating Officer—SeaWorld & Discovery Cove since 2010. Prior to that, Mr. Brown served as Park President of SeaWorld Orlando, Discovery Cove and Aquatica from 2007 to 2010, Park President of Busch Gardens Tampa and Adventure Island from 2003 to 2007, Park

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President of Busch Gardens Williamsburg from 1999 to 2003, and Vice President of Operations of Busch Entertainment Corporation from 1997 to 1999. Mr. Brown serves on the Dean's Advisory Board of USF's Rosen College of Hospitality Management, the executive board of Visit Orlando, the board of the Hubbs-SeaWorld Research Institute and the Orange County International Drive Community Development Area Advisory Committee. He holds a bachelor's degree of Arts from Webster University.

Donald W. Mills Jr. has been the Chief Operating Officer—Busch Gardens & Sesame Place theme parks since 2010. Prior to that, Mr. Mills served as Executive Vice President and General Manager of Busch Gardens Tampa from 2007 to 2010, Executive Vice President and General Manager of Busch Gardens Williamsburg from 2003 to 2007, Vice President of Park Operations of Busch Gardens Williamsburg from 2002 to 2003, Vice President of Park Operations of SeaWorld San Diego from 1999 to 2002, Vice President of Park Operations of Busch Gardens Tampa and Vice President of Adventure Island from 1992 to 1994. Mr. Mills is a member of the advisory board of the University of South Florida College of Business. He holds a bachelor's degree of Science and Marketing from the University of South Florida.

Scott D. Helmstedter has been our Chief Creative Officer since 2011. He served as Principal and Executive Producer of In Motion Entertainment from 2000 to 2011, and from 1997 to 1999 as a Producer at Universal Studios. Prior to that, from 1995 to 1997, Mr. Helmstedter was the Line Producer of Buena Vista Pictures of The Walt Disney Company, and from 1986 until 1995 he served as Production Manager of The Walt Disney Company. Mr. Helmstedter holds a bachelor's degree of Arts from Azusa Pacific University and a master's degree in business administration from Claremont Graduate University.

G. Anthony (Tony) Taylor has been our Chief Legal Officer, General Counsel and Corporate Secretary since 2010. He is also responsible for Industry & Government Affairs, Risk Management and Corporate Social Responsibility. Prior to that, Mr. Taylor held the position of Associate General Counsel of Anheuser-Busch Companies, Inc. from 2000 to 2010, and a Principal in Blumenfeld Kaplan in St. Louis from 1993 to 2000. He holds bachelors' degrees in media and political science from University of Missouri and a juris doctor degree from Washington University. Mr. Taylor is a board member and serves as president of The Anthony Armstrong 88 Foundation.

Dave Hammer has been our Chief Administrative Officer since 2009. Prior to that, Mr. Hammer served as Corporate Vice President of Human Resources of Busch Entertainment Corporation from 2004 until 2009, Vice President of Human Resources of Sea World Florida and Corporate Manager of Human Resources for Busch Entertainment Corporation from 1999 to 2001, Director of Human Resources of Busch Properties, Inc. from 1995 to 1999 and as Vice President of Human Resources for Sesame Place from 1991 to 1995. Mr. Hammer is a member of the board of directors of the Florida Chamber of Commerce. He holds a bachelor's degree in human resources from St. Leo College in Tampa, Florida.

Marc Swanson has been our Chief Accounting Officer since 2012. Prior to that, he has been Vice President Performance Management and Corporate Controller of SeaWorld Parks & Entertainment, Inc. from 2011 to 2012, the Corporate Controller of Busch Entertainment Corporation from 2008 to 2011 and the Vice President of Finance of Sesame Place from 2004 to 2008. He is a member of the board of directors of the SeaWorld & Busch Gardens Conservation Fund. Mr. Swanson holds a bachelor's degree in accounting from Purdue University and a master's degree in business administration from DePaul University.

Brad Andrews has been our Chief Zoological Officer since 2010. He served as Corporate Vice President of Zoological Operations of Busch Entertainment Corporation from 1991 to 2010, Vice President and Assistant Zoological Director of the same entity from 1990 to 1991. Prior to that, he served as Curator and Vice President Mammals of SeaWorld Orlando from 1988 until 1990. Mr. Andrews is also a member of the board of directors of the SeaWorld & Busch Gardens Conservation

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Fund, Hubbs-SeaWorld Research Institute, Wildlife Assistance, International Elephant Foundation, International Rhino Foundation, Cheetah Conservation Foundation, African Carnivore Research Association, Conservation Breeding Specialist Group and United States Rugby Foundation. Mr. Andrews holds a bachelor's degree of Science from St. Mary's College.

Joseph P. Baratta has been a director of the Company since 2009. Mr. Baratta is the Global Head of the Private Equity Group at Blackstone, which he joined in 1998. Before joining Blackstone, Mr. Baratta worked at Tinicum Incorporated, McCown De Leeuw & Company and Morgan Stanley. Mr. Baratta also currently serves on the board of directors of Center Parcs plc and he is also a trustee of the Private Equity Foundation. Mr. Baratta holds a bachelor's degree from Georgetown University, where he currently serves on the University's Board of Regents and the Advisory Board of the McDonough School of Business.

Bruce McEvoy has been a director of the Company since 2009. Mr. McEvoy is a Managing Director in the Private Equity Group at Blackstone, which he joined in 2006. Before joining Blackstone, Mr. McEvoy worked at General Atlantic and McKinsey & Company. Mr. McEvoy also currently serves on the board of directors of Catalent, GCA Services, Performance Food Group, RGIS Inventory Specialists and Vivint, and he was formerly a director of DJO Orthopedics. Mr. McEvoy graduated from Princeton University and Harvard Business School.

Peter F. Wallace has been a director of the Company since 2009. Mr. Wallace is a Senior Managing Director in Blackstone's Private Equity Group, which he joined in 1997. Mr. Wallace also currently serves on the board of directors of AlliedBarton Security Services, GCA Services, Michaels Stores, Inc., Vivint and the Weather Channel Companies. Mr. Wallace was formerly a director of Crestwood Midstream Partners, New Skies Satellites and Pelmorex Media. Mr. Wallace graduated from Harvard College.

Composition of the Board of Directors

Our business and affairs are managed under the direction of our Board of Directors. Following the completion of this offering, we expect our Board of Directors to initially consist of directors, of whom will be independent. In connection with this offering, we will be amending and restating our certificate of incorporation to provide for a classified Board of Directors, with directors in Class I (expected to be), directors in Class II (expected to be) and directors in Class III (expected to be). See "Description of Capital Stock—Anti-Takeover Effects of our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws and Certain Provisions of Delaware Law—Classified Board of Directors." In addition, we intend to enter into a stockholders agreement with certain affiliates of Blackstone in connection with this offering. This agreement will grant Blackstone the right to designate nominees to our Board of Directors subject to the maintenance of certain ownership requirements in us. See "Certain Relationships and Related Party Transactions—Stockholders Agreement."

Background and Experience of Directors

When considering whether directors and nominees have the experience, qualifications, attributes or skills, taken as a whole, to enable our Board of Directors to satisfy its oversight responsibilities effectively in light of our business and structure, the Board of Directors focused primarily on each person's background and experience as reflected in the information discussed in each of the directors' individual biographies set forth above. We believe that our directors provide an appropriate mix of experience and skills relevant to the size and nature of our business. Once appointed, directors serve until they resign or are terminated by the stockholders. In particular, the members of our Board of Directors considered the following important characteristics, among others: Messrs. Baratta, McEvoy and Wallace are representatives proposed by affiliates of Blackstone, our principal stockholder, and

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have significant financial, investment and operational experience from their involvement in Blackstone's investment in numerous portfolio companies and have played active roles in overseeing those businesses.

Board Leadership Structure

Our Board of Directors is led by the Non-Executive Chairman. The Chief Executive Officer position is separate from the Chairman position. We believe that the separation of the Chairman and Chief Executive Officer positions is appropriate corporate governance for us at this time.

Role of Board in Risk Oversight

The Board of Directors has extensive involvement in the oversight of risk management related to us and our business and accomplishes this oversight through the regular reporting by the Audit Committee. The Audit Committee represents the Board of Directors by periodically reviewing our accounting, reporting and financial practices, including the integrity of our financial statements, the surveillance of administrative and financial controls and our compliance with legal and regulatory requirements. Through its regular meetings with management, including the finance, legal, and internal audit functions, the Audit Committee reviews and discusses all significant areas of our business and summarizes for the Board of Directors all areas of risk and the appropriate mitigating factors. In addition, our Board of Directors receives periodic detailed operating performance reviews from management.

Controlled Company Exception

After the completion of this offering, investment funds associated with or designated by Blackstone will continue to beneficially own more than 50% of our common stock and voting power. As a result, (x) under the terms of the Stockholders Agreement, Blackstone will be entitled to nominate of the members of our Board of Directors (see "Certain Relationships and Related Party Transactions—Stockholders Agreement") and (y) we will be a "controlled company" within the meaning of corporate governance standards. Under corporate governance standards, a company of which more than 50% of the voting power is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain corporate governance standards, including (1) the requirement that a majority of the Board of Directors consist of independent directors, (2) the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities, (3) the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities and (4) the requirement for an annual performance evaluation of the nominating and corporate governance and compensation committees. Following this offering, we intend to utilize these exemptions. As a result, following this offering, we will not have a majority of independent directors on our Board of Directors; and we will not have a nominating and corporate governance committee or a compensation committee that is composed entirely of independent directors. Also, such committee will not be subject to annual performance evaluations. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of corporate governance requirements. In the event that we cease to be a "controlled company," we will be required to comply with these provisions within the transition periods specified in corporate governance rules.

Board Committees

After the completion of this offering, the standing committees of our Board of Directors will consist of an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee.

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Our president and chief executive officer and other executive officers will regularly report to the non-executive directors and the Audit, the Compensation and the Nomination and Corporate Governance Committees to ensure effective and efficient oversight of our activities and to assist in proper risk management and the ongoing evaluation of management controls. The vice president of internal audit will report functionally and administratively to our chief financial officer and directly to the Audit Committee. We believe that the leadership structure of our Board of Directors provides appropriate risk oversight of our activities given the controlling interests held by Blackstone.

So long as Blackstone and its affiliates own at least 50% of our common stock, under our stockholders agreement Blackstone will have the right to designate a majority of the members of the committees of our Board of Directors to the extent permitted by law. See “Certain Relationships and Related Party Transactions—Stockholders Agreement.”

Audit Committee

Upon the completion of this offering, we expect to have an Audit Committee, consisting of , and . Messrs. and qualify as independent directors under corporate governance standards and the independence requirements of Rule 10A-3 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We expect a new third independent member to be placed on the Audit Committee within one year of the completion of this offering so that all of our Audit Committee members will be independent as such term is defined in Rule 10A-3(b)(i) under the Exchange Act and under . Following this offering, our Board of Directors will determine which member of our Audit Committee qualifies as an “audit committee financial expert” as such term is defined in Item 407(d)(5) of Regulation S-K.

The purpose of the Audit Committee will be to prepare the audit committee report required by the SEC to be included in our proxy statement and to assist our Board of Directors in overseeing and monitoring (1) the quality and integrity of our financial statements, (2) our compliance with legal and regulatory requirements, (3) our independent registered public accounting firm’s qualifications and independence, (4) the performance of our internal audit function and (5) the performance of our independent registered public accounting firm.

Our Board of Directors will adopt a written charter for the Audit Committee which will be available on our website upon the completion of this offering.

Compensation Committee

Upon the completion of this offering, we expect to have a Compensation Committee, consisting of , and .

The purpose of the Compensation Committee is to assist our Board of Directors in discharging its responsibilities relating to (1) setting our compensation program and compensation of our executive officers and directors, (2) monitoring our incentive and equity-based compensation plans and (3) preparing the compensation committee report required to be included in our proxy statement under the rules and regulations of the SEC.

Our Board of Directors will adopt a written charter for the Compensation Committee which will be available on our website upon the completion of this offering.

Nominating and Corporate Governance Committee

Upon the completion of this offering, we expect to have a Nominating and Corporate Governance Committee, consisting of , and . The purpose of our Nominating and Corporate Governance

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Committee will be to assist our Board of Directors in discharging its responsibilities relating to (1) identifying individuals qualified to become new Board of Directors members, consistent with criteria approved by the Board of Directors, subject to the stockholders agreement with Blackstone; (2) reviewing the qualifications of incumbent directors to determine whether to recommend them for reelection and selecting, or recommending that the Board of Directors select, the director nominees for the next annual meeting of stockholders; (3) identifying Board of Directors members qualified to fill vacancies on any Board of Directors committee and recommending that the Board of Directors appoint the identified member or members to the applicable committee, subject to the stockholders agreement with Blackstone; (4) reviewing and recommending to the Board of Directors corporate governance guidelines applicable to us; (5) overseeing the evaluation of the Board of Directors and management; and (6) handling such other matters that are specifically delegated to the committee by the Board of Directors from time to time.

Our Board of Directors will adopt a written charter for the Nominating and Corporate Governance Committee which will be available on our website upon completion of this offering.

Compensation Committee Interlocks and Insider Participation

Presently, our Board of Directors does not have a compensation committee; therefore, our Board of Directors makes all decisions about our executive compensation. Mr. Atchison does not participate in the Board of Directors' discussions regarding his own compensation. None of our executive officers currently serves, or has served during the last year, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our Board of Directors or the Compensation Committee. We are parties to certain transactions with Blackstone described in "Certain Relationships and Related Party Transactions" section of this prospectus.

Code of Ethics

We will adopt a new Code of Business Conduct that applies to all of our officers and employees, including our principal executive officer, principal financial officer and principal accounting officer, which has been posted on our Internet website on the " " link to the " " page. Our Code of Business Conduct is a "code of ethics," as defined in Item 406(b) of Regulation S-K. Please note that our Internet website address is provided as an inactive textual reference only. We will make any legally required disclosures regarding amendments to, or waivers of, provisions of our code of ethics on our Internet website.

Compensation Discussion and Analysis

Introduction

Our executive compensation plan is designed to attract and retain individuals with the qualifications to manage and lead the Company as well as to motivate them to develop professionally and contribute to the achievement of our financial goals and ultimately create and grow our equity value.

Our named executive officers for 2012 are:

- Jim Atchison, our President and Chief Executive Officer;
- James M. Heaney, our Chief Financial Officer; and
- our three other most highly compensated executive officers who served in such capacities at December 31, 2012, namely,
 - Daniel B. Brown, our Chief Operating Officer—SeaWorld & Discovery Cove;

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- Donald W. Mills, Jr., our Chief Operating Officer—Busch Gardens & Sesame Place; and
- Scott D. Helmstedter, our Chief Creative Officer.

Executive Compensation Objectives and Philosophy

Our primary executive compensation objectives are to:

- attract, retain and motivate senior management leaders who are capable of advancing our mission and strategy and ultimately, create and maintain our long-term equity value. Such leaders must engage in a collaborative approach and possess the ability to execute our business strategy in an industry characterized by competitiveness, growth and a challenging business environment;
- reward senior management in a manner aligned with our financial performance; and
- align senior management's interests with our equity owners' long-term interests through equity participation and ownership.

To achieve our objectives, we deliver executive compensation through a combination of the following components:

- Base salary;
- Bonuses which are tied to company financial performance;
- Long-term incentive compensation;
- Broad-based employee benefits;
- Supplemental executive perquisites; and
- Severance benefits.

Our total executive compensation plan is inclusive of base salaries and other benefits and perquisites, including severance benefits, which are designed to attract and retain senior management talent. We also use annual cash incentive compensation and long-term equity incentives to ensure a performance-based delivery of pay that aligns, as closely as possible, the rewards of our named executive officers with the long-term interests of our equity-owners while enhancing executive retention.

Compensation Determination Process

Presently, our Board of Directors does not have a compensation committee; therefore, our Board of Directors makes all decisions about our executive compensation.

In making initial compensation determinations with respect to our named executive officers, our Board of Directors considered a number of variables, consistent with our executive compensation objectives, including individual circumstances related to each executive's recruitment or retention and the position for which they were hired. For example, our Board of Directors granted to Mr. Atchison a substantially greater number of equity awards in light of his role as our President and Chief Executive Officer as compared to the other named executive officers. The specific terms of each of the equity grants to our named executive officers are discussed below under "Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards." Our Board of Directors did not use any compensation consultants in making its compensation determinations and has not benchmarked any of its compensation determinations against a peer group.

Mr. Atchison generally participates in discussions and deliberations with our Board of Directors regarding the determinations of annual cash incentive awards for our executive officers. Specifically,

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he makes recommendations to our Board of Directors regarding the performance targets to be used under our annual bonus plan and the amounts of annual cash incentive awards. Mr. Atchison does not participate in discussions regarding his own compensation. In connection with this offering, we will establish a compensation committee that will be responsible for making all executive compensation determinations. We also intend to review, and may engage a compensation consultant to assist us in evaluating, the elements and levels of our executive compensation, including base salaries, annual cash incentive awards and annual equity-based incentives for our named executive officers.

Compensation Elements

The following is a discussion and analysis of each component of our executive compensation program.

Base Salary

Annual base salaries compensate our executive officers for fulfilling the requirements of their respective positions and provide them with a level of cash income predictability and stability with respect to a portion of their total compensation. Our Board of Directors believes that the level of an executive officer's base salary should reflect such executive's performance, experience and breadth of responsibilities, salaries for similar positions within our industry and any other factors relevant to that particular job. The Board of Directors utilized the experience, market knowledge and insight of its members in evaluating the competitiveness of current salary levels. Our Human Resources Department is also a resource for such information as needed.

In the sole discretion of our Board of Directors, base salaries for our executive officers may be periodically adjusted to take into account changes in job responsibilities or competitive pressures. Our Board of Directors did not make any adjustments to any of our named executive officers' base salaries in 2012.

Bonuses

Annual Cash Incentive Compensation. Annual cash incentive awards are available to all salaried exempt employees, including our named executive officers, under our annual bonus plan. The objectives of the bonus plan are to motivate these employees to achieve short-term performance goals and tie a portion of their cash compensation to our performance by rewarding them based on our overall performance.

Under our SeaWorld Parks & Entertainment Bonus Plan (the "2012 Bonus Plan"), each employee eligible to participate in the 2012 Bonus Plan was eligible to earn an annual cash incentive award based on our achievement of such employee's Adjusted EBITDA target for 2012. The Adjusted EBITDA target was determined by our Board of Directors early in the year, after taking into consideration management's recommendations and our budget for the year.

Under our 2012 Bonus Plan, Adjusted EBITDA is defined in the same way as the definition of Adjusted EBITDA that is used for covenant calculations under the indenture governing our Senior Notes and the credit agreement governing our Senior Secured Credit Facilities, which define Adjusted EBITDA as net income (loss) before interest expense, income tax expense (benefit), depreciation and amortization, as further adjusted to exclude certain unusual, non-cash, and other items permitted under such covenants.

Each participant in the 2012 Bonus Plan had a bonus potential target, computed as a percentage of salary, based on job level. For fiscal 2012, the bonus potential target for Mr. Atchison was 100% of his 2012 base salary and the bonus potential target for each of Messrs. Heaney, Brown, Mills and Helmstedter was 75% of their respective 2012 base salaries.

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As detailed in the following table, actual amounts paid under the 2012 Bonus Plan were calculated by multiplying each named executive officer's base salary by his bonus potential percentage to obtain their bonus potential target, which was then adjusted by an achievement factor based on our actual achievement against the Adjusted EBITDA target.

Salary	X	Bonus Potential Percentage	=	Bonus Potential Target
Bonus Potential Target	X	Achievement Factor	=	Actual Bonus Paid

The achievement factor was determined by calculating our achievement against the Adjusted EBITDA target based on the pre-established scale set forth in the following table:

	Adjusted EBITDA Target		
	Threshold	Target	Maximum
Performance Percentage of Target	95%	100%	105%
Achievement Factor	33%	100%	130%

Based on the pre-established scale set forth above, no cash incentive award would have been paid unless our Adjusted EBITDA for 2012 was at or above 95% of the Adjusted EBITDA target; provided, however, that if Adjusted EBITDA performance was below 95% of target, but no less than 83.3% of target, then the Board of Directors had the ability to award a special discretionary payment up to 25% of a named executive officer's bonus potential target. If our actual performance was 100% of target, then the named executive officers would have been paid their respective bonus potential target amounts. If performance was 105% of target, then our named executive officers would have been eligible for a maximum cash incentive award equal to 130% of their respective bonus potential target amounts. For performance percentages between the specified threshold, target and maximum levels, the resulting achievement factor would have been adjusted on a linear basis. For performance above 105% of target, additional payments could have been awarded by our Board of Directors upon a determination that an additional discretionary payment was warranted.

Notwithstanding the establishment of the performance target and the formula for determining the cash incentive award payment amounts as illustrated in the tables above, our Board of Directors had the ability to exercise negative discretion and award a lesser amount to our named executive officers under our annual 2012 Bonus Plan than the amount determined by the bonus plan formula if, in the exercise of its business judgment, our Board of Directors determined that a lesser amount was warranted under the circumstances. In addition, with respect to Messrs. Heaney, Brown, Mills and Helmstedter, if Adjusted EBITDA performance exceeded target, then a cash incentive award above target could only be paid upon an initial recommendation from Mr. Atchison to our Board of Directors and a final determination by our Board of Directors that an award above target was warranted.

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For fiscal 2012, our Board of Directors set an Adjusted EBITDA target of \$ million and our actual Adjusted EBITDA was \$ (or % of target), which resulted in an achievement factor of % based on the pre-established scale. The following table illustrates the calculation of the annual cash incentive awards payable to each of our named executive officers under our 2012 Bonus Plan in light of these performance results. Actual amounts awarded to each of the named executive officers are also reported under the Non-Equity Incentive Plan Compensation column of the Summary Compensation Table under the “2012” designation.

	2012 Salary	Bonus Potential Percentage	Bonus Potential Target	Achievement Factor	Actual Bonus Paid
Jim Atchison	\$395,000	100%	\$395,000	%	\$
James M. Heaney	\$300,000	75%	\$225,000	%	\$
Daniel B. Brown	\$297,000	75%	\$222,750	%	\$
Donald W. Mills, Jr.	\$280,008	75%	\$210,006	%	\$
Scott D. Helmstedter	\$275,000	75%	\$206,250	%	\$

Long-Term Incentive Compensation.

Our management employees, including our named executive officers, were granted long-term incentive awards that are designed to promote our interests by providing our management employees with the opportunity to participate in our equity, thereby incentivizing them to remain in our service. These long-term incentive awards were granted to our named executive officers in the form of Employee Units in the Partnerships. In addition, certain members of management, including Messrs. Atchison, Brown and Mills, purchased Class D Units of the Partnerships.

The Class D Units have economic characteristics that are similar to those of shares of common stock in a corporation and the Employee Units are profits interests having economic characteristics similar to stock appreciation rights.

Investment funds affiliated with Blackstone and other co-investors hold Class A Units and Class B Units of the Partnerships. In addition, ABI holds Class C Units in the Partnerships, which entitle ABI to receive, subject to certain conditions, a specified portion of distributions from the Partnerships. Under the terms of the Partnership Agreements of the Partnerships, an affiliate of Blackstone determines any voting and disposition decisions with respect to the shares of our common stock held by the Partnerships.

The Employee Units are divided into a time-vesting portion (one-third of the Employee Units granted), a 2.25x exit-vesting portion (one-third of the Employee Units granted), and a 2.75x exit-vesting portion (one-third of the Employee Units granted). Unvested Employee Units are not entitled to distributions from the Partnerships. For additional information regarding our Employee Units, see “—Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards—Employee Units.”

The Employee Units granted to our named executive officers are designed to motivate them to focus on efforts that will increase the value of our equity while enhancing their retention. The specific sizes of the equity grants made to our named executive officers were determined in light of Blackstone’s practices with respect to management equity programs at other private companies in its portfolio and the executive officer’s position and level of responsibilities with us.

Fiscal 2012 Grants. On June 7, 2012, Mr. Heaney was granted 37,500 Employee Units and Mr. Brown was granted 10,000 Employee Units. Mr. Heaney commenced employment as our Chief Financial Officer on January 20, 2012 and his fiscal 2012 grant reflected an initial grant of Employee

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Units in connection with his hiring. In fiscal 2011, a portion of Mr. Brown's initial grant of Employee Units was withheld. On June 7, 2012, Mr. Brown was granted the 10,000 Employee Units that had been withheld from his original allocation. Since the 10,000 Employee Units had been withheld from Mr. Brown's initial fiscal 2011 grant, it was determined appropriate to compensate Mr. Brown for the taxes he incurred in connection with this grant.

Benefits and Perquisites.

We provide to all our employees, including our named executive officers, broad-based benefits that are intended to attract and retain employees while providing them with retirement and health and welfare security. Broad-based employee benefits include:

- a 401(k) savings plan;
- medical, dental, vision, life and accident insurance, disability coverage, dependent care and healthcare flexible spending accounts; and
- employee assistance program benefits.

Under our 401(k) savings plan, we match a portion of the funds set aside by the employee. All matching contributions by us become vested on the two-year anniversary of the participant's hire date. At no cost to the employee, we provide an amount of basic life and accident insurance coverage valued at two times the employee's annual base salary. The employee may also select supplemental life and accident insurance, for a premium to be paid by the employee.

We also provide our executive officers with limited perquisites and personal benefits that are not generally available to all employees, such as executive relocation assistance and complimentary access to our theme parks. In addition, all employees with at least three weeks of vacation have the opportunity to participate in our vacation sell benefit program and sell back vacation days to us in order to offset personal health insurance premiums. We provide these limited perquisites and personal benefits in order to further our goal of attracting and retaining our executive officers. These benefits and perquisites are reflected in the All Other Compensation column of the Summary Compensation Table and the accompanying footnote in accordance with SEC rules.

Severance Arrangements

Our Board of Directors believes that a Key Employee Severance Plan (the "Severance Plan") is necessary to attract and retain the talent necessary for our long-term success. Our Board of Directors views our Severance Plan as a recruitment and retention device that helps secure the continued employment and dedication of our named executive officers, including when we are considering strategic alternatives.

Each of our named executive officers is eligible for the Severance Plan benefits. Under the terms of the Severance Plan, each named executive officer is entitled to severance benefits if his employment is terminated for any reason other than voluntary resignation or willful misconduct. The severance payments under the Severance Plan are contingent upon the affected executive's execution of a release and waiver of claims, which contains non-compete, non-solicitation and confidentiality provisions. See "— Potential Payments Upon Termination" for descriptions of these arrangements.

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Summary Compensation Table

The following table provides summary information concerning compensation paid or accrued by us to or on behalf of our named executive officers for services rendered to us during 2012.

Name and Principal Position	Year	Salary (\$) ⁽¹⁾	Bonus (\$) ⁽²⁾	Stock Awards (\$) ⁽²⁾	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$) ⁽³⁾	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$) ⁽⁴⁾	All Other Compensation (\$) ⁽⁵⁾	Total (\$)
Jim Atchison Chief Executive Officer and President and Director	2012	395,000							
James M. Heaney Chief Financial Officer	2012	283,077		542,750					
Daniel B. Brown Chief Operating Officer— SeaWorld & Discovery Cove	2012	297,000		240,000					
Donald W. Mills, Jr. Chief Operating Officer—Busch Gardens	2012	280,008							
Scott D. Helmstedter Chief Creative Officer	2012	275,000							

- (1) Mr. Heaney commenced employment as our Chief Financial Officer on January 20, 2012 and the amount reported in this column for Mr. Heaney reflects the portion of his annual base salary earned in fiscal 2012 from such date.
- (2) Amounts included in this column reflect the aggregate grant date fair value of Employee Units in the Partnerships granted during 2012, calculated in accordance with FASB ASC Topic 718, utilizing the assumptions discussed in Note to our consolidated financial statements for the year ended December 31, 2012.
- (3) Annual cash incentive awards for the named executive officers are expected to be determined in January 2013. See “—Compensation Discussion and Analysis—Compensation Elements—Bonuses—Annual Cash Incentive Compensation.” In addition, the amount reported for Mr. Heaney in fiscal 2012 will reflect a pro-rated annual cash incentive award based on his January 20, 2012 employment commencement date.
- (4) We have no pension benefits, nonqualified defined contribution or other nonqualified deferred compensation plans for executive officers.
- (5) Amounts reported under All Other Compensation for fiscal 2012 include contributions to our 401(k) plan on behalf of our named executive officers as follows: Mr. Atchison \$8,750; Mr. Heaney \$7,437; Mr. Brown \$8,750, Mr. Mills \$8,750 and Mr. Helmstedter \$8,750. Amounts reported also include life and long-term disability insurance premiums paid by us on behalf of our named executive officers as follows: Mr. Atchison \$1,435; Mr. Heaney \$1,041; Mr. Brown \$1,131, Mr. Mills \$1,076 and Mr. Helmstedter \$1,052. Amounts reported for Messrs. Atchison, Brown and Mills also include the dollar value of vacation days sold to pay for personal health insurance premiums under our vacation sell benefit program as follows: Mr. Atchison \$7,596; Mr. Brown \$11,423 and Mr. Mills \$8,616. Amount reported for Mr. Brown also includes a tax gross-up of \$309,725 with respect to the taxable income on his June 7, 2012 Employee Unit grant. See “Compensation Discussion and Analysis—Long-Term Incentive Compensation—Fiscal 2012 Grants.” In addition, the named executive officers (and their spouses) each receive a Corporate Executive Card that entitles them and an unlimited number of guests to complimentary access to our theme parks. There is no incremental cost to us associated with the use of the Corporate Executive Card.

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Grants of Plan-Based Awards in 2012

The following table provides supplemental information relating to grants of plan-based awards made to our named executive officers during 2012.

Name	Grant Date	Estimated Possible Payouts Under Non-Equity Incentive Plan Awards ⁽¹⁾			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other	Grant Date Fair Value of Stock and
		Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#) ⁽²⁾	Maximum (#)	Stock Awards: Number of Shares of Stock or Units (#) ⁽²⁾	Option Awards (\$) ⁽³⁾
Jim Atchison		130,350	395,000	513,500					
James M. Heaney	6/7/2012	74,250	225,000	292,500		25,000		12,500	542,750
Daniel B. Brown	6/7/2012	73,508	222,750	289,575		6,667		3,333	240,000
Donald W. Mills, Jr.		69,302	210,006	273,007					
Scott D. Helmstedter		68,063	206,250	268,125					

(1) Reflects possible payouts under our 2012 Bonus Plan. See “—Compensation Discussion and Analysis—Compensation Elements—Bonuses—Annual Cash Incentive Compensation” for a discussion of threshold, target and maximum cash incentive compensation payouts. The actual amounts of cash incentive compensation paid to our named executive officers under our 2012 Bonus Plan are disclosed in the Summary Compensation Table under the Non-Equity Incentive Plan Compensation column.

(2) As described in more detail in the “—Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards—Terms of Equity Award Grants” section that follows, amounts reported reflect grants of Employee Units that are divided into three tranches for vesting purposes; one third are time-vesting and two-thirds are exit-vesting (of which one-third are 2.25x exit-vesting and one-third are 2.75x exit-vesting). The exit-vesting units are reported as an equity incentive plan award in the “Estimated Future Payouts Under Equity Incentive Plan Awards” column, while the time-vesting tranche of the awards are reported as an all other stock award in the “All Other Stock Awards: Number of Shares of Stock or Units” column.

(3) Represents the grant date fair value of the 37,500 Employee Units granted to Mr. Heaney and the 10,000 Employee Units granted to Mr. Brown, calculated in accordance with FASB ASC Topic 718 and utilizing the assumptions discussed in Note to our consolidated financial statements for the year ended December 31, 2012.

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Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards

Terms of Equity Award Grants

Employee Units

As a condition to receiving his Employee Units, each named executive officer was required to enter into a subscription agreement with us and the Partnerships and to become a party to the partnership agreements of each of the Partnerships as well as an equity holders agreement. These agreements generally govern the named executive officer's rights with respect to the Employee Units.

Vesting Terms

Only vested Employee Units are entitled to distributions from the Partnerships. The Employee Units are divided into a time-vesting portion (1/3 of the Employee Units granted), a 2.25x exit-vesting portion (1/3 of the Employee Units granted), and a 2.75x exit-vesting portion (1/3 of the Employee Units granted).

- *Time-Vesting Units* : 12 months after the initial "vesting reference date," as defined in the applicable subscription agreement, 20% of the named executive officer's time-vesting Employee Units will vest, subject to his continued employment through such date. Thereafter, an additional 20% of the named executive officer's time-vesting Employee Units will vest every year until he is fully vested, subject to his continued employment through each vesting date. Notwithstanding the foregoing, the time-vesting Employee Units will become fully vested on an accelerated basis upon a change of control (as defined in the equity holders agreement) that occurs while the named executive officer is still employed by us.
- *2.25x Exit-Vesting Units* : The 2.25x exit-vesting Employee Units vest if the named executive officer is employed by us when and if Blackstone receives cash proceeds in respect of its Partnership units equal to (x) a 20% annualized effective compounded return rate on its investment and (y) a 2.25x multiple on its investment.
- *2.75x Exit-Vesting Units* : The 2.75x exit-vesting Employee Units vest if the named executive officer is employed by us when and if Blackstone receives cash proceeds in respect of its Partnership units equal to (x) a 15% annualized effective compounded return rate on its investment and (y) a 2.75x multiple on its investment.

Employee Units will vest across all Partnerships pro rata with the named executive officer's aggregate holdings in each Partnership, maintaining a constant ratio of Employee Units held in each Partnership throughout the period in which a named executive officer holds Employee Units, subject to the right of the Partnerships to adjust the number of a named executive officer's Employee Units in a particular Partnership from time to time (which will not affect any vesting thereof).

Any Employee Units that have not vested as of the date of termination of a named executive officer's employment will be immediately forfeited.

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Outstanding Equity Awards at 2012 Fiscal-Year End

The following table provides information regarding outstanding equity awards made to our named executive officers as of December 31, 2012. The equity awards held by the named executive officers are Employee Units, which represent an equity interest in the Partnerships.

Name	Grant Date	Stock Awards			Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
		Number of Shares or Units of Stock That Have Not Vested #(1)	Market Value of Shares or Units of Stock That Have Not Vested \$(3)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested #(2)	
Jim Atchison	5/6/2011	15,000		75,000	
James M. Heaney	6/7/2012	12,500		25,000	
Daniel B. Brown	5/6/2011	3,667		18,333	
	6/7/2012	3,333		6,667	
Donald W. Mills, Jr.	5/6/2011	5,000		25,000	
Scott D. Helmstedter	5/6/2011	6,000		15,000	

- (1) Reflects time-vesting Employee Units that have not vested. The following provides information with respect to the vesting schedule of the time-vesting Employee Units that have not vested as of December 31, 2012:
- Mr. Atchison—these units vest 20% a year over five years on each anniversary of the December 1, 2009 vesting reference date.
 - Mr. Heaney—these units vest 20% a year over five years on each anniversary of the April 1, 2012 vesting reference date.
 - Mr. Brown—the units granted to Mr. Brown on May 6, 2011 vest 20% a year over five years on each anniversary of the December 1, 2009 vesting reference date. The units granted to Mr. Brown on June 7, 2012 vest 20% a year over five years on each anniversary of the January 1, 2012 vesting reference date.
 - Mr. Mills—these units vest 20% a year over five years on each anniversary of the December 1, 2009 vesting reference date.
 - Mr. Helmstedter—these units vest 20% a year over five years on each anniversary of the April 1, 2011 vesting reference date.

Vesting of the time-vesting Employee Units will be accelerated upon a change of control that occurs while the executive is still employed by us, as described under “—Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards-Terms of Equity Award Grants.”

- (2) Reflects exit-vesting Employee Units (of which one-half are 2.25x exit-vesting and one-half are 2.75x exit-vesting). Unvested exit-vesting Employee Units vest as described under the “—Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards-Terms of Equity Award Grants” section above.
- (3) Based on a value of \$ _____ per time-vesting Employee Unit as of December 31, 2012.

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Option Exercises and Stock Vested in 2012

The following table provides information regarding the number of Employee Units held by our named executive officers that vested during 2012.

Name	Stock Awards	
	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$) ⁽¹⁾
Jim Atchison	7,500	
James M. Heaney	—	—
Daniel B. Brown	1,833	
Donald W. Mills, Jr.	2,500	
Scott D. Helmstedter	1,500	

(1) Based on a value of \$ per Employee Unit on the applicable vesting dates.

Pension Benefits

We have no pension benefits for the executive officers.

Nonqualified Deferred Compensation for 2012

We have no nonqualified defined contribution or other nonqualified deferred compensation plans for executive officers.

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Potential Payments Upon Termination

The following table describes the potential payments and benefits that would have been payable to our named executive officers under existing plans assuming a termination of their employment for reasons other than willful misconduct or a voluntary resignation on December 31, 2012.

The amounts shown in the table do not include payments and benefits to the extent they are provided generally to all salaried employees upon termination of employment and do not discriminate in scope, terms or operation in favor of the named executive officers. These include accrued but unpaid salary and distributions of plan balances under our 401(k) savings plan. Furthermore, the amounts shown in the table do not include amounts that may be payable to a named executive officer upon the sale or purchase of his vested equity units pursuant to the exercise of the put or call rights described under “—Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards—Terms of Equity Award Grants.”

Name	Cash Severance Payment (\$)(1)	Continuation of Group Health Plans (\$)(2)	Accrued but Unused Vacation (\$)(3)	Executive Outplacement Services (\$)(4)	Value of Employee Unit Acceleration (\$)(5)	Total (\$)
Jim Atchison						
Termination under the Severance Plan	1,185,000	71,540		10,000		
Change of Control	—	—	—	—		
James M. Heaney						
Termination under the Severance Plan	675,000	19,777		10,000		
Change of Control	—	—	—	—		
Daniel B. Brown						
Termination under the Severance Plan	519,750	19,777		10,000		
Change of Control	—	—	—	—		
Donald W. Mills, Jr.						
Termination under the Severance Plan	490,014	24,199		10,000		
Change of Control	—	—	—	—		
Scott D. Helmstedter						
Termination under the Severance Plan	618,750	11,532		10,000		
Change of Control	—	—	—	—		

(1) Cash severance payment includes the following:

- Mr. Atchison—two times the sum of his annual base salary (\$395,000) plus his targeted bonus under the 2012 Bonus Plan (\$395,000);
- Mr. Heaney—eighteen months base salary (\$450,000) plus his targeted bonus under the 2012 Bonus Plan (\$225,000);
- Mr. Brown—twelve months base salary (\$297,000) plus his targeted bonus under the 2012 Bonus Plan (\$222,750);
- Mr. Mills—twelve months base salary (\$280,008) plus his targeted bonus under the 2012 Bonus Plan (\$210,006); and
- Mr. Helmstedter—eighteen months base salary (\$412,500) plus his targeted bonus under the 2012 Bonus Plan (\$206,250).

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- (2) Reflects the cost of providing the executive officer with continued health, dental, vision, prescription drug and mental health coverage as enrolled at the time of his termination for a period of twenty-four months for Mr. Atchison and for a period of twelve months for Messrs. Heaney, Brown, Mills and Helmstedter, in each case, assuming 2013 rates.
- (3) Amounts shown represent the following number of accrued but unused vacation days: Mr. Atchison, days; Mr. Heaney, days; Mr. Brown, days; Mr. Mills, days; and Mr. Helmstedter, days
- (4) Amounts shown assume that executive outplacement services are provided to each of the named executive officers for a period of nine months.
- (5) Upon a change of control, our named executive officers' unvested time-vesting Employee Units would become immediately vested. The amounts reported are based on the Employee Units having a value of \$ on December 31, 2012.

Severance Arrangements and Restrictive Covenants

We have adopted the Severance Plan for the benefit of certain key employees. Each of the named executive officers is a member of our Strategy Committee and is eligible for severance pay and benefits under the Severance Plan. All severance pay and benefits must be approved by the Chief Administrative Officer and our Chairman of the Board of Directors.

Mr. Atchison

If Mr. Atchison's employment terminates as a result of (1) job elimination resulting from a business reorganization, reduction in force, facility closure, business consolidation; (2) job elimination resulting from a sale or merger; (3) lack of an available position following a return from a certified medical leave of absence or work related injury or illness; or (4) unsatisfactory job performance, Mr. Atchison will be entitled to receive:

- a lump sum payment equal to two times his annual base pay at the time of termination;
- any remaining accrued but unused vacation;
- the targeted bonus for the plan year in which he is terminated;
- continued health, dental, vision, prescription drug and mental health coverage as enrolled at the time of his termination for a period of twenty four months; and
- executive outplacement services (as determined by us), which services must be engaged within thirty days of the termination of employment.

Messrs. Heaney and Helmstedter

If the employment of Messrs. Heaney and Helmstedter terminates as a result of (1) job elimination resulting from a business reorganization, reduction in force, facility closure, business consolidation; (2) job elimination resulting from a sale or merger; (3) lack of an available position following a return from a certified medical leave of absence or work related injury or illness; or (4) unsatisfactory job performance, Messrs. Heaney and Helmstedter will be entitled to receive:

- a lump sum payment equal to eighteen months of his annual base pay at the time of termination;
- any remaining accrued but unused vacation;
- the targeted bonus for the plan year in which he is terminated;
- continued health, dental, vision, prescription drug and mental health coverage as enrolled at the time of his termination for a period of twelve months; and
- executive outplacement services (as determined by us), which services must be engaged within thirty days of the termination of employment.

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Messrs. Brown and Mills

If the employment of Messrs. Brown and Mills terminates as a result of (1) job elimination resulting from a business reorganization, reduction in force, facility closure, business consolidation; (2) job elimination resulting from a sale or merger; (3) lack of an available position following a return from a certified medical leave of absence or work related injury or illness; or (4) unsatisfactory job performance, Messrs. Brown and Mills will be entitled to receive:

- a lump sum payment equal to twelve months of his annual base pay at the time of termination;
- any remaining accrued but unused vacation;
- the targeted bonus for the plan year in which he is terminated;
- continued health, dental, vision, prescription drug and mental health coverage as enrolled at the time of his termination for a period of twelve months; and
- executive outplacement services (as determined by us), which services must be engaged within thirty days of the termination of employment.

In order to be eligible for the Severance Plan benefits, the employee must sign and return a release and waiver of claims that will include but is not limited to (1) a one-year non-compete covenant; (2) a two-year non-solicitation covenant; (3) a non-disparagement covenant; (4) an agreement to cooperate in any current or future legal matters relating to activities or matters occurring the employees term of employment; and (5) the release of any and all claims that the employee may have in connection with their employment with us or with the termination of employment.

No benefits are payable under the Severance Plan if (1) the eligible employee fails or refuses to return the release and waiver of claims; (2) the eligible employee voluntarily terminates their employment for “any” reason; or (3) the eligible employee engages in willful misconduct as determined at the discretion of the Chief Administrative Officer and our Chairman of the Board of Directors.

Director Compensation

The following table summarizes all compensation for our non-employee directors (other than Sponsor-affiliated directors) for fiscal year 2012. The employee directors and Sponsor-affiliated directors receive no additional compensation for serving on the Board of Directors or the Audit Committee and, as a result, are not listed in the table below. The compensation paid to Mr. Atchison, our President and Chief Executive Officer, is presented in the Summary Compensation Table and the related explanatory tables.

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$) ⁽¹⁾	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings	All Other Compensation (\$)	Total (\$)
David F. D'Alessandro	200,000	—	—	—	—	—	200,000
Joseph P. Baratta	—	—	—	—	—	—	—
Bruce McEvoy	—	—	—	—	—	—	—
Peter F. Wallace	—	—	—	—	—	—	—

- (1) As of December 31, 2012, Mr. D'Alessandro held 6,562 unvested time-vesting Employee Units and 35,000 unvested Employee Units subject to both time-vesting and exit-vesting criteria.

Description of Director Compensation

This section contains a description of the material terms of our compensation arrangements for Mr. D'Alessandro. As noted above, Messrs. Baratta, McEvoy and Wallace are employees of Blackstone and do not receive any compensation from us for their services on our Board of Directors. All of our directors, including Messrs. Baratta, McEvoy and Wallace, are reimbursed for the out-of-pocket expenses they incur in connection with their service as directors. Following the completion of this offering, we intend to continue to pay a cash retainer to our independent directors for serving as directors and an additional cash payment for serving as a committee chair, and we expect to grant equity-based awards to our independent directors under the 2013 Omnibus Incentive Plan (as defined herein).

Mr. D'Alessandro. Mr. D'Alessandro, who serves as Chairman of the Board of Directors, receives an annual cash retainer of \$200,000 a year. In addition, Mr. D'Alessandro was provided the opportunity to invest in Class D Units of the Partnerships and, in fiscal 2010, he was granted 52,500 Employee Units as part of his compensation. Similar to the Employee Units granted to our named executive officers, Mr. D'Alessandro's Employee Units are divided into a time-vesting portion (one-third of the Employee Units granted), a 2.25x exit-vesting portion (one-third of the Employee Units granted), and a 2.75x exit-vesting portion (one-third of the Employee Units granted). The vesting terms of Mr. D'Alessandro's Employee Units are set forth below.

Vesting Terms

- *Time-Vesting Units* : 25% of the time-vesting Employee Units vested on Mr. D'Alessandro's September 7, 2010 start date and the remaining 75% vest in equal annual installments on each of the first four anniversaries of his September 7, 2010 start date. Notwithstanding the foregoing, the time-vesting Employee Units will become fully vested on an accelerated basis upon a change of control (as defined in the equity holders agreement) that occurs while Mr. D'Alessandro is still serving as our Chairman of the Board of Directors.
- *2.25x Exit-Vesting Units* : The 2.25x Employee Units vest based on a double trigger that includes both time-vesting and exit-vesting criteria. The time-vesting criteria are the same as the portion of his award that is solely time-vesting described above. 25% of the 2.25x Employee Units satisfied the time-vesting criteria on Mr. D'Alessandro's September 7, 2010 start date and the remaining 75% will satisfy the time-vesting criteria in equal annual installments on each of the first four anniversaries of his September 7, 2010 start date. The exit-vesting criteria will be satisfied when and if Blackstone receives cash proceeds in respect of its Partnership units equal to (x) a 20% annualized effective compounded return rate on its investment and (y) a 2.25x multiple on its investment. Upon Mr. D'Alessandro's departure as Chairman of the Board of Directors, all 2.25x Employee Units which have satisfied the time-vesting criteria, will remain outstanding subject to achievement of the exit-vesting criteria.
- *2.75x Exit-Vesting Units* : The 2.75x Employee Units vest based on a double trigger that includes both time-vesting and exit-vesting criteria. The time-vesting criteria are the same as the portion of his award that is solely time-vesting described above. 25% of the 2.25x Employee Units satisfied the time-vesting criteria on Mr. D'Alessandro's September 7, 2010 start date and the remaining 75% will satisfy the time-vesting criteria in equal annual installments on each of the first four anniversaries of his September 7, 2010 start date. The exit-vesting criteria will be satisfied when and if Blackstone receives cash proceeds in respect of its Partnership units equal to (x) a 15% annualized effective compounded return rate on its investment and (y) a 2.75x multiple on its investment. Upon Mr. D'Alessandro's departure as Chairman of the Board of Directors, all 2.75x Employee Units which have satisfied the time-vesting criteria, will remain outstanding subject to achievement of the exit-vesting criteria.

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Forfeiture Provisions

Any Employee Units that have not vested upon Mr. D'Alessandro's departure as Chairman of the Board of Directors will be immediately forfeited. If Mr. D'Alessandro is terminated by us for cause (or he voluntarily resigns when grounds exist for cause) or in the event he breaches any of the restrictive covenants set forth in the subscription agreement, all of his Employee Units (whether vested or unvested) will be forfeited.

Compensation Arrangements to be Adopted in Connection with This Offering

In connection with this offering, our Board of Directors expects to adopt, and our stockholders expect to approve the 2013 Omnibus Incentive Plan prior to the completion of the offering.

PRINCIPAL AND SELLING STOCKHOLDERS

The following table and accompanying footnotes set forth information with respect to the beneficial ownership of our common stock, as of September 30, 2012, for:

- each person known by us to own beneficially more than 5% of our outstanding shares of common stock;
- each of our directors;
- each of our named executive officers;
- all of our directors and executive officers as a group; and
- each selling stockholder.

For further information regarding material transactions between us and the selling stockholders, see “Certain Relationships and Related Party Transactions.”

The number of shares and percentages of beneficial ownership prior to this offering set forth below are based on the number of shares of our common stock to be issued and outstanding immediately prior to the consummation of this offering. The number of shares and percentages of beneficial ownership after this offering set forth below are based on the number of shares of our common stock to be issued and outstanding immediately after the consummation of this offering.

Beneficial ownership for the purposes of the following table is determined in accordance with the rules and regulations of the SEC. A person is a “beneficial owner” of a security if that person has or shares “voting power,” which includes the power to vote or to direct the voting of the security, or “investment power,” which includes the power to dispose of or to direct the disposition of the security or has the right to acquire such powers within 60 days.

To our knowledge, unless otherwise noted in the footnotes to the following table, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to their beneficially owned common stock.

Except as otherwise indicated in the footnotes below, the address of each beneficial owner is c/o SeaWorld Entertainment, Inc., 9205 South Park Center Loop, Suite 400, Orlando, Florida 32819.

Name of Beneficial Owner	Common Stock Beneficially Owned Prior to this Offering		Shares of Common Stock Offered	Common Stock Beneficially Owned After this Offering			
				Assuming the Underwriters' Option is not Exercised		Assuming the Underwriters' Option is Exercised in Full	
	Number	% ⁽³⁾		Number	%	Number	%
Principal and selling stockholders:							
The Partnerships ⁽¹⁾⁽²⁾		100%					
Directors and Named Executive Officers:							
David F. D'Alessandro		—					
Jim Atchison		—					
Joseph P. Baratta ⁽⁴⁾		—					
Bruce McEvoy ⁽⁴⁾		—					
Peter Wallace ⁽⁴⁾		—					
James M. Heaney		—					
Dan Brown		—					
Donald Mills		—					
Scott Helmstedter		—					
All directors and executive officers as a group (9 persons) ⁽³⁾		—					

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- (1) As of September 30, 2012, the Partnerships owned 100% of our outstanding common stock and no other person or entity had a direct beneficial ownership interest in our common stock as of such date until the expiration of the lock-up period related to such common stock.
- (2) Reflects shares of our common stock held by the Partnerships as follows: 8,056,541.01 shares of our common stock held by SW Cayman L.P. ("SWC"), 251,474.43 shares of our common stock held by SW Cayman A L.P. ("SWCA"), 282,826.98 shares of our common stock held by SW Cayman B L.P. ("SWCB"), 258,035.64 shares of our common stock held by SW Cayman C L.P. ("SWCC"), 92,701.14 shares of our common stock held by SW Delaware D L.P. ("SWDD"), 290,513.04 shares of our common stock held by SW Cayman E L.P. ("SWCE"), 227,044.97 shares of our common stock held by SW Cayman F L.P. ("SWCF"), 345,800.96 shares of our common stock held by SW Cayman Co-Invest L.P. ("SWCCI"), 378,995.51 shares of our common stock held by SW Cayman (GS) L.P. ("SWCGS") and 126,331.84 shares of our common stock held by SW Cayman (GSO) L.P. Members of the Investor Group own various classes of interests in the Partnerships as described under "Certain Relationships and Related Party Transactions—Limited Partnership Agreements." Investors in SCWGS include certain affiliates of Goldman, Sachs & Co. The general partner of each of the Partnerships is SW Cayman Limited. SW Cayman Limited is wholly owned by Blackstone Capital Partners (Cayman III) V L.P. The general partner of Blackstone Capital Partners (Cayman III) V L.P. is Blackstone Management Associates (Cayman) V L.P. The general partner of Blackstone Management Associates (Cayman) V L.P. is BCP V GP L.L.C. The sole member of BCP V GP L.L.C. is Blackstone Holdings III L.P. The general partner of Blackstone Holdings III L.P. is Blackstone Holdings III GP L.P. The general partner of Blackstone Holdings III GP L.P. is Blackstone Holdings III GP Management L.L.C. The sole member of Blackstone Holdings III GP Management L.L.C. is The Blackstone Group L.P. The general partner of The Blackstone Group L.P. is Blackstone Group Management L.L.C. Blackstone Group Management L.L.C. is wholly owned by Blackstone's senior managing directors and controlled by its founder, Stephen A. Schwarzman. Each of such Blackstone entities (other than the Partnerships to the extent of their direct holdings) and Mr. Schwarzman may be deemed to beneficially own the shares beneficially owned by the Partnerships directly or indirectly controlled by it or him, but each disclaims beneficial ownership of such shares. The address of each of Mr. Schwarzman and each of the other entities listed in this footnote is c/o The Blackstone Group L.P., 345 Park Avenue, New York, New York 10154.
- (3) As of September 30, 2012, the Partnerships owned 100% of our outstanding common stock. Certain of our directors and officers own 29,240 Class D Units and 673,760 Employee Units in the Partnerships, as described under "Management—Compensation Discussion and Analysis," and will receive a portion of the net proceeds to the selling stockholders as a result of their ownership of the Class D Units. Under the terms of the partnership agreements of the Partnerships, an affiliate of Blackstone determines any voting and disposition decisions with respect to the shares of our common stock held by the Partnerships.
- (4) Messrs. Baratta, McEvoy, and Wallace are each employees of Blackstone, but each disclaims beneficial ownership of the shares beneficially owned by the Partnerships. The address for Messrs. Baratta, McEvoy and Wallace is c/o The Blackstone Group L.P., 345 Park Avenue, New York, New York 10154.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Stockholders Agreement

In connection with this offering, we expect to enter into a stockholders agreement with Blackstone. This agreement will grant Blackstone the right to nominate to our Board of Directors a number of designees equal to: (i) at least a majority of the total number of directors comprising our Board of Directors as long as Blackstone beneficially owns at least 50% of the shares of our common stock entitled to vote generally in the election of our directors; (ii) at least 40% of the total number of directors comprising our Board of Directors at such time as long as Blackstone beneficially owns at least 40% but less than 50% of the shares of our common stock entitled to vote generally in the election of our directors; (iii) at least 30% of the total number of directors comprising our Board of Directors at such time as long as Blackstone beneficially owns at least 30% but less than 40% of the shares of our common stock entitled to vote generally in the election of our directors; (iv) at least 20% of the total number of directors comprising our Board of Directors at such time as long as Blackstone beneficially owns at least 20% but less than 30% of the shares of our common stock entitled to vote generally in the election of our directors; and (v) at least 10% of the total number of directors comprising our Board of Directors at such time as long as Blackstone beneficially owns at least 5% but less than 20% of the shares of our common stock entitled to vote generally in the election of our directors. For purposes of calculating the number of directors that Blackstone is entitled to nominate pursuant to the formula outlined above, any fractional amounts would be rounded up to the nearest whole number (e.g., one and one quarter directors shall equate to two directors) and the calculation would be made after taking into account any increase in the size of our Board of Directors.

Furthermore, under the stockholders agreement, so long as the Blackstone owns at least 25% of our outstanding common stock, approval by Blackstone is required for us to take certain actions, including certain mergers, consolidations, recapitalizations, asset sales, dissolutions and entering into a business that is materially different from our existing business.

Limited Partnership Agreements and Equityholders Agreement

Investment funds affiliated with Blackstone and other co-investors hold Class A Units and Class B Units of the Partnerships. In addition, ABI holds Class C Units in the Partnerships, which entitle ABI to receive, subject to certain conditions, a specified portion of distributions from the Partnerships.

As of September 30, 2012, Blackstone owned 8,000,000 Class A Units in the Partnerships consisting of 6,870,315.17 Class A Units in SWC, 248,783.61 Class A Units in SWCA, 279,799.84 Class A Units in SWCB, Blackstone owned 255,273.63 Class A Units in SWCC, 91,709.15 Class A Units in SWDD, 287,403.79 Class A Units in SWCE, 224,615.11 Class A Units in SWCF and 342,099.70 Class A Units in SWCCI. Other members of the Investor Group, including certain of our directors and officers, affiliates of Goldman, Sachs & Co. and other investors, own the remaining limited partnership units in the Partnerships, consisting of 101,000 Class B Units, ten Class C Units, 29,240.02 Class D Units and 673,760 Employee Units.

Pursuant to the limited partnership agreements of each of the Partnerships (referred to herein as the "Partnership Agreements"), Blackstone, through its affiliate SW Cayman Limited, the general partner of the Partnerships, has the right to determine when dispositions of shares of our common stock held by the Partnerships will be made and, subject to certain exceptions, when distributions will be made to the limited partners of the Partnerships and the amount of any such distributions. If SW Cayman Limited authorizes a distribution, such distribution will be made to the partners of the Partnerships (1) in the case of a tax distribution (as described below), to the holders of limited partnerships units in proportion to the amount of taxable income of the Partnerships allocated to such

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holders and (2) in the case of other distributions, pro rata in accordance with the percentages of their respective partnership interests, subject to vesting requirements of certain Employee Units held by members of our management. ABI holds Class C Units in the Partnerships, which entitle ABI to receive, subject to certain conditions, a specified portion of distributions from the Partnerships.

The Partnership Agreements provide that SW Cayman Limited, as the general partner, will be entitled in its sole discretion and without the approval of the other partners to perform or cause to be performed all management and operational functions relating to the Partnerships and shall have the sole power to bind the Partnerships. The limited partners may not participate in the management or control of the Partnerships.

The Partnership Agreements provide that, subject to certain exceptions, the general partner will not withdraw from the Partnerships, resign as a general partner, or transfer its general partnership interests, and limited partners will not transfer their limited partnership interests.

The Partnership Agreements contain a covenant limiting the Partnerships' ability to enter into transactions with their affiliates, which is similar to the affiliate transactions covenant contained in the indenture governing the Senior Notes.

The Partnership Agreements provide that each of the Partnerships will be dissolved upon the earliest of (i) the determination of the general partner to dissolve the Partnerships, (ii) such date when there are no limited partners, (iii) at such times as all of the assets of the Partnership have been converted into cash and cash equivalents, (iv) the entry of a decree of judicial dissolution of the Partnership or (v) the dissolution, resignation, expulsion or bankruptcy of the general partner.

In connection with the 2009 Transactions, we entered into an equityholders agreement with the Partnerships and certain equity holders of the Partnerships. Pursuant to the agreement, in the event that we propose to redeem or repurchase any of our equity interests held by the Partnerships, we are required to offer each Partnership the right to participate in such redemption or repurchase on a pro rata basis. The agreement also requires us to issue a corresponding number of common equity interests to the Partnerships in connection with vesting of Employee Units.

Registration Rights Agreement

In connection with the 2009 Transactions, we entered into a registration rights agreement with the Partnerships and certain equity holders of the Partnerships. This agreement provides to the Partnerships an unlimited number of "demand" registrations and customary "piggyback" registration rights. The registration rights agreement also provide that we will pay certain expenses of the Partnerships and certain of its equity holders relating to such registrations and indemnify them against certain liabilities which may arise under the Securities Act of 1933, as amended.

Advisory Agreement and Support and Services Agreement

In connection with the 2009 Transactions, SWPEI, SeaWorld Parks & Entertainment LLC and Sea World LLC entered into the 2009 Advisory Agreement with Blackstone Management Partners L.L.C. ("BMP") pursuant to which Blackstone or its affiliates provided certain strategic and structuring advice and assistance to us. In connection with this offering, the parties intend to terminate the 2009 Advisory Agreement, and in connection with such termination we will pay BMP total fees of approximately \$ million.

The termination fee will be calculated by determining the present value (using a discount rate equal to the yield to maturity on the business day immediately preceding the date on which such

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termination fee is payable of the class of outstanding U.S. government bonds having a final maturity closest to the tenth anniversary of the date of 2009 Advisory Agreement) of all then-current and future monitoring fees payable under the agreement (assuming that the agreement terminated on its tenth anniversary).

Following termination of the 2009 Advisory Agreement and in connection with this offering, we expect to enter into a new Support and Services Agreement (the "Support and Services Agreement") with BMP. Under the Support and Services Agreement, we will until the first to occur of (i) the tenth anniversary of the closing date of this offering and (ii) the date upon which the Partnerships or affiliates of Blackstone owns less than % of our common stock and such stock has a fair market value (as determined by Blackstone) of less than \$ million (each of the events specified in clauses (i) through (ii) above, the "Exit Date") (or an earlier date determined by BMP), engage BMP to arrange for Blackstone's portfolio operations group to provide support services customarily provided by Blackstone's portfolio operations group to Blackstone's private equity portfolio companies of a type and amount determined with reference to the actual services provided. In addition, BMP will make available to us the opportunity to participate in Blackstone's group purchasing arrangements and, for a customary fee, the benefits of Blackstone's equity health care program for participating portfolio companies.

Debt and Interest Payments

As of September 30, 2012, approximately \$100.0 million of the Senior Notes and approximately \$120.0 million of aggregate principal amount of Tranche B Term Loans under our Senior Secured Credit Facilities were owned by affiliates of Blackstone. We make periodic interest payments on such debt in accordance with its terms. See "Description of Indebtedness—Senior Notes."

Repurchase of Securities

As market conditions warrant, we and our major stockholders, including Blackstone and its affiliates, may from time to time, depending upon market conditions, seek to repurchase our debt securities or loans in privately negotiated or open market transactions, by tender offer or otherwise.

Equity Investment by Directors and Executive Officers

Our management employees, including our named executive officers, received long-term incentive awards that are designed to promote our interests by providing our management employees with the opportunity to acquire an equity interest in the Partnerships as an incentive for the person to remain in our service. In fiscal 2011 and fiscal 2012, our named executive officers received grants of such awards in the form of Employee Units in the Partnerships. In addition, certain directors and members of management, including Messrs. Atchison, Brown and Mills, purchased Class D Units of the Partnerships.

Equity Healthcare Program Agreement

Effective as of January 1, 2012, we entered into an employer health program agreement with Equity Healthcare LLC ("Equity Healthcare"), an affiliate of Blackstone, pursuant to which Equity Healthcare provides to us certain negotiating, monitoring and other services in connection with our health benefit plans. Because of the combined purchasing power of its client participants, Equity Healthcare is able to negotiate pricing terms for providers that are believed to be more favorable than the companies could obtain for themselves on an individual basis.

In consideration for Equity Healthcare's services, we will pay Equity Healthcare a fee of \$2.50 per participating employee per month for benefit plans beginning on or after January 1, 2012, \$2.60 per

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participating employee per month for plans beginning on or after January 1, 2013, and \$2.70 per participating employee per month for plans beginning on or after January 1, 2014. As of December 31, 2011, we had approximately 8,400 employees enrolled in Equity Healthcare health benefit plans.

Equity Healthcare is an affiliate of Blackstone, with whom Messrs. Baratta, McEvoy and Wallace, members of our Board of Directors, are affiliated.

Core Trust Purchasing Group Participation Agreement

Effective May 1, 2010, we entered into a five year participation agreement with Core Trust Purchasing Group (“CPG”), which designates CPG as our exclusive “group purchasing organization” for the purchase of certain products and services from third party vendors. CPG secures from vendors pricing terms for goods and services that are believed to be more favorable than participants in the group purchasing organization could obtain for themselves on an individual basis. Under the participation agreement, we must purchase 80% of the requirements of our participating locations for core categories of specified products and services, from vendors participating in the group purchasing arrangement with CPG or CPG may terminate the contract.

We do not pay any fees to participate in this group arrangement, and we can terminate participation in any category of products and services at any time prior to the expiration of the agreement without penalty with a reasonable business justification, including if pricing under the agreement becomes uncompetitive or uneconomical, customer service is not satisfactory and participation negatively impacts our corporate governance or compliance policies.

In connection with purchases by its participants (including us), CPG receives a commission from the vendors in respect of such purchases. Additionally, Blackstone entered into an agreement with CPG whereby Blackstone receives a portion of the gross fees vendors pay to CPG based on the volume of purchases made between us and other participants. Amounts paid for purchases through CPG were approximately \$19.4 million and \$29.0 million for the six months ended June 30, 2012 and the fiscal year ended December 31, 2011, respectively.

Other

Mr. Thomas J. Valley, the Director Domestic Sales of a subsidiary of the Company, is the brother-in-law of our Chief Executive Officer and President. Mr. Valley’s total compensation for fiscal 2012 was \$.

From time to time, we do business with a number of other companies affiliated with Blackstone. We believe that all such arrangements have been entered into in the ordinary course of business and have been conducted on an arms-length basis.

Related Persons Transaction Policy

Our Board of Directors recognizes the fact that transactions with related persons present a heightened risk of conflicts of interests and/or improper valuation (or the perception thereof). Prior to the completion of this offering, our Board of Directors will adopt a written policy on transactions with related persons that is in conformity with the requirements upon issuers having publicly-held common stock that is listed on . Under the new policy:

- any related person transaction, and any material amendment or modification to a related person transaction, must be reviewed and approved or ratified by a committee of the Board of Directors composed solely of independent directors who are disinterested or by the disinterested members of the Board of Directors; and

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- any employment relationship or transaction involving an executive officer and any related compensation must be approved by the compensation committee of the Board of Directors or recommended by the compensation committee to the Board of Directors for its approval.

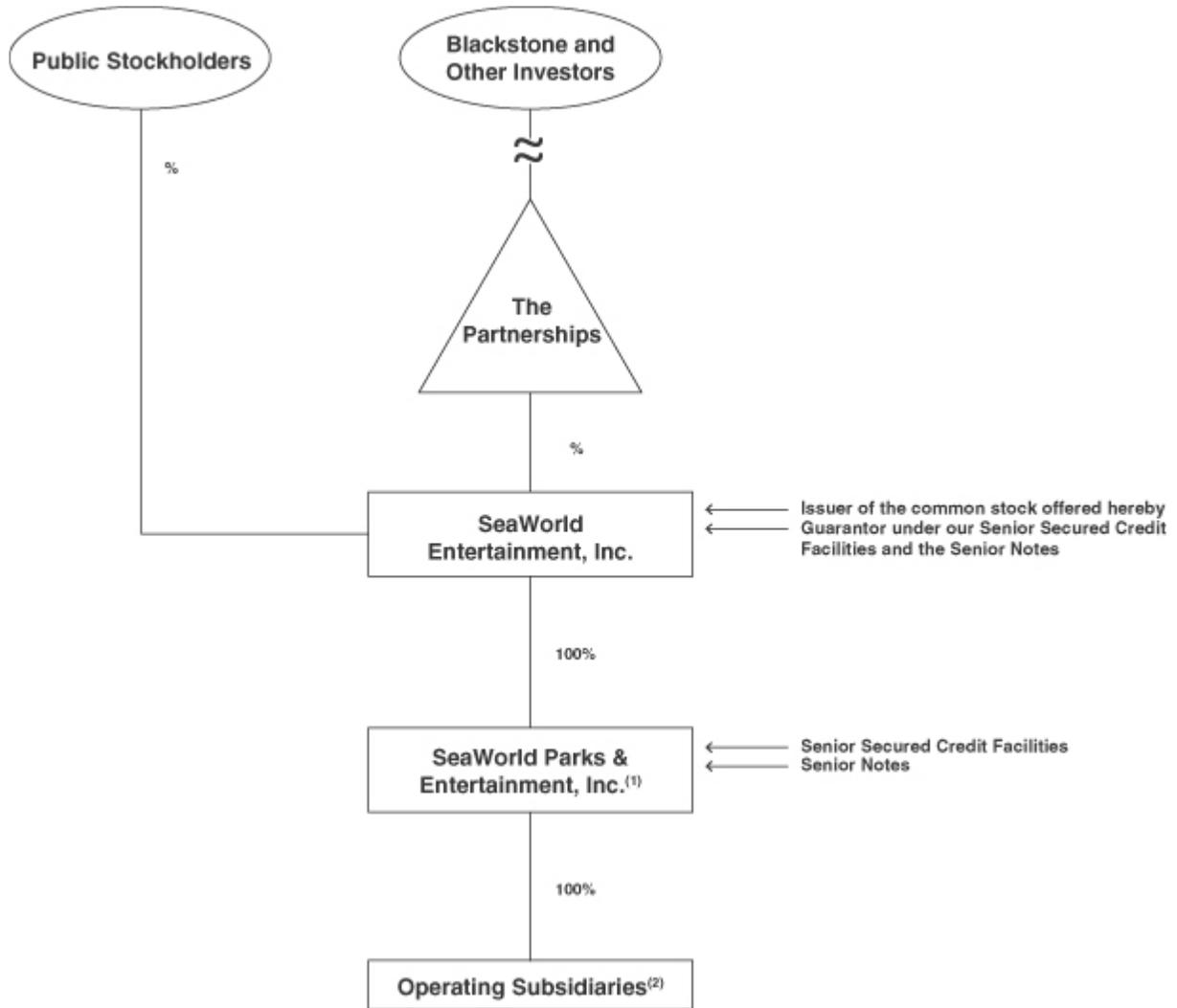
In connection with the review and approval or ratification of a related person transaction:

- management must disclose to the committee or disinterested directors, as applicable, the name of the related person and the basis on which the person is a related person, the material terms of the related person transaction, including the approximate dollar value of the amount involved in the transaction, and all the material facts as to the related person's direct or indirect interest in, or relationship to, the related person transaction;
- management must advise the committee or disinterested directors, as applicable, as to whether the related person transaction complies with the terms of our agreements governing our material outstanding indebtedness that limit or restrict our ability to enter into a related person transaction;
- management must advise the committee or disinterested directors, as applicable, as to whether the related person transaction will be required to be disclosed in our applicable filings under the Securities Act or the Exchange Act, and related rules, and, to the extent required to be disclosed, management must ensure that the related person transaction is disclosed in accordance with such Acts and related rules; and
- management must advise the committee or disinterested directors, as applicable, as to whether the related person transaction constitutes a "personal loan" for purposes of Section 402 of the Sarbanes-Oxley Act of 2002.

In addition, the related person transaction policy provides that the committee or disinterested directors, as applicable, in connection with any approval or ratification of a related person transaction involving a non-employee director or director nominee, should consider whether such transaction would compromise the director or director nominee's status as an "independent," "outside," or "non-employee" director, as applicable, under the rules and regulations of the SEC, and the Code.

ORGANIZATIONAL STRUCTURE

The following diagram illustrates our organizational structure after giving effect to the consummation of this offering.



(1) SWPEI is the borrower under our Senior Secured Credit Facilities and the issuer of the Senior Notes. We intend to use a portion of the net proceeds received by us from this offering to redeem \$ million in aggregate principal amount of the Senior Notes and pay approximately \$ million of redemption premium, plus accrued interest thereon. See "Description of Indebtedness" and "Use of Proceeds."
 (2) The obligations under our Senior Secured Credit Facilities and the Senior Notes are guaranteed by the Issuer and substantially all of the Issuer's existing subsidiaries.

DESCRIPTION OF INDEBTEDNESS

Senior Secured Credit Facilities

In December 2009, SWPEI entered into Senior Secured Credit Facilities with Bank of America, N.A., as administrative agent, collateral agent, letter of credit issuer and swing line lender, Banc of America Securities LLC and Deutsche Bank Securities Inc., as joint lead arrangers, and the other agents and lenders from time to time party thereto. In February and April 2011, we entered into amendments of our Senior Secured Credit Facilities with Bank of America, N.A., as administrative agent, collateral agent, letter of credit issuer and swing line lender, and the other agents and lenders from time to time party thereto. In March 2012, SWPEI entered into an amendment of our Senior Secured Credit Facilities with Bank of America, N.A., as administrative agent, collateral agent, letter of credit issuer and swing line lender, and the other agents and lenders from time to time party thereto.

Our Senior Secured Credit Facilities consist of:

- the \$153.9 million Tranche A Term Loans, which will mature on February 17, 2016;
- the \$1,297.1 million Tranche B Term Loans, which will mature on the earlier of (i) August 17, 2017 and (ii) the 91st day prior to the maturity of the Senior Notes, if more than \$50 million of debt with respect to the Senior Notes is outstanding as of such date; and
- the \$172.5 million Revolving Credit Facility, \$160.9 million of which would have been available for borrowing as of September 30, 2012 after giving effect to \$11.6 million of outstanding letters of credit, which will mature on February 17, 2016.

The obligations under our Senior Secured Credit Facilities are fully, unconditionally and irrevocably guaranteed by each of the Issuer, any subsidiary of the Issuer that directly or indirectly owns 100% of the issued and outstanding equity interests of SWPEI, and, subject to certain exceptions, each of SWPEI's existing and future material domestic wholly-owned subsidiaries.

The Revolving Credit Facility includes borrowing capacity available for letters of credit and for short-term borrowings referred to as the swingline borrowings. In addition, our Senior Secured Credit Facilities also provide us with the option to raise incremental credit facilities, refinance the loans with debt incurred outside our Senior Secured Credit Facilities and extend the maturity date of the revolving loans and term loans, subject to certain limitations.

Interest Rate and Fees

Borrowings for the Tranche A Term Loans bear interest, at SWPEI's option, at a rate equal to a margin over either (a) a base rate determined by reference to the higher of (1) the administrative agent's prime lending rate and (2) the federal funds effective rate plus 1/2 of 1% or (b) a LIBOR rate determined by reference to the BBA LIBOR rate for the interest period relevant to such borrowing. The margin for the Tranche A Term Loans is 1.75%, in the case of base rate loans, and 2.75%, in the case of LIBOR rate loans, subject to a step-down of 0.25% upon achievement of a secured leverage ratio less than or equal to 2.25 to 1.00.

Borrowings under the Tranche B Term Loans bear interest, at SWPEI's option, at a rate equal to a margin over either (a) a base rate determined by reference to the higher of (1) the administrative agent's prime lending rate and (2) the federal funds effective rate plus 1/2 of 1% or (b) a LIBOR rate determined by reference to the BBA LIBOR rate for the interest period relevant to such borrowing. The margin for the Tranche B Term Loans is 2.00%, in the case of base rate loans, and 3.00%, in the case of LIBOR rate loans, subject to a base rate floor of 2.00% and a LIBOR floor of 1.00%.

Borrowings under the Revolving Credit Facility bear interest, at SWPEI's option, at a rate equal to a margin over either (a) a base rate determined by reference to the higher of (1) the administrative

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agent's prime lending rate and (2) the federal funds effective rate plus 1/2 of 1% or (b) a LIBOR rate determined by reference to the BBA LIBOR rate for the interest period relevant to such borrowing. The margin for the Revolving Credit Facility is 1.75%, in the case of base rate loans, and 2.75%, in the case of LIBOR rate loans, subject to a step-down of 0.25% upon achievement of a secured leverage ratio less than or equal to 2.25 to 1.00.

In addition to paying interest on outstanding principal under the Senior Secured Credit Facilities, SWPEI is required to pay a commitment fee to the lenders under the Revolving Credit Facility in respect of the unutilized commitments thereunder. The commitment fee rate is 0.50% per annum. SWPEI is also required to pay customary letter of credit fees.

Prepayments

Our Senior Secured Credit Facilities, as amended, requires SWPEI to prepay outstanding term loans, subject to certain exceptions, with:

- 50% of SWPEI's annual "excess cash flow" (with step-downs to 25% and 0%, as applicable, based upon SWPEI's total leverage ratio), subject to certain exceptions;
- 100% of the net cash proceeds of certain non-ordinary course asset sales or other dispositions, subject to reinvestment rights and certain exceptions; and
- 100% of the net cash proceeds of any incurrence of debt by SWPEI or any of its restricted subsidiaries, other than debt permitted to be incurred or issued under our Senior Secured Credit Facilities.

Notwithstanding any of the foregoing, each lender of term loans has the right to reject its pro rata share of mandatory prepayments described above, in which case we may retain the amounts so rejected.

The foregoing mandatory prepayments will be applied pro rata to installments of term loans in direct order of maturity.

SWPEI may voluntarily repay amounts outstanding under our Senior Secured Credit Facilities at any time without premium or penalty, other than prepayment premium on voluntary prepayment of Tranche B Term Loans on or prior to March 30, 2013 and customary "breakage" costs with respect to LIBOR loans.

Amortization

SWPEI is currently required to repay installments on the term loans in quarterly installments equal to approximately \$1.9 million with respect to Tranche A Term Loans and approximately \$3.5 million with respect to Tranche B Term Loans, with the remaining amount payable on the applicable maturity date with respect to such term loans.

Collateral

Our Senior Secured Credit Facilities are collateralized by first priority or equivalent security interests in (i) all the capital stock of, or other equity interests in, substantially all of SWPEI's direct or indirect domestic subsidiaries (other than a domestic subsidiary that is a subsidiary of a foreign subsidiary) and 65% of the capital stock of, or other equity interests in, any of SWPEI's direct foreign subsidiaries and any of SWPEI's domestic subsidiaries that are treated as disregarded entities for U.S. federal income tax purposes if substantially all the assets of such domestic subsidiary consist of equity

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interests of one or more “controlled foreign corporations” within the meaning of the Code and (ii) certain tangible and intangible assets of SWPEI and those of the Guarantors (subject to certain exceptions and qualifications).

Certain Covenants and Events of Default

Our Senior Secured Credit Facilities contain a number of significant affirmative and negative covenants. Such covenants, among other things, restrict, subject to certain exceptions, the ability of SWPEI and its restricted subsidiaries to:

- incur additional indebtedness, make guarantees and enter into hedging arrangements;
- create liens on assets;
- enter into sale and leaseback transactions;
- engage in mergers or consolidations;
- sell assets;
- make fundamental changes;
- pay dividends and distributions or repurchase SWPEI’s capital stock;
- make investments, loans and advances, including acquisitions;
- engage in certain transactions with affiliates;
- make changes in nature of the business; and
- make prepayments of junior debt.

Our Senior Secured Credit Facilities also contain covenants that (i) require SWPEI to maintain a (A) maximum net total leverage ratio and (B) minimum interest coverage ratio, and (ii) impose maximum annual capital expenditures requirements.

In addition, our Senior Secured Credit Facilities contain certain customary representations and warranties, affirmative covenants and events of default. If an event of default occurs, the lenders under our Senior Secured Credit Facilities will be entitled to take various actions, including the acceleration of amounts due under our Senior Secured Credit Facilities and all actions permitted to be taken by a secured creditor.

As of September 30, 2012, we were in compliance in all material respects with all covenants in the provisions contained in the documents governing our Senior Secured Credit Facilities.

Senior Notes

General

On December 1, 2009, SWPEI issued \$400.0 million aggregate principal amount of 13.5% Senior Notes due 2016. On March 30, 2012, pursuant to an amendment to the indenture governing the Senior Notes, the interest rate was reduced from 13.5% to 11.0%. As of September 30, 2012, we had \$400.0 million aggregate principal amount in Senior Notes outstanding. Interest on the Senior Notes is payable semi-annually in arrears. The obligations under the Senior Notes are guaranteed by the same entities as those that guarantee our Senior Secured Credit Facilities.

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Ranking

The Senior Notes are senior unsecured obligations and:

- rank senior in right of payment to all existing and future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the Senior Notes;
- rank equally in right of payment to all existing and future senior debt and other obligations that are not, by their terms, expressly subordinated in right of payment to the Senior Notes; and
- are effectively subordinated in right of payment to all existing and future secured debt (including obligations under our Senior Secured Credit Facilities), to the extent of the value of the assets securing such debt, and are structurally subordinated to all obligations of each of our subsidiaries that is not a guarantor of the Senior Notes.

Optional Redemption

We may redeem some or all of the Senior Notes at any time prior to December 1, 2014 at a price equal to 100% of the principal amount of Senior Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest to, the redemption date, subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date. The “Applicable Premium” is defined as the greater of (1) 1.0% of the principal amount of the Senior Notes and (2) the excess, if any, of (a) the present value at such redemption date of (i) the redemption price of the Senior Notes at December 1, 2014 or plus (ii) all required interest payments due on the Senior Notes through December 1, 2014 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate plus 50 basis points over (b) the principal amount of the Senior Notes.

After December 1, 2014, we may redeem the Senior Notes at the redemption prices listed below, if redeemed during the 12-month period beginning on December 1 of each of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2014	105.50%
2015	102.75%

In addition, until December 1, 2014, we may redeem up to 35% of the aggregate principal amount of the Senior Notes at a redemption price equal to 111.0% of the aggregate principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date, subject to the right of holders of the Senior Notes of record on the relevant record date to receive interest due on the relevant interest payment date, with the net cash proceeds received by us from one or more equity offerings; provided that (i) at least 65% of the sum of the aggregate principal amount of the Senior Notes originally issued under the indenture remains outstanding immediately after the occurrence of each such redemption and (ii) each such redemption occurs within 90 days of the date of closing of each such equity offering. Pursuant to such provisions, we intend to use a portion of the net proceeds received by us from this offering to redeem \$ million in aggregate principal amount of the Senior Notes at a redemption price of 111.0% and to pay estimated premiums and accrued interest thereon. We intend to use the remaining proceeds received by us from this offering for other general corporate purposes. See “Use of Proceeds.”

Change of Control Offer

Upon the occurrence of a change of control (as defined in the indenture governing the Senior Notes), SWPEI will be required to offer to repurchase some or all of the Senior Notes at 101% of the aggregate principal amount thereof, plus accrued and unpaid interest, if any, to the repurchase date.

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Covenants

The indenture governing the Senior Notes contains a number of covenants that, among other things, restrict SWPEI's ability and the ability of its restricted subsidiaries to, among other things:

- dispose of certain assets;
- incur additional indebtedness;
- pay dividends;
- prepay subordinated indebtedness;
- incur liens;
- make capital expenditures;
- make investments or acquisitions;
- engage in mergers or consolidations; and
- engage in certain types of transactions with affiliates.

These covenants are subject to a number of important limitations and exceptions.

Events of Default

The indenture governing the Senior Notes provides for certain events of default which, if any of them were to occur, would permit or require the principal of and accrued interest, if any, on the Senior Notes to become or be declared due and payable (subject, in some cases, to specified grace periods).

As of September 30, 2012, we were in compliance in all material respects with all covenants and the provisions contained in the indenture governing the Senior Notes.

DESCRIPTION OF CAPITAL STOCK

The following is a description of the material terms of, and is qualified in its entirety by, our amended and restated certificate of incorporation and amended and restated bylaws, each of which will be in effect upon the consummation of this offering, the forms of which are filed as exhibits to the registration statement of which this prospectus is a part.

Our purpose is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the General Corporation Law of the State of Delaware (the "DGCL"). Upon the consummation of this offering, our authorized capital stock will consist of _____ shares of common stock, par value \$0.01 per share, and _____ shares of preferred stock, par value \$0.01 per share. No shares of preferred stock will be issued or outstanding immediately after the public offering contemplated by this prospectus. Unless our Board of Directors determines otherwise, we will issue all shares of our capital stock in uncertificated form.

Common Stock

Holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders, including the election or removal of directors. The holders of our common stock do not have cumulative voting rights in the election of directors.

Upon our liquidation, dissolution or winding up and after payment in full of all amounts required to be paid to creditors and to the holders of preferred stock having liquidation preferences, if any, the holders of our common stock will be entitled to receive pro rata our remaining assets available for distribution. Holders of our common stock do not have preemptive, subscription, redemption or conversion rights. The common stock will not be subject to further calls or assessment by us. There will be no redemption or sinking fund provisions applicable to the common stock. All shares of our common stock that will be outstanding at the time of the completion of the offering will be fully paid and non-assessable. The rights, powers, preferences and privileges of holders of our common stock will be subject to those of the holders of any shares of our preferred stock we may authorize and issue in the future.

Preferred Stock

Our amended and restated certificate of incorporation authorizes our Board of Directors to establish one or more series of preferred stock (including convertible preferred stock). Unless required by law or by _____, the authorized shares of preferred stock will be available for issuance without further action by you. Our Board of Directors is able to determine, with respect to any series of preferred stock, the voting powers (if any), preferences and rights, and the qualifications, limitations or restrictions of that series, including, without limitation:

- the designation of the series;
- the number of shares of the series, which our Board of Directors may, except where otherwise provided in the preferred stock designation, increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares then outstanding);
- whether dividends, if any, will be cumulative or non-cumulative and the dividend rate of the series;
- the dates at which dividends, if any, will be payable;
- the redemption rights and price or prices, if any, for shares of the series;
- the terms and amounts of any sinking fund provided for the purchase or redemption of shares of the series;

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- the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Company;
- whether the shares of the series will be convertible into shares of any other class or series, or any other security, of the Company or any other corporation, and, if so, the specification of the other class or series or other security, the conversion price or prices or rate or rates, any rate adjustments, the date or dates as of which the shares will be convertible and all other terms and conditions upon which the conversion may be made;
- restrictions on the issuance of shares of the same series or of any other class or series; and
- the voting rights, if any, of the holders of the series.

We could issue a series of preferred stock that could, depending on the terms of the series, impede or discourage an acquisition attempt or other transaction that some, or a majority, of the holders of our common stock might believe to be in their best interests or in which the holders of our common stock might receive a premium for your common stock over the market price of the common stock. Additionally, the issuance of preferred stock may adversely affect the rights of holders of our common stock by restricting dividends on the common stock, diluting the voting power of the common stock or impairing the liquidation rights of the common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our common stock.

Dividends

The DGCL permits a corporation to declare and pay dividends out of “surplus” or, if there is no “surplus,” out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. “Surplus” is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by the Board of Directors. The capital of the corporation is typically calculated to be (and cannot be less than) the aggregate par value of all issued shares of capital stock. Net assets equals the fair value of the total assets minus total liabilities. The DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, remaining capital would be less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

Declaration and payment of any dividend will be subject to the discretion of our Board of Directors. The time and amount of dividends will be dependent upon our financial condition, operations, cash requirements and availability, debt repayment obligations, capital expenditure needs and restrictions in our debt instruments, industry trends, the provisions of Delaware law affecting the payment of distributions to stockholders and any other factors our Board of Directors may consider relevant.

We intend to pay cash dividends on our common stock, subject to our compliance with applicable law, and depending on, among other things, our results of operations, financial condition, level of indebtedness, capital requirements, contractual restrictions, restrictions in our debt agreements and in any preferred stock, business prospects and other factors that our Board of Directors may deem relevant. Our ability to pay dividends on our common stock is limited by the covenants of our Senior Secured Credit Facilities and the indenture governing the Senior Notes and may be further restricted by the terms of any future debt or preferred securities. See “Dividend Policy” and “Description of Indebtedness.”

Annual Stockholder Meetings

Our amended and restated bylaws provide that annual stockholder meetings will be held at a date, time and place, if any, as exclusively selected by our Board of Directors.

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Anti-Takeover Effects of Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws and Certain Provisions of Delaware Law

Our amended and restated certificate of incorporation, amended and restated bylaws and the DGCL, which are summarized in the following paragraphs, contain provisions that are intended to enhance the likelihood of continuity and stability in the composition of our Board of Directors. These provisions are intended to avoid costly takeover battles, reduce our vulnerability to a hostile change of control and enhance the ability of our Board of Directors to maximize stockholder value in connection with any unsolicited offer to acquire us. However, these provisions may have an anti-takeover effect and may delay, deter or prevent a merger or acquisition of the Company by means of a tender offer, a proxy contest or other takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the prevailing market price for the shares of common stock held by stockholders.

Authorized but Unissued Capital Stock

Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of _____, which would apply if and so long as our common stock remains listed on _____, require stockholder approval of certain issuances equal to or exceeding 20% of the then outstanding voting power or then outstanding number of shares of common stock. Additional shares that may be used in the future may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

Our Board of Directors may generally issue preferred shares on terms calculated to discourage, delay or prevent a change of control of the Company or the removal of our management. Moreover, our authorized but unissued shares of preferred stock will be available for future issuances without stockholder approval and could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, to facilitate acquisitions and employee benefit plans.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable our Board of Directors to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of the Company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management and possibly deprive our stockholders of opportunities to sell their shares of common stock at prices higher than prevailing market prices.

Classified Board of Directors

Our amended and restated certificate of incorporation provides that our Board of Directors will be divided into three classes of directors, with the classes to be as nearly equal in number as possible, and with the directors serving three-year terms. As a result, approximately one-third of our Board of Directors will be elected each year. The classification of directors will have the effect of making it more difficult for stockholders to change the composition of our Board of Directors. Our amended and restated certificate of incorporation and amended and restated bylaws provide that, subject to any rights of holders of preferred stock to elect additional directors under specified circumstances, the number of directors will be fixed from time to time exclusively pursuant to a resolution adopted by the Board of Directors, but must consist of not less than _____ nor more than _____ directors.

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Business Combinations

We have opted out of Section 203 of the DGCL; however, our amended and restated certificate of incorporation contains similar provisions providing that we may not engage in certain “business combinations” with any “interested stockholder” for a three-year period following the time that the stockholder became an interested stockholder, unless:

- prior to such time, our Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding certain shares; or
- at or subsequent to that time, the business combination is approved by our Board of Directors and by the affirmative vote of holders of at least $66 \frac{2}{3}\%$ of our outstanding voting stock that is not owned by the interested stockholder.

Generally, a “business combination” includes a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. Subject to certain exceptions, an “interested stockholder” is a person who, together with that person’s affiliates and associates, owns, or within the previous three years owned, 15% or more of our outstanding voting stock. For purposes of this section only, “voting stock” has the meaning given to it in Section 203 of the DGCL.

Under certain circumstances, this provision will make it more difficult for a person who would be an “interested stockholder” to effect various business combinations with the Company for a three-year period. This provision may encourage companies interested in acquiring the Company to negotiate in advance with our Board of Directors because the stockholder approval requirement would be avoided if our Board of Directors approves either the business combination or the transaction which results in the stockholder becoming an interested stockholder. These provisions also may have the effect of preventing changes in our Board of Directors and may make it more difficult to accomplish transactions which stockholders may otherwise deem to be in their best interests.

Our amended and restated certificate of incorporation provides that Blackstone, and any of its respective direct or indirect transferees and any group as to which such persons are a party, do not constitute “interested stockholders” for purposes of this provision.

Removal of Directors; Vacancies

Under the DGCL, unless otherwise provided in our amended and restated certificate of incorporation, directors serving on a classified board may be removed by the stockholders only for cause. Our amended and restated certificate of incorporation and amended and restated bylaws provide that directors may be removed with or without cause upon the affirmative vote of a majority in voting power of all outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class; provided, however, at any time when Blackstone beneficially owns in the aggregate, less than 40% in the voting power of all outstanding shares of our stock entitled to vote generally in the election of directors, directors may only be removed for cause, and only upon the affirmative vote of holders of at least 75% of the voting power of all the then outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class. In addition, our amended and restated certificate of incorporation and amended and restated bylaws also provide that, subject to the rights granted to one or more series of preferred stock then outstanding or the rights granted under the stockholders agreement with Blackstone, any vacancies on our Board of Directors will be filled only by the affirmative vote of a majority of the remaining directors, even if less than a quorum, or by a sole remaining director or, for so long as Blackstone beneficially owns, in the aggregate, at least 40% in voting power of all outstanding shares of our stock entitled to vote generally in the election of directors, by the stockholders.

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No Cumulative Voting

Under Delaware law, the right to vote cumulatively does not exist unless the certificate of incorporation specifically authorizes cumulative voting. Our amended and restated certificate of incorporation does not authorize cumulative voting. Therefore, stockholders holding a majority of the shares of our stock entitled to vote generally in the election of directors will be able to elect all our directors.

Requirements for Advance Notification of Special Stockholder Meetings, Nominations and Proposals

Our amended and restated certificate of incorporation provides that special meetings of our stockholders may be called at any time only by or at the direction of the chairman of the Board of Directors, the Board of Directors or a committee of the Board of Directors which has been designated by the Board of Directors or, for so long as Blackstone beneficially owns, in the aggregate, more than 40% voting power of all outstanding shares of our stock entitled to vote generally in the election of directors, at the request of Blackstone. Our amended and restated bylaws prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control or management of the Company.

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the Board of Directors or a committee of the Board of Directors. In order for any matter to be “properly brought” before a meeting, a stockholder will have to comply with advance notice requirements and provide us with certain information. Generally, to be timely, a stockholder’s notice must be received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of the immediately preceding annual meeting of stockholders. Our amended and restated bylaws also specify requirements as to the form and content of a stockholder’s notice. Our amended and restated bylaws allow the presiding officer at a meeting of the stockholders to adopt rules and regulations for the conduct of meetings which may have the effect of precluding the conduct of certain business at a meeting if the rules and regulations are not followed. These provisions will not apply to Blackstone and its affiliates so long as the stockholders agreement with Blackstone remains in effect. These provisions may also defer, delay or discourage a potential acquirer from conducting a solicitation of proxies to elect the acquirer’s own slate of directors or otherwise attempting to influence or obtain control of the Company.

Stockholder Action by Written Consent

Pursuant to Section 228 of the DGCL, any action required to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of our stock entitled to vote thereon were present and voted, unless our amended and restated certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation will preclude stockholder action by written consent after the date on which Blackstone ceases to hold at least 40% of the voting power of all the then outstanding shares of our stock entitled to vote generally in the election of directors.

Supermajority Provisions

Our amended and restated certificate of incorporation and amended and restated bylaws will provide that the Board of Directors is expressly authorized to make, alter, amend, change, add to or repeal, in whole or in part, our bylaws without a stockholder vote in any matter not inconsistent with the

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laws of the State of Delaware and our amended and restated certificate of incorporation. For as long as Blackstone beneficially owns, in the aggregate, at least 40% in voting power of all outstanding shares of our stock entitled to vote generally in the election of directors, any amendment, alteration, change, addition or repeal of our bylaws by our stockholders will require the affirmative vote of a majority in voting power of the outstanding shares of our stock present in person or represented by proxy at the meeting of stockholders and entitled to vote on such amendment, alteration, change, addition or repeal. At any time when Blackstone beneficially owns, in the aggregate, less than 40% in voting power of all outstanding shares of our stock entitled to vote generally in the election of directors, any amendment, alteration, change, addition or repeal of our bylaws by our stockholders will require the affirmative vote of holders of at least 75% of the voting power of all the then outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class.

The DGCL provides generally that the affirmative vote of a majority of the outstanding shares then entitled to vote, voting together as a single class, is required to amend a corporation's certificate of incorporation, unless the certificate of incorporation requires a greater percentage.

Our amended and restated certificate of incorporation provides that at any time when Blackstone beneficially owns less than 40% in voting power of all outstanding shares of our capital stock entitled to vote generally in the election of directors, the following provisions in our amended and restated certificate of incorporation may be amended only by a vote of 75% or more of all of the outstanding shares of our capital stock entitled to vote generally in the election of directors, voting together as a single class:

- the provision requiring a 75% supermajority vote for stockholders to amend our amended and restated bylaws;
- the provisions providing for classified Board of Directors (the election and term of our directors);
- the provisions regarding resignation and removal of directors;
- the provisions regarding competition and corporate opportunities;
- the provisions regarding entering into business combinations with interested stockholders;
- the provisions regarding stockholder action by written consent;
- the provisions regarding calling special meetings of stockholders;
- the provisions regarding filling vacancies on our Board of Directors and newly created directorships;
- the provisions eliminating monetary damages for breaches of fiduciary duty by a director; and
- the amendment provision requiring that the above provisions be amended only with a 75% supermajority vote.

The combination of the classification of our Board of Directors, the lack of cumulative voting and the supermajority voting requirements will make it more difficult for our existing stockholders to replace our Board of Directors as well as for another party to obtain control of us by replacing our Board of Directors. Because our Board of Directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management.

These provisions may have the effect of deterring hostile takeovers or delaying or preventing changes in control of our management or the Company, such as a merger, reorganization or tender offer. These provisions are intended to enhance the likelihood of continued stability in the composition of our Board of Directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of the Company. These provisions are designed to reduce

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our vulnerability to an unsolicited acquisition proposal. The provisions are also intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts.

Dissenters' Rights of Appraisal and Payment

Under the DGCL, with certain exceptions, our stockholders will have appraisal rights in connection with a merger or consolidation of us. Pursuant to the DGCL, stockholders who properly request and perfect appraisal rights in connection with such merger or consolidation will have the right to receive payment of the fair value of their shares as determined by the Delaware Court of Chancery.

Stockholders' Derivative Actions

Under the DGCL, any of our stockholders may bring an action in our name to procure a judgment in our favor, also known as a derivative action, provided that the stockholder bringing the action is a holder of our shares at the time of the transaction to which the action relates or such stockholder's stock thereafter devolved by operation of law.

Conflicts of Interest

Delaware law permits corporations to adopt provisions renouncing any interest or expectancy in certain opportunities that are presented to the corporation or its officers, directors or stockholders. Our amended and restated certificate of incorporation will, to the maximum extent permitted from time to time by Delaware law, renounce any interest or expectancy that we have in, or right to be offered an opportunity to participate in, specified business opportunities that are from time to time presented to our officers, directors or stockholders or their respective affiliates, other than those officers, directors, stockholders or affiliates who are our or our subsidiaries' employees. Our amended and restated certificate of incorporation will provide that, to the fullest extent permitted by law, none of Blackstone or any of its affiliates or any director who is not employed by us (including any non-employee director who serves as one of our officers in both his director and officer capacities) or his or her affiliates will have any duty to refrain from (i) engaging in a corporate opportunity in the same or similar lines of business in which we or our affiliates now engage or propose to engage or (ii) otherwise competing with us or our affiliates. In addition, to the fullest extent permitted by law, in the event that Blackstone or any non-employee director acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself or himself or its or his affiliates or for us or our affiliates, such person will have no duty to communicate or offer such transaction or business opportunity to us or any of our affiliates and they may take any such opportunity for themselves or offer it to another person or entity. Our amended and restated certificate of incorporation will not renounce our interest in any business opportunity that is expressly offered to a non-employee director solely in his or her capacity as a director or officer of the Company. To the fullest extent permitted by law, no business opportunity will be deemed to be a potential corporate opportunity for us unless we would be permitted, to undertake the opportunity under our amended and restated certificate of incorporation, we have sufficient financial resources to undertake the opportunity and the opportunity would be in line with our business.

Limitations on Liability and Indemnification of Officers and Directors

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties, subject to certain exceptions. Our amended and restated certificate of incorporation includes a provision that eliminates the personal liability of directors for monetary damages for any breach of

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fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL. The effect of these provisions is to eliminate the rights of us and our stockholders, through stockholders' derivative suits on our behalf, to recover monetary damages from a director for breach of fiduciary duty as a director, including breaches resulting from grossly negligent behavior. However, exculpation does not apply to any director if the director has acted in bad faith, knowingly or intentionally violated the law, authorized illegal dividends or redemptions or derived an improper benefit from his or her actions as a director.

Our amended and restated bylaws provide that we must indemnify and advance expenses to our directors and officers to the fullest extent authorized by the DGCL. We also are expressly authorized to carry directors' and officers' liability insurance providing indemnification for our directors, officers and certain employees for some liabilities. We believe that these indemnification and advancement provisions and insurance are useful to attract and retain qualified directors and executive officers.

The limitation of liability, advancement and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

We currently are party to indemnification agreements with certain of our directors and officers. These agreements require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. In connection with this offering, we intend to enter into indemnification agreements with each of our current directors and executive officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

There is currently no pending material litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is _____.

Listing

We intend to apply to list our common stock on _____ under the symbol "SEAS."

SHARES ELIGIBLE FOR FUTURE SALE

General

Prior to this offering, there has not been a public market for our common stock, and we cannot predict what effect, if any, market sales of shares of common stock or the availability of shares of common stock for sale will have on the market price of our common stock prevailing from time to time. Nevertheless, sales of substantial amounts of common stock, including shares issued upon the exercise of outstanding options, in the public market, or the perception that such sales could occur, could materially and adversely affect the market price of our common stock and could impair our future ability to raise capital through the sale of our equity or equity-related securities at a time and price that we deem appropriate. See “Risk Factors—Risks Related to this Offering and Ownership of Our Common Stock—Future sales, or the perception of future sales, by us or our existing stockholders in the public market following this offering could cause the market price for our common stock to decline.”

Upon the consummation of this offering, we will have _____ shares of common stock outstanding, or _____ shares, if the underwriters exercise in full their option to purchase additional shares. Of these shares, only _____ shares of common stock sold in this offering by us will be freely tradable without registration under the Securities Act and without restriction by persons other than our “affiliates” (as defined under Rule 144). The _____ shares of common stock held by the Partnerships after this offering will be “restricted” securities under the meaning of Rule 144 and may not be sold in the absence of registration under the Securities Act, unless an exemption from registration is available, including the exemptions pursuant to Rule 144 under the Securities Act.

The restricted shares held by our affiliates will be available for sale in the public market as follows:

- _____ shares will be eligible for sale at various times after the date of this prospectus pursuant to Rule 144; and
- _____ shares subject to the lock-up agreements described below will be eligible for sale at various times beginning 180 days after the date of this prospectus pursuant to Rule 144.

Rule 144

In general, under Rule 144, as currently in effect, a person (or persons whose shares are aggregated) who is not deemed to be or have been one of our affiliates for purposes of the Securities Act at any time during 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than an affiliate, is entitled to sell such shares without registration, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of a prior owner other than an affiliate, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates, who have met the six month holding period for beneficial ownership of “restricted shares” of our common stock, are entitled to sell within any three-month period, a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately _____ shares immediately after this offering; or
- the average reported weekly trading volume of our common stock on _____ during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

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Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us. The sale of these shares, or the perception that sales will be made, could adversely affect the price of our common stock after this offering because a great supply of shares would be, or would be perceived to be, available for sale in the public market.

Lock-Up Agreements

In connection with this offering, we, our officers, directors, and holders of substantially all of our common stock, including the selling stockholders, have agreed with the underwriters, subject to certain exceptions, not to sell, dispose of or hedge any shares of our common stock or securities convertible into or exchangeable for shares of common stock during the period ending 180 days after the date of this prospectus, except with the prior written consent of the representatives of the underwriters.

The 180-day restricted period described in the preceding paragraph will be automatically extended if:

- during the last 17 days of the 180-day restricted period we issue an earnings release or announce material news or a material event; or
- prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 15-day period following the last day of the 180-day period,

in which case the restrictions described in this paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the announcement of the material news or material event. See “Underwriting (Conflicts of Interest).”

Registration Rights

Pursuant to a registration rights agreement, we have granted the Partnerships and certain equity holders of the Partnerships the right to cause us, in certain instances, at our expense, to file registration statements under the Securities Act covering resales of our common stock held by them. Following completion of this offering, the shares covered by registration rights would represent approximately % of our outstanding common stock (or %, if the underwriters exercise in full their option to purchase additional shares). These shares also may be sold under Rule 144 under the Securities Act, depending on their holding period and subject to restrictions in the case of shares held by persons deemed to be our affiliates. For a description of rights the Partnerships and certain equity holders of the Partnerships have to require us to register the shares of common stock they own, see “Certain Relationships and Related Party Transactions—Registration Rights Agreement.”

MATERIAL UNITED STATES FEDERAL INCOME AND ESTATE TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a summary of the material United States federal income and estate tax consequences to a non-U.S. holder (as defined below) of the purchase, ownership and disposition of our common stock issued pursuant to this offering as of the date hereof. Except where noted, this summary deals only with common stock that is held as a capital asset.

A “non-U.S. holder” means a person (other than a partnership) that is not for United States federal income tax purposes any of the following:

- an individual citizen or resident of the United States;
- a corporation (or any other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to United States federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

This summary is based upon provisions of the Code and regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in United States federal income and estate tax consequences different from those summarized below. This summary does not address all aspects of United States federal income and estate taxes and does not deal with foreign, state, local or other tax considerations that may be relevant to non-U.S. holders in light of their particular circumstances. In addition, it does not represent a detailed description of the United States federal income tax consequences applicable to you if you are subject to special treatment under the United States federal income tax laws (including if you are a United States expatriate, “controlled foreign corporation,” “passive foreign investment company,” a person who holds or receives our common stock pursuant to the exercise of any employee stock option or otherwise as compensation or a partnership or other pass-through entity for United States federal income tax purposes). We cannot assure you that a change in law will not alter significantly the tax considerations that we describe in this summary.

If a partnership holds our common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding our common stock, you should consult your tax advisors.

If you are considering the purchase of our common stock, you should consult your own tax advisors concerning the particular United States federal income and estate tax consequences to you of the ownership of the common stock, as well as the consequences to you arising under the laws of any other taxing jurisdiction.

Dividends

Distributions on our common stock will constitute dividends for U.S. federal income tax purposes to the extent paid out of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and will first be applied against and reduce a holder’s adjusted tax basis in the common stock, but not below zero. Any remaining excess will be treated as capital gain subject to the rules discussed under “—Gain on Disposition of Common Stock.”

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Dividends paid to a non-U.S. holder of our common stock generally will be subject to withholding of United States federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. However, dividends that are effectively connected with the conduct of a trade or business by the non-U.S. holder within the United States (and, if required by an applicable income tax treaty, are attributable to a United States permanent establishment) are not subject to the withholding tax, provided certain certification and disclosure requirements are satisfied. Instead, such dividends are subject to United States federal income tax on a net income basis in the same manner as if the non-U.S. holder were a United States person as defined under the Code. Any such effectively connected dividends received by a foreign corporation may be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A non-U.S. holder of our common stock who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding, as discussed below, for dividends will be required (a) to complete Internal Revenue Service Form W-8BEN (or other applicable form) and certify under penalty of perjury that such holder is not a United States person as defined under the Code and is eligible for treaty benefits or (b) if our common stock is held through certain foreign intermediaries, to satisfy the relevant certification requirements of applicable United States Treasury regulations. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals.

A non-U.S. holder of our common stock eligible for a reduced rate of United States withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the Internal Revenue Service.

Gain on Disposition of Common Stock

Any gain realized on the disposition of our common stock generally will not be subject to United States federal income tax unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States (and, if required by an applicable income tax treaty, is attributable to a United States permanent establishment of the non-U.S. holder);
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or
- we are or have been a “United States real property holding corporation” for United States federal income tax purposes at any time during the shorter of the five-year period ending on the date of the disposition or such non-U.S. holder’s holding period for our common stock.

An individual non-U.S. holder described in the first bullet point immediately above will be subject to tax on the net gain derived from the sale under regular graduated United States federal income tax rates. If a non-U.S. holder that is a foreign corporation falls under the first bullet point immediately above, it will be subject to tax on its net gain in the same manner as if it were a United States person as defined under the Code and, in addition, may be subject to the branch profits tax equal to 30% of its effectively connected earnings and profits or at such lower rate as may be specified by an applicable income tax treaty. An individual non-U.S. holder described in the second bullet point immediately above will be subject to a flat 30% tax on the gain derived from the sale, which may be offset by United States source capital losses (even though the individual is not considered a resident of the United States) provided such a non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

We believe that we are currently a “United States real property holding corporation” for United States federal income tax purposes. So long as our common stock continues to be regularly traded on

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an established securities market, only a non-U.S. holder who holds or held (at any time during the shorter of the five year period preceding the date of disposition or the holder's holding period) more than 5% of our common stock will be subject to United States federal income tax on the disposition of our common stock.

Federal Estate Tax

Common stock held by an individual non-U.S. holder at the time of death will be included in such holder's gross estate for United States federal estate tax purposes, unless an applicable estate tax treaty provides otherwise.

Information Reporting and Backup Withholding

We must report annually to the Internal Revenue Service and to each non-U.S. holder the amount of dividends paid to such holder and the tax withheld with respect to such dividends, regardless of whether withholding was required. Copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

A non-U.S. holder will be subject to backup withholding for dividends paid to such holder unless such holder certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that such holder is a United States person as defined under the Code), or such holder otherwise establishes an exemption.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale of our common stock within the United States or conducted through certain United States-related financial intermediaries, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that the beneficial owner is a United States person as defined under the Code), or such owner otherwise establishes an exemption.

Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's United States federal income tax liability provided the required information is timely furnished to the Internal Revenue Service.

Additional Withholding Requirements

Under recently enacted legislation, proposed Treasury Regulations and recent administrative guidance, the relevant withholding agent may be required to withhold 30% of any dividends paid after December 31, 2013 and the proceeds of a sale of our common stock occurring after December 31, 2016 paid to (i) a foreign financial institution unless such foreign financial institution agrees to verify, report and disclose its U.S. accountholders and meets certain other specified requirements or (ii) a non-financial foreign entity that is the beneficial owner of the payment unless such entity certifies that it does not have any substantial United States owners or provides the name, address and taxpayer identification number of each substantial United States owner and such entity meets certain other specified requirements. The proposed Treasury Regulations will not be effective unless and until they are issued in final form. Prospective investors should consult their tax advisors regarding these withholding provisions.

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New Tax on Investment Income

Recent legislation would require certain taxpayers to pay a 3.8% tax on, among other things, dividends on and capital gains from the sale or other disposition of our common stock for taxable years beginning after December 31, 2012, but exempts from such tax non-resident alien individuals. Newly published proposed regulations, upon which, by their terms, taxpayers may rely until final regulations are promulgated, exempt from the tax non-U.S. trusts and estates all of whose beneficiaries are non-U.S. persons. Such proposed regulations reserve on the treatment of non-U.S. trusts and estates with U.S. beneficiaries. Prospective investors should consult their tax advisors regarding the tax consequences of the new legislation and the proposed regulations on the ownership and disposition of our common stock.

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UNDERWRITING (CONFLICTS OF INTEREST)

We, the selling stockholders and the underwriters named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. Goldman, Sachs & Co. and J.P. Morgan Securities LLC are the representatives of the underwriters.

<u>Underwriters</u>	<u>Number of Shares</u>
Goldman, Sachs & Co.	
J.P. Morgan Securities LLC	
Citigroup Global Markets Inc.	
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Barclays Capital Inc.	
Wells Fargo Securities, LLC	
Total	

The underwriters are committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

The underwriters have an option to buy up to an additional _____ shares from the selling stockholders to cover sales by the underwriters of a greater number of shares than the total number set forth in the table above. They may exercise that option for 30 days. If any shares are purchased pursuant to this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The following tables show the per share and total underwriting discounts and commissions to be paid to the underwriters by us and the selling stockholders. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase _____ additional shares.

Paid by Us

	<u>No Exercise</u>	<u>Full Exercise</u>
Per Share	\$	\$
Total	\$	\$

Paid by the Selling Stockholders

	<u>No Exercise</u>	<u>Full Exercise</u>
Per Share	\$	\$
Total	\$	\$

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to \$ _____ per share from the initial public offering price. After the initial offering of the shares, the representatives may change the offering price and the other selling terms. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

We and our officers, directors, and holders of substantially all of our common stock, including the selling stockholders, have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their common stock or securities convertible into or exchangeable for shares of

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common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of the representatives. See “Shares Eligible for Future Sale” for a discussion of certain transfer restrictions.

The 180-day restricted period described in the preceding paragraph will be automatically extended if: (1) during the last 17 days of the 180-day restricted period, we issue an earnings release or announce material news or a material event; or (2) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 15-day period following the last day of the 180-day period, in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the announcement of the material news or material event.

Prior to the offering, there has been no public market for the shares. The initial public offering price has been negotiated among us and the representatives. Among the factors to be considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be our historical performance, estimates of our business potential and earnings prospects, an assessment of our management and the consideration of the above factors in relation to market valuation of companies in related businesses.

We intend to apply for the common stock on the _____ under the symbol “SEAS.”

In connection with the offering, the underwriters may purchase and sell shares of common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering, and a short position represents the amount of such sales that have not been covered by subsequent purchases. A “covered short position” is a short position that is not greater than the amount of additional shares for which the underwriters’ option described above may be exercised. The underwriters may cover any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to cover the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase additional shares pursuant to the option described above. “Naked” short sales are any short sales that create a short position greater than the amount of additional shares for which the option described above may be exercised. The underwriters must cover any such naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Purchases to cover a short position and stabilizing transactions, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of our stock, and together with the imposition of the penalty bid, may stabilize, maintain or otherwise affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. The underwriters are not required to engage in these activities and may end any of these activities at any time. These transactions may be effected on _____, in the over-the-counter market or otherwise.

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In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State, no offer of shares may be made to the public in that Relevant Member State other than:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 100, or, if the Relevant Member State has implemented the relevant portion of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representative;
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of shares shall require the Company or the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of shares to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression Prospectus Directive means Directive 2003/71/EC (including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

Each underwriter has represented and agreed that:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the shares in circumstances in which Section 21(1) of the FSMA does not apply to the Company; and
- (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares in, from or otherwise involving the United Kingdom.

The shares may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or

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distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries’ rights and interest in that trust shall not be transferable for six months after that corporation or that trust has acquired the shares under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

We and the selling stockholders estimate that the underwriters’ share of the total expenses of the offering, excluding underwriting discounts and commissions, will be approximately \$.

We and the selling stockholders have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act.

Conflicts of Interest

Affiliates of Goldman, Sachs & Co. hold \$300.0 million in aggregate principal amount of the Senior Notes. As described under “Use of Proceeds,” a portion of the net proceeds from this offering will be used to redeem \$ million in aggregate principal amount of the Senior Notes and such affiliates of Goldman, Sachs & Co. will receive their pro rata share of such redemption amount. Affiliates of Goldman, Sachs & Co. also own Class A and Class B Units in one of the Partnerships that collectively own 100% of our common stock and such affiliates will receive a portion of the net proceeds to the selling stockholders. Because Goldman, Sachs & Co. is an underwriter and its affiliates are expected to receive more than 5% of the net proceeds of this offering due to the redemption and the proceeds to the selling stockholders, Goldman, Sachs & Co. is deemed to have a “conflict of interest” under FINRA Rule 5121. Accordingly, this offering will be conducted in accordance with Rule 5121, which requires, among other things, that a “qualified independent underwriter” has participated in the preparation of, and has exercised the usual standards of “due diligence” with respect to, the registration statement and this prospectus. Citigroup Global Markets Inc. has agreed to act as qualified independent underwriter for this offering and to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act, specifically including those inherent in Section 11 of the Securities Act. Pursuant to Rule 5121, Goldman, Sachs & Co. will not confirm any sales to any account over which it exercises discretionary authority without the specific written approval of the account holder. See “Use of Proceeds.”

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Discretionary Sales

The underwriters have informed us that they do not intend to confirm sales to discretionary accounts that exceed 5% of the total number of shares offered by them.

Other Relationships

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to us and to persons and entities with relationships with us, for which they received or will receive customary fees and expenses. In particular, affiliates of each of Goldman, Sachs & Co., J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Barclays Capital Inc. are lenders under our Senior Secured Credit Facilities and have received and will receive fees from us.

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to our assets, securities and/or instruments (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with us. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

LEGAL MATTERS

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Simpson Thacher & Bartlett LLP, New York, New York. Certain legal matters relating to this offering will be passed upon for the underwriters by Latham & Watkins LLP, New York, New York. An investment vehicle comprised of selected partners of Simpson Thacher & Bartlett LLP, members of their families, related persons and others owns an interest representing less than 1% of the capital commitments of funds affiliated with The Blackstone Group L.P.

EXPERTS

The financial statements of the Company as of December 31, 2011 and 2010, for each of the two years in the period ended December 31, 2011 and the one month period ended December 31, 2009, and the related financial statement schedule included elsewhere in this prospectus, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements and financial statement schedule have been so included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the common stock offered by this prospectus. This prospectus is a part of the registration statement and does not contain all of the information set forth in the registration statement and its exhibits and schedules, portions of which have been omitted as permitted by the rules and regulations of the SEC. For further information about us and our common stock, you should refer to the registration statement and its exhibits and schedules. Statements in this prospectus about the contents of any contract, agreement or other document are not necessarily complete and in each instance that a copy of such contract, agreement or document has been filed as an exhibit to the registration statement, we refer you to the copy that we have filed as an exhibit.

We will file annual, quarterly and special reports and other information with the SEC. Our filings with the SEC will be available to the public on the SEC's website at <http://www.sec.gov>. Those filings will also be available to the public on, or accessible through, our corporate website under the heading _____ at _____. The information we file with the SEC or contained on or accessible through our corporate website or any other website that we may maintain is not part of this prospectus or the registration statement of which this prospectus is a part. You may also read and copy, at SEC prescribed rates, any document we file with the SEC, including the registration statement (and its exhibits) of which this prospectus is a part, at the SEC's Public Reference Room located at 100 F Street, N.E., Washington D.C. 20549. You can call the SEC at 1-800-SEC-0330 to obtain information on the operation of the Public Reference Room.

We intend to make available to our common stockholders annual reports containing consolidated financial statements audited by an independent registered public accounting firm.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
SeaWorld Entertainment, Inc.
Orlando, Florida

We have audited the accompanying consolidated balance sheets of SeaWorld Entertainment, Inc. and subsidiaries (the "Company") as of December 31, 2011 and 2010, and the related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows for each of the two years in the period ended December 31, 2011 and for the one month period ended December 31, 2009. Our audits also included the financial statement schedule listed in the Index at Page F-1. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of SeaWorld Entertainment, Inc. and subsidiaries as of December 31, 2011 and 2010, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2011 and for the one month period ended December 31, 2009, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ Deloitte & Touche LLP
Certified Public Accountants
Tampa, Florida
December 26, 2012

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SeaWorld Entertainment, Inc. and Subsidiaries
Consolidated Balance Sheets
as of December 31, 2011 and 2010
(In thousands, except share and per share amounts)

	<u>2011</u>	<u>2010</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 66,663	\$ 123,697
Accounts receivable—net	45,980	54,927
Inventories	32,431	28,342
Prepaid expenses and other current assets	12,252	9,775
Deferred tax assets, net	9,529	1,744
Total current assets	166,855	218,485
Property and equipment, net	1,747,878	1,742,789
Goodwill	335,610	335,610
Trade names, net	165,709	166,808
Other intangible assets, net	33,837	37,056
Deferred tax assets, net	52,566	72,547
Other assets	44,640	47,986
Total	<u>\$2,547,095</u>	<u>\$2,621,281</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 104,915	\$ 104,389
Current maturities on long-term debt	52,500	10,500
Accrued salaries and wages	32,189	25,675
Deferred revenue	82,233	84,136
Other accrued expenses	8,399	7,213
Total current liabilities	280,236	231,913
Long-term debt	1,365,387	1,400,029
Other liabilities	29,005	39,544
Total liabilities	1,674,628	1,671,486
Commitments and contingencies (Note 13)		
Stockholders' Equity:		
Common stock, \$0.01 par value—authorized, 12,000,000 shares; issued and outstanding, 10,302,351 shares in 2011 and 10,100,000 in 2010	103	101
Additional paid-in capital	956,456	1,052,899
Accumulated deficit	(84,092)	(103,205)
Total stockholders' equity	872,467	949,795
Total	<u>\$2,547,095</u>	<u>\$2,621,281</u>

See notes to consolidated financial statements.

SeaWorld Entertainment, Inc. and Subsidiaries
Consolidated Statements of Operations and Comprehensive Income (Loss)
for the Years Ended December 31, 2011 and 2010 and the One Month Period Ended December 31, 2009
(In thousands, except per share amounts)

	Year Ended December 31,	Year Ended December 31,	One Month Period Ended December 31,
	2011	2010	2009
Net revenues:			
Admissions	\$ 824,937	\$ 730,368	\$ 45,060
Food, merchandise and other	505,837	465,735	27,918
Total revenues	<u>1,330,774</u>	<u>1,196,103</u>	<u>72,978</u>
Costs and expenses:			
Cost of food, merchandise and other revenues	112,498	97,871	5,472
Operating expenses	687,999	673,829	51,957
Selling, general and administrative	172,368	159,506	11,544
Depreciation and amortization	213,592	207,156	17,973
Acquisition-related expenses	—	—	67,966
Total costs and expenses	<u>1,186,457</u>	<u>1,138,362</u>	<u>154,912</u>
Operating income (loss)	144,317	57,741	(81,934)
Other (expense) income, net	(1,679)	1,937	30
Interest expense	110,097	134,383	11,501
Income (loss) before income taxes	32,541	(74,705)	(93,405)
Provision for (benefit from) income taxes	13,428	(29,241)	(35,664)
Net income (loss)	<u>\$ 19,113</u>	<u>\$ (45,464)</u>	<u>\$ (57,741)</u>
Other comprehensive income (loss)	—	—	—
Comprehensive income (loss)	<u>\$ 19,113</u>	<u>\$ (45,464)</u>	<u>\$ (57,741)</u>
Basic earnings per share:			
Weighted average common shares outstanding	<u>10,174</u>	<u>10,100</u>	<u>10,100</u>
Net income (loss) per share	<u>\$ 1.88</u>	<u>\$ (4.50)</u>	<u>\$ (5.72)</u>
Diluted earnings per share:			
Weighted average common shares outstanding	<u>10,253</u>	<u>10,100</u>	<u>10,100</u>
Net income (loss) per share	<u>\$ 1.86</u>	<u>\$ (4.50)</u>	<u>\$ (5.72)</u>

See notes to consolidated financial statements.

SeaWorld Entertainment, Inc. and Subsidiaries
Consolidated Statements of Changes in Stockholders' Equity
for the Years Ended December 31, 2011 and 2010
and for the One Month Period Ended December 31, 2009
(In thousands, except share amounts)

	Shares of Common Stock	Common Stock	Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
Balance—December 1, 2009	—	—	—	—	—
Issuance of common stock	10,100,000	\$ 101	\$1,009,899	—	\$1,010,000
Contributed capital—purchase price (Note 4)	—	—	\$ 38,000	—	38,000
Contributed capital—issuance of warrants (Note 11)	—	—	\$ 5,000	—	5,000
Net loss	—	—	—	\$ (57,741)	(57,741)
Balance—December 31, 2009	10,100,000	101	1,052,899	(57,741)	995,259
Net loss	—	—	—	(45,464)	(45,464)
Balance—December 31, 2010	10,100,000	101	1,052,899	(103,205)	949,795
Issuance of common stock	130,240	2	12,834	—	12,836
Equity-based compensation	72,111	—	823	—	823
Dividend declared to stockholders	—	—	(110,100)	—	(110,100)
Net income	—	—	—	19,113	19,113
Balance—December 31, 2011	<u>10,302,351</u>	<u>\$ 103</u>	<u>\$ 956,456</u>	<u>\$ (84,092)</u>	<u>\$ 872,467</u>

See notes to consolidated financial statements.

SeaWorld Entertainment, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
for the Years Ended December 31, 2011 and 2010 and the One Month Period Ended December 31, 2009
(In thousands)

	2011	2010	One Month Period Ended December 31, 2009
Cash Flows From Operating Activities:			
Net income (loss)	\$ 19,113	\$ (45,464)	\$ (57,741)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	213,592	220,695	17,973
Amortization of debt issuance costs and discounts	18,446	20,814	1,706
Loss on disposal of property and equipment	11,346	9,060	—
Deferred income tax provision (benefit)	12,197	(29,241)	(35,664)
Equity-based compensation	823	—	—
Changes in assets and liabilities:			
Accounts receivable	11,574	14,710	3,244
Inventories	(4,089)	2,372	(37)
Prepaid expenses and other current assets	(3,711)	1,038	(11,082)
Accounts payable	(6,223)	(26,684)	35,115
Accrued salaries and wages	6,514	14,778	3,232
Deferred revenue	(13,983)	21,057	78
Other accrued expenses	1,186	(5,879)	10,551
Other assets and liabilities	1,464	5,025	761
Net cash provided by (used in) operating activities	<u>268,249</u>	<u>202,281</u>	<u>(31,864)</u>
Cash Flows From Investing Activities:			
Purchase of Busch Entertainment LLC, net of cash acquired	—	—	(2,282,351)
Capital expenditures	(225,316)	(120,196)	(3,149)
Net cash used in investing activities	<u>(225,316)</u>	<u>(120,196)</u>	<u>(2,285,500)</u>
Cash Flows From Financing Activities:			
Repayment of long-term debt	(586,248)	(20,500)	—
Proceeds from the issuance of long-term debt	550,291	—	1,426,050
Net proceeds from issuance of common stock	12,836	—	1,010,000
Draw on revolving credit facility	36,000	—	—
Dividend paid to stockholders	(106,920)	—	—
Debt issuance costs	(5,926)	—	(56,574)
Net cash (used in) provided by financing activities	<u>(99,967)</u>	<u>(20,500)</u>	<u>2,379,476</u>
Change in Cash and Cash Equivalents	<u>(57,034)</u>	<u>61,585</u>	<u>62,112</u>
Cash and Cash Equivalents—Beginning of year	<u>123,697</u>	<u>62,112</u>	<u>—</u>
Cash and Cash Equivalents—End of year	<u>\$ 66,663</u>	<u>\$ 123,697</u>	<u>\$ 62,112</u>
Supplemental Disclosures of Noncash Investing and Financing Activities:			
Warrants and original issuance discounts issued in conjunction with the Senior Notes	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 38,950</u>
Contributed capital	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 38,000</u>
Dividends declared, but unpaid	<u>\$ 3,180</u>	<u>\$ —</u>	<u>\$ —</u>
Capital expenditures in accounts payable	<u>\$ 28,441</u>	<u>\$ 24,872</u>	<u>\$ 7,758</u>
Debt financing fees in accounts payable	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 6,007</u>

See notes to consolidated financial statements.

SEAWORLD ENTERTAINMENT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
AS OF AND FOR THE YEARS ENDED DECEMBER 31, 2011 AND DECEMBER 31, 2010, AND THE
ONE MONTH PERIOD ENDED DECEMBER 31, 2009
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

1. DESCRIPTION OF THE BUSINESS

SeaWorld Entertainment, Inc. (f/k/a SW Holdco, Inc.) through its wholly-owned subsidiary SeaWorld Parks & Entertainment, Inc. ("SEA") (collectively, the "Company"), owns and operates ten theme parks within the United States. The Company is owned by ten limited partnerships (the "Partnerships"), owned by affiliates of The Blackstone Group L.P. ("Blackstone") and certain co-investors.

Prior to December 1, 2009, the Company did not have any operations. On December 1, 2009, the Company acquired all of the outstanding equity interests of Busch Entertainment LLC and affiliates (the "Predecessor") from Anheuser-Busch Companies, Inc. and Anheuser-Busch InBev SA/NV ("A-B/InBev"). See Note 4.

The Company operates SeaWorld theme parks in Orlando, Florida; San Antonio, Texas; and San Diego, California, and Busch Gardens theme parks in Tampa, Florida, and Williamsburg, Virginia. The Company operates water park attractions in Orlando, Florida (Aquatica); Tampa, Florida (Adventure Island), and Williamsburg, Virginia (Water Country USA). The Company also operates a reservations-only attraction offering interaction with marine animals (Discovery Cove) and a seasonal park in Langhorne, Pennsylvania (Sesame Place).

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Principles of Consolidation —The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The consolidated financial statements include the accounts of the Company beginning with the commencement of operations on December 1, 2009, as described in Note 1. All intercompany accounts have been eliminated in consolidation.

Use of Estimates —The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of certain assets and liabilities, revenues and expenses, and disclosure of contingencies during the reporting period. Significant estimates and assumptions include the accounting for self-insurance, deferred tax assets, deferred revenue, and valuation of goodwill and other indefinite-lived intangible assets. Actual results could differ from those estimates.

Cash and Cash Equivalents —Cash and cash equivalents include cash held at financial institutions as well as operating cash on-site at each theme park to fund daily operations and amounts due from third-party credit card companies. The cash balances in non-interest bearing accounts held at financial institutions are fully insured by the Federal Deposit Insurance Corporation ("FDIC") through December 31, 2012. Interest bearing accounts are insured up to \$250. At times, cash balances may exceed federally insured amounts and potentially subject the Company to a concentration of credit risk. Management believes that no significant concentration of credit risk exists with respect to these cash balances because of its assessment of the creditworthiness and financial viability of the respective financial institutions.

Accounts Receivable — Net —Accounts receivable are reported at net realizable value and consist primarily of amounts due from customers for the sale of admission products. The Company is not exposed to a significant concentration of credit risk. The Company does record an allowance for

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estimated uncollectible receivables, based on the amount and status of past-due accounts, contractual terms of the receivables, and the Company's history of uncollectible accounts. For all periods presented, the allowance for uncollectible accounts and the related provision were insignificant.

Inventories —Inventories are stated at the lower of cost or market value with the cost being determined by the weighted average cost method. Inventories consist primarily of products for resale, including merchandise, culinary items, and miscellaneous supplies. Obsolete or excess inventories are recorded at their estimated realizable value.

Property and Equipment — Net —Property and equipment are recorded at cost; the cost of routine maintenance, repairs, spare parts and minor renewals is expensed as incurred. Internal development costs associated with rides and equipment are capitalized after feasibility studies have been completed and substantially all product development is complete. The cost of the assets is depreciated using the straight-line method based on the following estimated useful lives:

Land improvements	10–40 years
Buildings	5–40 years
Rides and equipment	3–15 years
Animals	1–40 years

Material costs to purchase animals exhibited in the theme parks are capitalized and amortized over their estimated remaining productive lives (1-40 years). In-house animal breeding costs are expensed as they are incurred since they are insignificant to the consolidated financial statements. All costs (including training) to maintain the animals after they are placed into service at the parks are expensed as incurred.

Construction in process assets consist primarily of rides and other attractions that are under construction and have not yet been placed in service. These assets are stated at cost and are not depreciated. Once construction of assets is completed and the assets are placed into service, assets are reclassified to the appropriate asset class based on their nature and depreciated in accordance with the useful lives above. Interest is capitalized on major construction projects. Total interest capitalized for the years ended December 31, 2011 and 2010, was \$5,600 and \$2,394, respectively.

Computer System Development Costs —The Company capitalizes computer system development costs that meet established criteria and amortizes those costs to expense on a straight-line basis over five years. The capitalized costs related to the computer system development costs were \$2,009 and \$661 for the years ended December 31, 2011 and 2010, respectively, and are recorded in other assets in the accompanying consolidated balance sheets. Computer system development costs not meeting the proper criteria for capitalization, including systems reengineering costs, are expensed as incurred.

Impairment of Long-Lived Assets —All long-lived assets are reviewed for impairment upon the occurrence of events or changes in circumstances that would indicate that the carrying value of the assets may not be recoverable. An impairment loss may be recognized when estimated undiscounted future cash flows expected to result from the use of the asset, including disposition, are less than the carrying value of the asset.

The measurement of the impairment loss to be recognized is based upon the difference between the fair value and the carrying amounts of the assets. Fair value is generally determined based upon a discounted cash flow analysis. In order to determine if an asset has been impaired, assets are grouped and tested at the lowest level for which identifiable independent cash flows are available (generally a theme park). No impairment losses were recognized during the years ended December 31, 2011 and 2010, and the one month period ended December 31, 2009.

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Goodwill and Indefinite-Lived Intangible Assets —Goodwill and indefinite-lived intangible assets are not amortized, but instead reviewed for impairment at least annually on December 1, with ongoing recoverability based on applicable reporting unit performance and consideration of significant events or changes in the overall business environment.

The following description of the Company's policy and process for assessing goodwill for possible impairment reflects the adoption of Accounting Standards Update (ASU) 2011-08 in 2011. Prior to 2011, the Company performed the quantitative two-step process further described below.

In assessing goodwill for impairment, we initially evaluate qualitative factors to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying amount. We consider several factors, including macroeconomic conditions, industry and market conditions, overall financial performance of the reporting unit, changes in management, strategy or customers, and relevant reporting unit specific events such as a change in the carrying amount of net assets, a more-likely-than-not expectation of selling or disposing all, or a portion, of a reporting unit, and the testing for recoverability of a significant asset group within a reporting unit. If this qualitative assessment results in a conclusion that it is more likely than not that the fair value of a reporting unit exceeds the carrying value, then no further testing is performed for that reporting unit.

If the qualitative assessment is not conclusive and it is necessary to calculate the fair value of a reporting unit, then the impairment analysis for goodwill is performed at the reporting unit level using a two-step approach. The first step is a comparison of the fair value of the reporting unit, determined using future cash flow analysis, to its recorded amount. If the recorded amount exceeds the fair value, the second step quantifies any impairment write-down by comparing the current implied value of goodwill to the recorded goodwill balance. The Company's indefinite-lived intangible assets consist of certain trade names which, after considering legal, regulatory, contractual, and other competitive and economic factors, are determined to have indefinite lives and are valued annually using the relief from royalty method. The Company performed its annual impairment test of goodwill and indefinite lived assets on December 1, 2011 and 2010, and found no impairments.

Other Intangible Assets —The Company's other intangible assets consist primarily of certain trade names, relationships with ticket resellers, and a favorable lease asset. These intangible assets are amortized on the straight-line basis over their estimated remaining lives.

Self-Insurance Reserves —Reserves are recorded for the estimated amounts of guest and employee claims and expenses incurred each period that are not covered by insurance. Reserves are established for both identified claims and incurred but not reported ("IBNR") claims. Such amounts are accrued for when claim amounts become probable and estimable. Reserves for identified claims are based upon our own historical claims experience and third-party estimates of settlement costs. Reserves for IBNR claims are based upon our own claims data history, as well as industry averages. All reserves are periodically reviewed for changes in facts and circumstances and adjustments are made as necessary.

Debt Financing Costs —Direct costs incurred in issuance of long-term debt are being amortized to interest expense using the effective interest method over the term of the related debt.

Revenue Recognition —The Company recognizes revenue upon admission into a park or when products are delivered to customers. For season passes and other multi-use admissions, deferred revenue is recorded and the related revenue is recognized over the terms of the admission product and its related use. Deferred revenue includes a current and long-term portion. At December 31, 2011 and 2010, long-term deferred revenue of \$8,109 and \$20,189, respectively, is included in other liabilities in the accompanying consolidated balance sheets.

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The Company has entered into agreements with certain external theme park, zoo, and other attraction operators to jointly market and sell admission products. These joint products allow admission to both a Company park and an external park, zoo or other attraction. The agreements with the external parks, specify the allocation of revenue to the Company from any jointly sold products. The Company's portion of revenue is deferred and recognized upon admission.

The Company barter theme park admission products for advertising, employee recognition awards, and various other services. The fair value of the admission products is recognized into revenue and related expense at the time of the exchange and approximates the fair value of the goods or services received. For the years ended December 31, 2011 and 2010, and the one month period ended December 31, 2009, \$19,734, \$17,149, and \$693, respectively, were included within admissions revenue and selling, general, and administrative expenses in the accompanying consolidated statements of operations and comprehensive income (loss) related to bartered ticket transactions.

Advertising and Promotional Costs —Advertising production costs are deferred and expensed the first time the advertisement is shown. Advertising and media costs are expensed as incurred and for the years ended December 31, 2011 and 2010, and the one month period ended December 31, 2009, totaled approximately \$113,300, \$122,600, and \$9,700, respectively, and are included in selling, general, and administrative expenses in the accompanying consolidated statements of operations and comprehensive income (loss).

Equity-Based Compensation —The Company measures the cost of employee services rendered in exchange for share-based compensation based upon the grant date fair market value. The cost is recognized over the requisite service period.

Income Taxes —Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date.

A valuation allowance is established for deferred tax assets when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Realization is dependent on generating future taxable income or the reversal of deferred tax liabilities during the periods in which those temporary differences become deductible.

The Company evaluates its tax positions by determining if it is more likely than not a tax position is sustainable upon examination, based upon the technical merits of the position, before any of the benefit is recorded for financial statement purposes. Previously recorded benefits that no longer meet the more-likely than not threshold are charged to earnings in the period that the determination is made. Interest and penalties accrued related to uncertain positions are charged to the provision/benefit for income taxes.

Fair Value Measurements —Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants.

An entity is permitted to measure certain financial assets and financial liabilities at fair value with changes in fair value recognized in earnings each period. The Company has not elected to use the fair value option for any of its financial assets and financial liabilities that are not already recorded at fair value. Carrying values of financial instruments classified as current assets and current liabilities approximate fair value, due to their short-term nature.

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A description of the Company's policies regarding fair value measurement is summarized below.

Fair Value Hierarchy —Fair value is determined for assets and liabilities, which are grouped according to a hierarchy, based upon significant levels of observable or unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. This hierarchy requires the use of observable market data when available. These two types of inputs have created the following fair value hierarchy:

Level 1 —Quoted prices for identical instruments in active markets.

Level 2 —Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.

Level 3 —Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Determination of Fair Value —The Company generally uses quoted market prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access to determine fair value, and classifies such items in Level 1. Fair values determined by Level 2 inputs utilize inputs other than quoted market prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted market prices in active markets for similar assets or liabilities, and inputs other than quoted market prices that are observable for the asset or liability. Level 3 inputs are unobservable inputs for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability. If quoted market prices are not available, fair value is based upon internally developed valuation techniques that use, where possible, current market-based or independently sourced market parameters, such as interest and currency rates, and the like. Assets or liabilities valued using such internally generated valuation techniques are classified according to the lowest level input or value driver that is significant to the valuation. Thus, an item may be classified in Level 3 even though there may be some significant inputs that are readily observable.

Segment Reporting —The Company maintains discrete financial information for each of its ten theme parks, which is used by the Chief Operating Decision Maker ("CODM"), identified as the Chief Executive Officer, as a basis for allocating resources. Each theme park has been identified as an operating segment and meets the criteria for aggregation due to similar economic characteristics. In addition, all of the theme parks provide similar products and services and share similar processes for delivering services. The theme parks have a high degree of similarity in the workforces and target the same consumer group. Accordingly, based on these economic and operational similarities and the way the CODM monitors the operations, the Company has concluded that its operating segments may be aggregated and that it has one reportable segment.

3. RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In May 2011, the Financial Accounting Standards Board ("FASB") issued guidance clarifying how to measure and disclose fair value. This guidance amends the application of the "highest and best use" concept to be used only in the measurement of fair value of nonfinancial assets, clarifies that the measurement of the fair value of equity-classified financial instruments should be performed from the perspective of a market participant who holds the instrument as an asset, clarifies that an entity that manages a group of financial assets and liabilities on the basis of its net risk exposure can measure those financial instruments on the basis of its net exposure to those risks, and clarifies when premiums and discounts should be taken into account when measuring fair value. The fair value disclosure requirements were also amended. This new guidance is effective for fiscal years and interim periods beginning after December 15, 2011. The Company does not expect the adoption of this guidance to have a material impact on its consolidated financial statements.

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In June 2011, the FASB issued guidance that revises the manner in which entities present comprehensive income in their financial statements. The guidance requires entities to report the components of comprehensive income in either a single, continuous statement or two separate but consecutive statements. In December 2011, the FASB issued guidance which defers certain requirements set forth in June 2011. These amendments were made to allow the FASB time to redeliberate whether to present on the face of the financial statements the effects of reclassifications out of accumulated other comprehensive income on the components of net income and other comprehensive income in all periods presented. Both sets of guidance are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 and are required to be applied retrospectively. The Company adopted this guidance on January 1, 2012 and accordingly applied the new guidance retrospectively. The Company had no components of comprehensive income in any of the periods presented.

In September 2011, the FASB issued guidance related to testing goodwill for impairment. Under the amended guidance, entities testing goodwill for impairment have the option of performing a qualitative assessment before calculating the fair value of the reporting units. If the entities determine, based on the qualitative assessment, that it is more likely than not an impairment has not occurred, no further quantitative testing is necessary. The guidance is effective for fiscal years beginning after December 15, 2011, with early adoption permitted. The Company early adopted the guidance and performed a qualitative assessment as its initial step for the 2011 annual review of goodwill impairment. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

In July 2012, the FASB issued new accounting guidance relating to impairment testing for indefinite-lived intangible assets. In accordance with this guidance, an entity has the option first to assess qualitative factors to determine whether events and circumstances indicate that it is more likely than not that an indefinite-lived intangible asset is impaired. If after such assessment an entity concludes that the indefinite-lived intangible asset is not impaired, then the entity is not required to take further action. However, if an entity concludes otherwise, then it is required to determine the fair value of the indefinite-lived intangible asset and perform the quantitative impairment test as required by existing standards. This guidance is effective for annual and interim impairment tests for fiscal years beginning after September 15, 2012 and early adoption is permitted. The Company is in the process of evaluating this guidance, which is not expected to have a material impact on its consolidated financial statements.

4. ACQUISITION OF BUSCH ENTERTAINMENT LLC AND AFFILIATES

On December 1, 2009, investment funds affiliated with Blackstone and certain co-investors, through SeaWorld Entertainment, Inc. and its wholly-owned subsidiary, SEA, acquired all of the outstanding equity interests of SeaWorld LLC and SeaWorld Parks & Entertainment LLC from Anheuser-Busch Companies, Inc. for approximately \$2,300,000. The acquisition (and its related expenses) was financed by a capital contribution from the Partnerships of \$1,010,000, and the issuance of \$1,460,000 in long-term debt, net of \$34,000 original issue discount (see Note 11).

In connection with the acquisition, Anheuser-Busch received from the Partnerships the right to receive, subject to certain conditions, distributions of up to \$400,000 under the terms of the Partnership agreements. Such right has been included in the purchase price and included in additional paid-in capital at their aggregate fair value of \$38,000 using a valuation technique referred to as a Monte Carlo simulation. The Monte Carlo simulation is based upon significant inputs that are not observable in the market. Key assumptions include the probability of a liquidation event, projected income before income taxes, amortization, depreciation, interest, and a discount rate of 16%. The estimated fair value of these instruments was measured on a nonrecurring basis as they were valued on the date of acquisition using significant unobservable (Level 3) inputs under the guidance for fair value measurements.

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Goodwill recognized in the acquisition, which is deductible for tax purposes, is attributed primarily to historical operating performance of the parks. Goodwill of \$269,332 and \$66,278 respectively, have been allocated to the SeaWorld Orlando and Discovery Cove theme parks and will be tested annually for impairment on December 1. There were no changes to the goodwill balance for the years ended December 31, 2011 or 2010.

5. EARNINGS PER SHARE

Earnings per share is computed as follows (in thousands, except per share data):

	Year Ended December 31, 2011			Year Ended December 31, 2010			One Month Period Ended December 31, 2009		
	Per Share			Per Share			Per Share		
	Net Income	Shares	Amount	Net Loss	Shares	Amount	Net Loss	Shares	Amount
Basic earnings per share	\$19,113	10,174	\$ 1.88	\$(45,464)	10,100	\$ (4.50)	\$(57,741)	10,100	\$ (5.72)
Effect of dilutive equity-based awards		79			—			—	
Diluted earnings per share	<u>\$19,113</u>	<u>10,253</u>	<u>\$ 1.86</u>	<u>\$(45,464)</u>	<u>10,100</u>	<u>\$ (4.50)</u>	<u>\$(57,741)</u>	<u>10,100</u>	<u>\$ (5.72)</u>

Basic earnings per share is computed by dividing net income by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is determined based on the dilutive effect of warrants and incentive units using the treasury stock method.

Warrants to purchase 101,000 shares (not in thousands) of the Company's common stock were outstanding at December 31, 2010 and 2009, but were not included in the computation of diluted earnings per share because the effect of exercising such warrants would be antidilutive.

6. INVENTORIES

Inventories as of December 31, 2011 and 2010, consist of the following:

	2011	2010
Merchandise	\$27,937	\$23,753
Food and beverage	4,461	4,555
Supplies	33	34
Total	<u>\$32,431</u>	<u>\$28,342</u>

7. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets at December 31, 2011 and 2010, consist of the following:

	2011	2010
Prepaid insurance	\$ 7,152	\$8,386
Prepaid marketing and advertising costs	3,365	1,275
Other	1,735	114
Total	<u>\$12,252</u>	<u>\$9,775</u>

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8. PROPERTY AND EQUIPMENT—NET

The components of property and equipment—net as of December 31, 2011 and 2010, consist of the following:

	<u>2011</u>	<u>2010</u>
Land	\$ 274,100	\$ 274,100
Land improvements	201,319	151,059
Buildings	418,318	395,758
Rides and equipment	977,233	899,246
Animals	161,144	164,063
Construction in process	140,770	76,474
Less accumulated depreciation	(425,006)	(217,911)
Total	<u>\$1,747,878</u>	<u>\$1,742,789</u>

Depreciation expense was approximately \$209,300, \$202,800, and \$17,700 for the years ended December 31, 2011 and 2010, and the one month period ended December 31, 2009, respectively.

9. TRADE NAMES AND OTHER INTANGIBLE ASSETS—NET

Trade names-net are comprised of the following at December 31, 2011:

	<u>Weighted Average Amortization Period</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Value</u>
Trade names—indefinite lives		\$ 157,000	\$	\$ 157,000
Trade names—definite lives	10 years	11,000	2,291	8,709
Total		<u>\$ 168,000</u>	<u>\$ 2,291</u>	<u>\$ 165,709</u>

Trade names-net are comprised of the following at December 31, 2010:

	<u>Weighted Average Amortization Period</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Value</u>
Trade names—indefinite lives		\$ 157,000	\$	\$ 157,000
Trade names—definite lives	10 years	11,000	1,192	9,808
Total		<u>\$ 168,000</u>	<u>\$ 1,192</u>	<u>\$ 166,808</u>

Other intangible assets-net at December 31, 2011, consist of the following:

	<u>Weighted Average Amortization Period</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Value</u>
Favorable lease asset	39 years	\$ 18,200	\$ 934	\$ 17,266
Reseller agreements	8.11 years	22,300	5,729	16,571
Total		<u>\$ 40,500</u>	<u>\$ 6,663</u>	<u>\$ 33,837</u>

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Other intangible assets-net at December 31, 2010, consist of the following:

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Net Carrying Value
Favorable lease asset	39 years	\$ 18,200	\$ 467	\$ 17,733
Reseller agreements	8.11 years	22,300	2,977	19,323
Total		<u>\$ 40,500</u>	<u>\$ 3,444</u>	<u>\$ 37,056</u>

Total amortization was approximately \$4,300 for the years ended December 31, 2011 and 2010, and \$321 for the one month period ended December 31, 2009. The total weighted average amortization period of all finite-lived intangibles is 19.4 years. Total expected amortization of the finite-lived intangible assets for the five succeeding years and thereafter is as follows:

Years Ending December 31	
2012	\$ 4,318
2013	4,318
2014	4,318
2015	4,318
2016	4,318
Thereafter	20,956
	<u>\$42,546</u>

10. OTHER ACCRUED EXPENSES

Other accrued expenses at December 31, 2011 and 2010, consist of the following:

	2011	2010
Accrued property taxes	\$1,644	\$1,720
Accrued interest	4,908	4,996
Other	1,847	497
Total	<u>\$8,399</u>	<u>\$7,213</u>

11. LONG-TERM DEBT

Long-term debt at December 31, 2011 and 2010, consists of the following:

	2011	2010
Term loan	\$ —	\$1,039,500
Term Loan A	159,500	—
Term Loan B	844,043	—
Revolving credit agreement	36,000	—
Senior Notes	400,000	400,000
	<u>1,439,543</u>	<u>1,439,500</u>
Less discounts	(21,656)	(28,971)
Less current maturities	(52,500)	(10,500)
Total long-term debt, net of current maturities	<u>\$1,365,387</u>	<u>\$1,400,029</u>

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In connection with the acquisition described in Note 4, on December 1, 2009, SEA both entered into senior secured credit facilities ("Senior Secured Credit Facilities") and issued senior notes (the "Senior Notes"):

Senior Secured Credit Facilities

Effective on February 17 and April 15, 2011, SEA entered into Amendments No. 1 and 2, respectively, of the Senior Secured Credit Facilities (collectively, the "Amendments"). As a result of Amendment No. 1, the original term loan was refinanced into two tranches of term loans, Term A Loans (original balance of \$150,000), and Term B Loans (original balance of \$900,000). As a result of Amendment No. 2, \$17,000 of Term Loan B was refinanced to Term Loan A. In addition, the revolving credit commitment availability under the Senior Secured Credit Facilities increased to \$172,500. The amended credit agreement was not deemed to be substantially different, as defined in the authoritative accounting guidance, from the original agreement. At December 31, 2011, following the Amendments, the Senior Secured Credit Facilities consist of:

- Tranche A Term Loans, balance of \$159,500, which will mature on February 17, 2016;
- Tranche B Term Loans, balance of \$844,043 in Tranche B Term Loans, which will mature on the earlier of (i) August 17, 2017 or (ii) the 91st day prior to the maturity of the Senior Notes, if more than \$50 million of debt with respect to the Senior Notes is outstanding as of such date; and
- Revolving Credit Facility, balance of \$36,000, which will mature on February 17, 2016.

Borrowings related to the Tranche A Term Loans and the revolving credit facility bear interest, at SEA's option, at a rate equal to a margin over either (a) a base rate determined by reference to the higher of (1) Bank of America's prime lending rate and (2) the federal funds effective rate plus 1/2 of 1% or (b) a LIBOR rate determined by reference to the British Bankers Association ("BBA") LIBOR rate for the interest period relevant to such borrowing. The margin for the Tranche A Term Loans is 1.75%, in the case of base rate loans, and 2.75%, in the case of LIBOR rate loans, subject to a step-down of 0.25% upon achievement of a secured leverage ratio less than or equal to 2.25 to 1.00. SEA selected the LIBOR rate at December 31, 2011, related to the Term A Term Loans and the revolving credit loans (interest rate of 3.046% and 2.99%, respectively).

Borrowings under the Tranche B Term Loans bear interest, at SEA's option, at a rate equal to a margin over either (a) a base rate determined by reference to the higher of (1) the Bank of America's prime lending rate and (2) the federal funds effective rate plus 1/2 of 1% or (b) a LIBOR rate determined by reference to the BBA LIBOR rate for the interest period relevant to such borrowing. The margin for the Tranche B Term Loans is 2.00%, in the case of base rate loans, and 3.00%, in the case of LIBOR rate loans, subject to a base rate floor of 2.00% and a LIBOR floor of 1.00%. SEA selected the LIBOR rate at December 31, 2011, related to the Term B Term Loans (interest rate of 4%).

The option selected and rate in effect at December 31, 2010, was the LIBOR rate (interest rate of 5.75% at December 31, 2010). Under the terms of the Senior Secured Credit Facilities at December 31, 2010, the LIBOR interest rate could be no lower than 5.75%.

SEA is required to repay installments on the term loans in quarterly installments equal to \$1,875 with respect to Tranche A Term Loans and 0.25% of the original principal balance with respect to Tranche B Term Loans, with the remaining amount payable on the applicable maturity date with respect to such term loans.

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In addition, the Senior Secured Credit Facilities, as amended, requires the Company to prepay outstanding term loans, subject to certain exceptions, in an amount equal to:

- 50% (which percentage will be reduced to 25% and 0%, as applicable, subject to SEA attaining certain total leverage ratios) of its annual excess cash flow, as defined;
- 100% of the net cash proceeds of all non-ordinary course asset sales or other dispositions of property by SEA and its restricted subsidiaries (including insurance and condemnation proceeds, subject to de minimis thresholds), if SEA does not reinvest those net cash proceeds in assets to be used in its business or to make certain other permitted investments (a) within 12 months of the receipt of such net cash proceeds or (b) if SEA commits to reinvest such net cash proceeds within 12 months of the receipt thereof, within 180 days of the date of such commitment; and
- 100% of the net proceeds of any incurrence of debt by SEA or any of its restricted subsidiaries, other than debt permitted to be incurred or issued under the Senior Secured Credit Facilities.

Notwithstanding any of the foregoing, each lender of term loans has the right to reject its pro rata share of mandatory prepayments described above, in which case SEA may retain the amounts so rejected. The foregoing mandatory prepayments will be applied pro rata to installments of term loans in direct order of maturity.

There were no mandatory prepayments during the year ended December 31, 2011 or 2010.

The obligations under the Senior Secured Credit Facilities are fully, unconditionally and irrevocably guaranteed by the Company, any subsidiary of the Company that directly or indirectly owns 100% of the issued and outstanding equity interests of SEA, and, subject to certain exceptions, each of SEA's existing and future material domestic wholly-owned subsidiaries. The Senior Secured Credit Facilities are collateralized by first priority or equivalent security interests, subject to certain exceptions, in (i) all the capital stock of, or other equity interests in, substantially all of our direct or indirect domestic subsidiaries and 65% of the capital stock of, or other equity interests in, any foreign subsidiaries and (ii) certain tangible and intangible assets of SEA and the Company. Certain financial, affirmative and negative covenants, including a maximum total net leverage ratio and minimum interest coverage ratio, are included in the Senior Secured Credit Facilities. If an event of default occurs, the lenders under the Senior Secured Credit Facilities will be entitled to take various actions, including the acceleration of amounts due under the Senior Secured Credit Facilities and all actions permitted to be taken by a secured creditor. SEA was in compliance with the covenants at December 31, 2011 and 2010.

Revolving credit available under the Senior Secured Credit Facilities as of December 31, 2011 and 2010, was \$124,707 and \$135,001, respectively. The revolving credit commitment includes up to \$20,000 in short-term loans (five days in duration) and up to \$50,000 in letters of credit. Any amounts borrowed under the short-term loans or as letters of credit reduce the total amount available under the revolving credit loan. All amounts outstanding under the revolving credit commitment are due on February 17, 2016, except for borrowings under the short-term loans, which are payable within five business days of the original borrowing.

Amounts outstanding at December 31, 2011, relating to the Revolving Credit Facility were \$36,000 at an interest rate of 2.99%. No amounts were outstanding at December 31, 2010.

As of December 31, 2011, the Company had approximately \$11.8 million of outstanding letters of credit.

Senior Notes

On December 1, 2009, SEA issued \$400.0 million of 13.5% Senior Notes due December 1, 2016. SEA can redeem the Senior Notes at any time and the Senior Notes are unsecured. Interest is paid semi-annually in arrears. Prior to December 1, 2012, the redemption price is 100% of the principal

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amount of the Senior Notes, plus an applicable premium, as defined. However, in the case of an equity offering prior to December 1, 2012, SEA may redeem up to 35% of the Senior Notes for 113.5% of the principal amount. The Senior Notes may be redeemed by the Company at 110%, 106.75%, 104.5%, and 102.25% of the principal balance beginning on December 1, 2012, 2013, 2014, and 2015, respectively. The terms were amended on March 30, 2012. (See Note 18). The Senior Notes were issued at a discount of \$80.72 per \$1 or a total of \$33,950. The discount is being amortized to interest expense using the weighted average interest method and the discount balance is \$18,144 and \$24,745 at December 31, 2011 and 2010, respectively. The obligations under the Senior Notes are guaranteed by the same entities as those that guarantee the Senior Secured Credit Facilities.

Cash paid for interest relating to the Senior Secured Credit Facilities and the Senior Notes discussed above was \$97,575 and \$121,239 during the years ended December 31, 2011 and 2010, respectively.

In connection with the issuance of the Senior Notes, the holders of the Senior Notes received warrants to purchase 101,000 (not in thousands) Partnerships units for \$100 (not in thousands) per unit. The Partnerships, in turn, received warrants to acquire 101,000 (not in thousands) shares of the Company's common stock. The total value of the warrants at December 1, 2009 was \$5,000 and was recorded by the Company as additional paid-in capital and a discount on the Senior Notes. The additional discount is being amortized to interest expense over the term of the Senior Notes. The unamortized discount at December 31, 2011 and 2010, of \$3,512 and \$4,226, respectively, is presented as a reduction of the carrying value of the Senior Notes in the accompanying consolidated financial statements. During 2011, all the warrants were exercised for cash in accordance with the underlying warrant agreement, the holders of the Senior Notes received 101,000 (not in thousands) limited partnership units of the Partnerships and the Company issued a total of 101,000 (not in thousands) shares of common stock to the Partnerships.

The Company has deferred \$62,500 in financing costs that were paid to issue the long-term debt. Deferred financing costs, net of accumulated amortization, were \$39,232 and \$44,437 as of December 31, 2011 and 2010, respectively, and are being amortized to interest expense using the effective interest method over the term of the Senior Notes and are included in other assets in the accompanying consolidated balance sheets. Financing costs paid to the creditors amounting to \$5,926 directly related to the Amendments noted above were recorded as deferred financing costs.

The fair value of the term loans at December 31, 2011, approximates their carrying value due to the variable nature of the underlying interest rates. The fair value of the Senior Notes approximates \$429,000 at December 31, 2011. The estimated fair value of the Senior Notes was computed using significant inputs that are not observable in the market including a discount rate of 12.5% and projected cash flows of the underlying Senior Notes.

Long-term debt at December 31, 2011, is repayable as follows, not including any possible prepayments described above:

<u>Years Ending</u> <u>December 31</u>	
2012	\$ 52,500
2013	16,500
2014	16,500
2015	16,500
2016	<u>1,337,543</u>
Total	<u>\$1,439,543</u>

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12. INCOME TAXES

For the years ended December 31, 2011, and 2010, and the one month period ended December 31, 2009, the provision for (benefit from) income taxes is comprised of the following:

	2011	2010	2009
Current income tax expense (benefit)			
Federal	\$ (70)	\$ —	\$ —
State	1,277	—	—
Foreign	24	—	—
Total current income tax provision	<u>1,231</u>	<u>—</u>	<u>—</u>
Deferred income tax provision (benefit):			
Federal	11,429	(24,074)	(31,089)
State	768	(5,167)	(4,575)
Total deferred income tax provision (benefit)	<u>12,197</u>	<u>(29,241)</u>	<u>(35,664)</u>
Total income tax provision (benefit)	<u>\$13,428</u>	<u>\$(29,241)</u>	<u>\$(35,664)</u>

The deferred income tax provision (benefit) represents the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Cash paid for income taxes totaled \$513, \$0, and \$0 for the years ended December 31, 2011 and 2010 and the one month period ended December 31, 2009, respectively.

The Company has determined that there are no positions currently taken that would rise to a level requiring an amount to be recorded or disclosed as an uncertain tax position. If such positions do arise, it is the Company's intent that any interest or penalty amount related to such positions will be recorded as a component of tax expense to the applicable period.

The components of deferred income tax assets and liabilities as of December 31, 2011 and 2010, are as follows:

	2011	2010
Deferred income tax assets:		
Acquisition costs	\$ 23,866	\$ 25,157
Net operating loss	197,241	152,319
Self-insurance	7,507	2,127
Deferred revenue	3,337	1,177
Other	2,477	1,614
Total deferred income tax assets	<u>234,428</u>	<u>182,394</u>
Deferred income tax liabilities:		
Property and equipment	(146,002)	(93,330)
Goodwill	(14,030)	(6,875)
Other	(12,301)	(7,898)
Total deferred income tax liabilities	<u>(172,333)</u>	<u>(108,103)</u>
Net deferred income tax assets	<u>\$ 62,095</u>	<u>\$ 74,291</u>

The Company has federal tax net operating loss carryforwards as of December 31, 2011, of approximately \$507,600. The net operating loss carryforwards, if not used to reduce taxable income in future periods, will begin to expire in 2029, for both state and federal tax purposes. Realization of the net deferred income tax assets is dependent upon generating sufficient taxable income prior to expiration of the loss carryforwards, which may include reversal of the other deferred income tax

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components. Although realization is not assured, management believes it is more likely than not that all of the deferred income tax assets will be realized. The Company files federal and state income tax returns in various jurisdictions with varying statute of limitation expiration dates. The 2009 through 2011 tax years generally remain subject to examination by tax authorities.

The reconciliation between the U.S. federal statutory income tax rate and the Company's effective income tax provision (benefit) rate for the years ended December 31, 2011 and 2010, and the one month period ended December 31, 2009, is as follows:

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Income tax rate at federal statutory rates	35.00%	35.00%	35.00%
State taxes, net of federal benefit	5.57	3.67	3.17
Other	0.69	0.47	—
Income tax rate	41.26%	39.14%	38.17%

13. COMMITMENTS AND CONTINGENCIES

At December 31, 2011, the Company has commitments under long-term operating leases requiring annual minimum lease payments as follows:

<u>Years Ending December 31</u>	
2012	\$ 13,393
2013	11,501
2014	10,399
2015	10,398
2016	9,637
Thereafter	302,216
Total	<u>\$357,544</u>

Rental expense was \$22,119, \$19,719, and \$1,332 for the years ended December 31, 2011 and 2010, and the one month period ended December 31, 2009, respectively.

The SeaWorld theme park in San Diego, California, leases the land for the theme park from the City of San Diego. The lease term is for 50 years ending on July 1, 2048. Lease payments are based upon gross revenue from the San Diego theme park subject to certain minimums. On January 1, 2011, the minimum annual rent payment was recalculated in accordance with the lease agreement and remained at \$9,600 and is included in the table above for all periods presented. This annual rent will remain in effect until January 1, 2014, at which time the next recalculation will be completed in accordance with the lease agreement.

Pursuant to license agreements with Sesame Workshop, the Company pays a specified annual license fee, as well as a specified royalty based on revenues earned in connection with sales of licensed products, all food and beverage items utilizing the licensed elements and any events utilizing such elements if a separate fee is paid for such event.

The Company has commenced construction of certain new theme park attractions and other projects under contracts with various third parties. At December 31, 2011, additional capital payments of approximately \$146,600 are necessary to complete these projects. These projects are expected to be completed during 2012 and 2013.

In addition, the Company is party to various claims and legal proceedings arising in the normal course of business. Matters where an unfavorable outcome to the Company is probable and which can

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be reasonably estimated are accrued. Such accruals, which are not material for any period presented, are based on information known about the matters, the Company's estimate of the outcomes of such matters, and the Company's experience in contesting, litigating, and settling similar matters. Matters that are considered reasonably possible to result in a material loss are not accrued for, but an estimate of the possible loss or range of loss is disclosed, if such amount or range can be determined. Management does not expect any known claims or legal proceedings to have a material adverse effect on the Company's consolidated financial position, results of operations, or cash flows.

14. RELATED-PARTY TRANSACTIONS

Certain affiliates of Blackstone provide monitoring, advisory, and consulting services to the Company under an advisory fee agreement. Fees related to these services, which are based upon a multiple of EBITDA, as defined in the advisory agreement, amounted to \$6,012, \$4,704, and \$290 for the years ended December 31, 2011 and 2010, and the one month period ended December 31, 2009, respectively, are included in selling, general, and administrative expenses in the accompanying consolidated statements of operations and other comprehensive income (loss). In connection with the advisory agreement, a termination fee calculated based on the terms of the agreement will be assessed if certain triggering events occur, including, but not limited to, an initial public offering.

The Company had an arrangement with another former Blackstone portfolio theme park company to sell admission tickets on a combined basis. The Company earned revenue of approximately \$7,400 (through June, 2011) and \$18,400 during the years ended December 31, 2011 and 2010, respectively under the combined ticket arrangement. Blackstone sold its interest in such theme park company in June 2011.

The Company entered into a transition services agreement ("TSA") with Anheuser-Busch Companies, Inc., effective December 1, 2009, to receive support in the areas of information technology, accounting, tax, human resources, and procurement. Services were provided for a term of six months. The services were at graduated rates that increased over the term and range from \$10 to \$190 per month, depending upon the type of service. Extensions were charged at the initial rates plus 33%. In addition, in February 2010, the Company elected to purchase certain one-time information technology support for \$624. As of December 31, 2010, the Company no longer received services under the TSA. Total cost under the TSA for the year ended December 31, 2010 and the one month period ended December 31, 2009, was \$4,860 and \$700, respectively, and is included in selling, general, and administrative expenses in the accompanying consolidated statements of operations and other comprehensive income (loss).

15. RETIREMENT PLAN

The Company sponsors a defined contribution plan, under Section 401(k) of the Internal Revenue Code, that it established in March 2010. The plan is a qualified automatic contributions arrangement, which automatically enrolls employees, once eligible, unless they opt out. The Company makes matching cash contributions subject to certain restrictions, structured as a 100% match on the first 1% contributed by the employee and a 50% match on the next 5% contributed by the employee. Employer-matching contributions for the year ended December 31, 2011 and 2010 totaled \$7,345 and \$6,165, respectively.

16. EQUITY-BASED COMPENSATION

In 2011, the Partnerships granted employee units to certain key employees of SEA. Upon vesting of the employee units, the Company issues the corresponding number of shares of common stock of the Company to the Partnerships.

The total number of employee units granted, (which are accounted for as equity awards) was 657,910 and they were divided into three equal tranches as follows:

Time-Vesting Units (TVUs)—One-third of the employee units (219,303) (not in thousands) granted vest over five years (20% per year). The vesting begins on the earlier of December 1, 2009, or the grant date. Vesting is contingent upon continued employment. In the event of a change of control (defined as a sale or disposition of the assets of the limited partnership to other than a Blackstone-affiliated group or, if any group other than a Blackstone-affiliated entity, becomes the general partner or the beneficial owner of more than 50% interest), the employee units immediately 100% vest. The TVUs were recorded at the fair market value at the date of grant and will be amortized to compensation expense over the vesting period. Total compensation expense related to the TVUs was \$823 for the year ended December 31, 2011, and is included in selling, general, and administrative expenses in the accompanying consolidated statement of operations and other comprehensive income (loss) and as contributed capital in the accompanying statement of stockholders' equity. The weighted-average grant date fair value of these grants was \$21.34 and the total intrinsic value of the grants was approximately \$4,700. Total unrecognized compensation cost related to the nonvested TVUs, expected to be recognized over the next four years, was approximately \$3,580 as of December 31, 2011.

The activity related to the TVUs for the year ended December 31, 2011, is as follows:

	Employee Units (not in thousands)	Weighted Average Fair Value	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding—January 1, 2011	—	\$ —		
Granted	219,303	21.34		
Forfeited	13,083	21.34		
Outstanding—December 31, 2011	<u>206,220</u>	21.34	35 months	\$4.4 million
Vested—December 31, 2011	72,111			

2.25x and 2.75x Performance Vesting Units (PVUs)—Two tranches of the employee units vest only if certain events occur. The 2.25x PVUs vest if the employee is employed by the Company when and if Blackstone receives cash proceeds (not subject to any clawback, indemnity or similar contractual obligation) in respect of its Partnerships units equal to (x) a 20% annualized effective compounded return rate on Blackstone's investment and (y) a 2.25x on Blackstone's investment. The 2.75x PVUs vest if the employee is employed by the Company when and if Blackstone receives cash proceeds (not subject to any clawback, indemnity or similar contractual obligation) in respect of its Partnerships units equal to (x) a 15% annualized effective compounded return rate on Blackstone's investment and (y) a 2.75x multiple on Blackstone's investment. The employee units have no termination date other than termination of employment from the Company. There are no service or period vesting conditions associated with the PVUs other than employment at the time the benchmark is reached. No compensation will be recorded related to these PVUs until their issuance is probable. There was no compensation expense recorded during 2011 for the PVUs. The 2.25x and the 2.75x PVUs had grant date fair values of \$12.65 and \$8.88, respectively. A total of 219,303 and 13,083 (not in thousands) were granted and forfeited, respectively, from each tranche during the year ended December 31, 2011,

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for a total of 206,220 (not in thousands) outstanding for each tranche. Total intrinsic value as of December 31, 2011, was approximately \$2,610 and \$1,800 for the 2.25x and the 2.75x PVUs, respectively. None of the PVUs were exercisable at December 31, 2011.

The fair value of each employee unit granted was estimated on the date of grant using a composite of the discounted cash flow model and the guideline public company approach to determine the underlying enterprise value. The discounted cash flow model is based upon significant inputs that are not observable in the market. Key assumptions include projected cash flows, a discount rate of 10.5%, and a terminal value. The guideline public company approach uses relevant public company valuation multiples to determine fair value. The value of the individual equity tranches was allocated based upon the Option-Pricing Method model. Significant assumptions include a holding period of 3.6 years, a risk free rate of 1.22%, volatility of approximately 49% and a discount for lack of marketability, depending upon the units, from 40% to 53%.

17. STOCKHOLDERS' EQUITY

In 2011, the Company sold 29,240 shares of common stock to the Partnership (not in thousands) for net cash consideration of \$2,736.

The Company declared a dividend in the amount of \$110,100 to common stockholders on September 29, 2011. The dividend was accounted for as a return of capital.

18. SUBSEQUENT EVENTS

In connection with the preparation of the consolidated financial statements, the Company evaluated subsequent events after the consolidated balance sheet date of December 31, 2011, through December 26, 2012, the date the consolidated financial statements were issued, to determine whether any events occurred that required recognition or disclosure in the accompanying consolidated financial statements. The Company believes the following events require disclosure:

On March 30, 2012, pursuant to an amendment to the indenture governing the Senior Notes, the interest rate was changed from 13.5% to 11.0%. Until December 1, 2014, and in the case of an Equity Offering (as defined in the indenture), SEA may redeem up to 35% of the Senior Notes at a price of 111% of the aggregate principal balance plus accrued interest using the net cash proceeds from an Equity Offering. Except in the case of an Equity Offering, prior to December 1, 2014, the Senior Notes may be redeemed at 100% of the outstanding principal balance plus the greater of 1% of the principal balance of the Senior Notes or the excess of the present value of the Senior Notes as of December 1, 2014 plus required interest and redemption rates using the Treasury Rate plus 50 basis points over the principal balance of the Senior Notes. On or after December 1, 2014, the Senior Notes may be redeemed at 105.5% and 102.75% of the principal balance beginning on December 1, 2014 and 2015, respectively.

On March 30, 2012, the Company amended the terms of its Senior Secured Credit Facilities and increased borrowings under Term Loan B by \$500,000. The Company used the proceeds from these borrowings to pay a dividend of the same amount to stockholders. The dividend of \$500,000 to stockholders was paid in March 2012.

On November 20, 2012, the Company acquired Knott's Soak City, a standalone Southern California water park, from an affiliate of Cedar Fair L.P. for \$15,000, of which approximately \$12,000 was paid at closing, and the remaining \$3,000 will be paid on or before September 1, 2013. The Company plans to rebrand this water park as Aquatica San Diego before it re-opens in 2013.

Schedule I—Registrant’s Condensed Financial Statements

Seaworld Entertainment, Inc.

Parent Company Only

Condensed Balance Sheets

as of December 31, 2011 and 2010

(In thousands, except share and per share amounts)

	2011	2010
Assets		
Current assets:		
Cash	\$ 3,180	\$ —
Total current assets	3,180	—
Investment in wholly owned subsidiary	872,467	949,795
Total assets	<u>\$875,647</u>	<u>\$ 949,795</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accrued liabilities	\$ 3,180	\$ —
Total current liabilities	3,180	—
Total liabilities	<u>3,180</u>	<u>—</u>
Commitments and contingencies		
Stockholders' equity:		
Common stock \$0.01 par value—authorized, 12,000,000 shares; issued and outstanding, 10,302,351 shares in 2011 and 10,100,000 shares in 2010	103	101
Additional paid-in capital	956,456	1,052,899
Accumulated deficit	<u>(84,092)</u>	<u>(103,205)</u>
Total stockholders' equity	<u>872,467</u>	<u>949,795</u>
Total liabilities and stockholders' equity	<u>\$875,647</u>	<u>\$ 949,795</u>

See accompanying notes to condensed financial statements.

Seaworld Entertainment, Inc.
Parent Company Only
Condensed Statements of Operations and Comprehensive Income (Loss)
for the Years Ended December 31, 2011 and 2010
and for the One Month Period Ended December 31, 2009
(In thousands)

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Equity in net income (loss) of subsidiary	\$19,113	\$(45,464)	\$(57,741)
Net income (loss)	19,113	(45,464)	(57,741)
Other comprehensive income (loss)	—	—	—
Comprehensive income (loss)	<u>\$19,113</u>	<u>\$(45,464)</u>	<u>\$(57,741)</u>

See accompanying notes to condensed financial statements.

Seaworld Entertainment, Inc.
Parent Company Only
Condensed Statements of Cash Flows
for the Years Ended December 31, 2011 and 2010
and for the One Month Period Ended December 31, 2009
(In thousands)

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Cash Flows From Operating Activities			
Net income (loss)	\$ 19,113	\$(45,464)	\$ (57,741)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Equity in net (income) loss of subsidiary	(19,113)	45,464	57,741
Net cash provided by (used in) operating activities	<u>—</u>	<u>—</u>	<u>—</u>
Cash Flows From Investing Activities			
Capital contributed to subsidiary	(2,736)	—	(1,010,000)
Dividend received from subsidiary (return of capital)	100,000	—	—
Net cash provided by (used in) investing activities	<u>97,264</u>	<u>—</u>	<u>(1,010,000)</u>
Cash Flows From Financing Activities			
Net proceeds from the issuance of common stock	12,836	—	1,010,000
Dividend paid to stockholders (return of capital)	(106,920)	—	—
Net cash provided by (used in) financing activities	<u>(94,084)</u>	<u>—</u>	<u>1,010,000</u>
Cash — Beginning of year	<u>—</u>	<u>—</u>	<u>—</u>
Change in cash	<u>3,180</u>	<u>—</u>	<u>—</u>
Cash — End of year	<u>\$ 3,180</u>	<u>\$ —</u>	<u>\$ —</u>
Supplemental Disclosure of Noncash Investing and Financing Activities			
Capital contributed to subsidiary	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 43,000</u>

See accompanying notes to condensed financial statements.

Notes to Condensed Parent Company Only Financial Statements

1. DESCRIPTION OF SEAWORLD ENTERTAINMENT, INC.

SeaWorld Entertainment, Inc. (the "Parent") was incorporated in Delaware on October 2, 2009 to effect the purchase of all the outstanding equity interests of Busch Entertainment LLC and affiliates from Anheuser-Busch Companies, Inc. The Parent has no operations or significant assets or liabilities other than its investment in SeaWorld & Parks Entertainment, Inc. ("SEA"). Accordingly, the Parent is dependent upon distributions from SEA to fund its obligations. However, under the terms of SEA's various debt agreements, SEA's ability to pay dividends or lend to the Parent is restricted, except that SEA may pay specified amounts to the Parent to fund the payment of the Company's tax obligations.

2. BASIS OF PRESENTATION

The accompanying condensed financial statements (parent company only) include the accounts of the Parent and its investment in SEA accounted for in accordance with the equity method, and do not present the financial statements of the Parent and its subsidiary on a consolidated basis. These parent company only financial statements should be read in conjunction with the SeaWorld Entertainment, Inc. consolidated financial statements.

3. ACQUISITION OF BUSCH ENTERTAINMENT LLC AND AFFILIATES

On December 1, 2009, Parent and its subsidiary acquired all of the outstanding equity interests of Busch Entertainment LLC and affiliates from Anheuser-Busch Companies, Inc. The acquisition was partially financed by a capital contribution to Parent of \$1,010,000. Upon receipt of the capital contribution, Parent contributed these funds to SEA as a \$1,010,000 capital contribution.

4. GUARANTEES

In connection with the business combination described in Note 3 above, on December 1, 2009, SEA entered into senior secured credit facilities (the "Senior Secured Credit Facilities") and issued senior notes (the "Senior Notes"). The Senior Secured Credit Facilities were amended on February 17, 2011 and April 15, 2011.

Under the terms of the Senior Secured Credit Facilities, the obligations of SEA are fully, unconditionally and irrevocably guaranteed by Parent, any subsidiary of Parent that directly or indirectly owns 100% of the issued and outstanding equity interest of SEA, and subject to certain exceptions, each of SEA's existing and future material domestic wholly-owned subsidiaries (collectively, the "Guarantors").

The obligations under the Senior Notes are guaranteed by the same Guarantors as under the Senior Secured Credit Facilities. In the event of a default under the Senior Notes, the principal and accrued interest would become immediately due and payable (subject to, in some cases, grace periods).

5. DIVIDENDS FROM SUBSIDIARIES

The Parent received a dividend in the amount of \$100,000 from SEA on September 29, 2011 which has been reflected as a return of capital in the accompanying condensed financial statements. On that same date, the Parent declared a dividend (defined as a restricted payment in the Senior Secured Credit Facilities) of \$110,100 to the Partnerships, of which \$106,920 was paid as of December 31, 2011. This dividend has also been reflected as a return of capital in the accompanying condensed financial statements.

SeaWorld Entertainment, Inc. and Subsidiaries
Unaudited Condensed Consolidated Balance Sheets
as of September 30, 2012 and December 31, 2011
(In thousands, except share and per share amounts)

	September 30,	December 31,
	<u>2012</u>	<u>2011</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 142,843	\$ 66,663
Accounts receivable, net	52,054	45,980
Inventories	36,646	32,431
Prepaid expenses and other current assets	8,761	12,252
Deferred tax assets, net	12,675	9,529
Total current assets	<u>252,979</u>	<u>166,855</u>
Property and equipment, at cost	2,309,917	2,172,884
Accumulated depreciation	(528,172)	(425,006)
Property and equipment, net	1,781,745	1,747,878
Goodwill	335,610	335,610
Trade names, net	164,883	165,709
Other intangible assets, net	31,424	33,837
Deferred tax assets, net	—	52,566
Other assets	44,599	44,640
Total	<u>\$2,611,240</u>	<u>\$2,547,095</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 134,491	\$ 104,915
Current maturities on long-term debt	21,330	52,500
Accrued salaries and wages	24,190	32,189
Deferred revenue	95,702	82,233
Other accrued expenses	28,560	8,399
Total current liabilities	<u>304,273</u>	<u>280,236</u>
Long-term debt	1,806,335	1,365,387
Other liabilities	42,222	29,005
Total liabilities	<u>2,152,830</u>	<u>1,674,628</u>
Stockholders' Equity:		
Common stock, \$0.01 par value—authorized, 12,000,000 shares; issued and outstanding, 10,310,266 shares in 2012 and 10,302,351 shares in 2011, respectively	103	103
Additional paid-in capital	457,328	956,456
Accumulated other comprehensive loss	(1,172)	—
Retained earnings (accumulated deficit)	2,151	(84,092)
Total stockholders' equity	<u>458,410</u>	<u>872,467</u>
Total	<u>\$2,611,240</u>	<u>\$2,547,095</u>

See notes to unaudited condensed consolidated financial statements.

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SeaWorld Entertainment, Inc. and Subsidiaries
Unaudited Condensed Consolidated Statements of Operations and Comprehensive Income (Loss)
for the Nine Months Ended September 30, 2012 and 2011
(In thousands, except per share amounts)

	For the Nine Months Ended September 30, 2012 and 2011	
	2012	2011
Net revenues:		
Admissions	\$ 715,842	\$ 666,097
Food, merchandise and other	444,737	412,637
Total revenues	1,160,579	1,078,734
Costs and expenses:		
Cost of food, merchandise and other revenues	99,109	89,736
Operating expenses	560,145	521,390
Selling, general and administrative	150,571	142,447
Depreciation and amortization	122,085	154,862
Total costs and expenses	931,910	908,435
Operating income	228,669	170,299
Other income (expense), net	2,110	(1,661)
Interest expense	86,263	83,960
Income before income taxes	144,516	84,678
Provision for income taxes	(58,273)	(34,719)
Net income	\$ 86,243	\$ 49,959
Other comprehensive loss		
Unrealized loss from cash flow hedging derivatives, net of tax	(1,172)	—
Other comprehensive loss	\$ (1,172)	\$ —
Comprehensive income	\$ 85,071	\$ 49,959
Basic earnings per share:		
Weighted average common shares outstanding	10,310	10,138
Net income per share	\$ 8.36	\$ 4.93
Diluted earnings per share:		
Weighted average common shares outstanding	10,413	10,205
Net income per share	\$ 8.28	\$ 4.90
Unaudited pro forma basic net income per common share (Note 3)	\$	
Unaudited pro forma diluted net income per common share (Note 3)	\$	

See notes to unaudited condensed consolidated financial statements.

SeaWorld Entertainment, Inc. and Subsidiaries
Unaudited Condensed Consolidated Statements of Changes in Stockholders' Equity
for the Nine Months Ended September 30, 2012 and the Year Ended December 31, 2011
(In thousands, except share amounts)

	Shares of Common Stock	Common Stock	Additional Paid-In Capital	Retained Earnings (Accumulated) Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
Balance at December 31, 2010	10,100,000	\$ 101	\$1,052,899	\$ (103,205)	\$ —	\$ 949,795
Issuance of common stock	130,240	2	12,834	—	—	12,836
Equity-based compensation	72,111	—	823	—	—	823
Dividend declared to stockholders	—	—	(110,100)	—	—	(110,100)
Net income	—	—	—	19,113	—	19,113
Balance at December 31, 2011	<u>10,302,351</u>	<u>\$ 103</u>	<u>\$ 956,456</u>	<u>\$ (84,092)</u>	<u>\$ —</u>	<u>\$ 872,467</u>
Equity-based compensation	7,915	—	872	—	—	872
Unrealized loss on derivatives, net of tax	—	—	—	—	(1,172)	(1,172)
Dividend declared to stockholders	—	—	(500,000)	—	—	(500,000)
Net income	—	—	—	86,243	—	86,243
Balance at September 30, 2012	<u>10,310,266</u>	<u>\$ 103</u>	<u>\$ 457,328</u>	<u>\$ 2,151</u>	<u>\$ (1,172)</u>	<u>\$ 458,410</u>

See notes to unaudited condensed consolidated financial statements.

SeaWorld Entertainment, Inc. and Subsidiaries
Unaudited Condensed Consolidated Statements of Cash Flows
for the Nine Months Ended September 30, 2012 and 2011
(In thousands)

	For the Nine Months Ended September 30, 2012 and 2011	
	2012	2011
Cash Flows From Operating Activities:		
Net income	\$ 86,243	\$ 49,959
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	122,085	154,862
Amortization of debt issuance costs and discounts	14,757	13,933
Loss on sale and disposal of property and equipment	6,139	1,799
Deferred income tax provision	58,273	34,719
Equity-based compensation	887	437
Changes in assets and liabilities:		
Accounts receivable	(8,053)	(1,619)
Inventories	(4,215)	(4,473)
Other current assets	3,491	5,007
Accounts payable	(8,238)	(17,452)
Accrued salaries and wages	(8,014)	(3,291)
Deferred revenue	16,131	11,725
Other accrued expenses	20,161	24,316
Other assets and liabilities	3,001	1,871
Net cash provided by operating activities	<u>302,648</u>	<u>271,793</u>
Cash Flows From Investing Activities:		
Capital expenditures	(154,976)	(163,551)
Net cash used in investing activities	<u>(154,976)</u>	<u>(163,551)</u>
Cash Flows From Financing Activities:		
Repayment of long-term debt	(52,451)	(582,123)
Proceeds from the issuance of debt	487,163	550,291
Repayment of revolving credit facility	(36,000)	—
Dividend paid to stockholders	(463,180)	(103,078)
Net proceeds from issuance of common stock	—	13,024
Debt issuance costs	(7,024)	(5,880)
Net cash used in financing activities	<u>(71,492)</u>	<u>(127,766)</u>
Change in Cash and Cash Equivalents	76,180	(19,524)
Cash and Cash Equivalents — Beginning of period	66,663	123,697
Cash and Cash Equivalents — End of period	<u>\$ 142,843</u>	<u>\$ 104,173</u>
Supplemental Disclosures of Noncash Investing and Financing Activities		
Capital expenditures in accounts payable	<u>\$ 28,496</u>	<u>\$ 29,543</u>
Dividends declared, but unpaid	<u>\$ 40,000</u>	<u>\$ 7,022</u>

See notes to unaudited condensed consolidated financial statements.

SEAWORLD ENTERTAINMENT, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

1. BASIS OF PRESENTATION

SeaWorld Entertainment, Inc. (f/k/a SW Holdco, Inc.), through SeaWorld Parks & Entertainment, Inc. ("SEA") (collectively, the "Company"), owns and operates ten theme parks within the United States. The Company is owned by ten limited partnerships (the "Partnerships"), ultimately controlled by affiliates of The Blackstone Group L.P. ("Blackstone") and certain co-investors.

The Company operates SeaWorld theme parks in Orlando, Florida; San Antonio, Texas; and San Diego, California, and Busch Gardens theme parks in Tampa, Florida, and Williamsburg, Virginia. The Company operates water park attractions in Orlando, Florida (Aquatica); Tampa, Florida (Adventure Island), and Williamsburg, Virginia (Water Country USA). The Company also operates a reservations-only attraction offering interaction with marine animals (Discovery Cove) and a seasonal park in Langhorne, Pennsylvania (Sesame Place).

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission (the "SEC") regarding interim financial reporting. Certain information and note disclosures normally included in annual financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Therefore, these unaudited condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes for the year ended December 31, 2011. The unaudited condensed consolidated balance sheet as of December 31, 2011 has been derived from the audited consolidated financial statements at that date.

The preparation of financial statements and related disclosures in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with the Company's customary accounting practices. In the opinion of management, such unaudited condensed consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial position, results of operations, and cash flows for the interim periods, but are not necessarily indicative of the results of operations for the full 2012 fiscal year or any future period due to the seasonal nature of the Company's operations.

The unaudited condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, including SEA. All intercompany accounts have been eliminated in consolidation.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

Significant Accounting Policies

Derivative Instruments and Hedging Activities

During fiscal year 2012, the Company entered into certain derivative transactions, as detailed in Note 7, and elected the related derivative instruments and hedging activities accounting policy described herein. Accounting Standards Codification Topic (“ASC”) 815, *Derivatives and Hedging*, provides the disclosure requirements for derivatives and hedging activities with the intent to provide users of financial statements with an enhanced understanding of: (a) how and why an entity uses derivative instruments, (b) how the entity accounts for derivative instruments and related hedged items, and (c) how derivative instruments and related hedged items affect an entity’s financial position, results of operations and cash flows. Further, qualitative disclosures are required that explain the Company’s objectives and strategies for using derivatives, as well as quantitative disclosures about the fair value of, and gains and losses on, derivative instruments, and disclosures about credit-risk-related contingent features in derivative instruments.

As required by ASC 815, the Company records all derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Derivatives designated and qualifying as a hedge of the exposure to changes in the fair value of an asset, liability, or firm commitment attributable to a particular risk, such as interest rate risk, are considered fair value hedges. Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges. Hedge accounting generally provides for the matching of the timing of gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the hedged risk in a fair value hedge or the earnings effect of the hedged forecasted transactions in a cash flow hedge. The Company may enter into derivative contracts that are intended to economically hedge certain of its risk, even though hedge accounting does not apply or the Company elects not to apply hedge accounting.

Fair Value Measurements

Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Carrying values of financial instruments classified as current assets and current liabilities approximate fair value, due to their short-term nature.

An entity is permitted to measure certain financial assets and financial liabilities at fair value with changes in fair value recognized in earnings each period. The Company has not elected to use the fair value option for any of its financial assets and financial liabilities that are not already recorded at fair value.

A description of the Company’s policies regarding fair value measurement is summarized below.

Fair Value Hierarchy —Fair value is determined for assets and liabilities, which are grouped according to a hierarchy, based upon significant levels of observable or unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company’s market assumptions. This hierarchy requires the use of observable market data when available. These two types of inputs have created the following fair value hierarchy:

Level 1 —Quoted prices for identical instruments in active markets.

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Level 2—Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.

Level 3—Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Determination of Fair Value—The Company generally uses quoted market prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access to determine fair value, and classifies such items in Level 1. Fair values determined by Level 2 inputs utilize inputs other than quoted market prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted market prices in active markets for similar assets or liabilities, and inputs other than quoted market prices that are observable for the asset or liability. Level 3 inputs are unobservable inputs for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability. If quoted market prices are not available, fair value is based upon internally developed valuation techniques that use, where possible, current market-based or independently sourced market parameters, such as interest and currency rates, and the like. Assets or liabilities valued using such internally generated valuation techniques are classified according to the lowest level input or value driver that is significant to the valuation. Thus, an item may be classified in Level 3 even though there may be some significant inputs that are readily observable.

Segment Reporting—The Company maintains discrete financial information for each of its ten theme parks which is used by the Chief Operating Decision Maker (“CODM”), identified as the Chief Executive Officer, as a basis for allocating resources. Each theme park has been identified as an operating segment and meets the criteria for aggregation due to similar economic characteristics. In addition, all of the theme parks provide similar products and services and share similar processes for delivering services. The theme parks have a high degree of similarity in the workforces and target the same consumer group. Accordingly, based on these economic and operational similarities and the way the CODM monitors the operations, the Company has concluded that its operating segments may be aggregated and that it has one reportable segment.

Recently Issued Accounting Pronouncements

In May 2011, the Financial Accounting Standards Board (“FASB”) issued guidance clarifying how to measure and disclose fair value. This guidance amends the application of the “highest and best use” concept to be used only in the measurement of fair value of nonfinancial assets, clarifies that the measurement of the fair value of equity-classified financial instruments should be performed from the perspective of a market participant who holds the instrument as an asset, clarifies that an entity that manages a group of financial assets and liabilities on the basis of its net risk exposure can measure those financial instruments on the basis of its net exposure to those risks, and clarifies when premiums and discounts should be taken into account when measuring fair value. The fair value disclosure requirements were also amended. This new guidance is effective for fiscal years and interim periods beginning after December 15, 2011. The Company adopted the amended guidance effective January 1, 2012 and it did not have a material effect on the unaudited condensed consolidated financial statements.

In June 2011, the FASB issued guidance that revises the manner in which entities present comprehensive income in their financial statements. The guidance requires entities to report the components of comprehensive income in either a single, continuous statement or two separate but consecutive statements. In December 2011, the FASB issued guidance which defers certain requirements set forth in June 2011. These amendments were made to allow the FASB time to redeliberate whether to present on the face of the financial statements the effects of reclassifications out of accumulated other comprehensive income on the components of net income and other

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comprehensive income in all periods presented. Both sets of guidance were effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 and are required to be applied retrospectively. The Company adopted this guidance on January 1, 2012 and such adoption only resulted in a change in how the Company presents the components of comprehensive income.

In July 2012, the FASB issued new accounting guidance relating to impairment testing for indefinite-lived intangible assets. In accordance with this guidance, an entity has the option first to assess qualitative factors to determine whether events and circumstances indicate that it is more likely than not that an indefinite-lived intangible asset is impaired. If after such assessment an entity concludes that the indefinite-lived intangible asset is not impaired, then the entity is not required to take further action. However, if an entity concludes otherwise, then it is required to determine the fair value of the indefinite-lived intangible asset and perform the quantitative impairment test as required by existing standards. This guidance is effective for annual and interim impairment tests for fiscal years beginning after September 15, 2012 and early adoption is permitted. The Company is in the process of evaluating this guidance, which is not expected to have a material impact on its consolidated financial statements.

3. EARNINGS PER SHARE

Earnings per share is computed as follows (in thousands, except per share data):

	Nine Months Ended September 30, 2012			Nine Months Ended September, 2011		
	Net Income	Shares	Per Share Amount	Net Income	Shares	Per Share Amount
Basic earnings per share	\$ 86,243	10,310	\$ 8.36	\$ 49,959	10,138	\$ 4.93
Effect of dilutive incentive-based awards		103			67	
Diluted earnings per share	\$ 86,243	10,413	\$ 8.28	\$ 49,959	10,205	\$ 4.90
Unaudited pro forma basic net income per common share	\$		\$			
Unaudited pro forma diluted net income per common share	\$		\$			

Basic earnings per share is computed by dividing net income by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is determined based on the dilutive effect of incentive units using the treasury stock method.

Unaudited pro forma net income per share was calculated using the number of shares that would be required to be sold at the initial public offering price to fund the \$500.0 million dividend declared in March 2012, less the net income for the period ended September 30, 2012.

4. INCOME TAXES

Income tax expense is recognized based on the Company's estimated annual effective tax rate which is based upon the tax rate expected for the full calendar year applied to the pre-tax income of the interim period. The Company's consolidated effective tax rate for the nine months ended September 30, 2012 and 2011 was 40.32% and 41.0%, respectively, and differs from the statutory federal income tax rate primarily due to state income taxes.

The Company has determined that there are no positions currently taken that would rise to a level requiring an amount to be recorded or disclosed as an uncertain tax position. If such positions do arise, it is the Company's intent that any interest or penalty amount related to such positions will be recorded as a component of tax expense to the applicable period.

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5. OTHER ACCRUED EXPENSES

Other accrued expenses at September 30, 2012 and December 31, 2011, consist of the following:

	September 30,	December 31,
	2012	2011
Accrued property taxes	\$ 10,940	\$ 1,644
Accrued interest	15,210	4,908
Other	2,410	1,847
Total	<u>\$ 28,560</u>	<u>\$ 8,399</u>

6. LONG-TERM DEBT

Long-term debt as of September 30, 2012 and December 31, 2011 consists of the following:

	September 30,	December 31,
	2012	2011
Term Loan A	\$ 153,875	\$ 159,500
Term Loan B	1,297,128	844,043
Revolving credit agreement	—	36,000
Senior Notes	400,000	400,000
	<u>1,851,003</u>	<u>1,439,543</u>
Less discounts	(23,338)	(21,656)
Less current maturities	(21,330)	(52,500)
Total long-term debt, net of current maturities	<u>\$ 1,806,335</u>	<u>\$ 1,365,387</u>

Effective on March 30, 2012, SEA entered into Amendment No. 3 to the senior secured credit facilities (the "Senior Secured Credit Facilities") to increase the amount of Term B Loans ("Additional Term B Loans") by \$500,000 for the purposes of financing a dividend payment to the stockholders in the same amount. The Additional Term B loans were issued at a discount of \$6,245. The discount is being amortized to interest expense using the weighted average interest method. Borrowings under the Tranche B Term Loans bear interest, at SEA's option, at a rate equal to a margin over either (a) a base rate determined by reference to the higher of (1) the Bank of America's prime lending rate and (2) the federal funds effective rate plus 1/2 of 1% or (b) a LIBOR rate determined by reference to the British Bankers Association ("BBA") LIBOR rate for the interest period relevant to such borrowing. The margin for the Tranche B Term Loans is 2.00%, in the case of base rate loans, and 3.00%, in the case of LIBOR rate loans, subject to a base rate floor of 2.00% and a LIBOR floor of 1.00%. SEA selected the LIBOR rate at September 30, 2012, related to the Term B loans (interest rate of 4%).

The Additional Term B Loans mature on the earlier of August 17, 2017 or the 91st day prior to the maturity of any mezzanine debt with an aggregate principal amount greater than \$50,000.

In conjunction with the issuance of the Additional Term B loans and the Revised Indenture (as defined below), SEA deferred \$13,527 in financing costs.

In conjunction with the execution of Amendment No. 3 to the Senior Secured Credit Facilities, SEA also entered into the Second Supplemental Indenture (the "Revised Indenture") dated March 30, 2012 relating to the Senior Notes. Among other matters, the Revised Indenture granted waivers to allow SEA to issue the additional \$500,000 of Term B Loans to fund the dividend payment discussed above and decreased the interest rate on the Senior Notes from 13.5% per annum to 11% per annum. Until December 1, 2014, and in the case of an Equity Offering (as defined in the indenture), SEA may

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redeem up to 35% of the Senior Notes at a price of 111% of the aggregate principal balance plus accrued interest using the net cash proceeds from an Equity Offering. Except in the case of an Equity Offering, prior to December 1, 2014, the Senior Notes may be redeemed at 100% of the outstanding principal balance plus the greater of 1% of the principal balance of the Senior Notes or the excess of the present value of the notes as of December 1, 2014 plus required interest and redemption rates using the Treasury Rate plus 50 basis points over the principal balance of the Senior Notes. On or after December 1, 2014, the Senior Notes may be redeemed at 105.5% and 102.75% of the principal balance beginning on December 1, 2014 and 2015, respectively. The Revised Indenture also increased the minimum covenant leverage ratio from 2.75 to 1.00 to 3.0 to 1.0.

Additionally, on August 23, 2012, SEA executed two interest rate swap agreements to effectively fix the interest rate on \$550,000 of the Term B Loans. Each interest rate swap has a notional amount of \$275,000; matures on September 30, 2016, pays a fixed rate of interest of 1.247% per annum; receives a variable rate of interest based upon three month BBA LIBOR; and has interest settlement dates occurring on the last day of December, March, June and September through maturity. SEA has designated such interest rate swap agreements as qualifying cash flow hedge accounting relationships as further discussed in Note 7 below.

7. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

Risk Management Objective of Using Derivatives

The Company is exposed to certain risks arising from both its business operations and economic conditions. The Company principally manages its exposures to a wide variety of business and operational risks through management of its core business activities. The Company manages economic risks, including interest rate, liquidity, and credit risk primarily by managing the amount, sources, and duration of its debt funding and the use of derivative financial instruments. Specifically, the Company enters into derivative financial instruments to manage exposures that arise from business activities that result in the receipt or payment of future known and uncertain cash amounts, the value of which are determined by interest rates. The Company's derivative financial instruments are used to manage differences in the amount, timing, and duration of the Company's known or expected cash receipts and its known or expected cash payments principally related to the Company's borrowings.

As of September 30, 2012, the Company does not have any derivatives outstanding that are not designated in hedge accounting relationships. In addition, the Company did not have any material derivatives outstanding as of December 31, 2011.

As of September 30, 2012, the Company had approximately \$11.6 million of outstanding letters of credit.

Cash Flow Hedges of Interest Rate Risk

The Company's objectives in using interest rate derivatives are to add stability to interest expense and to manage its exposure to interest rate movements. To accomplish this objective, the Company primarily uses interest rate swaps as part of its interest rate risk management strategy. During the nine months ended September 30, 2012, such derivatives were used to hedge the variable cash flows associated with existing variable-rate debt. As of September 30, 2012, the Company had two outstanding interest rate derivatives with a combined notional of \$550,000 that were designated as cash flow hedges of interest rate risk.

The effective portion of changes in the fair value of derivatives designated and that qualify as cash flow hedges is recorded in accumulated other comprehensive income and is subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. The ineffective portion of the change in fair value of the derivatives is recognized directly in earnings. Amounts reported in accumulated other comprehensive income related to derivatives will be

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reclassified to interest expense as interest payments are made on the Company's variable-rate debt. During the next 12 months, the Company estimates that an additional \$1,360 will be reclassified as an increase to interest expense.

Tabular Disclosure of Fair Values of Derivative Instruments on the Balance Sheet

The table below presents the fair value of the Company's derivative financial instruments as well as their classification on the balance sheet as of September 30, 2012:

	Asset Derivatives As of September 30, 2012		Liability Derivatives As of September 30, 2012	
	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
Derivatives designated as hedging instruments:				
Interest rate swaps	Other assets	\$ —	Other liabilities	\$ 1,964
Total derivatives designated as hedging instruments		<u>\$ —</u>		<u>\$ 1,964</u>

Tabular Disclosure of the Effect of Derivative Instruments on the Statement of Comprehensive Income (Loss)

The table below presents the pre-tax effect of the Company's derivative financial instruments on the statement of comprehensive income (loss) for the nine months ended September 30, 2012:

	Nine months ended September 30, 2012
Derivatives in Cash Flow Hedging Relationships:	
Gain (loss) related to effective portion of derivatives recognized in accumulated other comprehensive income	\$ (1,964)
Gain (loss) related to effective portion of derivatives reclassified from accumulated other comprehensive income to interest expense	\$ (11)
Gain (loss) related to ineffective portion of derivatives recognized in other income (expense)	\$ —

Credit Risk-Related Contingent Features

The Company has agreements with each of its derivative counterparties that contain a provision where if the Company defaults on any of its indebtedness, including default where repayment of the indebtedness has not been accelerated by the lender, then the Company could also be declared in default on its derivative obligations.

As of September 30, 2012, the termination value of derivatives in a net liability position, which includes accrued interest but excludes any adjustment for nonperformance risk, related to these agreements was \$2,002. As of September 30, 2012, the Company has posted no collateral related to these agreements. If the Company had breached any of these provisions at September 30, 2012, it could have been required to settle its obligations under the agreements at their termination value of \$2,002.

8. FAIR VALUE MEASUREMENTS

Fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement is required to be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, fair value accounting standards establish a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

The Company has determined that the majority of the inputs used to value its derivative financial instruments using the income approach fall within Level 2 of the fair value hierarchy. The Company uses readily available market data to value its derivatives, such as interest rate curves and discount factors. ASC 820 also requires consideration of credit risk in the valuation. The Company uses a potential future exposure model to estimate this credit valuation adjustment ("CVA"). The inputs to the CVA are largely based on observable market data, with the exception of certain assumptions regarding credit worthiness which make the CVA a Level 3 input. Based on the magnitude of the CVA, it is not considered a significant input and the derivatives are classified as Level 2. Of the Company's long-term obligations, the Term A Loans and Term B Loans are classified in Level 2 of the fair value hierarchy. The fair value of the term loans as of September 30, 2012 approximates their carrying value due to the variable nature of the underlying interest rates and the frequent intervals at which such interest rates are reset. The Senior Notes are classified in Level 3 of the fair value hierarchy and have been valued using significant inputs that are not observable in the market including a discount rate of 10.83% and projected cash flows of the underlying Senior Notes. The Company does not have any assets measured at fair value as of September 30, 2012.

	Quoted Prices in Active Markets for Identical Assets and Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Balance at September 30, 2012
Liabilities:				
Long-term obligations(a)	—	\$1,451,003	\$ 412,581	\$ 1,863,584
Derivative financial instruments(b)	—	\$ 1,964	—	\$ 1,964

- (a) Reflected at carrying value in the unaudited condensed consolidated balance sheet as current maturities on long-term debt of \$21,330 and long-term debt of \$1,806,335. As of December 31, 2011, the carrying value and fair value of long-term obligations, including the current portion, was \$1,417,887 and \$1,468,543, respectively.
- (b) Reflected at fair value in the unaudited condensed consolidated balance sheet as other liabilities of \$1,964.

9. RELATED-PARTY TRANSACTIONS

Certain affiliates of Blackstone provide monitoring, advisory, and consulting services to the Company under an advisory fee agreement. Fees related to these services, which are based upon a multiple of EBITDA as defined in the advisory agreement, amounted to \$5,075 and \$4,948 for the nine months ended September 30, 2012 and 2011, respectively, are included in selling, general, and administrative expenses in the accompanying unaudited condensed consolidated statements of operations and other comprehensive income (loss).

In March 2012, the Company declared a \$500,000 dividend to its stockholders. The dividend was accounted for as a return of capital in the September 30, 2012 condensed consolidated balance sheet as the Company was in a net accumulated deficit position at the time that such dividends were declared.

10. SUBSEQUENT EVENTS

In connection with the preparation of the unaudited condensed consolidated financial statements, the Company evaluated subsequent events after the condensed consolidated balance sheet date of September 30, 2012, through December 26, 2012, the date the unaudited condensed consolidated financial statements were issued, to determine whether any events occurred that required recognition or disclosure in the accompanying unaudited condensed consolidated financial statements. The Company believes the following event requires disclosure:

On November 20, 2012, the Company acquired Knott's Soak City, a standalone Southern California water park, from an affiliate of Cedar Fair L.P. for \$15,000, of which approximately \$12,000 was paid at closing, and the remaining \$3,000 will be paid on or before September 1, 2013. The Company plans to rebrand this water park as Aquatica San Diego before it re-opens in 2013.

Shares

SeaWorld Entertainment, Inc.

Common Stock



Goldman, Sachs & Co.

J.P. Morgan

Citigroup

BofA Merrill Lynch

Barclays

Wells Fargo Securities

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the expenses payable by the Registrant expected to be incurred in connection with the issuance and distribution of common stock being registered hereby (other than underwriting discounts and commissions). All of such expenses are estimates, except for the Securities and Exchange Commission (the "SEC") registration fee, the Financial Industry Regulatory Authority Inc. ("FINRA") filing fee and stock exchange and listing fees.

SEC registration fee	\$ 13,640
FINRA filing fee	15,500
Stock exchange filing fee and listing fee	*
Printing fees and expenses	*
Legal fees and expenses	*
Registrar and transfer agent fees	*
Accounting fees and expenses	*
Miscellaneous expenses	*
Total	\$ *

* To be completed by amendment.

Item 14. Indemnification of Directors and Officers.

Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL") allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our amended and restated certificate of incorporation will provide for this limitation of liability. We will enter into indemnification agreements with our director nominees that provide for us to indemnify them to the fullest extent permitted by Delaware law.

Section 145 of the DGCL ("Section 145"), provides, among other things, that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify any persons who were or are a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the

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corporation's best interests, provided further that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses (including attorneys' fees) which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify such person under Section 145.

Our amended and restated bylaws will provide that we must indemnify and advance expenses to our directors and officers to the full extent authorized by the DGCL.

In connection with this offering, we intend to enter into indemnification agreements with each of our current directors and executive officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, any provision of our amended and restated certificate of incorporation, our amended and restated bylaws, agreement, vote of stockholders or disinterested directors or otherwise. Notwithstanding the foregoing, we shall not be obligated to indemnify a director or officer in respect of a proceeding (or part thereof) instituted by such director or officer, unless such proceeding (or part thereof) has been authorized by the Board of Directors pursuant to the applicable procedure outlined in the amended and restated bylaws.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held jointly and severally liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing his or her dissent to such actions to be entered in the books containing the minutes of the meetings of the Board of Directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

We expect to maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments that we may make to such directors and officers.

The underwriting agreement provides for indemnification by the underwriters of us and our officers and directors and the selling stockholders, and by us and the selling stockholders of the underwriters, for certain liabilities arising under the Securities Act or otherwise in connection with this offering.

Item 15. Recent Sales of Unregistered Securities.

Following the 2009 Transactions, the Registrant issued an aggregate of 242,126 shares of its common stock to the Partnerships for aggregate proceeds to the Registrant of approximately \$12.8 million. Such securities were issued in reliance on the exemption contained in Section 4(2) of the Securities Act as transactions by the issuer not involving a public offering. No underwriters were involved in any of these sales of securities.

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Item 16. Exhibits and Financial Statement Schedules.

(a) *Exhibits*. See the Exhibit Index immediately following the signature page hereto, which is incorporated by reference as if fully set forth herein.

(b) *Financial Statement Schedules*. Schedule I—Registrant's Condensed Financial Statements is included in the registration statement beginning on page F-24.

Item 17. Undertakings.

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

(2) The undersigned Registrant hereby undertakes that:

- (A) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (B) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Orlando, Florida, on December 26, 2012.

SeaWorld Entertainment, Inc.

By: /s/ J AMES A TCHISON
Name: James Atchison
Title: Chief Executive Officer and President

POWER OF ATTORNEY

The undersigned directors and officers of SeaWorld Entertainment, Inc. hereby constitute and appoint G. Anthony (Tony) Taylor, James M. Heaney and Paul B. Powers and each of them, any of whom may act without joinder of the other, the individual's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the person and in his or her name, place and stead, in any and all capacities, to sign this Registration Statement and any or all amendments, including post-effective amendments to the Registration Statement, including a prospectus or an amended prospectus therein and any Registration Statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act, and all other documents in connection therewith to be filed with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact as agents or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement and power of attorney have been signed by the following persons in the capacities indicated on December 26, 2012.

<u>Signature</u>	<u>Capacity</u>
<u> /s/ J AMES A TCHISON </u> James Atchison	Chief Executive Officer, President and Director (Principal Executive Officer)
<u> /s/ J AMES M. H EANEY </u> James M. Heaney	Chief Financial Officer (Principal Financial Officer)
<u> /s/ M ARC G. S WANSON </u> Marc G. Swanson	Chief Accounting Officer (Principal Accounting Officer)
<u> /s/ D AVID F. D'A LESSANDRO </u> David F. D'Alessandro	Director
<u> /s/ B RUCE M C E VOY </u> Bruce McEvoy	Director
<u> /s/ P ETER W ALLACE </u> Peter Wallace	Director

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement
3.1*	Form of Amended and Restated Certificate of Incorporation of SeaWorld Entertainment, Inc.
3.2*	Form of Amended and Restated Bylaws of SeaWorld Entertainment, Inc.
5.1*	Opinion of Simpson Thacher & Bartlett LLP
10.1	Indenture, dated as of December 1, 2009, among SW Acquisitions Co., Inc., the guarantors named therein and Wilmington Trust FSB, as trustee
10.2	First Supplemental Indenture, dated as of August 30, 2011, among SeaWorld Parks & Entertainment, Inc. (f/k/a SW Acquisitions Co., Inc.), the guarantors named therein and Wilmington Trust, National Association (as successor by merger to Wilmington Trust FSB), as trustee
10.3	Second Supplemental Indenture, dated as of March 30, 2012, among SeaWorld Parks & Entertainment, Inc. (f/k/a SW Acquisitions Co., Inc.), the guarantors named therein and Wilmington Trust, National Association (as successor by merger to Wilmington Trust FSB), as trustee
10.4	Third Supplemental Indenture, dated as of December 17, 2012, among SeaWorld Parks & Entertainment, Inc., (f/k/a SW Acquisitions Co., Inc.), the guarantors named therein and Wilmington Trust, National Association (as successor by merger to Wilmington Trust FSB), as trustee
10.5	Amendment No. 3, dated as of March 30, 2012, to the Credit Agreement, among SeaWorld Parks & Entertainment, Inc. (f/k/a SW Acquisitions Co., Inc.), the guarantors party thereto from time to time, Bank of America, N.A., as administrative agent, collateral agent, Letter of Credit issuer and swing line lender, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Bank of America, N.A., as joint lead arrangers, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Capital, Deutsche Bank Securities Inc., Goldman Sachs Lending Partners LLC, J.P. Morgan Securities LLC, Macquarie Capital (USA) Inc. and Mizuho Corporate Banks, Ltd. as joint bookrunners, Deutsche Bank Securities Inc. and Barclays Bank plc, as co-syndication agents, and the other agents and lenders from time to time party thereto (the amended and restated Credit Agreement is included as Exhibit A hereto)
10.6	Joinder Agreement, dated as of December 17, 2012, under the Credit Agreement, among SeaWorld of Texas Holdings, LLC, SeaWorld of Texas Management, LLC, SeaWorld of Texas Beverage, LLC and Bank of America, N.A., as administrative agent and collateral agent
10.7	Security Agreement, dated as of December 1, 2009, among SW Acquisitions Co., Inc., the other grantors named therein and Bank of America, N.A., as collateral agent
10.8	Supplement No. 1, dated as of December 17, 2012, to the Security Agreement among the grantors identified therein and Bank of America, N.A., as collateral agent
10.9	Pledge Agreement, dated as of December 1, 2009, between SeaWorld Entertainment, Inc. (f/k/a/SW Holdco, Inc.) and Bank of America, N.A., as collateral agent
10.10	Patent Security Agreement, dated as of December 1, 2009, by SeaWorld Parks & Entertainment (f/k/a Busch Entertainment LLC) in favor of Bank of America, N.A., as collateral agent
10.11	Trademark Security Agreement, dated as of December 1, 2009, by SeaWorld Parks & Entertainment (f/k/a Busch Entertainment LLC) in favor of Bank of America, N.A., as collateral agent

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<u>Exhibit No.</u>	<u>Description</u>
10.12	Trademark Security Agreement, dated as of December 1, 2009, by Sea World LLC in favor of Bank of America, N.A., as collateral agent
10.13	Copyright Security Agreement, dated as of December 1, 2009, by SeaWorld Parks & Entertainment (f/k/a Busch Entertainment LLC) in favor of Bank of America, N.A., as collateral agent
10.14	Copyright Security Agreement, dated as of December 1, 2009, by Sea World LLC in favor of Bank of America, N.A., as collateral agent
10.15*	Form of Support and Services Agreement
10.16*	Form of Stockholders Agreement
10.17*	Registration Rights Agreement, dated December 1, 2009, by and among SeaWorld Entertainment, Inc. (f/k/a SW Holdco, Inc.), SW Cayman L.P. and the equityholders named therein
10.18	Lease Amendment, dated January 9, 1978, by and between the City of San Diego and Sea World Inc.
10.19	Lease Amendment, dated March 6, 1979, by and between the City of San Diego and Sea World Inc.
10.20	Lease Amendment, dated December 12, 1983, by and between the City of San Diego and Sea World Inc.
10.21	Lease Amendment, dated June 24, 1985, by and between the City of San Diego and Sea World Inc.
10.22	Lease Amendment, dated September 22, 1986, by and between the City of San Diego and Sea World Inc.
10.23	Lease Amendment, dated June 29, 1998, by and between the City of San Diego and Sea World Inc.
10.24	Lease Amendment, dated July 9, 2002, by and between the City of San Diego and Sea World Inc.
10.25	Trademark License Agreement, dated December 1, 2009, by and between Anheuser-Busch Incorporated and Busch Entertainment LLC
10.26*	Amended and Restated Agreement, dated April 1, 1983, by and between SeaWorld Parks & Entertainment LLC (f/k/a SPI, Inc.) and Sesame Workshop (f/k/a Children's Television Workshop)
10.27*	Amendment, dated August 24, 2006, to the Amended and Restated Agreement, dated April 1, 1983, by and between SeaWorld Parks & Entertainment LLC (f/k/a SPI, Inc.) and Sesame Workshop (f/k/a Children's Television Workshop)
10.28*	License Agreement, dated August 24, 2006, by and between Sesame Workshop and SeaWorld Parks & Entertainment LLC (f/k/a Busch Entertainment Corporation)
10.29*	Change in Control Notification and Consent, dated October 6, 2009, pursuant to the license agreement, dated April 1, 1983, as amended on August 24, 2006, between SeaWorld Parks & Entertainment LLC (f/k/a Busch Entertainment Corporation) and Sesame Workshop
10.30*	Change in Control Notification and Consent, dated October 6, 2009, pursuant to the license agreement, dated August 24, 2006, between SeaWorld Parks & Entertainment LLC (f/k/a Busch Entertainment Corporation) and Sesame Workshop
10.31*†	Form of 2013 Omnibus Incentive Plan
10.32*	Form of Indemnification Agreement
21.1	List of Subsidiaries
23.1*	Consent of Simpson Thacher & Bartlett LLP (included in exhibit 5.1)

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<u>Exhibit No.</u>	<u>Description</u>
23.2	Consent of Deloitte & Touche LLP
24.1	Power of Attorney (included in the signature page to this Registration Statement)
*	To be filed by amendment.
†	Identifies exhibits that consist of a management contract or compensatory plan or arrangement.

INDENTURE

Dated as of December 1, 2009

Among

SW ACQUISITIONS CO., INC.

THE GUARANTORS NAMED ON THE SIGNATURE PAGES HERETO

and

WILMINGTON TRUST FSB
as Trustee

13 1/2% SENIOR NOTES DUE 2016

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INDENTURE, dated as of December 1, 2009, among SW ACQUISITIONS CO., INC., a Delaware corporation, as the Issuer (as defined herein), the Guarantors (as defined herein) listed on the signature pages hereto and WILMINGTON TRUST FSB, as Trustee.

WITNESSETH

WHEREAS, the Issuer has duly authorized the creation of an issue of \$400.0 million aggregate principal amount of 13¹/₂% Senior Notes due 2016 (the “Notes”); and

WHEREAS, the Issuer and each of the Guarantors has duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, each of the Issuer, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

“144A Global Note” means a Global Note substantially in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

“Acquired Indebtedness” means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging with or into or becoming a Restricted Subsidiary of such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Agent” means any Registrar or Paying Agent.

“Applicable Premium” means, with respect to any Note on any Redemption Date, the greater of:

(1) 1.0% of the principal amount of such Note; and

(2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Note at December 1, 2012 (each such redemption price being set forth in Section 3.07 hereof), plus (ii) all required interest payments due on such Note through December 1, 2012 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Note.

“ Applicable Procedures ” means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and/or Clear-stream that apply to such transfer or exchange.

“ Asset Sale ” means:

(1) the sale, conveyance, transfer or other disposition (including by way of a lease, assignment or otherwise), whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction) of the Issuer or any of its Restricted Subsidiaries (each referred to in this definition as a “disposition”); or

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary, whether in a single transaction or a series of related transactions (other than Disqualified Stock or Preferred Stock issued in compliance with Section 4.09 hereof);

in each case, other than:

(a) any disposition of Cash Equivalents or Investment Grade Securities or obsolete or worn out equipment or inventory in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale or no longer used in the ordinary course of business;

(b) the disposition of all or substantially all of the assets of the Issuer in a manner permitted pursuant to the provisions described under Section 5.01 hereof or any disposition that constitutes a Change of Control pursuant to this Indenture (other than pursuant to clause (4) of the definition thereof);

(c) the making of any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under Section 4.07 hereof;

(d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate fair market value of less than \$10.0 million;

(e) any (i) disposition of property or assets by the Issuer or a Restricted Subsidiary or (ii) issuance of securities by a Restricted Subsidiary of the Issuer, in each case, to the Issuer, any of its Wholly-Owned Restricted Subsidiaries or any Subsidiary Guarantor;

(f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Similar Business between the Issuer or any of its Restricted Subsidiaries and another Person with fair market value in an aggregate amount for all such exchanges from the Issue Date, together with the aggregate amount of all Permitted Asset Swaps from the Issue Date, not to exceed \$25.0 million;

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- (g) the loan, lease, assignment or sub-lease of any real or personal property (including plants, animals and related equipment and inventory) in the ordinary course of business or consistent with past practice prior to the Issue Date;
 - (h) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;
 - (i) the granting of Liens otherwise permitted under this Indenture or foreclosures, condemnations or similar actions with respect to assets;
 - (j) any financing transaction with respect to property built or acquired by the Issuer or any Restricted Subsidiary after the Issue Date, including Sale and Lease-Back Transactions and asset securitizations permitted by this Indenture;
 - (k) sales of accounts receivable, or participations therein, in connection with any Receivables Facility;
 - (l) the licensing and sub-licensing of intellectual property or other general intangibles in the ordinary course of business and consistent with past practice; and
 - (m) loans and leases of animals to third parties for the purposes of exhibition, storage or breeding, as the case may be, in each case in the ordinary course of business and consistent with past practices.

Notwithstanding anything to the contrary contained herein, (i) any sale or other disposition of all or any portion of the Split-Up Non-Cash Consideration, regardless of the amount involved except for transactions excluded as a result of the foregoing clauses (b), (c)(Permitted Investments only), (e), or (i), shall constitute an Asset Sale subject to the requirements of Section 4.10 hereof, and (ii) any dividend or distribution of all or any portion of the Split-Up Non-Cash Consideration in kind shall be (A) permitted only if otherwise permitted under Section 4.07 hereof, and (B) upon any such dividend or distribution, shall deemed to result, for purposes of Sections 4.10(b) through (e), in the receipt by the Issuer of Net Proceeds in the amount equal to the then fair market value (as determined in writing by an Independent Financial Advisor unless such Split-Up Non-Cash Consideration consists of publicly traded securities, in which case the fair market value thereof shall be equal to the closing price on the date of such dividend or distribution).

“Bankruptcy Law” means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

“Business Day” means each day which is not a Legal Holiday. “Capital Stock” means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Calculation Date” shall mean the date on which the event for which the calculation of the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable, shall occur.

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

“Cash Equivalents” means:

- (1) United States dollars;
- (2) (a) sterling, euro, or any national currency of any participating member state of the EMU; or
(b) such local currencies held by the Issuer or any Restricted Subsidiary from time to time in the ordinary course of business;
- (3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;
- (4) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than \$500.0 million in the case of U.S. banks and \$100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;
- (5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above;
- (6) commercial paper rated at least P-1 by Moody's or at least A-1 by S&P and in each case maturing within 24 months after the date of creation thereof;
- (7) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof;
- (8) investment funds investing 95% of their assets in securities of the types described in clauses (1) through (7) above;

(9) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P with maturities of 24 months or less from the date of acquisition;

(10) [reserved]; and

(11) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, provided that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

“Change of Control” means the occurrence of any of the following:

(1) the sale, conveyance, transfer or other disposition (including by way of a lease, assignment or otherwise), in one or a series of related transactions, of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person other than a Permitted Holder; or

(2) prior to a Qualified Public Offering to occur after the Issue Date, the Sponsor directly or indirectly sells or disposes of a number of shares of Capital Stock of Holdings (adjusted for stock splits, combinations, and comparable transactions) representing more than 50% of the total voting power or economic power of the Capital Stock of Holdings; or

(3) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more of (i) prior to the Initial Qualified Public Offering Date, the total voting power or economic power of the Capital Stock of the Issuer or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power and economic power of the Capital Stock of the Issuer or (ii) on or after the Initial Qualified Public Offering Date, the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Issuer; or

(4) the sale, conveyance, transfer or other disposition (including by way of a lease, assignment or otherwise), in one or a series of related transactions of all or substantially all of the assets of the SeaWorld Orlando (including by means of any Sale Lease-Back Transaction or an asset swap in respect thereof) to any Person other than to the Issuer or a Wholly-Owned Restricted Subsidiary of the Issuer.

“Change of Control Percentage” means (a) if a Change of Control occurs under clause (4) of the definition thereof and, after giving *pro forma* effect to such occurrence, the Consolidated Total

Leverage Ratio of the Issuer and its Restricted Subsidiaries exceeds 2.75 to 1.00, (x) 113.5%, if such occurrence takes place before December 1, 2012 or (y) the applicable percentage set forth in Section 3.07(d), if such occurrence takes place on or after December 1, 2012 and (b) if a Change of Control occurs (i) under clauses (1) through (3) of the definition thereof or (ii) under clause (4) of the definition thereof and, after giving *pro forma* effect to such occurrence, the Consolidated Total Leverage Ratio of the Issuer and its Restricted Subsidiaries is equal to or less than 2.75 to 1.00, 101%.

“Clearstream” means Clearstream Banking, Société Anonyme.

“Consolidated Depreciation and Amortization Expense” means with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees and capitalized fees related to any Receivables Facility (to the extent, and only to the extent, such fees are incurred in connection with such Receivables Facility), and amortization of intangible assets, including Capitalized Software Expenditures, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, (t) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, (g) any expensing of bridge, commitment and other financing fees and (h) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Receivables Facility; *plus*

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; less

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; provided, however, that, without duplication,

(1) any after-tax effect of any extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses (including relating to the Transaction to the extent incurred on or prior to the last day of the month ending immediately prior to the first anniversary of the Issue Date), severance, relocation costs and curtailments or modifications to

pension and post-retirement employee benefit plans and other restructuring costs (including any one-time information technology or other costs relating to the separation of the Issuer or its predecessor from Anheuser Busch InBev NV/SA as part of the Transaction, to the extent incurred on or prior to the last day of the month ending immediately prior to the second anniversary of the Issue Date) shall be excluded,

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(3) any after-tax effect of income (loss) from disposed, abandoned or discontinued operations and any net after-tax gains or losses on disposal of disposed, abandoned or discontinued operations shall be excluded,

(4) any after-tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions other than in the ordinary course of business, as determined in good faith by the Issuer, shall be excluded,

(5) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Issuer shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period,

(6) solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 4.07(a) hereof, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded if the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination wholly permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, provided that Consolidated Net Income of the Issuer will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) or Cash Equivalents to the Issuer or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(7) effects of adjustments (including the effects of such adjustments pushed down to the Issuer and its Restricted Subsidiaries) in the property and equipment, inventory and other intangible assets, deferred revenue and debt line items in such Person's consolidated financial statements pursuant to GAAP resulting from the application of purchase accounting in relation to the Transaction or any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(8) any after-tax effect of income (loss) from the early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

(9) any impairment charge or asset write-off, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(10) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights shall be excluded,

(11) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, disposition, recapitalization, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded,

(12) accruals and reserves that are established or adjusted within twelve months after the Issue Date that are so required to be established or adjusted as a result of the Transaction in accordance with GAAP or changes as a result of a modification of accounting policies shall be excluded; and

(13) following consummation of the Permitted SplitCo Exchange Transaction, the Net Income of SplitCo (or its parent in which the Issuer or its Restricted Subsidiaries own Capital Stock) shall be excluded; provided that Consolidated Net Income of the Issuer shall be increased by the amount (not exceeding the portion of the consolidated Net Income of SplitCo attributable to the Issuer's ownership of the Equity Interests of SplitCo) of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) by SplitCo to the Issuer or its Restricted Subsidiaries in respect of such period.

Notwithstanding the foregoing, for the purpose of Section 4.07(a) hereof only (other than clause (3)(d) of Section 4.07(a) hereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Issuer and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Issuer and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Issuer or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (3)(d) of Section 4.07(a) hereof.

“Consolidated Secured Leverage Ratio” means, with respect to any specified Person on any Calculation Date, the ratio, on a *pro forma* basis, of (1) the sum of the aggregate outstanding amount of Secured Indebtedness of such Person and its Restricted Subsidiaries plus the aggregate liquidation preference of all outstanding Disqualified Stock and Preferred Stock (except Disqualified Stock and Preferred Stock issued to the Issuer or a Restricted Subsidiary) of such Person and its Restricted Subsidiaries secured by a Lien, in each case, determined on a consolidated basis in accordance with GAAP as of the last day of the most fiscal quarter for which internal financial statements are available immediately preceding the Calculation Date, to (2) the EBITDA of such Person and its Restricted Subsidiaries for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the Calculation Date, in each case, with such *pro forma* adjustments to Secured Indebtedness and Disqualified Stock and Preferred Stock secured by a Lien and EBITDA as are consistent with the *pro forma* adjustment provisions set forth in the definition of “Consolidated Total Leverage Ratio.”

“Consolidated Total Leverage Ratio” means, with respect to any specified Person on any Calculation Date, the ratio, on a *pro forma* basis, of (1) the sum of the aggregate outstanding amount of Indebtedness of such Person and its Restricted Subsidiaries plus the aggregate liquidation preference of all outstanding Disqualified Stock and Preferred Stock (except Disqualified Stock and Preferred Stock

issued to the Issuer or a Restricted Subsidiary) of such Person and its Restricted Subsidiaries, in each case, determined on a consolidated basis in accordance with GAAP as of the last day of the most recent fiscal quarter for which internal financial statements are available immediately preceding the Calculation Date, to (2) the EBITDA of such Person and its Restricted Subsidiaries for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the Calculation Date.

For purposes of calculating the Consolidated Total Leverage Ratio:

(1) Specified Transactions or discontinued operations (determined in accordance with GAAP) that have been made by the specified Person or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such period and on or prior to or simultaneously with the Calculation Date shall be calculated on a pro forma basis assuming that all such Specified Transactions and discontinued operations had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary, or was merged or amalgamated with or into such Person or any of its Restricted Subsidiaries since the beginning of such period, shall have made any Specified Transactions or discontinued operations that would have required adjustment pursuant to this definition, then the Consolidated Total Leverage Ratio shall be calculated giving pro forma effect thereto for such period as if such Specified Transactions or discontinued operations had occurred on the first day of the four-quarter reference period;

(2) in the event that such Person or any Restricted Subsidiary incurs, assumes, guarantees, redeems, repays, retires or extinguishes any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes) or issues, redeems, repays or retires Disqualified Stock or Preferred Stock, in each case, subsequent to the end of the most recent fiscal quarter for which internal financial statements are available but on or prior to or simultaneously with the Calculation Date, then the Leverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness, or such issuance, redemption, repayment or retirement of Disqualified Stock or Preferred Stock, as if the same had occurred on the last day of such most recent fiscal quarter;

(3) whenever *pro forma* effect is to be given to any Specified Transactions, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of such Person. Any such *pro forma* calculation may include adjustments appropriate, in the reasonable determination of the Issuer as set forth in an Officer's Certificate, to reflect cost savings reasonably expected to result from any Specified Transactions; *provided* that (x) such cost savings are reasonably identifiable and factually supportable and are reasonably expected to be realized within 12 months of the consummation of the Specified Transaction, and (y) the aggregate amount of such cost savings added pursuant to this clause (3) with respect to all Specified Transactions, shall not exceed (when taken together with any amounts included in EBITDA pursuant to clause (j) of the definition of EBITDA) an amount equal to 10% of EBITDA of the Issuer and its Restricted Subsidiaries determined on a *pro forma* basis (but without giving effect to any adjustments pursuant to this clause (3) and clause (j) of the definition of EBITDA) for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the Calculation Date;

(4) the amount of Indebtedness under any revolving credit facility shall be computed based upon the average balance of such Indebtedness at the end of each month during such four-quarter reference period; provided, that, if Indebtedness under any revolving credit facility is incurred or repaid outside the ordinary course of business for working capital purposes during or after the four-quarter reference period, such incurrence or repayment will be given pro forma effect to each monthly balance prior to the incurrence or repayment of such Indebtedness;

(5) Indebtedness of any non-Wholly-Owned Subsidiary of any Person shall be included only in proportion to such Person's equity interest in such Subsidiary; *provided* that such Indebtedness is not guaranteed by the Issuer or any of its Restricted Subsidiaries; and

(6) the U.S. dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. dollar equivalent principal amount of such Indebtedness.

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds

(a) for the purchase or payment of any such primary obligation, or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Corporate Trust Office of the Trustee” shall be at the address of the Trustee specified in Section 14.02 hereof or such other address as to which the Trustee may give notice to the Holders and the Issuer.

“Credit Agreement” means that certain Credit Agreement, dated as of the Issue Date, among the Issuer, Holdings, the Subsidiary Guarantors, Bank of America, N.A., as Administrative Agent, and each other agent and lender from time to time party thereto and any amendments, supplements, modifications, extensions, renewals, restatements, refundings or refinancings thereof.

“Credit Facilities” means, with respect to the Issuer or any of its Restricted Subsidiaries, one or more debt facilities, including the Senior Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (provided that such increase is permitted under Section 4.09 hereof) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

“Custodian” means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

“Default” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“Default Interest Rate” means a rate equal to 2% per annum.

“Definitive Note” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 (c) hereof, substantially in the form of Exhibit A hereto, except that such Note shall not bear the Global Note Legend and shall not have the “Schedule of Exchanges of Interests in the Global Note” attached thereto.

“Depository” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depository with respect to the Notes, and any and all successors thereto appointed as Depository hereunder and having become such pursuant to the applicable provision of this Indenture.

“Designated Non-cash Consideration” means the fair market value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Issuer, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

“Designated Preferred Stock” means Preferred Stock of the Issuer or any parent corporation thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate executed by the principal financial officer of the Issuer or the applicable parent corporation thereof, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of Section 4.07(a) hereof.

“Designated Theme Parks” means the theme parks owned by the Issuer and its Restricted Subsidiaries on the Issue Date known as Busch Gardens (Tampa Bay, FL), Busch Gardens (Williamsburg, VA), Adventure Island (Tampa, FL), Water Country USA (Williamsburg, VA), and Sesame Place (Langhorne, PA).

“Disposition Date” means the first day on which the GSMP Group no longer constitutes the Required Holders.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control or asset sale) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely as a result of a change of control or asset sale), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; provided, however, that if such Capital Stock is issued to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period:

(1) increased (without duplication) by:

(a) provision for taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes (such as Delaware franchise tax, Pennsylvania capital tax or Texas margin tax) and foreign withholding taxes and penalties and interest relating to such taxes of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) Fixed Charges of such Person for such period to the extent the same was deducted (and not added back) in calculating Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the offering of the Notes and the Credit Facilities and (ii) any amendment or other modification of the Notes, and, in each case, deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) the amount of any restructuring charges, integration costs, or other business optimization expenses or reserves deducted (and not added back) in such period in computing Consolidated Net Income, including any one-time costs incurred in connection with acquisitions after the Issue Date and costs related to the closure and/or consolidation of facilities; *plus*

(f) any other non-cash charges, including any write offs or write downs, reducing (and not added back in computing) Consolidated Net Income for such period (provided that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(g) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income; *plus*

(h) [reserved]

(i) the amount of management, monitoring, consulting and advisory fees and related expenses paid or accrued in such period to the Sponsor to the extent otherwise permitted under Section 4.11 hereof and to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(j) the amount of net cost savings projected by the Issuer in good faith to be realized as a result of specified actions taken or expected to be taken within 12 months after the Issue Date (which cost savings shall be added to EBITDA until fully realized and calculated on a pro forma basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions (to the extent any of the foregoing benefits are reflected in computations of the Consolidated Net Income); *provided* that (x) such cost savings are reasonably identifiable and factually supportable and are reasonably expected to be realized within 12 months of taking such action and (y) the aggregate amount of cost savings added pursuant to this clause (j) with respect to any action, shall not exceed (when taken together with all *pro forma* adjustments permitted under clause (3) of the second paragraph of the definition of Consolidated Total Leverage Ratio), an amount equal to 10% of EBITDA of the Issuer and its Restricted Subsidiaries determined on a *pro forma* basis (but without giving effect to any adjustments pursuant to this clause (j) or clause (3) of the second paragraph of the definition of Consolidated Total Leverage Ratio) for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the Calculation Date; *plus*

(k) the amount of loss on sale of receivables and related assets to the Receivables Subsidiary in connection with a Receivables Facility to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(l) any costs or expense incurred by the Issuer or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Issuer or net cash proceeds of an issuance of Equity Interest of the Issuer (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation set forth in clause (3) of Section 4.07(a) hereof and to the extent deducted (and not added back) in computing Consolidated Net Income,

(2) decreased by (without duplication) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period, and

(3) increased or decreased by (without duplication):

(a) any net gain or loss resulting in such period from Hedging Obligations and the application of Statement of Financial Accounting Standards No. 133; *plus* or *minus*, as applicable,

(b) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk).

For the avoidance of doubt, (1) revenue will be accounted for on a GAAP basis and the recognition of any deferred revenue will be included in EBITDA in the same period as recognized for GAAP and (2) any net

gain or loss resulting in such period from mark-to-market adjustments to any liability recorded in connection with the Limited Partnership Interests (as defined in the Acquisition Agreement) issued to Anheuser Busch InBev NV/SA or an affiliate thereof pursuant to the Acquisition Agreement (as defined in the Note Purchase Agreement).

“EMU” means economic and monetary union as contemplated in the Treaty on European Union.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“Equity Offering” means any public or private sale of common stock or Preferred Stock of (x) the Issuer (but only if Holdings is not a Guarantor of the Notes at such time) or (y) Holdings or any of Holdings’ direct or indirect parent companies (excluding, in any such case, Disqualified Stock), other than:

- (1) public offerings with respect to the Issuer’s or any direct or indirect parent company’s common stock registered on Form S-8;
- (2) issuances to any Subsidiary of Holdings;
- (3) issuances to the Sponsor; and
- (4) any such public or private sale that constitutes an Excluded Contribution.

“Euroclear” means Euroclear S.A./N.V., as operator of the Euroclear system.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“euro” means the single currency of participating member states of the EMU.

“Excluded Contribution” means net cash proceeds or marketable securities received by the Issuer from

- (1) contributions to its common equity capital, and
- (2) the sale (other than to a Subsidiary of the Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Issuer,

in each case designated as Excluded Contributions pursuant to an officer’s certificate executed by the principal financial officer of the Issuer on the date such capital contributions are made or the date such Equity Interests are sold, as the case may be, which are excluded from the calculation set forth in clause (3) of Section 4.07(a) hereof. In no event will the proceeds of the Permitted SplitCo Exchange Transaction or from the sale or other disposition of the Split-Up Non-Cash Consideration be designated as Excluded Contributions.

“Fixed Charges” means, with respect to any Person for any period, the sum of:

- (1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock of any Restricted Subsidiary during such period; and

(3) all dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

“Foreign Subsidiary” means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.

“GAAP” means generally accepted accounting principles in the United States which are in effect on the Issue Date.

“Global Note Legend” means the legend set forth in Section 2.06(f)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

“Global Notes” means, individually and collectively, each of the Restricted Global Notes and Unrestricted Global Notes, substantially in the form of Exhibit A hereto, issued in accordance with Section 2.01, 2.06(b) or 2.06(d) hereof.

“Government Securities” means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

“GSMP Group” means, collectively, (i) GSLP I Onshore Holdings Fund, L.L.C., GSLP I Offshore Holdings Fund A, L.P., GSLP I Offshore Holdings Fund B, L.P., GSLP I Offshore Holdings Fund C, L.P., GSMP V Onshore US, Ltd., GSMP V Offshore US, Ltd. and GSMP V Institutional US, Ltd., (ii) any other Affiliate thereof or The Goldman Sachs Group, Inc., and (iii) any Subsidiaries of the foregoing.

“guarantee” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Guarantee” means the guarantee by any Guarantor of the Issuer’s Obligations under this Indenture.

“Guarantor” means Holdings and each Subsidiary Guarantor.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer, modification or mitigation of interest rate, commodity or currency risks either generally or under specific contingencies.

“Holder” means the Person in whose name a Note is registered on the Registrar’s books.

“Holdings” means SW Holdco, Inc., a Delaware corporation.

“IAI Global Note” means the Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depository or its nominee that will be issued on the Issue Date or thereafter in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

“Indebtedness” means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or

(a) not contingent;

(b) in respect of borrowed money;

(c) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);

(d) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business and (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP; or

(e) representing any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person.

provided, that for the avoidance of doubt, Indebtedness shall be deemed not to include (a) Contingent Obligations, (b) obligations under or in respect of Receivables Facilities, or (c) any payment obligations in connection with the Limited Partnership Interests (as defined in the Acquisition Agreement) issued to Anheuser Busch InBev NV/SA or an affiliate thereof (or any liability recorded in connection therewith) pursuant to the Acquisition Agreement (as defined in the Note Purchase Agreement).

“Indenture” means this Indenture, as amended or supplemented from time to time.

“Independent Financial Advisor” means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of the Issuer, qualified to perform the task for which it has been engaged.

“Indirect Participant” means a Person who holds a beneficial interest in a Global Note through a Participant.

“Initial Qualified Public Offering Date” means the date of the first Qualified Public Offering to occur after the Issue Date.

“Institutional Accredited Investor” means an institution that is an “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

“Interest Payment Date” means December 1 and June 1 of each year to stated maturity.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

“Investment Grade Securities” means:

(1) securities issued or directly and fully guaranteed by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;

(3) investments in any fund that invests exclusively in investments of the type de-scribed in clauses (1) and (2), which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily used for high quality investments.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel and

similar advances to officers and employees, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of “Unrestricted Subsidiary” and Section 4.07 hereof:

(1) “Investments” shall include the portion (proportionate to the Issuer’s equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Issuer shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Issuer “Investment” in such Subsidiary at the time of such redesignation; *less*

(b) the portion (proportionate to the Issuer’s equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Issuer.

“Issue Date” means December 1, 2009.

“Issuer” means SW Acquisitions Co., Inc., a Delaware corporation; provided that when used in the context of determining the fair market value of an asset or liability under this Indenture, “Issuer” shall be deemed to mean the board of directors of the Issuer when the fair market value is equal to or in excess of \$30.0 million (unless otherwise expressly stated).

“Issuer Order” means a written request or order signed on behalf of the Issuer by an Officer of the Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer, and delivered to the Trustee.

“Legal Holiday” means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or the city in which the Corporate Trust Office of the Trustee or Paying Agent is located.

“Lien” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event shall an operating lease be deemed to constitute a Lien.

“Management Agreement” means the Transaction and Advisory Fee Agreement dated on or about the Issue Date among the Issuer, Busch Entertainment LLC, Sea World LLC, Blackstone Real Estate Advisors VI L.P. and Blackstone Management Partners V L.L.C., as amended, restated, supplemented or otherwise modified.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Net Income” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“Net Proceeds” means the aggregate cash proceeds received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale (or, in the case of any dividend or distribution by the Issuer of all or any portion of the Split-Up Non-Cash Consideration, the Net Proceeds deemed received as a result thereof in accordance with clause (ii) of the last paragraph under the definition of “Asset Sale” herein), including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting and investment banking fees, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), amounts required to be applied to the repayment of principal, premium, if any, and interest on the Credit Facilities required (other than required by clause (1) of Section 4.10(b) hereof) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

“Non-U.S. Person” means a Person who is not a U.S. Person.

“Note Purchase Agreement” means the note purchase agreement, dated as of the date hereof, by and among the Issuer; Holdings; GSMP V Onshore US, Ltd.; GSMP V Offshore US, Ltd.; GSMP V Institutional US, Ltd; GSLP I Offshore Holdings Fund A, L.P.; GSLP I Offshore Holdings Fund B, L.P.; GSLP I Offshore Holdings Fund C, L.P.; GSLP I Onshore Holdings Fund, L.L.C.; GSO COF Facility LLC; Blackstone Holdings Finance Co. LLC; and GS Mezzanine Partners V Institutional, L.P.

“Notes” is defined in the Recitals.

“Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

“Officer” means the Chairman of the board of directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Issuer.

“Officer’s Certificate” means a certificate signed on behalf of the Issuer by an Officer of the Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer, that meets the requirements set forth in this Indenture.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer or the Trustee.

“Participant” means, with respect to the Depository, Euroclear or Clearstream, a Person who has an account with the Depository, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

“Permitted Asset Swap” means the concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets (other than all or substantially all assets of any theme park) and cash or Cash Equivalents between the Issuer or any of its Restricted Subsidiaries and another Person and in an aggregate amount for all such purchases, sales and exchanges from the Issue Date, together with the aggregate amount of all exchanges permitted under clause (f) of the definition of “Asset Sale” from the Issue Date, not to exceed \$25.0 million; provided, that any cash or Cash Equivalents received must be applied in accordance with Section 4.10 hereof.

“Permitted Holders” means (i) the Sponsor, (ii) the entities identified in clause (i) of the definition of the GSMP Group, (iii) members of management of the Issuer (or any of its direct or indirect parent companies) who are holders of Equity Interests of the Issuer (or any of its direct or indirect parent companies); provided that if such members of management own beneficially or of record Capital Stock representing in the aggregate more than 10% of (a) prior the Initial Qualified Public Offering Date, the voting power or economic power of the outstanding Capital Stock of the Issuer (or any of its direct or indirect parent companies) and (b) on or after the Initial Qualified Public Offering Date, the voting power of the outstanding Voting Stock of the Issuer (or any of its direct or indirect parent companies), they shall be treated as Permitted Holders of only the Capital Stock representing 10% of (A) prior to the Initial Qualified Public Offering Date, the voting power or economic power of such outstanding Capital Stock and (B) on or after the Initial Qualified Public Offering Date, the voting power of such Voting Stock, at such time and (iv) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided that, in the case of such group and without giving effect to the existence of such group or any other group, persons identified in clauses (i), (ii) and (iii), collectively and subject to the 10% limitation described in the proviso to clause (iii), have beneficial ownership of Capital Stock representing more than 50% of (x) prior to the Initial Qualified Public Offering Date, the voting power and economic power of the outstanding Capital Stock of the Issuer (or any of its direct or indirect parent companies) and (y) on or after the Initial Qualified Public Offering Date, the voting power of the outstanding Voting Stock of the Issuer (or any of its direct or indirect parent companies).

“Permitted Investments” means:

- (1) any Investment in the Issuer, any of its Wholly-Owned Restricted Subsidiaries or any of the Subsidiary Guarantors;
- (2) any Investment in cash and Cash Equivalents or Investment Grade Securities;
- (3) any Investment by the Issuer or any of its Restricted Subsidiaries in a Person that is engaged in a Similar Business so long as:
 - (a) no Default or Event of Default shall have occurred or be continuing or will result therefrom,

(b) as the result of such Investment (i) such Person becomes a Wholly-Owned Restricted Subsidiary of the Issuer or a Subsidiary Guarantor, or (ii) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer, one of its Wholly-Owned Restricted Subsidiaries or one of the Subsidiary Guarantors, and

(c) after giving effect to such Investment, either (1) the Issuer could incur at least \$1.00 of additional Indebtedness pursuant to the Consolidated Total Leverage Ratio test described in Section 4.09(a) hereof or (2) the Consolidated Total Leverage Ratio immediately after giving effect to such Investment is lower than the Consolidated Total Leverage Ratio immediately prior to such Investment;

(4) any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to the provisions of Section 4.10 hereof or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Issue Date;

(6) any Investment acquired by the Issuer or any of its Restricted Subsidiaries:

(a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or

(b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Hedging Obligations permitted under clause (10) of Section 4.09(b) hereof;

(8) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Issuer, or any of its direct or indirect parent companies; provided, however, that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of Section 4.07(a) hereof;

(9) guarantees of Indebtedness permitted under Section 4.09 hereof;

(10) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment;

(11) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (11) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities), not to exceed \$75.0 million (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(12) advances to, or guarantees of Indebtedness of, employees not in excess of \$15.0 million outstanding at any one time, in the aggregate;

(13) loans and advances to officers, directors and employees for business-related travel expenses, moving expenses and other similar expenses, in each case incurred in the ordinary course of business or consistent with past practices;

(14) Investments in Permitted Joint Ventures having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (14), that are at that time outstanding not to exceed the greater of (x) \$20.0 million and (y) 1.0% of Total Assets at the time of such Investment (with the fair market value being measured at the time made and without giving effect to subsequent changes in value);

(15) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure or other taking of title with respect to any secured Investment otherwise made in compliance with this Indenture;

(16) Investments relating to a Receivables Subsidiary that, in the good faith determination of the Issuer are necessary or advisable to effect any Receivables Facility; and

(17) loans and leases of animals to third parties for the purposes of exhibition, storage or breeding, as the case may be, in each case in the ordinary course of business and consistent with past practices.

“Permitted Joint Ventures” means a corporation, partnership or other entity (other than a Subsidiary) engaged in one or more Similar Businesses in respect of which the Issuer or a Restricted Subsidiary (a) beneficially owns at least 20% of the Equity Interests of such entity and (b) either is a party to an agreement empowering one or more parties to such agreement (which may or may not be the Issuer or a Subsidiary), or is a member of a group that, pursuant to the constituent documents of the applicable corporation, partnership or other entity, has the power, to direct the policies, management and affairs of such entity.

“Permitted Liens” means, with respect to any Person:

(1) pledges or deposits by such Person under workers’ compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers’, warehousemen’s and mechanics’ Liens, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(3) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) Liens securing Indebtedness permitted to be incurred pursuant to clause (4) of Section 4.09(b) hereof;

(7) Liens existing on the Issue Date;

(8) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; provided, further, however, that such Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;

(9) Liens on property at the time the Issuer or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Issuer or any of its Restricted Subsidiaries; provided, however, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition; provided, further, however, that the Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;

(10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary permitted to be incurred in accordance with Section 4.09 hereof;

(11) Liens securing Hedging Obligations so long as related Indebtedness is, and is permitted to be under this Indenture, secured by a Lien on the same property securing such Hedging Obligations;

(12) Liens on specific items of inventory of other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

- (13) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries and do not secure any Indebtedness;
- (14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;
- (15) Liens in favor of the Issuer or any Guarantor;
- (16) Liens on equipment of the Issuer or any of its Restricted Subsidiaries granted in the ordinary course of business to the Issuer's clients;
- (17) Liens on accounts receivable and related assets incurred in connection with a Receivables Facility;
- (18) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (6), (7), (8) and (9); provided, however, that (a) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6), (7), (8) and (9) at the time the original Lien became a Permitted Lien under this Indenture, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement;
- (19) deposits made in the ordinary course of business to secure liability to insurance carriers;
- (20) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed \$40.0 million at any one time outstanding;
- (21) Liens securing judgments for the payment of money not constituting an Event of Default under clause (5) under Section 6.01 hereof so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;
- (23) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code or any comparable or successor provision on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(24) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 4.09 hereof; provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(25) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes; and

(26) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Issuer or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Issuer and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business.

For purposes of this definition, the term “Indebtedness” shall be deemed to include interest on such Indebtedness.

“Permitted SplitCo Exchange Transaction” shall mean any sale, conveyance, transfer or other disposition (including by way of a lease, assignment or otherwise), whether in a single transaction or a series of related transactions (all to be completed pursuant to a single master agreement within a period no longer than three months), or all or substantially all the assets of one or more of the Designated Theme Parks to any Person (such Person referred to herein as “SplitCo”, other than an individual) so long as (a) before and immediately after giving effect to such transaction, Sponsor owns a number of shares of Capital Stock of SplitCo representing at least 20% of the total voting and economic power of the Capital Stock of SplitCo; (b) SplitCo is engaged in a theme park or other entertainment business; (c) not more than 49% of the EBITDA of SplitCo immediately after giving effect to the transaction (determined on a *pro forma* basis consistent with the *pro forma* adjustment provisions set forth in the definition of “Consolidated Total Leverage Ratio”) will be attributable to the assets acquired from the Issuer; (d) any non-cash consideration received by the Issuer and its Restricted Subsidiaries consist solely of Capital Stock of SplitCo or any direct or indirect parent of SplitCo of which SplitCo is a Wholly-Owned Subsidiary (the “Split-Up Non-Cash Consideration”); (e) after giving effect to such transaction, the Consolidated Total Leverage Ratio of the Issuer for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date of such transaction does not exceed 4.00 to 1.00, determined on a *pro forma* basis consistent with the *pro forma* adjustment provisions set forth in the definition of “Consolidated Total Leverage Ratio, as if such transaction had been consummated at the beginning of such four-quarter period; (f) only one such transaction or a series of related transactions (all to be completed pursuant to a single master agreement within a period no longer than three months) shall constitute a Permitted SplitCo Exchange Transaction since the Issue Date; and (g) such transaction shall be consummated at fair market value (as determined by an Independent Financial Adviser).

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Preferred Stock” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

“Private Placement Legend” means the legend set forth in Section 2.06(f)(i) hereof to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

“Qualified Public Offering” means the initial underwritten public offering of common Equity Interests of (x) the Issuer (but only if Holdings is not a Guarantor of the Notes at such time) or (y) Holdings or any of Holdings’ direct or indirect parent companies, in each case, pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (other than a registration statement on Form S-8 or any successor form) generating gross proceeds to the Issuer of not less than \$100.0 million.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Rating Agencies” means Moody’s and S&P or if Moody’s or S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer which shall be substituted for Moody’s or S&P or both, as the case may be.

“Receivables Facility” means any of one or more receivables financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the Obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Issuer or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) pursuant to which the Issuer or any of its Restricted Subsidiaries sells its accounts receivable to either (a) a Person that is not a Restricted Subsidiary or (b) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“Receivables Fees” means distributions or payments made directly or by means of discounts with respect to any accounts receivable or participation interest therein issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Receivables Facility.

“Receivables Subsidiary” means any Subsidiary formed for the purpose of, and that solely engages only in one or more Receivables Facilities and other activities reasonably related thereto.

“Record Date” for the interest payable on any applicable Interest Payment Date means November 15 or May 15 (whether or not a Business Day) next preceding such Interest Payment Date.

“Regulation S” means Regulation S promulgated under the Securities Act.

“Regulation S Global Note” means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as applicable.

“Regulation S Permanent Global Note” means a permanent Global Note in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the Restricted Period.

“Regulation S Temporary Global Note” means a temporary Global Note in the form of Exhibit A hereto, bearing the Global Note Legend, the Private Placement Legend and the Regulation S Temporary Global Note Legend and deposited with or on behalf of and registered in the name of the Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903.

“Regulation S Temporary Global Note Legend” means the legend set forth in Section 2.06(f)(iii) hereof.

“Related Business Assets” means assets (other than cash or Cash Equivalents) used or useful in a Similar Business, provided that any assets received by the Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“Required Holders” means Holders of at least a majority in aggregate principal amount of the then outstanding Notes. Sections 2.08 and 2.09 hereof shall determine which Notes are considered to be “outstanding” for purposes of this definition.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Restricted Definitive Note” means a Definitive Note bearing the Private Placement Legend.

“Restricted Global Note” means a Global Note bearing the Private Placement Legend.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Period” means the 40-day distribution compliance period as defined in Regulation S.

“Restricted Subsidiary” means, at any time, any direct or indirect Subsidiary of the Issuer (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; provided, however, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of “Restricted Subsidiary.”

“Rule 144” means Rule 144 promulgated under the Securities Act.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“Rule 903” means Rule 903 promulgated under the Securities Act.

“Rule 904” means Rule 904 promulgated under the Securities Act.

“S&P” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“Sale and Lease-Back Transaction” means any arrangement providing for the leasing by the Issuer or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing.

“SeaWorld Orlando” means the theme park (commonly known as “SeaWorld”) located in Orlando, Florida (including any related intellectual property, real estate, animals and other properties).

“SEC” means the U.S. Securities and Exchange Commission.

“Secured Indebtedness” means any Indebtedness of the Issuer or any of its Restricted Subsidiaries secured by a Lien (including the Senior Credit Facilities).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Senior Credit Facilities” means the Credit Facility under the Credit Agreement, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements, refundings or refinancings thereof and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

“Similar Business” means any business conducted or proposed to be conducted by the Issuer and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental or ancillary thereto.

“Specified Transaction” means (a) any Investment that results in a Person becoming a Restricted Subsidiary, (b) any purchase or other acquisition of a business of any Person or of assets constituting a business unit, line of business or division of such Person, (c) any Asset Sale (i) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Issuer or (ii) of a business, business unit, line of business or division of the Issuer or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, or (d) any Investment, purchase, acquisition or Asset Sale outside the ordinary course of business, consummated in a single transaction or a series of related transactions, that in the aggregate exceeds \$25.0 million in total consideration, total assets or enterprise value.

“Split-Co” is defined in the definition of Permitted SplitCo Exchange Transaction.

“Split-Up Non-Cash Consideration” is defined in the definition of Permitted SplitCo Exchange Transaction.

“Sponsor” means The Blackstone Group and its Affiliates; *provided* that the term “Sponsor” shall not, for purposes of the definitions of Permitted Holders, Change of Control and related provisions, include any portfolio company of The Blackstone Group or any of its affiliated investment funds.

“Stated Maturity” means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

“Subordinated Indebtedness” means, with respect to the Notes,

- (1) any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Notes, and
- (2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

“Subsidiary” means, with respect to any Person:

- (1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and
- (2) any partnership, joint venture, limited liability company or similar entity of which
 - (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and
 - (y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“Subsidiary Guarantor” means each Restricted Subsidiary that Guarantees the Notes in accordance with the terms of this Indenture.

“Total Assets” means the total assets of the Issuer and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent balance sheet of the Issuer or such other Person as may be expressly stated.

“Transaction” means (i) the transactions contemplated by the Acquisition Agreement (as defined in the Note Purchase Agreement); (ii) the issuance of the Notes; and (iii) the borrowings on the Issue Date under the Senior Credit Facilities as in effect on the Issue Date.

“Treasury Rate” means, as of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two Business Days prior to the Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to December 1, 2012; provided, however, that if the period from the Redemption Date to December 1, 2012 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“Trustee” means Wilmington Trust FSB, as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“Unrestricted Definitive Note” means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

“Unrestricted Global Note” means a Global Note that does not bear and is not required to bear the Private Placement Legend.

“Unrestricted Subsidiary” means:

- (1) any Subsidiary of the Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Issuer, as provided below); and
- (2) any Subsidiary of an Unrestricted Subsidiary.

The Issuer may designate any Subsidiary of the Issuer (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Issuer or any Subsidiary of the Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); provided that

- (1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Issuer;
- (2) such designation complies with Section 4.07 hereof; and
- (3) each of: (a) the Subsidiary to be so designated; and (b) its Subsidiaries, has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Issuer or any Restricted Subsidiary

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that, immediately after giving effect to such designation, no Default shall have occurred and be continuing and either:

- (1) the Issuer could incur at least \$1.00 of additional Indebtedness pursuant to the Consolidated Total Leverage Ratio test set forth in Section 4.09(a) hereof; or
- (2) the Consolidated Total Leverage Ratio for the Issuer and its Restricted Subsidiaries would not be greater than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such designation,

in each case on a *pro forma* basis taking into account such designation.

Any such designation by the Issuer shall be notified by the Issuer to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of the Issuer or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

“U.S. Person” means a U.S. person as defined in Rule 902(k) under the Securities Act.

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing

(1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by

(2) the sum of all such payments.

“Wholly-Owned Restricted Subsidiary” of any Person means a Wholly-Owned Subsidiary of such Person that is also a Restricted Subsidiary of such Person.

“Wholly-Owned Subsidiary” of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

Section 1.02 Other Definitions .

<u>Term</u>	<u>Defined in</u>
	<u>Section</u>
“Acceptable Commitment”	4.10
“Affiliate Transaction”	4.11
“Asset Sale Offer”	4.10
“Authentication Order”	2.02
“Change of Control Offer”	4.14
“Change of Control Payment”	4.14
“Change of Control Payment Date”	4.14
“Covenant Defeasance”	8.03
“DTC”	2.03
“Event of Default”	6.01
“Excess Proceeds”	4.10
“incur”	4.09
“Legal Defeasance”	8.02
“Note Register”	2.03

<u>Term</u>	<u>Section</u>
“Offer Amount”	3.09
“Offer Period”	3.09
“Pari Passu Indebtedness”	4.10
“Paying Agent”	2.03
“Purchase Date”	3.09
“Redemption Date”	3.07
“Refinancing Indebtedness”	4.09
“Refunding Capital Stock”	4.07
“Registrar”	2.03
“Restricted Payments”	4.07
“Successor Company”	5.01
“Successor Person”	5.01
“Treasury Capital Stock”	4.07

Section 1.03 [Reserved].

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;
- (d) words in the singular include the plural, and in the plural include the singular;
- (e) “will” shall be interpreted to express a command;
- (f) provisions apply to successive events and transactions;
- (g) references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;
- (h) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture; and
- (i) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision.

Section 1.05 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it

is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Issuer may set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Issuer prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including DTC that is the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and DTC that is the Holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such depository's standing instructions and customary practices.

(h) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by DTC entitled under the procedures of such depository to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders

remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 90 days after such record date.

Section 1.06 Predecessor to the Issuer.

Notwithstanding anything to the contrary elsewhere in this Indenture, to the extent for periods including, or relating to, any period ending on or prior to the Issue Date, EBITDA and Consolidated Net Income, or any other financial calculations, in each case with respect to the Issuer for any periods that include any periods prior to the Issue Date shall be determined on the basis of the consolidated audited financial statements of Busch Entertainment Corporation and its subsidiaries for the relevant periods.

ARTICLE 2

THE NOTES

Section 2.01 Form and Dating; Terms.

(a) General. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) Temporary Global Notes. Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, as custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. The Restricted Period shall be terminated upon the receipt by the Trustee of a written certificate from the Company.

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S

Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(d) Terms. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture may not exceed \$400.0 million, except as provided in Section 2.07 hereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuer, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

The Notes shall be subject to repurchase by the Issuer pursuant to an Asset Sale Offer as provided in Section 4.10 hereof or a Change of Control Offer as provided in Section 4.14 hereof. The Notes shall not be redeemable, other than as provided in Article 3.

(e) Euroclear and Clearstream Procedures Applicable. The provisions of the “Operating Procedures of the Euroclear System” and “Terms and Conditions Governing Use of Euroclear” and the “General Terms and Conditions of Clearstream Banking” and “Customer Handbook” of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Notes that are held by Participants through Euroclear or Clearstream.

Section 2.02 Execution and Authentication .

At least one Officer shall execute the Notes on behalf of the Issuer by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A attached hereto, as the case may be, by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Issuer Order (an “Authentication Order”), authenticate and deliver the Notes.

The Trustee may appoint an authenticating agent acceptable to the Issuer to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuer.

Section 2.03 Registrar and Paying Agent .

The Issuer shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (“Registrar”) and an office or agency where Notes may be presented for payment (“Paying Agent”). The Registrar shall keep a register of the Notes (“Note Register”) and of their transfer and exchange. The Issuer may appoint one or more co-registrars and one

or more additional paying agents. The term “Registrar” includes any co-registrar and the term “Paying Agent” includes any additional paying agent. The Issuer may change any Paying Agent or Registrar without prior notice to any Holder. The Issuer shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

The Issuer initially appoints The Depository Trust Company (“DTC”) to act as Depository with respect to the Global Notes.

The Issuer initially appoints the Trustee to act as the Paying Agent and Registrar for the Notes and to act as Custodian with respect to the Global Notes.

Section 2.04 Paying Agent to Hold Money in Trust.

The Issuer shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuer or a Subsidiary) shall have no further liability for the money. If the Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes.

Section 2.06 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depository or to a successor Depository or a nominee of such successor Depository. A beneficial interest in a Global Note may not be exchanged for a Definitive Note unless (i) the Depository (x) notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act and, in either case, a successor Depository is not appointed by the Issuer within 120 days, (ii) the Issuer, at its option, notifies the Trustee in writing that it elects to cause the issuance of the Definitive Notes or (iii) there shall have occurred and be continuing a Default or Event of Default with respect to the Notes. Upon the occurrence of any of the preceding events in (i), (ii) or (iii) above, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and

shall be, a Global Note, except for Definitive Notes issued subsequent to any of the preceding events in (i), (ii) or (iii) above and pursuant to Section 2.06(c) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); provided, however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depository, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; provided, however, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) hereof, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depository to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above; provided that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(g) hereof.

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(ii) hereof and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; or

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(ii) hereof and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(B) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this clause (iv), if the Registrar or the Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to clause (iv) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to clause (iv) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests for Definitive Notes.

(i) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes. If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon the occurrence of any of the events in clauses (i), (ii) or (iii) of Section 2.06(a) hereof and receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3) (a) thereof;

(E) if such beneficial interest is being transferred to the Issuer or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof, or

(F) if such beneficial interest is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Issuer shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depository and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Sections 2.06(c)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the

Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) of the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes. A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only upon the occurrence of any of the events in clauses (i), (ii) or (iii) of Section 2.06(a) hereof and if the Registrar receives the following:

(1) If the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) If the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this clause (iii), if the Registrar or the Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar or to the Issuer, as the case may be, to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

The Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06 (g) hereof, and the Issuer shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depository and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered.

(iv) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes. If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon the occurrence of any of the events in clauses (i), (ii) or (iii) of Section 2.06(a) hereof and satisfaction of the conditions set forth in Section 2.06(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Issuer shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depository and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the

Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(i) Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (2) (b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, certificate substantially in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable; or

(F) if such Restricted Definitive Note is being transferred to the Issuer or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of clause (B) above, the applicable 144A Global Note, in the case of clause (C) above, the applicable Regulation S Global Note and in all other cases, the IAI Global Note.

(ii) Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes de-livery thereof in the form of a beneficial interest in an Unrestricted Global Note only if the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this clause (ii), if the Registrar or the Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar or to the Issuer, as the case may be, to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(ii), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraph (ii) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

(i) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to a QM in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications required by item (3) thereof, if applicable.

(ii) Restricted Definitive Notes to Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if the Registrar receives the following:

(1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this clause (ii), if the Registrar or the Issuer so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar or to the Issuer, as the case may be, to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) Legends. The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(i) Private Placement Legend. (A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION

THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS NOTE AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THIS NOTE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 903 AND RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (V) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE REGISTRATION OF TRANSFER OF THIS NOTE (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE) AND AN OPINION OF COUNSEL ACCEPTABLE TO THE ISSUER THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENT OF THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS NOTE FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii) or (e)(iii) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) Global Note Legend. Each Global Note shall bear a legend in substantially the following form:

THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE

REQUIRED PURSUANT TO SECTION 2.06(g) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUER. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (“DTC”) TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

(iii) Regulation S Temporary Global Note Legend. The Regulation S Temporary Global Note shall bear a legend in substantially the following form:

“THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT.”

(g) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a

Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(h) General Provisions Relating to Transfers and Exchanges .

(i) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.09, 4.10, 4.14 and 9.05 hereof).

(iii) Neither the Registrar nor the Issuer shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(v) The Issuer shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuer shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Issuer designated pursuant to Section 4.02 hereof, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the replacement Global Notes and Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07 Replacement Notes .

If any mutilated Note is surrendered to the Trustee, the Registrar or the Issuer and the Trustee receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, the Issuer shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Issuer, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuer to protect the Issuer, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuer and/or the Trustee may charge for its expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Issuer and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 Outstanding Notes .

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Issuer, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09 Treasury Notes .

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer, or by any Affiliate of the Issuer (other than (i) any fund managed by, or under common management with, GSO Capital Partners LP, including, without limitation, any fund of The Blackstone Group L.P. that invests primarily in debt, and

(ii) any fund managed by GSO Debt Funds Management LLC, Blackstone Debt Advisors L.P., Blackstone Distressed Securities Advisors L.P., Blackstone Mezzanine Advisors L.P. or Blackstone Mezzanine Advisors II L.P.), shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not the Issuer or any obligor upon the Notes or any Affiliate of the Issuer or of such other obligor (other than (i) any fund managed by, or under common management with, GSO Capital Partners LP, including, without limitation, any fund of The Blackstone Group L.P. that invests primarily in debt, and (ii) any fund managed by GSO Debt Funds Management LLC, Blackstone Debt Advisors L.P., Blackstone Distressed Securities Advisors L.P., Blackstone Mezzanine Advisors L.P. or Blackstone Mezzanine Advisors II L.P.).

Section 2.10 Temporary Notes.

Until certificates representing Notes are ready for delivery, the Issuer may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuer considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

Holder and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11 Cancellation.

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy cancelled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all cancelled Notes shall be delivered to the Issuer. The Issuer may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 Defaulted Interest.

If the Issuer defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 6.03 hereof. The Issuer shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; provided that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Issuer of such special record date. At least 15 days before the special

record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the name and at the expense of the Issuer) shall deliver or cause to be delivered, to each Holder a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13 CUSIP Numbers.

The Issuer in issuing the Notes may use CUSIP numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; provided, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will as promptly as practicable notify the Trustee of any change in the CUSIP numbers.

ARTICLE 3
REDEMPTION

Section 3.01 Notices to Trustee.

If the Issuer elects to redeem Notes pursuant to Section 3.07 hereof, it shall furnish to the Trustee, at least 15 days before notice of redemption is required to be delivered or caused to be delivered to Holders pursuant to Section 3.03 hereof but not more than 60 days before a redemption date, an Officer's Certificate setting forth (i) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of the Notes to be redeemed and (iv) the redemption price.

Section 3.02 Selection of Notes to Be Redeemed or Purchased.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased (a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed or (b) on a *pro rata* basis or, to the extent that selection on a *pro rata* basis is not practicable, by lot or by such other method the Trustee considers fair and appropriate. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Issuer in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in an integral multiple of \$1,000 (but in a minimum amount of \$2,000); no Notes of \$2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of \$1,000 (or a minimum

amount of \$2,000), shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 Notice of Redemption.

Subject to Section 3.09 hereof, the Issuer shall deliver or cause to be delivered by electronic transmission or by first-class mail notices of redemption at least 30 days but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at such Holder's registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 13 hereof. Except as set forth in Section 3.07(b) hereof, notices of redemption may not be conditional.

The notice shall identify the Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed will be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Issuer defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph or subparagraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;

(h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes; and

(i) if in connection with a redemption pursuant to Section 3.07(b) hereof, any condition to such redemption.

At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at its expense; provided that the Issuer shall have delivered to the Trustee, at least 15 days before notice of redemption is required to be delivered or caused to be delivered to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is delivered in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price (except as provided for in Section 3.07(b) hereof). The notice, if delivered in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by electronic transmission or by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest ceases to accrue on Notes or portions of Notes called for redemption.

Section 3.05 Deposit of Redemption or Purchase Price.

Prior to 10:00 a.m. (New York City time) on the redemption or purchase date, the Issuer shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Issuer complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the redemption or purchase date shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Issuer shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same indebtedness to the extent not redeemed or purchased; provided that each new Note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate such new Note.

Section 3.07 Optional Redemption.

(a) At any time prior to December 1, 2012, the Issuer may redeem all or part of the Notes, upon not less than 30 nor more than 60 days' prior notice delivered electronically or by first-class mail, with a copy to the Trustee, to the registered address of each Holder or otherwise delivered in accordance with the procedures of DTC, at a redemption price equal to 100% of the principal amount of Notes redeemed, plus the Applicable Premium as of, plus accrued and unpaid interest thereon to, the date of redemption (the "Redemption Date"), subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(b) Until December 1, 2012, the Issuer may redeem up to 35% of the aggregate principal amount of Notes issued by it at a redemption price equal to 113.50% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds received by it from one or more Equity Offerings; provided that at least 65% of the sum of the aggregate principal amount of Notes originally issued under this Indenture remains outstanding immediately after the occurrence of each such redemption; provided further that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any such Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(c) Except pursuant to clause (a) or (b) of this Section 3.07, the Notes will not be redeemable at the Issuer's option prior to December 1, 2012.

(d) On and after December 1, 2012, the Issuer may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' prior notice delivered electronically or by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes at the address of such Holder appearing in the security register, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve-month period beginning on December 1 of each of the years indicated below:

Year	Percentage
2012	110.00%
2013	106.75%
2014	104.50%
2015	102.250%

(e) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof. In addition, each redemption pursuant to this Section 3.07 shall relate to an aggregate principal amount of Notes of at least the lesser of (a) \$5.0 million and (b) the remaining outstanding principal amount of the Notes.

Section 3.08 Mandatory Redemption.

The Issuer shall not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09 Offers to Repurchase by Application of Excess Proceeds.

(a) In the event that, pursuant to Section 4.10 hereof, the Issuer shall be required to commence an Asset Sale Offer, it shall follow the procedures specified below.

(b) The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "Offer Period"). No later than five Business Days after the termination of the Offer Period (the "Purchase Date"), the Issuer shall apply all Excess Proceeds (the "Offer Amount") to the purchase of Notes and, if required, Pari Passu Indebtedness (on a *pro rata* basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and Pari Passu Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

(c) If the Purchase Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest up to but excluding the Purchase Date, shall be paid to the Person in whose name a tendered Note accepted for purchase is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders of such Note pursuant to the Asset Sale Offer.

(d) Upon the commencement of an Asset Sale Offer, the Issuer shall deliver electronically or by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders and holders of Pari Passu Indebtedness. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

(i) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer shall remain open;

(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment shall continue to accrue interest;

(iv) that, unless the Issuer defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in integral multiples of \$1,000 only (but in a minimum amount of \$2,000);

(vi) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Note completed, or transfer by book-entry transfer, to the Issuer, the Depository, if appointed by the Issuer, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders shall be entitled to withdraw their election if the Issuer, the Depository or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(viii) that, if the aggregate principal amount of Notes and Pari Passu Indebtedness surrendered by the holders thereof exceeds the Offer Amount, the Trustee shall select the Notes and the Issuer shall select such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered (with such adjustments as may be deemed appropriate by the Trustee so that only Notes in denominations of \$2,000, or integral multiples of \$1,000 in excess thereof, shall be purchased); and

(ix) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer) representing the same indebtedness to the extent not repurchased.

(e) On or before the Purchase Date, the Issuer shall, to the extent lawful, (1) accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered and (2) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(f) The Issuer, the Depositary or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Issuer for purchase, and the Issuer shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased; provided, that each such new Note shall be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof. Any Note not so accepted shall be promptly mailed or delivered by the Issuer to the Holder thereof. The Issuer shall publicly announce the results of the Asset Sale Offer on or as soon as practicable after the Purchase Date.

Other than as specifically provided in this Section 3.09 or Section 4.10 hereof, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Sections 3.01 through 3.06 hereof.

ARTICLE 4

COVENANTS

Section 4.01 Payment of Notes.

The Issuer shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Issuer or a Subsidiary, holds as of noon Eastern Time on the due date money deposited by the Issuer in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Issuer shall pay interest on overdue principal (including post-petition interest in any proceeding under any Bankruptcy Law) and on overdue installments of interest, to the extent lawful, as provided in Section 6.03 hereof.

Section 4.02 Maintenance of Office or Agency.

The Issuer shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any

such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency for such purposes. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuer in accordance with Section 2.03 hereof.

Section 4.03 Reports and Other Information.

(a) Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Issuer shall furnish to the Trustee and Holders of the Notes (without exhibits),

(1) within 180 days after the end of the fiscal year ending on or prior to December 31, 2009 and within 90 days (or any other time period then in effect under the rules and regulations of the Exchange Act with respect to the filing of a Form 10-K by a non-accelerated filer) after the end of each fiscal year thereafter, annual financial information (including a management discussion and analysis of financial condition and results of operations, but excluding financial information required by Rule 3-10 of Regulation S-X under the Securities Act) that would be required to be contained in a filing with the SEC on Form 10-K, or any successor or comparable form;

(2) within 60 days after the end of the fiscal quarter ending March 31, 2010 and thereafter within 45 days after the end of each of the first three fiscal quarters of each fiscal year, quarterly financial information that would be required to be contained in a filing with the SEC on Form 10-Q, or any successor or comparable form (excluding financial information required by Rule 3-10 of Regulation S-X under the Securities Act); and

(3) promptly from time to time after the occurrence of an event required to be therein reported, all material information that would be included in all current reports that would be required to be filed with the SEC on Form 8-K, or any successor or comparable form;

(4) any other information, documents and other reports which the Issuer would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

In addition, to the extent not satisfied by the foregoing, the Issuer shall, for so long as any Notes are outstanding, furnish to Holders and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144(A)(d)(4) under the Securities Act.

(b) The Issuer may satisfy its obligations under this Section 4.03 with respect to financial information relating to the Issuer by furnishing financial information relating to Holdings; provided that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

Section 4.04 Compliance Certificate.

(a) The Issuer shall deliver to the Trustee, within 90 days after the end of each fiscal year ending after the Issue Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Issuer and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Issuer has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Issuer has kept, observed, performed and fulfilled each and every condition and covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge and what action the Issuer is taking or proposes to take with respect thereto).

(b) When any Default has occurred and is continuing under this Indenture, or if the Trustee or the holder of any other evidence of Indebtedness of the Issuer or any Subsidiary gives any notice or takes any other action with respect to a claimed Default, the Issuer shall promptly (which shall be no more than five (5) Business Days) deliver to the Trustee, by registered or certified mail or by electronic transmission an Officer's Certificate specifying such event and what action the Issuer proposes to take with respect thereto.

Section 4.05 Taxes.

The Issuer shall pay, and shall cause each of its Restricted Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate negotiations or proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06 Stay, Extension and Usury Laws.

The Issuer and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 Limitation on Restricted Payments.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any payment or distribution on account of the Issuer's, or any of its Restricted Subsidiaries' Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation other than:

(A) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or

(B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the Issuer or a Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities;

(2) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any direct or indirect parent of the Issuer, including in connection with any merger or consolidation;

(3) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than:

(A) Indebtedness permitted under clauses (7) and (8) of Section 4.09(b) hereof; or

(B) the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition; or

(4) make any Restricted Investment,

(all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as “Restricted Payments”) unless, at the time of such Restricted Payment:

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a *pro forma* basis, the Company could incur \$1.00 of additional Indebtedness under Section 4.09(a); and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries after the Issue Date (excluding Restricted Payments permitted by clauses (2)(a), (3), (4), (5), (6), (7)(a) and (b), (8), (10), (11), (12) and (14) of Section 4.07(b) hereof), is less than the sum of (without duplication):

(A) 50% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) from the beginning of the first full fiscal quarter following the Issue Date to the end of the Issuer’s most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, in the event such Consolidated Net Income for such period is a deficit, then minus such deficit); *plus*

(B) 100% of the aggregate net cash proceeds and the fair market value, as determined (1) in good faith by the Issuer for marketable securities and property other than marketable securities up to an amount of \$30.0 million and (2) otherwise, in writing by an Independent Financial Advisor, of marketable securities or other property received by the Issuer since immediately after the Issue Date from the issue or sale of:

(i) (a) Equity Interests of the Issuer, including Treasury Capital Stock, but excluding cash proceeds and the fair market value, determined as set forth at the beginning of this clause (B), of marketable securities or other property received from the sale of:

(x) Equity Interests to members of management, directors or consultants of the Issuer, any direct or indirect parent company of the Issuer and the Issuer's Subsidiaries after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (5) of Section 4.07(b) hereof; and

(y) Designated Preferred Stock; and

(b) to the extent such net cash proceeds are actually contributed to the Issuer, Equity Interests of the Issuer's direct or indirect parent companies (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with clause (5) of Section 4.07(b) hereof; or

(ii) debt securities of the Issuer that have been converted into or exchanged for such Equity Interests of the Issuer; provided, however, that this clause (B) shall not include the proceeds from (V) the Permitted SplitCo Exchange Transaction or the Split-Up Non-Cash Consideration, (W) Refunding Capital Stock, (X) Equity Interests or convertible debt securities of the Issuer sold to a Restricted Subsidiary, as the case may be, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions; *plus*

(C) 100% of the aggregate amount of cash and the fair market value, as determined (1) in good faith by the Issuer for marketable securities and property other than marketable securities up to an amount of \$30.0 million and (2) otherwise in writing by an Independent Financial Advisor, of marketable securities or other property contributed to the capital of the Issuer following the Issue Date (other than (w) contributions in respect of Disqualified Stock, (x) contributions by a Restricted Subsidiary, (y) Excluded Contributions or (z) contributions of the proceeds from the Permitted SplitCo Exchange Transaction or the Split-Up Non-Cash Consideration); *plus*

(D) 100% of the aggregate amount received in cash and the fair market value, as determined (1) in good faith by the Issuer for marketable securities and property other than marketable securities up to an amount of \$30.0 million and (2) otherwise in writing by an Independent Financial Advisor, of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary) of Restricted Investments made by the Issuer or its Restricted Subsidiaries and repurchases and redemptions of such Restricted

Investments from the Issuer or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Issuer or its Restricted Subsidiaries, in each case after the Issue Date; or

(ii) the sale (other than to the Issuer or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Issue Date; *plus*

(E) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary, as determined (1) by the Issuer in good faith or (2) if, in the case of an Unrestricted Subsidiary, such fair market value may exceed \$30.0 million, in writing by an Independent Financial Advisor, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary other than an Unrestricted Subsidiary to the extent such Investment constituted a Permitted Investment;

(b) The foregoing provisions of Section 4.07(a) hereof shall not prohibit:

(1) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration thereof or the giving of the irrevocable redemption notice, as applicable, if at the date of declaration or notice such payment would have complied with the provisions of this Indenture;

(2) (a) the redemption, repurchase, retirement or other acquisition of any Equity Interests (“Treasury Capital Stock”) or Subordinated Indebtedness of the Issuer or any Equity Interests of any direct or indirect parent company of the Issuer, in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent contributed to the Issuer (in each case, other than any Disqualified Stock) (“Refunding Capital Stock”) and (b) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (7) of this Section 4.07(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Issuer) in an aggregate amount per year no greater than the aggregate amount of dividends *per annum* that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the redemption, repurchase, defeasance or other acquisition or retirement of Subordinated Indebtedness of the Issuer or a Guarantor made in exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Issuer or a Guarantor, as the case may be, which is incurred in compliance with Section 4.09 hereof, so long as:

(a) the principal amount of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired for value, plus the amount of any reasonable premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired and any reasonable fees and expenses incurred in connection with the issuance of such new Indebtedness;

(b) such new Indebtedness is subordinated to the Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, acquired or retired for value;

(c) such new Indebtedness has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired; and

(d) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired;

(4) distributions or payments of Receivables Fees;

(5) a Restricted Payment to pay for the repurchase, retirement or the acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Issuer or any of its direct or indirect parent companies held by any future, present or former employee, director or consultant of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement; provided, however, that the aggregate Restricted Payments made under this clause (5) do not exceed in any calendar year \$12.5 million (which shall increase to \$25.0 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent corporation of the Issuer) (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$25.0 million in any calendar year (which shall increase to \$50.0 million subsequent to the consummation of an underwritten public Equity Offering by the Issuer or any direct or indirect parent entity of the Issuer)); provided further that such amount in any calendar year may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer and, to the extent contributed to the Issuer, Equity Interests of any of the Issuer's direct or indirect parent companies, in each case to members of management, directors or consultants of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (3) of Section 4.07(a) hereof; plus

(b) the cash proceeds of key man life insurance policies received by the Issuer or its Restricted Subsidiaries after the Issue Date; less

(c) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a) and (b) of this clause (5);

and provided further that cancellation of Indebtedness owing to the Issuer or any of its Restricted Subsidiaries from members of management of the Issuer, any of the Issuer's direct or indirect parent companies or any of the Issuer's Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Issuer or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this Section 4.07 or any other provision of this Indenture;

(6) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries issued in accordance with Section 4.09 hereof to the extent such dividends are included in the definition of “Fixed Charges”;

(7) (a) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Issuer after the Issue Date;

(b) the declaration and payment of dividends to a direct or indirect parent company of the Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent corporation issued after the Issue Date; provided that the amount of dividends paid pursuant to this clause (b) shall not exceed the aggregate amount of cash actually contributed to the Issuer from the sale of such Designated Preferred Stock; or

(c) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this Section 4.07(b);

provided, however, in the case of each of (a), (b) and (c) of this clause (7), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Issuer could incur \$1.00 of additional Indebtedness pursuant to the Consolidated Total Leverage Ratio test set forth in Section 4.09(a) hereof;

(8) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(9) the declaration and payment of dividends on the Issuer’s common stock (or the payment of dividends to any direct or indirect parent entity to fund a payment of dividends on such entity’s common stock), following the first public offering of the Issuer’s common stock or the common stock of any of its direct or indirect parent companies after the Issue Date, of up to 6% *per annum* of the net cash proceeds received by or contributed to the Issuer in or from any such public offering, other than public offerings with respect to the Issuer’s common stock registered on Form S-8 and other than any public sale constituting an Excluded Contribution;

(10) Restricted Payments that are made with Excluded Contributions;

(11) other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (11) not to exceed \$60.0 million;

(12) any Restricted Payment used to fund the Transaction and the reasonable fees and expenses related thereto or owed to Affiliates, in each case to the extent permitted by Section 4.11 hereof;

(13) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness pursuant to the provisions similar to those described under Section 4.10 and Section 4.14 hereof; provided that all Notes validly tendered by Holders in connection with the related Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(14) the declaration and payment of dividends by the Issuer to, or the making of loans to, any direct or indirect parent in amounts required for any direct or indirect parent companies to pay, in each case without duplication,

(a) franchise taxes and other fees, taxes and expenses, required to maintain their corporate existence;

(b) federal, state and local income taxes, to the extent such income taxes are attributable to the income of the Issuer and its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries; provided that in each case the amount of such payments in any fiscal year does not exceed (i) the amount of such taxes actually paid by such direct or indirect parent companies on account of such taxes, and (ii) the amount that the Issuer and its Restricted Subsidiaries would be required to pay in respect of federal, state and local taxes for such fiscal year were the Issuer, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such parent entity;

(c) customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of the Issuer to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(d) general corporate operating overhead costs and expenses of any direct or indirect parent company of the Issuer to the extent such costs and expenses are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;

(e) reasonable fees and expenses other than to Affiliates of the Issuer related to any unsuccessful equity or debt offering of such parent entity; and

(f) so long as no Default or Event of Default pursuant to Sections 6.01(a)(1), 6.01(a)(2), 6.01(a)(6) or 6.01(a)(7) shall have occurred or is continuing or shall result therefrom, payment of management, consulting and monitoring, transactional and advisory fees pursuant to the Management Agreement, in each case to the extent permitted by Section 4.11; and

(15) the distribution, by dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Issuer or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are cash and/or Cash Equivalents or were contributed to such Unrestricted Subsidiary in anticipation of such distribution, dividend or other payment);

provided, however, that, at the time of and after giving effect to, any Restricted Payment permitted under clauses (6), (7), (11), (13) and (15) of this Section 4.07(b), no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof.

(c) As of the Issue Date, all of the Issuer's Subsidiaries will be Restricted Subsidiaries. The Issuer shall not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the last sentence of the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Issuer and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investments." Such designation shall be permitted only if a Restricted Payment in such amount would be permitted at such time, whether pursuant to Section 4.07(a) hereof or under clause (10) or (11) of Section 4.07(b) hereof, or pursuant to the definition of "Permitted Investments," and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries shall not be subject to any of the restrictive covenants set forth in this Indenture.

Section 4.08 Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries that are not Guarantors to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(1) (A) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or (B) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries.

(b) The restrictions in Section 4.08(a) hereof shall not apply to encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the Senior Credit Facilities and the related documentation;

(2) this Indenture and the Notes;

(3) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature discussed in clause (3) of Section 4.08(a) hereof on the property so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person acquired by the Issuer or any of its Restricted Subsidiaries in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(6) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Issuer pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(7) Secured Indebtedness otherwise permitted to be incurred pursuant to Section 4.09 hereof and Section 4.12 hereof that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(9) customary provisions in joint venture agreements and other similar agreements relating solely to such joint venture;

(10) customary provisions contained in leases or licenses of intellectual property and other agreements, in each case, entered into in the ordinary course of business;

(11) any encumbrances or restrictions of the type referred to in clauses (1), (2) and (3) of Section 4.08(a) hereof imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (10) of this Section 4.08(b); provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(12) restrictions created in connection with any Receivables Facility that, in the good faith determination of the Issuer are necessary or advisable to effect the transactions contemplated under such Receivables Facility.

Section 4.09 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock .

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, “*incur*” and collectively, an “*incurrence*”) with respect to any Indebtedness (including Acquired Indebtedness) and the Issuer shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; provided, however, that (i) the Issuer may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, (ii) any Restricted Subsidiary that is a Guarantor may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock and, (iii) subject to the last proviso of this paragraph, any Restricted Subsidiary that is not a Guarantor, may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if, in case of each clause (i), (ii) and (iii), the Consolidated Total Leverage Ratio on a consolidated basis for the Issuer and its Restricted Subsidiaries’ most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been no more than 3.85 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom); provided, further, that the amount of Indebtedness (other than Acquired Indebtedness), Disqualified Stock and Preferred Stock that may be

incurred and issued pursuant to the foregoing by Restricted Subsidiaries that are not Guarantors shall not exceed (i) prior to the consummation of the Permitted SplitCo Exchange Transaction \$30.0 million at any one time outstanding and (ii) thereafter \$27.0 million at any one time outstanding.

(b) The provisions of Section 4.09(a) hereof shall not apply to:

(1) the incurrence of Indebtedness under Credit Facilities by the Issuer or any Restricted Subsidiaries and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof), up to an aggregate principal amount of \$1,240.0 million outstanding at any one time, less the sum of (i) the aggregate of mandatory principal prepayments required to be and actually made by the borrower thereunder after the Issue Date with Net Proceeds from Dispositions or Casualty Events (each as defined in the Credit Agreement), pursuant to Section 2.05(b) of the Credit Agreement (or similar provision) and (ii) any prepayments or other reduction in the principal amount of the Credit Facilities in connection with the Permitted SplitCo Exchange Transaction; provided, however, that the amount of Indebtedness under the Credit Facilities and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) that can be incurred and created pursuant to this clause (b)(1) by Restricted Subsidiaries that are not Guarantors shall not exceed \$125.0 million at any one time outstanding;

(2) the incurrence by the Issuer and any Subsidiary Guarantor of Indebtedness represented by the Notes (including any Guarantee);

(3) Indebtedness of the Issuer and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (1) and (2) of this Section 4.09(b));

(4) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock and Preferred Stock incurred by the Issuer or any of its Restricted Subsidiaries, to finance the purchase, lease or improvement of property (real or personal) or equipment that is used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount (together with any Refinancing Indebtedness in respect thereof) not to exceed (i) prior to the consummation of the Permitted SplitCo Exchange Transaction \$50.0 million at any time outstanding and (ii) thereafter, \$45.0 million at any time outstanding, in each case, together with all other Indebtedness, Disqualified Stock and/or Preferred Stock issued and outstanding under this clause (4);

(5) Indebtedness incurred by the Issuer or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; provided, however, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence;

(6) Indebtedness arising from agreements of the Issuer or its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; provided, however, that

(A) such Indebtedness is not reflected on the balance sheet of the Issuer, or any of its Restricted Subsidiaries (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (6)(A)); and

(B) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(7) Indebtedness of the Issuer to a Wholly-Owned Restricted Subsidiary or a Subsidiary Guarantor; provided that any such Indebtedness is expressly subordinated in right of payment to the Notes; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary ceasing to be a Wholly-Owned Restricted Subsidiary or a Subsidiary Guarantor or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Wholly-Owned Restricted Subsidiary or a Subsidiary Guarantor, or any collateral agent under the Credit Facilities) shall be deemed, in each case, to be an incurrence of such Indebtedness;

(8) Indebtedness of a Wholly-Owned Restricted Subsidiary or a Subsidiary Guarantor to the Issuer or another Wholly-Owned Restricted Subsidiary or a Subsidiary Guarantor; provided that if a Subsidiary Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not a Subsidiary Guarantor, such Indebtedness is expressly subordinated in right of payment to the Guarantee of the Notes of such Subsidiary Guarantor; provided further that any subsequent transfer of any such Indebtedness (except to the Issuer or another Wholly-Owned Restricted Subsidiary or a Subsidiary Guarantor, or any collateral agent under the Credit Facilities) shall be deemed, in each case, to be an incurrence of such Indebtedness;

(9) shares of Preferred Stock of a Restricted Subsidiary issued to the Issuer or another Wholly-Owned Restricted Subsidiary or a Subsidiary Guarantor, provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Issuer or another of its Restricted Subsidiaries) shall be deemed in each case to be an issuance of such shares of Preferred Stock;

(10) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk with respect to any Indebtedness or exchange rate risk or commodity pricing risk;

(11) obligations in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(12) [reserved];

(13) the incurrence or issuance by the Issuer or any Restricted Subsidiary of the Issuer of Indebtedness, Disqualified Stock or Preferred Stock which serves to refund or refinance any

Indebtedness, Disqualified Stock or Preferred Stock incurred as permitted under Section 4.09(a) and clauses (2), (3), (4), (13) and (14) of this Section 4.09(b) or any Indebtedness, Disqualified Stock or Preferred Stock, including additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay premiums (including reasonable tender premiums), defeasance costs and reasonable fees in connection therewith (the “Refinancing Indebtedness”) prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

(A) has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of, the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced,

(B) to the extent such Refinancing Indebtedness refinances (i) Indebtedness subordinated or *pari passu* to the Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated or *pari passu* to the Notes or the Guarantee at least to the same extent as the Indebtedness being refinanced or refunded or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively, and

(C) shall not include:

(i) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Guarantor; or

(ii) Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and provided further that subclause (A) of this clause (13) shall not apply to any refunding or refinancing of any Indebtedness outstanding under any Credit Facilities;

(14) [reserved];

(15) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within two Business Days of its incurrence;

(16) Indebtedness of the Issuer or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(17) (a) any guarantee by the Issuer or a Restricted Subsidiary of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by such Restricted Subsidiary is permitted under the terms of this Indenture, or (b) any guarantee by a Restricted Subsidiary of Indebtedness of the Issuer; provided that such guarantee is incurred in accordance with Section 4.15 hereof;

(18) Indebtedness of the Issuer or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business;

(19) Indebtedness consisting of Indebtedness issued by the Issuer or any of its Restricted Subsidiaries to current or former officers, directors and employees thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent described in clause (5) of Section 4.07(b) hereof;

(20) Indebtedness, Disqualified Stock or Preferred Stock of (a) Persons that are acquired by the Issuer or any Restricted Subsidiary or merged into the Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture, or (b) the Issuer or any Subsidiary Guarantor incurred in connection with or in contemplation of, or to provide all or any portion of the funds or credit support utilized to consummate, the acquisition by the Issuer or such Subsidiary Guarantor of property used or useful in a Similar Business (whether through the direct purchase of assets or the purchase of Capital Stock of, or merger, amalgamation or consolidation with, any Person owning such assets); provided that (in case of each clause (a) and (b) above), after giving *pro forma* effect to such transaction and any related transactions, the Issuer and its Restricted Subsidiaries on a consolidated basis, for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such Indebtedness is incurred, (A) would have had a on a *pro forma* basis Consolidated Total Leverage Ratio of not more than 3.85 to 1.00 or (B) would have had on a *pro forma* basis a Consolidated Total Leverage Ratio lower than the Consolidated Total Leverage Ratio for such period immediately prior to giving *pro forma* effect to such transaction and any related transactions; and

(21) incurrence by the Issuer or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount not to exceed (i) prior to the consummation of the Permitted SplitCo Exchange Transaction \$125.0 million and (ii) thereafter \$112.5 million, in each case, at any time outstanding.

(c) For purposes of determining compliance with this Section 4.09:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (21) of Section 4.09(b) hereof or is entitled to be incurred pursuant to Section 4.09(a) hereof, the Issuer, in its sole discretion, shall classify or reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses; provided that all Indebtedness outstanding under the Credit Facilities on the Issue Date shall be treated as incurred on the Issue Date under clause (1) of Section 4.09(b) hereof; and

(2) at the time of incurrence, the Issuer shall be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Section 4.09(a) and Section 4.09(b) hereof.

(d) Notwithstanding anything to the contrary herein, the Issuer shall not, and shall not permit any of its Restricted Subsidiaries to incur Secured Indebtedness otherwise permitted to be incurred pursuant to Section 4.09, directly or indirectly, in exchange for any *Pari Passu* Indebtedness or

Subordinated Indebtedness, unless, after giving *pro forma* effect to such incurrence and exchange, the Consolidated Secured Leverage Ratio on a consolidated basis for the Issuer and its Restricted Subsidiaries' most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such Secured Indebtedness is incurred and such exchange is consummated would have been no more than 2.75 to 1.00.

(e) Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount, and the payment of interest in the form of additional Indebtedness and the payment of dividends in the form of additional Disqualified Stock or Preferred Stock, as applicable, shall in each case not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.09.

(f) Notwithstanding anything to the contrary, the Issuer shall not, and shall not permit any Subsidiary Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinated in right of payment to any other Indebtedness of the Issuer or such Subsidiary Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Notes or such Subsidiary Guarantor's Guarantee of the Notes, as the case may be.

(g) For the purposes of this Indenture, Indebtedness that is unsecured will not be deemed to be subordinated or junior to Secured Indebtedness merely because it is unsecured, and Secured Indebtedness will not be deemed to be subordinated or junior to any other Secured Indebtedness merely because it has a junior priority with respect to the same collateral. In addition to the foregoing, until the Disposition Date (unless otherwise consented by the GSMP Group), any Secured Indebtedness which is, by its express terms, subordinated as to rights to receive payments or proceeds of collateral to any other Secured Indebtedness of the Issuer or a Guarantor secured in whole or in part by the same collateral (including any "second-lien" debt or "first-loss" or "last-out" tranche) shall not be permitted.

(h) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

Section 4.10 Asset Sales .

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, cause, make or suffer to exist an Asset Sale, unless:

(1) the Issuer or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (as determined in good faith by the Issuer) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap or the Permitted SplitCo Exchange Transaction, at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that the amount of:

(A) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto) of the Issuer or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Notes, that are assumed by the transferee of any such assets and for which the Issuer and all of its Restricted Subsidiaries have been validly released by all creditors in writing,

(B) any securities received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale, and

(C) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed 2.5% of Total Assets at the time of the receipt of such Designated Non-cash Consideration, with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value,

shall be deemed to be cash for purposes of this provision and for no other purpose.

(b) Within 390 days after the receipt of any Net Proceeds of any Asset Sale, the Issuer or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale.

(1) to permanently reduce:

(A) Obligations under the Senior Credit Facilities or other Secured Indebtedness, and to correspondingly reduce commitments with respect thereto;

(B) Obligations under other unsecured Pari Passu Indebtedness (and to correspondingly reduce commitments with respect thereto); provided that the Issuer shall equally and ratably reduce Obligations under the Notes as provided under Section 3.07 hereof by making an offer (in accordance with the procedures set forth under Section 4.10(c) hereof) to all Holders of Notes to purchase their Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the amount of Notes that would otherwise be prepaid, or

(C) Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor, other than Indebtedness owed to the Issuer or another Restricted Subsidiary,

(2) to make (A) an Investment in any one or more businesses, provided that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Issuer or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (B) capital expenditures (provided that the aggregate amount of the Net Proceeds of the Split-Up Non-Cash Consideration that may be invested in capital expenditures after the consummation of the

Permitted SplitCo Exchange Transaction shall not exceed the highest amount of capital expenditures made in any one 390-day period (as such period may be extended pursuant to the proviso below in this clause (b) since the Issue Date) or (C) acquisitions of other assets, in each of (A), (B) and (C), used or useful in a Similar Business, or

(3) to make an investment in (A) any one or more businesses, provided that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Issuer or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (B) properties or (C) acquisitions of other assets that, in each of (A), (B) and (C), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

provided that, in the case of clauses (2) and (3) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds shall be applied to satisfy such commitment within 180 days of such commitment (an “Acceptable Commitment”); provided further that if any Acceptable Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Excess Proceeds.

(c) Any Net Proceeds from the Asset Sale that are not invested or applied as provided and within the time period set forth in Section 4.10(b) hereof shall be deemed to constitute “Excess Proceeds.” When the aggregate amount of Excess Proceeds exceeds \$25.0 million, the Issuer shall make an offer to all Holders of the Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Notes (“Pari Passu Indebtedness”), to the holders of such Pari Passu Indebtedness (an “Asset Sale Offer”), to purchase the maximum aggregate principal amount of the Notes and such Pari Passu Indebtedness that is an integral multiple of \$1,000 (but in a minimum amount of \$2,000) that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. The Issuer shall commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed \$25.0 million by delivering the notice required pursuant to the terms of this Indenture, with a copy to the Trustee.

To the extent that the aggregate amount of Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in this Indenture. If the aggregate principal amount of Notes or the Pan Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and the Issuer shall select such Pan Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pan Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset to zero.

(d) Pending the final application of any Net Proceeds pursuant to this Section 4.10, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

(e) The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer. To the extent

that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof.

(f) Notwithstanding anything to the contrary contained herein, neither the Issuer nor any of its Restricted Subsidiaries) shall sell, convey, transfer or otherwise dispose of (including by way of a lease, assignment or otherwise), in one transaction or in a series of related transactions, all or substantially all of the assets of the SeaWorld Orlando (including by means of any Sale Lease-Back Transaction or an asset swap in respect thereof) prior to the first anniversary of the Issue Date.

Section 4.11 Transactions with Affiliates.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, convey, transfer or otherwise dispose of (including by way of a lease, assignment or otherwise) any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each of the foregoing, an “Affiliate Transaction”) involving aggregate payments or consideration in excess of \$5.0 million, unless:

(1) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm’s-length basis; and

(2) the Issuer delivers to the Trustee:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$15.0 million, a resolution adopted by the majority of the board of directors of the Issuer approving such Affiliate Transaction and set forth in an Officer’s Certificate certifying that such Affiliate Transaction complies with clause (1) of this Section 4.11(a); and

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$35.0 million, a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view.

(b) The provisions of Section 4.11(a) hereof shall not apply to the following:

(1) transactions between or among the Issuer or any of its Restricted Subsidiaries;

(2) Restricted Payments permitted by Section 4.07 hereof and the definition of “Permitted Investments”;

(3) the payment of reasonable and customary fees paid to, and indemnities provided on behalf of, officers, directors, employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries;

(4) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or

stating that the terms are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(5) any agreement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(6) the Transaction and the payment of all reasonable fees and expenses related to the Transaction;

(7) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture which are fair to the Issuer and its Restricted Subsidiaries, in the reasonable determination of the board of directors of the Issuer or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(8) the issuance of Equity Interests (other than Disqualified Stock) of the Issuer to any Permitted Holder or to any director, officer, employee or consultant;

(9) payments by the Issuer or any of its Restricted Subsidiaries to the Sponsor or any of its Affiliates made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by a majority of the board of directors of the Issuer in good faith;

(10) payments or loans (or cancellation of loans) to employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries and employment agreements, stock option plans and other similar arrangements with such employees or consultants which, in each case, are approved by the Issuer in good faith;

(11) investments by Permitted Holders or any of their Affiliates in securities of the Issuer or any of its Restricted Subsidiaries so long as the investment is being offered generally to other investors on the same or more favorable terms;

(12) any transaction with a joint venture or similar entity which would constitute an Affiliate Transaction solely because the Issuer or a Restricted Subsidiary owns an equity interest in or otherwise controls such joint venture or similar entity; provided that no Affiliate of the Issuer or any of its Subsidiaries other than the Issuer or a Restricted Subsidiary shall have a beneficial interest in such joint venture or similar entity;

(13) so long as no Default or Event of Default pursuant to Sections 6.01(a)(1), 6.01(a)(2), 6.01(a)(6) or 6.01(a)(7) shall have occurred or is continuing or shall result therefrom, the payment of management, consulting and monitoring, transactional and advisory fees permitted under the Management Agreement as in effect on the Issue Date plus all reasonable out-of-pocket expenses and customary indemnities related to any such activities;

(14) sales of accounts receivable, or participation therein, in connection with any Receivables Facility;

(15) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date; and

(16) payments on the Notes in accordance with this Indenture.

Section 4.12 Liens.

The Issuer shall not, and shall not permit any Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness or any related Guarantee of any such entity, on any asset or property of the Issuer or any Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom; unless:

(1) in the case of Liens securing Subordinated Indebtedness, the Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or

(2) in all other cases, the Notes or the Guarantees are equally and ratably secured,

except that the foregoing shall not apply to (A) Liens securing the Notes and the related Guarantees, (B) Liens securing Indebtedness under the Senior Credit Facilities incurred in compliance with Section 4.09(b)(i) hereof and (C) Liens securing any other Indebtedness of the Issuer or a Subsidiary Guarantor incurred in compliance with Section 4.09 hereof, so long as the Consolidated Secured Leverage Ratio on a consolidated basis for the Issuer and its Restricted Subsidiaries' most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which the Indebtedness secured by such Lien is incurred would have been no more than 2.75 to 1.00.

Section 4.13 Corporate Existence.

Subject to Article 5 hereof, the Issuer shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Issuer or any such Restricted Subsidiary and (ii) the rights (charter and statutory), licenses and franchises of the Issuer and its Restricted Subsidiaries; provided that the Issuer shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Restricted Subsidiaries, if the Issuer in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and its Restricted Subsidiaries, taken as a whole.

Section 4.14 Offer to Repurchase Upon Change of Control.

(a) If a Change of Control occurs, unless the Issuer has previously or concurrently mailed a redemption notice with respect to all the outstanding Notes as described under Section 3.07 hereof, the Issuer shall make an offer to purchase all of the Notes pursuant to the offer described below (the "Change of Control Offer") at a price in cash (the "Change of Control Payment") equal to the applicable Change of Control Percentage of the aggregate principal amount thereof, plus accrued and unpaid interest to the date of purchase, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date. Within 30 days following any Change of Control, the Issuer shall deliver notice of such Change of Control Offer, with a copy to the Trustee, to each Holder to the registered address of such Holder (or otherwise delivered in accordance with the procedures of DTC) with the following information:

(1) that a Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;

(2) the purchase price and the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is delivered (the “Change of Control Payment Date”);

(3) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(4) that unless the Issuer defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of such Notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders shall be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes, provided that the paying agent receives, not later than the close of business on the 30th day following the date of the Change of Control notice, a telegram, facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(7) that if the Issuer is redeeming less than all of the Notes, the Holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered (which must be equal to \$2,000 or an integral multiple of \$1,000 in excess thereof); and

(8) the other instructions, as determined by the Issuer, consistent with this Section 4.14, that a Holder must follow.

The notice, if delivered in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (a) the notice is delivered in a manner herein provided and (b) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder’s failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect.

The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.14, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations in this Section 4.14 by virtue thereof.

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- (b) On the Change of Control Payment Date, the Issuer shall, to the extent permitted by law,
- (1) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,
 - (2) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered, and
 - (3) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer's Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuer.

(c) In the event a Change of Control occurs at a time when the Issuer is prohibited by the terms of any Secured Indebtedness from purchasing Notes, then prior to the delivery of the notice of a Change of Control to holders of Notes but in any event within 45 days following any Change of Control, the Issuer shall either (1) repay in full all Obligations, and terminate all commitments, under the Senior Credit Facilities and all such other Secured Indebtedness, the terms of which require repayment and/or termination of commitments upon a Change of Control or offer to repay in full all Obligations, and terminate all commitments, under the Senior Credit Facilities and all such other Secured Indebtedness and to repay the Obligations owed to (and terminate all commitments of) each lender which has accepted such offer or (2) obtain the requisite consents under the agreements governing all such Secured Indebtedness to permit the repurchase of the Notes. For the avoidance of doubt, the Issuer's failure to comply with this Section 4.14(c) shall not constitute an Event of Default described in clause (1) under Section 6.01 hereof, but shall constitute an Event of Default under clause (3) of Section 6.01 hereof after the giving of the notice and the expiration of the applicable cure period.

(d) [reserved]

(e) The Issuer shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.14 applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) The provisions of this Section 4.14 relative to the Issuer's obligation to make an offer to repurchase the Notes as a result of a Change of Control may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes.

(g) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections 3.02, 3.05 and 3.06 hereof.

Section 4.15 Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.

The Issuer shall not permit any of its Wholly-Owned Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee other Indebtedness), other than a Subsidiary Guarantor, to guarantee the payment of any Indebtedness of the Issuer or any other Subsidiary Guarantor unless:

(1) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to this Indenture, the form of which is attached as Exhibit E hereto, providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Subsidiary Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes:

(2) such Restricted Subsidiary waives and shall not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee; and

(3) such Restricted Subsidiary shall deliver to the Trustee an Opinion of Counsel to the effect that:

(a) such Guarantee has been duly executed and authorized; and

(b) such Guarantee constitutes a valid, binding and enforceable obligation of such Restricted Subsidiary, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity;

provided that this Section 4.15 shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

Section 4.16 Holdings Ownership.

To the extent and for so long as required under the Senior Credit Facilities, Holdings will maintain direct ownership of 100% of Capital Stock of the Issuer.

Section 4.17 Business Activities.

The Issuer shall not, and shall not permit any Restricted Subsidiary, to engage in any business other than a Similar Business.

ARTICLE 5
SUCCESSORS

Section 5.01 Merger, Consolidation or Sale of All or Substantially All Assets.

(a) The Issuer shall not consolidate or merge with or into or wind up into (whether or not the Issuer is the surviving entity), or sell, transfer, convey or otherwise dispose (including by way of a lease, assignment or otherwise) of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(1) either: (x) the Issuer is the surviving corporation; or (y) the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation (or, with the consent of the GSMP Group (such consent not to be unreasonably withheld), a partnership (including a limited partnership), trust, limited liability company or other entity; provided that such consent shall not be required after the Disposition Date) organized or existing under the laws of the jurisdiction of organization of the Issuer or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the “Successor Company”);

(2) the Successor Company, if other than the Issuer, expressly assumes all the obligations of the Issuer under the Notes pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(3) immediately after such transaction, no Default exists;

(4) immediately after giving *pro forma* effect to such transaction and any related financing transactions,

(A) the Successor Company would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Consolidated Total Leverage Ratio test set forth in Section 4.09(a) hereof; or

(B) the Consolidated Total Leverage Ratio for the Successor Company, the Issuer and its Restricted Subsidiaries would not be greater than the Consolidated Total Leverage Ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(5) each Guarantor, unless it is the other party to the transactions described above, in which case Section 5.01(c)(1)(B) hereof shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person’s obligations under this Indenture and the Notes; and

(6) the Issuer shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture.

(b) The Successor Company shall succeed to, and be substituted for the Issuer, as the case may be, under this Indenture, the Guarantees and the Notes, as applicable. Notwithstanding clauses (3) and (4) of Section 5.01(a) hereof,

(1) any Restricted Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Issuer, and

(2) the Issuer may merge with an Affiliate of the Issuer, as the case may be, solely for the purpose of reincorporating the Issuer in a State of the United States so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby.

(c) Subject to certain limitations described in this Indenture governing release of a Guarantee upon the sale, disposition or transfer of a guarantor, no Guarantor shall, and the Issuer shall not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not the Issuer or Guarantor is the surviving entity), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(1) (A) such Guarantor is the surviving entity or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership (including a limited partnership), trust, limited liability company or other entity organized or existing under the laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the “Successor Person”);

(B) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under this Indenture and such Guarantor’s related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(C) immediately after such transaction, no Default exists; and

(D) the Issuer shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture; or

(2) the transaction is made in compliance with Section 4.10 hereof.

(d) Subject to certain limitations described in this Indenture, the Successor Person shall succeed to, and be substituted for, such Guarantor under this Indenture and such Guarantor’s Guarantee. Notwithstanding the foregoing, any Guarantor may merge into or transfer all or part of its properties and assets to another Guarantor or the Issuer.

Section 5.02 Successor Company Substituted.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer in accordance with Section 5.01 hereof, the successor entity formed by such consolidation or into or with which the Issuer is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Issuer shall refer instead to the successor entity and not to the Issuer), and may exercise every right and power of the Issuer under this Indenture with the same effect as if such successor Person had been named as the Issuer herein; provided that the predecessor Issuer shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all or substantially all of the Issuer’s assets that meets the requirements of Section 5.01 hereof.

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

(a) An “Event of Default” wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(2) default for 30 days (or, until the Disposition Date, 5 days (unless the GSMP Group consents to a longer period not to exceed 30 days)) or more in the payment when due of interest on or with respect to the Notes;

(3) (A) failure by the Issuer or any Guarantor to comply with any of its obligations, covenants or agreements contained in Section 4.14 hereof or Article 5 (with respect to the Issuer only) hereof or (B) failure by the Issuer or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less than 25% in principal amount of the Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (1), (2) and (3)(A)) contained in this Indenture or the Notes; provided that, notwithstanding anything to the contrary in this clause (B), until the Disposition Date (unless the GSMP Group consents to longer grace periods not to exceed the period provided in the foregoing clause (B)), failure by the Issuer or any Guarantor to comply with their respective obligations (x) under Sections 4.07 through 4.13, inclusive, 4.15, 4.16 and Article 5 (other than with respect to the Issuer) shall result in an Event of Default upon the occurrence of such failure and (y) under any other provision of this Indenture or the Notes (to the extent such failure does not otherwise constitute a Default under clause (1), (2) or (3)(A)) shall result in an Event of Default after such failure continues for 30 days after receipt of written notice given by the Trustee or by the GSMP Group with a copy of the notice to the Trustee;

(4) (x) until the Disposition Date, the occurrence of any event of default under any Indebtedness (other than Indebtedness under the Senior Credit Facilities) of the Issuer or any Significant Subsidiary or (y) the Issuer or any Significant Subsidiary fails to pay any Indebtedness (other than Indebtedness owing to the Issuer or a Restricted Subsidiary of the Issuer) within any applicable grace period after final maturity or the acceleration of any such Indebtedness by the holders thereof because of a default, in each case of the foregoing clauses (x) or (y), if the total amount of such Indebtedness as to which a Default or Event of Default has occurred or that is un-paid or accelerated exceeds \$40.0 million or its foreign currency equivalent,

(5) failure by the Issuer or any Significant Subsidiary to pay final judgments aggregating in excess of \$40.0 million, which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(6) the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences proceedings to be adjudicated bankrupt or insolvent;

(ii) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy law;

(iii) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) generally is not paying its debts as they become due;

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in a proceeding in which the Issuer or any such Restricted Subsidiaries, that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; or

(iii) orders the liquidation of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days;

(8) the Guarantee of any Significant Subsidiary shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of any Guarantor that is a Significant Subsidiary, as the case may be, denies that it has any further liability under its Guarantee or gives notice to such effect, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture; or

(9) until the Disposition Date (unless waived by the GSMP Group), (A) failure by the Issuer for 30 days after receipt of written notice given by the GSMP Group to comply with any of its covenants and other agreements in the Note Purchase Agreement or (B) failure of any representation, warranty, certification or statement made or deemed to have been made by or on behalf of the Issuer or by any of its officers or employees in any statement or certificate at any time given by or on behalf of the Issuer in writing pursuant to the Note Purchase Agreement to be true and correct in any material respect on the date as of which made;

(b) In the event of any Event of Default specified in clause (4) of Section 6.01(a), such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 20 days after such Event of Default arose:

- (1) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or
- (2) holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or
- (3) the default that is the basis for such Event of Default has been cured.

Section 6.02 Acceleration.

(a) If any Event of Default (other than an Event of Default specified in clause (6) or (7) of Section 6.01(a) hereof with respect to the Issuer) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately.

Notwithstanding the foregoing, in the case of an Event of Default arising under clause (6) or (7) of Section 6.01(a) hereof with respect to the Issuer, all outstanding Notes shall be due and payable immediately without further action or notice.

The Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. In addition, the Trustee shall have no obligation to accelerate the Notes if in the judgment of the Trustee acceleration is not in the best interest of the Holders of the Notes.

The Required Holders by written notice to the Trustee may on behalf of all of the Holders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest, or premium that has become due solely because of the acceleration) have been cured or waived.

(b) Notwithstanding the preceding paragraph, in the event of a declaration of acceleration in respect of the Notes because of an Event of Default specified in Section 6.01(a)(4) shall have occurred and be continuing, such declaration of acceleration shall be automatically annulled if the Indebtedness that is the subject of such Event of Default has been discharged or the Holders thereof have rescinded their declaration of acceleration in respect of such Indebtedness, and written notice of such discharge or rescission, as the case may be, shall have been given to the Trustee by the Issuer and countersigned by the Holders of such Indebtedness or a trustee, fiduciary or agent for such Holders, within 30 days after such declaration of acceleration in respect of the Notes, and no other Event of Default has occurred during such 30 day period which has not been cured or waived during such period.

Section 6.03 Other Remedies.

If, at any time prior to the Disposition Date, unless waived by the GSMP Group, a Default in the payment when due of interest on, principal of, or premium, if any, on, the Notes or an Event of Default has occurred and is continuing, then in each case the Notes will accrue interest at the stated interest rate on the Notes plus the Default Interest Rate until the earlier of such time as no such Default or such Event of Default shall be continuing (to the extent that the payment of such interest shall be legally enforceable) or the Disposition Date. At any other time, any amounts payable under or in respect of the Notes not paid when due will accrue interest at the stated interest rate on the Notes plus the Default Interest Rate until such time as such amounts are paid in full, including any interest thereon (to the extent that the payment of such overdue interest shall be legally enforceable). Default interest shall be payable in cash on demand and, to the extent applicable, in accordance with Section 2.12 hereof.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 Waiver of Past Defaults.

The Required Holders by written notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default and its consequences hereunder except a continuing Default in the payment of interest on, premium, if any, or the principal of any Note held by a non-consenting Holder (including in connection with an Asset Sale Offer or a Change of Control Offer); provided, subject to Section 6.02 hereof, that the Required Holders may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.

Holders of a majority in principal amount of the total outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note or that would involve the Trustee in personal liability.

Section 6.06 Limitation on Suits.

Subject to Section 6.07 hereof, no Holder of a Note (other than, prior to the Disposition Date, the GSMP Group) may pursue any remedy with respect to this Indenture or the Notes unless:

- (1) such Holder has previously given the Trustee notice that an Event of Default is continuing;

- (2) Holders of at least 25% in principal amount of the total outstanding Notes have requested the Trustee to pursue the remedy;
- (3) Holders of the Notes have offered the Trustee security or indemnity reasonably satisfactory to it against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and
- (5) the Required Holders have not given the Trustee a direction inconsistent with such request within such 60-day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default specified in Section 6.01(a)(1) or (2) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuer for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Issuer, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes including the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.13 Priorities.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

- (i) to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;
- (ii) to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and
- (iii) to the Issuer or to such party as a court of competent jurisdiction shall direct including a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.13.

Section 6.14 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7

TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders of the Notes unless the Holders have offered to the Trustee indemnity or security reasonably satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer shall be sufficient if signed by an Officer of the Issuer.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) [reserved]

(k) The Trustee shall not be deemed to owe any fiduciary duty to the holders of Pari Passu Indebtedness of the Issuer and shall not be liable to any such holder for any action it takes or omits to take within the rights or powers conferred upon it by this Indenture.

Section 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or any Affiliate of the Issuer with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

Section 7.04 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the Notes or any money paid to the Issuer or upon the Issuer's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall deliver to Holders of Notes a notice of the Default within 90 days after it occurs. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes. The Trustee shall not be deemed to know of any Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is such a Default is received by the Trustee at the Corporate Trust Office of the Trustee.

Section 7.06 [Reserved].

Section 7.07 Compensation and Indemnity.

The Issuer shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Issuer and the Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuer or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuer or any Guarantor, or liability in connective with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith.

The obligations of the Issuer under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the payment obligations of the Issuer and the Guarantors in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(6) or (7) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.08 Replacement of Trustee .

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuer. The Required Holders may remove the Trustee by so notifying the Trustee and the Issuer in writing. The Issuer may remove the Trustee if:

(a) the Trustee fails to comply with Section 7.10 hereof;

(b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or its property; or

(d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Required Holders may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuer's expense), the Issuer or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall deliver a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; provided all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuer's obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09 Successor Trustee by Merger, etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.10 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$50.0 million as set forth in its most recent published annual report of condition.

Section 7.11 [Reserved].

ARTICLE 8

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 Option to Effect Legal Defeasance or Covenant Defeasance.

The Issuer may, at its option and at any time, elect to have either Section 8.02 or 8.03 hereof applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 Legal Defeasance and Discharge.

Upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes and Guarantees on the date the conditions set forth below are satisfied ("Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer shall be deemed to have paid and

discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be “outstanding” only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all its other obligations under such Notes and this Indenture including that of the Guarantors (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

- (a) the rights of Holders of Notes to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 8.04 hereof;
- (b) the Issuer’s obligations with respect to Notes concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;
- (c) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuer’s obligations in connection therewith; and
- (d) this Section 8.02.

Subject to compliance with this Article 8, the Issuer may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 Covenant Defeasance.

Upon the Issuer’s exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16 and 4.17 hereof and clauses (4) and (5) of Section 5.01(a), Sections 5.01(c) and 5.01(d) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (“Covenant Defeasance”), and the Notes shall thereafter be deemed not “outstanding” for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed “outstanding” for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuer may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuer’s exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(a)(3), 6.01(a)(4), 6.01(a)(5), 6.01(a)(6) (solely with respect to Restricted Subsidiaries that are Significant Subsidiaries), 6.01(a)(7) (solely with respect to Restricted Subsidiaries that are Significant Subsidiaries), 6.01(a)(8) and 6.01(a)(9) hereof shall not constitute Events of Default.

The following shall be the conditions to the application of either Section 8.02 or 8.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest due on the Notes on the date of Stated Maturity or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuer must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(a) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(b) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, and in each case the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the Senior Credit Facilities or any other material agreement or instrument (other than this Indenture) to which, the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such Legal Defeasance or Covenant Defeasance and any similar and simultaneous deposit relating to other Indebtedness, and the granting of Liens in connection therewith);

(6) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;

(7) the Issuer shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or any Guarantor or others; and

(8) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Section 8.05 Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions .

Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon the request of the Issuer any money or Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 Repayment to Issuer .

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium, if any, or interest has become due and payable shall be paid to the Issuer on its request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease.

Section 8.07 Reinstatement .

If the Trustee or Paying Agent is unable to apply any United States dollars or Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise

prohibiting such application, then the Issuer's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; provided that, if the Issuer makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 Without Consent of Holders of Notes.

Notwithstanding Section 9.02 hereof, the Issuer, any Guarantor (with respect to a Guarantee or this Indenture) and the Trustee may amend or supplement this Indenture and any Guarantee or Notes without the consent of any Holder:

- (1) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (2) to provide for uncertificated Notes of such series in addition to or in place of certificated Notes;
- (3) to comply with Section 5.01 hereof;
- (4) to provide for the assumption of the Issuer's or any Guarantor's obligations to the Holders;
- (5) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder;
- (6) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;
- (7) [reserved];
- (8) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee thereunder pursuant to the requirements thereof;
- (9) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;
- (10) to add a Guarantor under this Indenture or to release a Guarantee in accordance with the terms of Section 11.06 of this Indenture; or
- (11) making any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation to facilitate the issuance and administration of the Notes; provided, however, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not adversely affect the rights of Holders to transfer Notes.

Upon the request of the Issuer accompanied by a resolution of its board of directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuer and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further necessary agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, no Opinion of Counsel shall be required in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit E hereto, and delivery of an Officer's Certificate.

Section 9.02 With Consent of Holders of Notes .

Except as provided below in this Section 9.02, the Issuer and the Trustee may amend or supplement this Indenture, the Notes and the Guarantees with the consent of the Required Holders (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Guarantees or the Notes may be waived with the consent of the Required Holders (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 hereof and Section 2.09 hereof shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

Upon the request of the Issuer accompanied by a resolution of its board of directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuer in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

It shall not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuer shall deliver to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to deliver such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each Holder of Notes, an amendment or waiver under this Section 9.02 may not:

- (1) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed final maturity of any such Note or alter or waive the provisions with respect to the redemption of such Notes (other than provisions relating to Section 3.09, Section 4.10 and Section 4.14 hereof to the extent that any such amendment or waiver does not have the effect of reducing the principal of or changing the fixed final maturity of any such Note or altering or waiving the provisions with respect to the redemption of such Notes);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Required Holders and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all Holders;

(5) make any Note payable in money other than that stated therein;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(7) make any change in these amendment and waiver provisions;

(8) impair the right of any Holder to receive payment of principal of, or interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes; or

(9) except as expressly permitted by this Indenture, modify the Guarantees of any Significant Subsidiary in any manner adverse to the Holders of the Notes.

Section 9.03 [Reserved].

Section 9.04 Revocation and Effect of Consents.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement, or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 9.05 Notation on or Exchange of Notes.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06 Trustee to Sign Amendments, etc.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuer may not sign an amendment, supplement or waiver until the board of directors approves it. In executing any amendment, supplement or waiver, the Trustee shall be entitled to receive and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 14.04 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03). Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.

Section 9.07 Payment for Consent.

Neither the Issuer nor any Affiliate of the Issuer shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

ARTICLE 10

[RESERVED]

ARTICLE 11

GUARANTEES

Section 11.01 Guarantee.

Subject to this Article 11, from and after the consummation of the Transaction, each of the Guarantors hereby, jointly and severally, unconditionally guarantees (as to each of the Guarantors and as to all Guarantors collectively, "this Guarantee") to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuer hereunder or thereunder, that: (a) the principal of, interest and premium, if any, on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of

and interest on the Notes, if any, if lawful, and all other Obligations of the Issuer to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this Guarantee is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives (to the fullest extent permitted by law) diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section 11.01.

If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Guarantee.

This Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation, reorganization, should the Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuer's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or this Guarantee, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of this Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

This Guarantee shall be a general unsecured senior obligation of each Guarantor.

Each payment to be made by a Guarantor in respect of this Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 11.02 Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 11, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's *pro rata* portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Section 11.03 Execution and Delivery.

To evidence its Guarantee set forth in Section 11.01 hereof, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by its President, one of its Vice Presidents or one of its Assistant Vice Presidents.

Each Guarantor hereby agrees that its Guarantee set forth in Section 11.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

If required by Section 4.15 hereof, the Issuer shall cause any newly created or acquired Restricted Subsidiary to comply with the provisions of Section 4.15 hereof and this Article 11, to the ex-tent applicable.

Section 11.04 Subrogation.

Each Guarantor shall be subrogated to all rights of Holders of Notes against the Issuer in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 11.01 hereof;

provided that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuer under this Indenture or the Notes shall have been paid in full.

Section 11.05 Benefits Acknowledged.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 11.06 Release of Guarantees.

A Guarantee by a Guarantor shall be automatically and unconditionally released and discharged, and no further action by such Guarantor, the Issuer or the Trustee is required for the release of such Guarantor's Guarantee, upon:

(1) (A) any sale, exchange or transfer (by merger or otherwise) of the Capital Stock of such Guarantor (including any sale, exchange or transfer), after which the applicable Guarantor is no longer a Restricted Subsidiary or all or substantially all the assets of such Guarantor which sale, exchange or transfer is made in compliance with the applicable provisions of this Indenture;

(B) the release or discharge of the guarantee by such Guarantor of the Senior Credit Facilities or the guarantee which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee;

(C) the designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary in compliance with Section 4.07 hereof; or

(D) the Issuer exercising its Legal Defeasance option or Covenant Defeasance option in accordance with Article 8 hereof or the Issuer's obligations under this Indenture being discharged in accordance with the terms of this Indenture; and

(2) delivery by such Guarantor to the Trustee of an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

ARTICLE 12

[RESERVED]

ARTICLE 13

SATISFACTION AND DISCHARGE

Section 13.01 Satisfaction and Discharge.

This Indenture shall be discharged and shall cease to be of further effect as to all Notes, when either:

(1) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(2) (A) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, shall become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer and the Issuer or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(B) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness) with respect to this Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under the Senior Credit Facilities or any other material agreement or instrument (other than this Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, and the granting of Liens in connection therewith);

(C) the Issuer has paid or caused to be paid all sums payable by it under this Indenture; and

(D) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to subclause (A) of clause (2) of this Section 13.01, the provisions of Section 13.02 and Section 8.06 hereof shall survive.

Section 13.02 Application of Trust Money.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 13.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 13.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 13.01 hereof; provided that if the Issuer has made any payment of principal of, premium, if any, or interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 14

MISCELLANEOUS

Section 14.01 [Reserved].

Section 14.02 Notices.

Any notice or communication by the Issuer, any Guarantor or the Trustee to the others is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuer and/or any Guarantor:

SW Acquisitions Co., Inc.
and/or the applicable Guarantor
c/o Busch Entertainment LLC
9205 S. Park Center Loop, Ste 400
Orlando, FL 32819
Attention: Chief Legal Officer

with a copy (which copy shall not constitute notice) to:

SW Acquisitions Co., Inc.
and/or the applicable Guarantor
c/o The Blackstone Group,
345 Park Avenue, Floor 31,
New York, NY 10154
Attention: Bruce McEvoy; and
Simpson Thacher & Bartlett LLP,
425 Lexington Avenue,
New York, New York 10017,
Attention: Stephan J. Feder

If to the Trustee:

Wilmington Trust FSB
Corporate Capital Markets
50 South Sixth St., Suite 1290
Minneapolis, MN 55402
Attention: SW Acquisitions Co., Inc. Administrator

The Issuer, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt is acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; provided that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuer mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Notes, where this Indenture or any Notes provide for notice of any event (including any notice of redemption) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee) pursuant to the customary procedures of such Depositary.

Section 14.03 Communication by Holders of Notes with Other Holders of Notes .

Holders may communicate with other Holders with respect to their rights under this Indenture or the Notes.

Section 14.04 Certificate and Opinion as to Conditions Precedent .

Upon any request or application by the Issuer or any of the Guarantors to the Trustee to take any action under this Indenture, the Issuer or such Guarantor, as the case may be, shall furnish to the Trustee:

(a) An Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 14.05 hereof) stating that, in the opinion of the signer, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) An Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 14.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 14.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer's Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 14.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 14.07 No Personal Liability of Directors, Officers, Employees and Stockholders.

No director, officer, employee, incorporator or stockholder of the Issuer or any Guarantor or any of their parent companies shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees or this Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 14.08 Governing Law.

THIS INDENTURE, THE NOTES AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 14.09 Waiver of Jury Trial.

EACH OF THE ISSUER, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 14.10 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 14.11 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 14.12 Successors.

All agreements of the Issuer in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 11.05 hereof.

Section 14.13 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.14 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 14.15 Table of Contents, Headings, etc.

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following page]

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

WILMINGTON TRUST FSB
as Trustee

By: /s/ Jane Schweiger
Name: Jane Schweiger
Title: Vice President

[Indenture]

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

SW ACQUISITIONS CO., INC.
as Issuer

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary and Chief Financial Officer

SW HOLDCO, INC.
as Holdings and Guarantor

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary and Chief Financial Officer

[Indenture]

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

BUSCH ENTERTAINMENT LLC
as Guarantor

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary

BUSCH ENTERTAINMENT COMPANY
INTERNATIONAL, INC.
as Guarantor

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary

LANGHORNE FOOD SERVICES LLC
as Guarantor

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary

[Indenture]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date that written above.

SEA WORLD LLC
as Guarantor

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary

SEA WORLD OF FLORIDA LLC
as Guarantor

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary

SEA WORLD OF TEXAS LLC
as Guarantor

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary

[Indenture]

SUBSIDIARY GUARANTORS

Busch Entertainment LLC
Busch Entertainment Company International, Inc.
Langhorne Food Services LLC
Sea World LLC
Sea World of Florida LLC
Sea World of Texas LLC

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

This debt instrument has been issued with original issue discount for U.S. Federal income tax purposes.

The following information is provided pursuant to Treas. Reg. Section 1.1275-3:

Issue Price: \$ 919.28 per \$1,000.00 of face amount

Issue Date: December 1, 2009

Amount of Original Issue Discount: \$ \$80.72 per \$1,000.00 of face amount

Yield to Maturity: 16.01%

IN WITNESS HEREOF, the Issuer has caused this instrument to be duly executed.

Dated: _____

SW ACQUISITIONS CO., INC.

By: _____

Name:

Title:

This is one of the Notes referred to in the within-mentioned Indenture:

Dated: _____

WILMINGTON TRUST FSB, as Trustee

By: _____
Authorized Signatory

13 1/2 % Senior Notes due 2016

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. SW ACQUISITIONS CO., INC., a Delaware corporation, promises to pay interest on the principal amount of this Note at 13 1/4 % per annum from December 1, 2009 until maturity. The Issuer will pay interest semi-annually in arrears on December 1 and June 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an “Interest Payment Date”). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; provided that the first Interest Payment Date shall be June 1, 2010. If, at any time prior to the Disposition Date, a default in the payment when due of interest or on principal of, or premium, if any, on the Notes or an Event of Default has occurred and is continuing, then in each case this Note will accrue interest at the stated interest rate on this Note plus the Default Interest Rate until such time as no such Default or such Event of Default shall be continuing (to the extent that the payment of such interest shall be legally enforceable). At any other time, any amounts payable under or in respect of this Note not paid when due will accrue interest at the stated interest rate on this Note plus the Default Interest Rate until such time as such overdue amounts are paid in full, including any interest thereon (to the extent that the payment of such interest shall be legally enforceable). Default interest shall be payable by the Issuer in cash on demand in accordance with Section 2.12 of the Indenture. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. METHOD OF PAYMENT. The Issuer will pay interest on the Notes to the Persons who are registered Holders of Notes at the close of business on November 15 and May 15 (whether or not a Business Day), as the case may be, next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders; provided that payment by wire transfer of immediately available funds will be required with respect to principal of, and interest and premium on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuer or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

PAYING AGENT AND REGISTRAR. Initially, Wilmington Trust FSB, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuer may change any Paying Agent or Registrar without notice to the Holders. The Issuer or any of its Subsidiaries may act in any such capacity.

INDENTURE. The Issuer issued the Notes under an Indenture, dated as of December 1, 2009 (the “Indenture”), among the Issuer, the Guarantors named therein and the Trustee. This Note is one of a duly authorized issue of Notes of the Issuer designated as its 13 1/2 % Senior Notes due 2016. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. OPTIONAL REDEMPTION.

(a) Except as described below under clauses 5(b) and 5(c) hereof, the Notes will not be redeemable at the Issuer's option before December 1, 2012.

(b) At any time prior to December 1, 2012, the Issuer may redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice delivered electronically or by first-class mail, with a copy to the Trustee, to the registered address of each Holder or otherwise delivered in accordance with the procedures of DTC, at a redemption price equal to 100% of the principal amount of Notes redeemed plus the Applicable Premium as of, plus accrued and unpaid interest thereon to the date of redemption (the "Redemption Date"), subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(c) Until December 1, 2012, the Issuer may redeem up to 35% of the aggregate principal amount of Notes issued by it at a redemption price equal to 113.50% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds received by it from one or more Equity Offerings; provided that at least 65% of the sum of the aggregate principal amount of Notes originally issued under the Indenture remains outstanding immediately after the occurrence of each such redemption; provided further that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any such Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(d) On and after December 1, 2012, the Issuer may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' prior notice delivered electronically or by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes at the address of such Holder appearing in the security register, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve-month period beginning on December 1 of each of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2012	110.00%
2013	106.75%
2014	104.50%
2015	102.25%

(e) Any redemption pursuant to this paragraph 5 shall be made pursuant to the provisions of Sections 3.01 through 3.06 of the Indenture.

6. MANDATORY REDEMPTION. The Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

7. NOTICE OF REDEMPTION. Subject to Section 3.03 of the Indenture, notice of redemption will be delivered by electronic transmission or by first-class mail at least 30 days but not more than 60 days before the redemption date (except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 13 of the Indenture) to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$2,000 may be redeemed in part but only in whole multiples of \$1,000, unless all of the Notes held by a Holder are to be redeemed. Subject to Section 3.05 of the Indenture, on and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

8. OFFERS TO REPURCHASE.

Upon the occurrence of a Change of Control, the Issuer shall make an offer (a “Change of Control Offer”) to each Holder to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of each Holder’s Notes at a cash purchase price equal to the applicable Change of Control Percentage of the aggregate principal amount thereof, plus accrued and unpaid interest thereon, if any, to the date of purchase (the “Change of Control Payment”). The Change of Control Offer shall be made in accordance with Section 4.14 of the Indenture.

If the Issuer or any of its Restricted Subsidiaries consummates an Asset Sale, within 10 Business Days of each date that Excess Proceeds exceed \$25.0 million, the Issuer shall commence, an offer to all Holders of the Notes and, if required by the terms of any unsecured Indebtedness that is pari passu with the Notes (“Pari Passu Indebtedness”), to the holders of such Pari Passu Indebtedness (an “Asset Sale Offer”), to purchase the maximum principal amount of Notes and such other Pari Passu Indebtedness that is an integral multiple of \$1,000 that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. To the extent that the aggregate amount of Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and the Issuer shall select such Pari Passu Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. Holders of Notes that are the subject of an offer to purchase will receive an Asset Sale Offer from the Issuer prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled “Option of Holder to Elect Purchase” attached to the Notes.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuer may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuer need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuer need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed.

10. [RESERVED].

11. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

12. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

13. **DEFAULTS AND REMEDIES.** The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. If any Event of Default (other than an Event of Default specified in clause (6) or (7) of Section 6.01(a) of the Indenture with respect to the Issuer) occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all of the then outstanding Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture, the Notes or the Guarantees except as provided in the Indenture. Subject to certain limitations, the Required Holders may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default (except a Default relating to the payment of principal, premium, if any, or interest) if it determines that withholding notice is in their interest. The Required Holders by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or and its consequences under the Indenture except a continuing Default in payment of the principal of, premium, if any, or interest on, any of the Notes held by a non-consenting Holder. The Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required within five (5) Business Days after becoming aware of any Default, to deliver to the Trustee a statement specifying such Default and what action the Issuer proposes to take with respect thereto.

14. **AUTHENTICATION.** This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

15. **GOVERNING LAW. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THE NOTES AND THE GUARANTEES.**

16. **CUSIP NUMBERS.** Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuer will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to the Issuer at the following address:

SW Acquisitions Co., Inc.
c/o Busch Entertainment LLC
9205 S. Park Center Loop, Ste 400
Orlando, FL 32819
Attention: Chief Legal Officer

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____
(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of
this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee). Signature guarantee is not required for Definitive Notes

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 4.10 or 4.14 of the Indenture, check the appropriate box below:

Section 4.10 Section 4.14

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

\$

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee). Signature guarantee is not required for Definitive Notes

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is \$. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

<u>Date of Exchange</u>	Amount of decrease in Principal Amount of this <u>Global Note</u>	Amount of increase in Principal Amount of this <u>Global Note</u>	Principal Amount of this Global Note following such <u>decrease or increase</u>	Signature of authorized officer of Trustee or <u>Note Custodian</u>
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* This schedule should be included only if the Note is issued in global form.

FORM OF CERTIFICATE OF TRANSFER

SW Acquisitions Co., Inc.
 c/o Busch Entertainment LLC
 9205 S. Park Center Loop, Ste 400
 Orlando, FL 32819
 Attention: Chief Legal Officer

Wilmington Trust FSB
 Corporate Capital Markets
 50 South Sixth St., Suite 1290
 Minneapolis, MN 55402
 Attention: SW Acquisitions Co., Inc. Administrator

Re: 13 1/2% Senior Notes due 2016

Reference is hereby made to the Indenture, dated as of December 1, 2009 (the “Indenture”), among SW Acquisitions Co., Inc., the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

(the “Transferor”) owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of \$ _____ in such Note[s] or interests (the “Transfer”), to _____ (the “Transferee”), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE 144A GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the “Securities Act”), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

2. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE REGULATION S GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act (iii) the transaction is not part of a

plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Indenture and the Securities Act.

3. CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE IAI GLOBAL NOTE OR THE DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act; or

(b) such Transfer is being effected to the Issuer or a subsidiary thereof;

(c) such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

4. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR OF AN UNRESTRICTED DEFINITIVE NOTE.

(a) CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities

Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(a) CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated:

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

- (a) a beneficial interest in the:
 - (i) 144A Global Note (CUSIP 86960C AA8), or
 - (ii) Regulation S Global Note (CUSIP U8682K AA8), or
 - (iii) IAI Global Note (CUSIP 86960C AB6)
- (b) a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

- (a) a beneficial interest in the:
 - (i) 144A Global Note (CUSIP 86960C AA8), or
 - (ii) Regulation S Global Note (CUSIP U8682K AA8), or
 - (iii) IAI Global Note (CUSIP 86960C AB6), or
 - (iv) Unrestricted Global Note
- (b) a Restricted Definitive Note; or
- (c) an Unrestricted Definitive Note;

in each case, in accordance with the terms of the Indenture.

FORM OF CERTIFICATE OF EXCHANGE

SW Acquisitions Co., Inc.
 c/o Busch Entertainment LLC
 9205 S. Park Center Loop, Ste 400
 Orlando, FL 32819
 Attention: Chief Legal Office

Wilmington Trust FSB
 Corporate Capital Markets
 50 South Sixth St., Suite 1290
 Minneapolis, MN 55402
 Attention: SW Acquisitions Co., Inc. Administrator

Re: 13 1/2% Senior Notes due 2016

Reference is hereby made to the Indenture, dated as of December 1, 2009 (the "Indenture"), among SW Acquisitions Co., Inc., the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

(the "Owner") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of \$ _____ in such Note[s] or interests (the "Exchange"). In connection with the Exchange, the Owner hereby certifies that:

1) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE

(a) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES

(a) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] 144A Global Note Regulation S Global Note, with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer and are dated [].

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated:

ANNEX A TO CERTIFICATE OF EXCHANGE

1. The Owner owns and proposes to exchange the following:

[CHECK ONE OF (a) OR (b)]

- (a) a beneficial interest in a Restricted Global Note, or
- (b) a Restricted Definitive Note.

2. After the Exchange the Owner will hold:

[CHECK ONE]

- (a) a beneficial interest in an Unrestricted Global Note, or
- (b) an Unrestricted Definitive Note, or
- (c) a Restricted Definitive Note, or
- (d) beneficial interest in a 144A Global Note (CUSIP 86960C AA8), or
- (e) a beneficial interest in a Regulation S Global Note (CUSIP U8682K AA8), or
- (4) a beneficial interest in a IAI Global Note (CUSIP 86960C AB6).

FORM OF TRANSFEREE LETTER OF REPRESENTATION

SW Acquisitions Co., Inc.
 c/o Busch Entertainment LLC
 9205 S. Park Center Loop, Ste 400
 Orlando, FL 32819
 Attention: Chief Legal Officer

Wilmington Trust FSB
 Corporate Capital Markets
 50 South Sixth St., Suite 1290
 Minneapolis, MN 55402
 Attention: SW Acquisitions Co., Inc. Administrator

Re: 13 1/2% Senior Notes due 2016

Reference is hereby made to the Indenture, dated as of December 1, 2009 (the "Indenture"), among SW Acquisitions Co., Inc., the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This certificate is delivered to request a transfer of \$[] principal amount of the 13 1/2% Senior Notes due 2016 (the "Notes") of the Issuer. Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")), purchasing for our own account or for the account of such an institutional "accredited investor" at least \$100,000 principal amount of the Notes, and we are acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we invest in or purchase securities similar to the Notes in the normal course of our business. We, and any accounts for which we are acting (each of which is an institutional accredited investor), are each able to bear the economic risk of our or its investment.

2. We understand that the Notes have not been registered under the Securities Act and may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Notes (each of which is an institutional accredited investor) to offer, sell or otherwise transfer such Notes only (a) in the United States to a person whom we reasonably believe is a qualified institutional buyer (as defined in rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (b) outside the United States in an offshore transaction in accordance with Rule 904 of Regulation S under the Securities Act, (c) pursuant to

an exemption from registration under the Securities Act provided by Rule 144 thereunder (if applicable) or (d) pursuant to an effective registration statement under the Securities Act, in each of cases (a) through (d) in accordance with any applicable securities laws of any state of the United States. In addition, we will, and each subsequent holder is required to, notify any purchaser of the Notes of the resale restrictions set forth above.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Issuer such certifications, legal opinions and other information as you and the Issuer may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

You and the Issuer are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

[Insert Name of Transferor]

By: _____
Name:
Title:

[FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

Supplemental Indenture (this "Supplemental Indenture"), dated as of _____, among _____ (the "Guaranteeing Subsidiary"), a subsidiary of SW ACQUISITIONS CO., INC., a Delaware corporation (the "Issuer"), and WILMINGTON TRUST FSB, as trustee (the "Trustee").

WITNESSETH

WHEREAS, each of the Issuer, and the Guarantors (as defined in the Indenture referred to below) has heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of December 1, 2009, providing for the issuance of an unlimited aggregate principal amount of 13 1/2% Senior Notes due 2016 (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the "Guarantee"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Agreement to Guarantee. The Guaranteeing Subsidiary hereby agrees as follows:

(a) Along with all Guarantors named in the Indenture, to jointly and severally unconditionally guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or the obligations of the Issuer hereunder or thereunder, that:

(i) the principal of and interest, premium, if any, on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated

maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors and the Guaranteeing Subsidiary shall be jointly and severally obligated to pay the same immediately. This is a guarantee of payment and not a guarantee of collection.

(b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

(c) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever.

(d) This Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes, the Indenture and this Supplemental Indenture, and the Guaranteeing Subsidiary accepts all obligations of a Guarantor under the Indenture.

(e) If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantors (including the Guaranteeing Subsidiary), or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(f) The Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between the Guaranteeing Subsidiary, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guaranteeing Subsidiary for the purpose of this Guarantee.

(h) The Guaranteeing Subsidiary shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Guarantee.

(i) Pursuant to Section 11.02 of the Indenture, after giving effect to all other contingent and fixed liabilities that are relevant under any applicable Bankruptcy or fraudulent conveyance laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under Article 11 of the Indenture, this new Guarantee shall be limited to the maximum amount permissible such that the obligations of such Guaranteeing Subsidiary under this Guarantee will not constitute a fraudulent transfer or conveyance.

(j) This Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation, reorganization, should the Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuer's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes and Guarantee, whether as a "voidable preference", "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Note shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(k) In case any provision of this Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(l) This Guarantee shall be a general unsecured senior obligation of such Guaranteeing Subsidiary, ranking equally in right of payment with any other pari passu Indebtedness of the Guaranteeing Subsidiary, if any.

(m) Each payment to be made by the Guaranteeing Subsidiary in respect of this Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

(3) Execution and Delivery. The Guaranteeing Subsidiary agrees that the Guarantee shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(4) Merger, Consolidation or Sale of All or Substantially All Assets.

(a) Except as otherwise provided in Section 5.01(c) of the Indenture, the Guaranteeing Subsidiary may not consolidate or merge with or into or wind up into (whether or not the Issuer or Guaranteeing Subsidiary is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) (A) the Guaranteeing Subsidiary is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than the Guaranteeing Subsidiary) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership (including a limited partnership), trust, limited liability company or other entity organized or existing under the laws of the jurisdiction of organization of the Guaranteeing Subsidiary, as the case may be, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (the Guaranteeing Subsidiary or such Person, as the case may be, being herein called the "Successor Person");

(B) the Successor Person, if other than the Guaranteeing Subsidiary, expressly assumes all the obligations of the Guaranteeing Subsidiary under the Indenture and the Guaranteeing Subsidiary's related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(C) immediately after such transaction, no Default exists; and

(D) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture; or

(ii) the transaction is made in compliance with Section 4.10 of the Indenture;

(b) Subject to certain limitations described in the Indenture, the Successor Person will succeed to, and be substituted for, the Guaranteeing Subsidiary under the Indenture and the Guaranteeing Subsidiary's Guarantee. Notwithstanding the foregoing, the Guaranteeing Subsidiary may merge into or transfer all or part of its properties and assets to another Guarantor or the Issuer.

(5) Releases. The Guarantee of the Guaranteeing Subsidiary shall be automatically and unconditionally released and discharged, and no further action by the Guaranteeing Subsidiary, the Issuer or the Trustee is required for the release of the Guaranteeing Subsidiary's Guarantee, upon:

(1) (A) any sale, exchange or transfer (by merger or otherwise) of the Capital Stock of the Guaranteeing Subsidiary (including any sale, exchange or transfer), after which the Guaranteeing Subsidiary is no longer a Restricted Subsidiary or all or substantially all the assets of the Guaranteeing Subsidiary which sale, exchange or transfer is made in compliance with the applicable provisions of the Indenture;

(B) the release or discharge of the guarantee by the Guaranteeing Subsidiary of the Senior Credit Facilities or the guarantee which resulted in the creation of the Guarantee, except a discharge or release by or as a result of payment under such guarantee;

(C) the designation of the Guaranteeing Subsidiary as an Unrestricted Subsidiary in compliance with Section 4.07(c) of the Indenture; or

(D) the Issuer exercising its Legal Defeasance option or Covenant Defeasance option in accordance with Article 8 of the Indenture or the Issuer's obligations under the Indenture being discharged in accordance with the terms of the Indenture; and

(2) delivery by the Guaranteeing Subsidiary to the Trustee of an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in the Indenture relating to such transaction have been complied with.

(6) No Recourse Against Others. No director, officer, employee, incorporator or stockholder of the Guaranteeing Subsidiary shall have any liability for any obligations of the Issuer or the Guarantors (including the Guaranteeing Subsidiary) under the Notes, any Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

(7) Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(8) Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

(9) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(10) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

(11) Subrogation. The Guaranteeing Subsidiary shall be subrogated to all rights of Holders of Notes against the Issuer in respect of any amounts paid by the Guaranteeing Subsidiary pursuant to the provisions of Section 2 hereof and Section 11.01 of the Indenture; provided that, if an Event of Default has occurred and is continuing, the Guaranteeing Subsidiary shall not be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuer under the Indenture or the Notes shall have been paid in full.

(12) Benefits Acknowledged. The Guaranteeing Subsidiary's Guarantee is subject to the terms and conditions set forth in the Indenture. The Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

(13) Successors. All agreements of the Guaranteeing Subsidiary in this Supplemental Indenture shall bind its Successors, except as otherwise provided in Section 2(k) hereof or elsewhere in this Supplemental Indenture. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

WILMINGTON TRUST FSB
as Trustee

By: _____
Name:
Title:

[•]
as Subsidiary Guarantor

By: _____
Name:
Title:

FIRST SUPPLEMENTAL INDENTURE

This First Supplemental Indenture, dated as of August 30, 2011 (this “*First Supplemental Indenture*”), among SeaWorld Park & Entertainment, Inc. (f/k/a SW Acquisition Co., Inc.), a Delaware corporation (the “*Company*”), the Guarantors (as defined in the Base Indenture referred to herein) and Wilmington Trust, National Association (as successor by merger to Wilmington Trust FSB), as trustee under the Base Indenture referred to below (the “*Trustee*”).

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (the “*Base Indenture*”), dated as of December 1, 2009, providing for the issuance of 13 ¹/₂ % Senior Notes due 2016 (the “*Notes*”);

WHEREAS, the Company wishes to declare and pay a dividend or distribution to its shareholders in the amount of \$100.0 million (the “*Restricted Distribution*”) and such dividend or distribution is expected to be declared and paid within 60 days of the date hereof (net of any tax withholding);

WHEREAS, in connection with the Restricted Distribution, the Company has requested from the Holders of Notes, a waiver of the compliance with the provisions of Section 4.07 of the Base Indenture, to the extent such provisions would prevent the consummation of the Restricted Distribution;

WHEREAS, Section 9.02 of the Base Indenture provides that, subject to Sections 6.04 and 6.07 of the Base Indenture, compliance with any provision of the Base Indenture, the Guarantees or the Notes may be waived with the consent of the Required Holders;

WHEREAS, Holders of all outstanding Notes constituting Required Holders have provided written consent to this First Supplemental Indenture; and

WHEREAS, the execution of this First Supplemental Indenture by the parties hereto is in all respects authorized by the provisions of the Base Indenture and the Company has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel with respect to such execution.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company, the Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Base Indenture.

2. Waiver.

(a) The Company's and its Restricted Subsidiaries' compliance with the provisions of Sections 4.07 and 4.11 of the Base Indenture is hereby waived to the extent necessary in order for the Company to declare and pay the Restricted Distribution, as long as the Restricted Distribution is paid within 60 days of the date of this First Supplemental Indenture.

(b) In consideration of the foregoing waiver, the Company and Guarantors hereby agree that, after giving effect to the consummation of the Restricted Distribution, (i) the basket amount set forth in Section 4.07(b)(11) of the Base Indenture shall be deemed used up and no longer be available for further Restricted Payments and (ii) the amount available for making Restricted Payments under Section 4.07(a) of the Base Indenture shall be deemed to be reduced by \$40.0 million (regardless of whether such reduction will result in a negative basket amount).

3. Effect. This First Supplemental Indenture shall become effective as of the date hereof (such date, the "*Effective Date*") immediately upon its execution by the parties hereto.

4. NEW YORK LAW TO GOVERN. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

5. Effect on Base Indenture. This First Supplemental Indenture shall form a part of the Base Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby. Except as expressly set forth herein, the Base Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect, including with respect to this First Supplemental Indenture. This First Supplemental Indenture shall not be deemed to be a waiver of, or consent to, or a modification or amendment of, any other term or condition of the Base Indenture or the Notes or to prejudice any other right or rights which the Holders of the Notes may now have or may have in the future under or in connection with the Base Indenture or any of the instruments or agreements referred to therein, as the same may be amended from time to time.

6. Separability Clause. In case any provision in this First Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

7. Counterparts. The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This First Supplemental Indenture may be executed by any party hereto by original or facsimile signature, or electronic format (including pdf) signature, and any facsimile or electronic signature shall also be deemed valid, binding and enforceable as an original signature.

8. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

9. The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guarantors and the Company.

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed and attested, all as of the date first above written.

SEAWORLD PARKS ENTERTAINMENT, INC.

By: /s/ Marc Swanson
Name: Marc Swanson
Title: Controller

SW HOLDCO, INC.

By: /s/ Bruce McEvoy
Name: Bruce McEvoy
Title: Treasurer

SEAWORLD PARKS & ENTERTAINMENT LLC

By: /s/ Marc Swanson
Name: Marc Swanson
Title: Controller

SEAWORLD PARKS & ENTERTAINMENT
INTERNATIONAL, INC.

By: /s/ Marc Swanson
Name: Marc Swanson
Title: Controller

LANGHORNE FOOD SERVICES LLC

By: /s/ Marc Swanson
Name: Marc Swanson
Title: Controller

[Signature Page to First Supplemental Indenture]

SEA WORLD LLC

By: /s/ Marc Swanson

Name: Marc Swanson

Title: Controller

SEA WORLD OF FLORIDA LLC

By: /s/ Marc Swanson

Name: Marc Swanson

Title: Controller

SEA WORLD OF TEXAS LLC

By: /s/ Marc Swanson

Name: Marc Swanson

Title: Controller

[Signature Page to First Supplemental Indenture]

WILMINGTON TRUST, NATIONAL ASSOCIATION
(as successor by merger to Wilmington Trust FSB), as
Trustee

By: /s/ Jane Schweiger

Name: Jane Schweiger

Title: Vice President

[Signature Page to First Supplemental Indenture]

SECOND SUPPLEMENTAL INDENTURE

This Second Supplemental Indenture, dated as of March 30, 2012 (this “*Second Supplemental Indenture*”), among SeaWorld Park & Entertainment, Inc. (f/k/a SW Acquisition Co., Inc.), a Delaware corporation (the “*Company*”), the Guarantors (as defined in the Indenture referred to herein) and Wilmington Trust, National Association (as successor by merger to Wilmington Trust FSB), as trustee under the Indenture referred to below (the “*Trustee*”).

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture, dated as of December 1, 2009 (the “*Base Indenture*”), providing for the issuance of Senior Notes due 2016 (the “*Notes*”), and a First Supplemental Indenture thereto, dated August 30, 2011 (together with the Base Indenture, the “*Indenture*”);

WHEREAS, the Company wishes to (A) declare and pay a dividend or distribution to its shareholders in the amount of up to \$500.0 million (the “*Restricted Distribution*”) and such dividend or distribution is expected to be declared and paid on or before April 13, 2012 (net of any tax withholding), and (B) to finance the Restricted Distribution through the incurrence of up to \$500.0 million of additional Indebtedness under the Credit Facilities (the “*Additional Indebtedness*”) as permitted hereby;

WHEREAS, in connection with the Restricted Distribution, the Company has requested from the Holders of Notes, (a) waivers on the terms contemplated hereby of (i) compliance with the provisions of Sections 4.07 and 4.11 of the Indenture, to the extent such provisions would prevent the consummation of the Restricted Distribution, and (ii) compliance with the provisions of Sections 4.09 and 4.12 hereof, to the extent that such provisions would prevent the incurrence of the Additional Indebtedness to finance the Restricted Distribution (such waivers described in clauses (i) and (ii) above, the “*Waivers*”), and (b) the amendment of certain terms of the Indenture and the Notes on the terms contemplated hereby (the “*Amendments*”);

WHEREAS, Section 9.02 of the Indenture provides that, subject to Sections 6.04 and 6.07 of the Indenture, compliance with any provision of the Indenture, the Guarantees or the Notes may be waived with the consent of the Required Holders (or, in some cases, of each Holder of the Notes);

WHEREAS, each Holder of the Notes has provided its written consent to this Second Supplemental Indenture;

WHEREAS, the execution of this Second Supplemental Indenture by the parties hereto is in all respects authorized by the provisions of the Indenture, and the Company has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel with respect to such execution; and

WHEREAS, the Waivers and Amendments contemplated hereby shall only become effective on the date (the “ *Effective Date* ”) on which the Restricted Distribution is made from the proceeds of Additional Indebtedness incurred as contemplated hereby, and only so long as the Effective Date occurs on or before April 13, 2012 (the “ *Outside Effective Date* ”) .

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company, the Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms . Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. Waivers .

(a) The Company’s and its Restricted Subsidiaries’ compliance with the provisions of Sections 4.07 and 4.11 of the Indenture is hereby waived to the extent necessary in order for the Company to declare and pay the Restricted Distribution. In consideration of the foregoing waiver under this clause (a), the Company and Guarantors hereby agree that, after giving effect to the consummation of the Restricted Distribution, the amount available for making Restricted Payments under Section 4.07(a) of the Indenture shall be deemed to be reduced (in addition to the reduction provided by Section 2(b) of the First Supplemental Indenture) by \$500.0 million (regardless of whether such reduction will result in or further increase a negative basket amount).

(b) The Company’s and its Restricted Subsidiaries’ compliance with the provisions of Sections 4.09 and 4.12 of the Indenture is hereby waived solely to permit the Company and the Guarantors to incur, under Section 4.09(b)(1) of the Indenture, up to \$500.0 million of Additional Indebtedness under the Credit Facilities to finance the Restricted Distribution, and in connection therewith, the reference to \$1,240.0 million therein shall be increased to \$1,676.5 million; provided that, without waiving the other provisions of Section 4.09(b)(1), if at any time after the Effective Date the aggregate amount of Credit Facilities outstanding (including undrawn revolving commitments) is reduced to less than \$1,676.5 million, whether through voluntary or mandatory prepayments or scheduled amortization or otherwise, such reduced amount (in excess of \$1,240.0 million) may not be reborrowed or re-incurred under Section 4.09(b)(1) of the Indenture. For the avoidance of doubt, the foregoing proviso shall not limit the Company’s and its Restricted Subsidiaries’ ability to refinance its Credit Facilities or to reborrow any revolving loans under the Credit Facilities.

3. Amendment of Indenture . The Indenture (including the exhibits thereto, including the Notes) shall be amended as follows:

(a) The interest rate on the Notes under the Indenture is hereby changed from 13 ¹/₂ % to 11.0% per annum, and the Indenture (including Exhibit A thereto) is hereby amended by (i) replacing the text “13 ¹/₂ %” contained therein with the text “11.0%” and (ii) replacing the text “113.50%” contained in the definition of “Change of Control Percentage” and in Section 3.07(b) of the Indenture and in Exhibit A thereto with the text “111.0%”.

(b) The Indenture (including Exhibit A thereto) is hereby amended by replacing the text “December 1, 2012” contained therein with the text “December 1, 2014” in each instance where it occurs throughout the Indenture (except in the definition of “Change of Control Percentage”).

(c) Section 3.07(d) of the Indenture and Section 5(d) of Exhibit A thereto are hereby amended by deleting the table included therein and inserting in lieu thereof the following:

Year	Percentage
2014	105.50%
2015	102.75%

(d) Sections 4.09(d) and 4.12 of the Indenture are hereby amended by replacing the text “2.75 to 1.00” contained therein with the text “3.00 to 1.00”.

4. Mandatory Exchange of Global Notes. On the Effective Date, the beneficial interests in the Global Notes representing the Notes issued on December 1, 2009 (the “*Existing Global Notes*”) shall be automatically exchanged for beneficial interests in a 144A Global Note, substantially in the form of Exhibit I hereto (the “*Replacement 144A Note*”). The Notes shall accrue interest thereon on the terms contemplated hereby from the Effective Date. On the Effective Date the Company shall pay in cash in immediately available funds to the Holders all accrued and unpaid interest on the existing Notes through, but not including, the Effective Date.

5. NEW YORK LAW TO GOVERN. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

6. Effect on Indenture. This Second Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby; provided that the provisions of Section 1 through 3 hereof shall only come into effect on the Effective Date, and for avoidance of doubt, if the Effective Date does not occur on or prior to the Outside Effective Date, the provisions of Sections 1 through 3 hereof shall be null and of no effect (without affecting Sections 4 through 11 hereof). Except as expressly set forth herein, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect, including with respect to this Second Supplemental Indenture. This Second Supplemental Indenture shall not be deemed to be a waiver of, or consent to, or a modification or amendment of, any other term or condition of the Indenture or the Notes or to prejudice any other right or rights which the Holders of the Notes may now have or may have in the future under or in connection with the Indenture or any of the instruments or agreements referred to therein, as the same may be amended from time to time.

7. Confirmation of Guarantee. Without limiting the generality of the preceding paragraph, each of the Guarantors listed on the signature pages hereto hereby, jointly and severally, unconditionally confirms that its previously made Guarantee shall apply to the Issuer’s obligations under the Indenture as amended hereby and the Notes as they are amended in accordance herewith.

8. Separability Clause. In case any provision in this Second Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. Counterparts. The parties may sign any number of copies of this Second Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Second Supplemental Indenture may be executed by any party hereto by original or facsimile signature, or electronic format (including pdf) signature, and any facsimile or electronic signature shall also be deemed valid, binding and enforceable as an original signature.

10. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

11. The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Second Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guarantors and the Company.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed and attested, all as of the date first above written.

SEAWORLD PARKS & ENTERTAINMENT, INC.

By: /s/ Jim Heaney
Name: Jim Heaney
Title: Chief Financial Officer

SW HOLDCO, INC.

By: /s/ Bruce McEvoy
Name: Bruce McEvoy
Title: Treasurer

SEAWORLD PARKS & ENTERTAINMENT LLC

By: /s/ Jim Heaney
Name: Jim Heaney
Title: Chief Financial Officer

SEAWORLD PARKS & ENTERTAINMENT
INTERNATIONAL, INC.

By: /s/ Jim Heaney
Name: Jim Heaney
Title: Chief Financial Officer

LANGHORNE FOOD SERVICES LLC

By: /s/ Jim Heaney
Name: Jim Heaney
Title: Chief Financial Officer

[Signature Page to Second Supplemental Indenture]

SEA WORLD LLC

By: /s/ Jim Heaney
Name: Jim Heaney
Title: Chief Financial Officer

SEA WORLD OF FLORIDA LLC

By: /s/ Jim Heaney
Name: Jim Heaney
Title: Chief Financial Officer

SEA WORLD OF TEXAS LLC

By: /s/ Jim Heaney
Name: Jim Heaney
Title: Chief Financial Officer

[Signature Page to Second Supplemental Indenture]

WILMINGTON TRUST, NATIONAL ASSOCIATION
(as successor by merger to Wilmington Trust FSB), as
Trustee

By: /s/ Jane Schweiger
Name: Jane Schweiger
Title: Vice President

[Signature Page to Second Supplemental Indenture]

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP []
ISIN []

[RULE 144A][REGULATION S][IAI] [GLOBAL] NOTE
[*for Global Notes insert:* representing initially up to]
\$]
11.0% Senior Notes due 2016

No. [\$]

SEAWORLD PARKS & ENTERTAINMENT, INC. (F/K/A SW ACQUISITIONS CO., INC.)

promises to pay to [*for Global Notes insert:* CEDE & CO.] [*for Definitive Notes insert:* Name of Holder] or registered assigns, the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto] of United States Dollars on December 1, 2016.

Interest Payment Dates: December 1 and June 1

Record Dates: November 15 and May 15

IN WITNESS HEREOF, the Issuer has caused this instrument to be duly executed.

Dated: _____

SEAWORLD PARKS & ENTERTAINMENT, INC. (F/K/A
SW ACQUISITIONS CO., INC.)

By: _____
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture:

Dated: _____

WILMINGTON TRUST, NATIONAL ASSOCIATION, as
Trustee

By: _____
Authorized Signatory

11.0% Senior Notes due 2016

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. **INTEREST.** SEAWORLD PARKS & ENTERTAINMENT, INC. (F/K/A SW ACQUISITIONS CO., INC.), a Delaware corporation, promises to pay interest on the principal amount of this Note at 11.0% per annum from March 30, 2012 until maturity. The Issuer will pay interest semi-annually in arrears on December 1 and June 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an “Interest Payment Date”). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; provided that the first Interest Payment Date shall be June 1, 2012. If, at any time prior to the Disposition Date, a default in the payment when due of interest or on principal of, or premium, if any, on the Notes or an Event of Default has occurred and is continuing, then in each case this Note will accrue interest at the stated interest rate on this Note plus the Default Interest Rate until such time as no such Default or such Event of Default shall be continuing (to the extent that the payment of such interest shall be legally enforceable). At any other time, any amounts payable under or in respect of this Note not paid when due will accrue interest at the stated interest rate on this Note plus the Default Interest Rate until such time as such overdue amounts are paid in full, including any interest thereon (to the extent that the payment of such interest shall be legally enforceable). Default interest shall be payable by the Issuer in cash on demand in accordance with Section 2.12 of the Indenture. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. **METHOD OF PAYMENT.** The Issuer will pay interest on the Notes to the Persons who are registered Holders of Notes at the close of business on November 15 and May 15 (whether or not a Business Day), as the case may be, next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders; provided that payment by wire transfer of immediately available funds will be required with respect to principal of, and interest and premium on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuer or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. **PAYING AGENT AND REGISTRAR.** Initially, Wilmington Trust, National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuer may change any Paying Agent or Registrar without notice to the Holders. The Issuer or any of its Subsidiaries may act in any such capacity.

4. **INDENTURE.** The Issuer issued the Notes under an Indenture, dated as of December 1, 2009 (as amended and supplemented prior to the date hereof, the “Indenture”), among the Issuer, the Guarantors named therein and the Trustee. This Note is one of a duly authorized issue of Notes of the Issuer designated as its 11.0% Senior Notes due 2016. The terms of the Notes

include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. OPTIONAL REDEMPTION.

(a) Except as described below under clauses 5(b) and 5(c) hereof, the Notes will not be redeemable at the Issuer's option before December 1, 2014.

(b) At any time prior to December 1, 2014, the Issuer may redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice delivered electronically or by first-class mail, with a copy to the Trustee, to the registered address of each Holder or otherwise delivered in accordance with the procedures of DTC, at a redemption price equal to 100% of the principal amount of Notes redeemed plus the Applicable Premium as of, plus accrued and unpaid interest thereon to the date of redemption (the "Redemption Date"), subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(c) Until December 1, 2014, the Issuer may redeem up to 35% of the aggregate principal amount of Notes issued by it at a redemption price equal to 111.0% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds received by it from one or more Equity Offerings; provided that at least 65% of the sum of the aggregate principal amount of Notes originally issued under the Indenture remains outstanding immediately after the occurrence of each such redemption; provided further that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Notice of any redemption upon any such Equity Offering may be given prior to the redemption thereof, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(d) On and after December 1, 2014, the Issuer may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' prior notice delivered electronically or by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes at the address of such Holder appearing in the security register, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon to the applicable Redemption Date, subject to the right of Holders of Notes of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve-month period beginning on December 1 of each of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2014	105.50%
2015	102.75%

(e) Any redemption pursuant to this paragraph 5 shall be made pursuant to the provisions of Sections 3.01 through 3.06 of the Indenture.

6. MANDATORY REDEMPTION. The Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

7. NOTICE OF REDEMPTION. Subject to Section 3.03 of the Indenture, notice of redemption will be delivered by electronic transmission or by first-class mail at least 30 days but not more than 60 days before the redemption date (except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 13 of the Indenture) to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$2,000 may be redeemed in part but only in whole multiples of \$1,000, unless all of the Notes held by a Holder are to be redeemed. Subject to Section 3.05 of the Indenture, on and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

8. OFFERS TO REPURCHASE.

(a) Upon the occurrence of a Change of Control, the Issuer shall make an offer (a “Change of Control Offer”) to each Holder to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of each Holder’s Notes at a cash purchase price equal to the applicable Change of Control Percentage of the aggregate principal amount thereof, plus accrued and unpaid interest thereon, if any, to the date of purchase (the “Change of Control Payment”). The Change of Control Offer shall be made in accordance with Section 4.14 of the Indenture.

(b) If the Issuer or any of its Restricted Subsidiaries consummates an Asset Sale, within 10 Business Days of each date that Excess Proceeds exceed \$25.0 million, the Issuer shall commence, an offer to all Holders of the Notes and, if required by the terms of any unsecured Indebtedness that is *pari passu* with the Notes (“Pari Passu Indebtedness”), to the holders of such Pari Passu Indebtedness (an “Asset Sale Offer”), to purchase the maximum principal amount of Notes and such other Pari Passu Indebtedness that is an integral multiple of \$1,000 that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. To the extent that the aggregate amount of Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and the Issuer shall select such Pari Passu Indebtedness to be purchased on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. Holders of Notes that are the subject of an offer to purchase will receive an Asset Sale Offer from the Issuer prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled “Option of Holder to Elect Purchase” attached to the Notes.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuer may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuer need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuer need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed.

10. [RESERVED].

11. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

12. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

13. DEFAULTS AND REMEDIES. The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. If any Event of Default (other than an Event of Default specified in clause (6) or (7) of Section 6.01(a) of the Indenture with respect to the Issuer) occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all of the then outstanding Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture, the Notes or the Guarantees except as provided in the Indenture. Subject to certain limitations, the Required Holders may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default (except a Default relating to the payment of principal, premium, if any, or interest) if it determines that withholding notice is in their interest. The Required Holders by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or and its consequences under the Indenture except a continuing Default in payment of the principal of, premium, if any, or interest on, any of the Notes held by a non-consenting Holder. The Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required within five (5) Business Days after becoming aware of any Default, to deliver to the Trustee a statement specifying such Default and what action the Issuer proposes to take with respect thereto.

14. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

15. GOVERNING LAW. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUCT THE INDENTURE, THE NOTES AND THE GUARANTEES.

16. CUSIP NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuer will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to the Issuer at the following address:

SeaWorld Parks & Entertainment, Inc.
9205 S. Park Center Loop, Ste 400
Orlando, FL 32819
Attention: Chief Financial Officer

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____
(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of
this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee). Signature guarantee is not required for Definitive Notes

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 4.10 or 4.14 of the Indenture, check the appropriate box below:

Section 4.10 Section 4.14

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

\$ _____

Date: _____

Your Signature: _____
(Sign exactly as your name appears on
the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee). Signature guarantee is not required for Definitive Notes

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is \$. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

<u>Date of Exchange</u>	Amount of decrease in Principal Amount of this <u>Global Note</u>	Amount of increase in Principal Amount of this <u>Global Note</u>	Principal Amount of this Global Note following such decrease or increase	Signature of authorized officer of Trustee or <u>Note Custodian</u>

* This schedule should be included only if the Note is issued in global form.

THIRD SUPPLEMENTAL INDENTURE

Third Supplemental Indenture (this “Supplemental Indenture”), dated as of December 17, 2012, among SEAWORLD OF TEXAS MANAGEMENT, LLC, SEAWORLD OF TEXAS BEVERAGE, LLC, SEAWORLD OF TEXAS HOLDINGS, LLC (individually, a “Guaranteeing Subsidiary” and collectively, the “Guaranteeing Subsidiaries”) all of which are indirect subsidiaries of SEAWORLD PARKS AND ENTERTAINMENT, INC. (f/k/a SW Acquisitions Co., Inc.), a Delaware corporation (the “Issuer”), and WILMINGTON TRUST, NATIONAL ASSOCIATION (as successor by merger to Wilmington Trust FSB), as trustee (the “Trustee”).

WITNESSETH

WHEREAS, each of the Issuer, and the Guarantors (as defined in the Indenture referred to below) has heretofore executed and delivered to the Trustee an indenture, dated as of December 1, 2009, as supplemented by the First Supplemental Indenture, dated as of August 30, 2011, and the Second Supplemental Indenture, dated as of March 30, 2012 (as supplemented, the “Indenture”), providing for the issuance of \$400.0 million aggregate principal amount of 11.0% Senior Notes due 2016 (the “Notes”);

WHEREAS, the Indenture provides that under certain circumstances each Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which each Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuer’s Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the “Guarantee”); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Agreement to Guarantee. Each Guaranteeing Subsidiary hereby agrees as follows:

(a) Along with all Guarantors named in the Indenture, to jointly and severally unconditionally guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or the obligations of the Issuer hereunder or thereunder, that:

(i) the principal of and interest, premium, if any, on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption

or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors and each Guaranteeing Subsidiary shall be jointly and severally obligated to pay the same immediately. This is a guarantee of payment and not a guarantee of collection.

(b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

(c) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever.

(d) This Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes, the Indenture and this Supplemental Indenture, and each Guaranteeing Subsidiary accepts all obligations of a Guarantor under the Indenture.

(e) If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantors (including the Guaranteeing Subsidiary), or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(f) Each Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between each Guaranteeing Subsidiary, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guaranteeing Subsidiary for the purpose of this Guarantee.

(h) Each Guaranteeing Subsidiary shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Guarantee.

(i) Pursuant to Section 11.02 of the Indenture, after giving effect to all other contingent and fixed liabilities that are relevant under any applicable Bankruptcy or fraudulent conveyance laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under Article 11 of the Indenture, this new Guarantee shall be limited to the maximum amount permissible such that the obligations of such Guaranteeing Subsidiary under this Guarantee will not constitute a fraudulent transfer or conveyance.

(j) This Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation, reorganization, should the Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuer's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes and Guarantee, whether as a "voidable preference", "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Note shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(k) In case any provision of this Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(l) This Guarantee shall be a general unsecured senior obligation of such Guaranteeing Subsidiary, ranking equally in right of payment with any other *pari passu* Indebtedness of the Guaranteeing Subsidiary, if any.

(m) Each payment to be made by the Guaranteeing Subsidiaries in respect of this Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

(3) Execution and Delivery. Each Guaranteeing Subsidiary agrees that the Guarantee shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(4) Merger, Consolidation or Sale of All or Substantially All Assets.

(a) Except as otherwise provided in Section 5.01(c) of the Indenture, each Guaranteeing Subsidiary may not consolidate or merge with or into or wind up into (whether or not the Issuer or any Guaranteeing Subsidiary is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) (A) such Guaranteeing Subsidiary is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than such Guaranteeing Subsidiary) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership (including a limited partnership), trust, limited liability company or other entity organized or existing under the laws of the jurisdiction of organization of such Guaranteeing Subsidiary, as the case may be, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (the Guaranteeing Subsidiary or such Person, as the case may be, being herein called the "Successor Person");

(B) the Successor Person, if other than such Guaranteeing Subsidiary, expressly assumes all the obligations of such Guaranteeing Subsidiary under the Indenture and such Guaranteeing Subsidiary's related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(C) immediately after such transaction, no Default exists; and

(D) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture; or

(ii) the transaction is made in compliance with Section 4.10 of the Indenture;

(b) Subject to certain limitations described in the Indenture, the Successor Person will succeed to, and be substituted for, such Guaranteeing Subsidiary under the Indenture and such Guaranteeing Subsidiary's Guarantee. Notwithstanding the foregoing, each Guaranteeing Subsidiary may merge into or transfer all or part of its properties and assets to another Guarantor or the Issuer.

(5) Releases. The Guarantee of each Guaranteeing Subsidiary shall be automatically and unconditionally released and discharged, and no further action by each Guaranteeing Subsidiary, the Issuer or the Trustee is required for the release of each Guaranteeing Subsidiary's Guarantee, upon:

(i) (A) any sale, exchange or transfer (by merger or otherwise) of the Capital Stock of such Guaranteeing Subsidiary (including any sale, exchange or transfer), after which such Guaranteeing Subsidiary is no longer a Restricted Subsidiary or all or substantially all the assets of such Guaranteeing Subsidiary which sale, exchange or transfer is made in compliance with the applicable provisions of the Indenture;

(B) the release or discharge of the guarantee by such Guaranteeing Subsidiary of the Senior Credit Facilities or the guarantee which resulted in the creation of the Guarantee, except a discharge or release by or as a result of payment under such guarantee;

(C) the designation of such Guaranteeing Subsidiary as an Unrestricted Subsidiary in compliance with Section 4.07(c) of the Indenture; or

(D) the Issuer exercising its Legal Defeasance option or Covenant Defeasance option in accordance with Article 8 of the Indenture or the Issuer's obligations under the Indenture being discharged in accordance with the terms of the Indenture; and

(ii) delivery by such Guaranteeing Subsidiary to the Trustee of an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in the Indenture relating to such transaction have been complied with.

(6) No Recourse Against Others. No director, officer, employee, incorporator or stockholder of any Guaranteeing Subsidiary shall have any liability for any obligations of the Issuer or the Guarantors (including the Guaranteeing Subsidiary) under the Notes, any Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

(7) Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(8) Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

(9) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(10) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by each Guaranteeing Subsidiary.

(11) Subrogation. Each Guaranteeing Subsidiary shall be subrogated to all rights of Holders of Notes against the Issuer in respect of any amounts paid by such Guaranteeing Subsidiary pursuant to the provisions of Section 2 hereof and Section 11.01 of the

Indenture; provided that, if an Event of Default has occurred and is continuing, such Guaranteeing Subsidiary shall not be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuer under the Indenture or the Notes shall have been paid in full.

(12) Benefits Acknowledged. Each Guaranteeing Subsidiary's Guarantee is subject to the terms and conditions set forth in the Indenture. Each Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

(13) Successors. All agreements of each Guaranteeing Subsidiary in this Supplemental Indenture shall bind its Successors, except as otherwise provided in Section 2(k) hereof or elsewhere in this Supplemental Indenture. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Trustee

By: /s/ Jane Schweiger
Name:
Title:

SEAWORLD OF TEXAS MANAGEMENT, LLC
SEAWORLD OF TEXAS BEVERAGE, LLC
SEAWORLD OF TEXAS HOLDINGS, LLC
as Subsidiary Guarantors

By: /s/ Daniel Decker
Name: Daniel Decker
Title: Manager

By: /s/ Marcus VanVleet
Name: Marcus VanVleet
Title: Manager

By: /s/ Charles Wetesnick
Name: Charles Wetesnick
Title: Manager

[*Signature Page to Third Supplemental Indenture*]

AMENDMENT No. 3, dated as of March 30, 2012 (this “Amendment”), to the Credit Agreement, dated as of December 1, 2009, among SEAWORLD PARKS & ENTERTAINMENT, INC. (f/k/a SW ACQUISITIONS CO., INC.), a Delaware corporation (the “Borrower”), the several banks and other financial institutions or entities from time to time parties to the Credit Agreement (the “Lenders”), BANK OF AMERICA, N.A., as Administrative Agent (the “Administrative Agent”) and Collateral Agent (the “Collateral Agent”), BANK OF AMERICA, N.A., as L/C Issuer and Swing Line Lender, DEUTSCHE BANK SECURITIES INC. and BARCLAYS BANK PLC, as co-syndication agents (collectively, in such capacity, and together with their successors, the “Syndication Agents”), MIZUHO CORPORATE BANK, LTD., as documentation agent (the “Documentation Agent”), MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED and DEUTSCHE BANK SECURITIES INC., as Joint Lead Arrangers and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, BARCLAYS CAPITAL and DEUTSCHE BANK SECURITIES INC., as Joint Bookrunners (as amended by Amendment No. 1, dated as of February 17, 2011, as further amended by Amendment No. 2, dated as of April 15, 2011, and as further amended, restated, modified and supplemented from time to time, the “Credit Agreement”); capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

WHEREAS, the Borrower desires to amend the Credit Agreement on the terms set forth herein;

WHEREAS, Section 10.01 of the Credit Agreement provides that the relevant Loan Parties and the Required Lenders may amend the Credit Agreement and the other Loan Documents for certain purposes including to permit additional extensions of credit to be included in the Credit Agreement;

WHEREAS, the Term B Increase Lender (as defined in Exhibit A) has agreed to make Term B Loans (the “Term B Increase Loans”) in a principal amount equal to the Term B Increase Commitment (as defined in Exhibit A), the proceeds of which shall be used (i) to finance the payment of the Amendment No. 3 Distribution (as defined in Exhibit A) and (ii) to pay fees and expenses in connection with the Amendment No. 3 Distribution, the Mezzanine Debt Amendment (as defined in Exhibit A) and this Amendment.

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. Amendment. The Credit Agreement is, effective as of the Amendment No. 3 Effective Date (as defined below), hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto.

Section 2. Representations and Warranties, No Default. The Borrower hereby represents and warrants that as of the Amendment No. 3 Effective Date, after giving effect to the amendments set forth in this Amendment, (i) no Default or Event of Default exists and is continuing and (ii) all representations and warranties contained in the Credit Agreement are true and correct in all material respects on and as of the date hereof, as though made on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct in all material respects as of such earlier date (provided that representations and warranties that are qualified by materiality are true and correct (after giving effect to any qualification thereof) in all respects on and as of the date hereof).

Section 3. Effectiveness. Section 1 of this Amendment shall become effective on the date (such date, if any, the “ Amendment No. 3 Effective Date ”) that the following conditions have been satisfied:

(i) Consents. The Administrative Agent shall have received executed signature pages hereto from Lenders constituting the Required Lenders (each such Lender a “ Consenting Lender ”) and each Loan Party;

(ii) Amendment No. 3 Joinder Agreement. The Administrative Agent, the Borrower and the Term B Increase Lender shall have entered into the Amendment No. 3 Joinder Agreement (as defined in Exhibit A);

(iii) Fees. The Administrative Agent shall have received (x) from the Borrower a non-refundable fee (the “ Consent Fee ”), for the account of each Consenting Lender that has delivered an executed signature page hereto prior to the Amendment No. 3 Effective Date, equal to 0.25% of the principal amount of Loans and Commitments, as applicable, held by Consenting Lenders on the Amendment No. 3 Effective Date, (y) from the Borrower a non-refundable upfront fee (the “ Term B Increase Loan Upfront Fee ”) equal to 1.249% of the amount of the Term B Increase Loans funded on the Amendment No. 3 Effective Date, for the account of the Term B Increase Lender (it being understood that such Term B Increase Upfront Fee may take the form of original issue discount on the aggregate principal amount of the Term B Increase Loans to be funded on the Amendment No. 3 Effective Date) and (z) all fees required to be paid, and all expenses for which reasonably detailed invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Amendment No. 3 Effective Date;

(iv) Legal Opinions. The Administrative Agent shall have received a favorable legal opinion of Simpson Thacher & Bartlett LLP, counsel to the Loan Parties, covering such matters as the Administrative Agent may reasonably request and otherwise reasonably satisfactory to the Administrative Agent;

(v) Officer's Certificate. The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower dated the Amendment No. 3 Effective Date certifying that (a) all representations and warranties shall be true and correct in all material respects on and as of the Amendment No. 3 Effective Date (although any representations and warranties (i) which expressly relate to a given date or period shall be required to be true and correct in all material respects as of the respective date or for the respective period, as the case may be and (ii) that are qualified by materiality are true and correct (after giving effect to any qualification thereof) in all respects on and as of the date hereof), before and after giving effect to the borrowing and to the application of the proceeds therefrom, as though made on and as of such date and (b) no Event of Default or event which with the giving of notice or lapse of time or both would be an Event of Default, shall have occurred and be continuing;

(vi) Closing Certificates. The Administrative Agent shall have received (i) a copy of the certificate or articles of incorporation or organization, including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing (where relevant) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority or a certification from each Loan Party that there have been no changes to the certificate or articles of

incorporation or organization, including all amendments thereto that were delivered to the Administrative Agent on the Amendment No. 1 Effective Date and (ii) a certificate of a Responsible Officer of each Loan Party dated the Amendment No. 3 Effective Date and certifying (A) that (i) attached thereto is a true and complete copy of the by-laws or operating (or limited liability company) agreement of such Loan Party as in effect on the Amendment No. 3 Effective Date or (ii) there have been no changes to the by-laws or operating (or limited liability company) agreement of such Loan Party that were delivered to the Administrative Agent on the Amendment No. 1 Effective Date, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or organization of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, and (D) as to the incumbency and specimen signature of each officer executing any Loan Document on behalf of such Loan Party and countersigned by another officer as to the incumbency and specimen signature of a Responsible Officer executing the certificate pursuant to clause (ii) above;

(vii) Notice of Borrowing. The Administrative Agent shall have received a notice of borrowing with respect to the Term B Increase Loans pursuant to Section 2.02 of the Credit Agreement;

(viii) Flood Certificates. The Administrative Agent shall have received (i) a completed "life of the loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (each a "Flood Notice") and (ii) with respect to any Mortgaged Property which is designated as a "flood hazard area" in any Flood Insurance Rate Map established by the Federal Emergency Management Agency (or any successor agency), a duly executed and acknowledged Flood Notice by the appropriate Loan Parties, together with a copy of and a certificate as to coverage under the insurance policies required by Section 6.07 of the Credit Agreement with respect to flood insurance policies and the applicable provisions of the Collateral Documents, each of which shall be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgagee endorsement (as applicable) and shall name the Administrative Agent, on behalf of the Secured Parties, as additional insured, and such other evidence of compliance with applicable flood insurance regulations as the Administrative Agent may reasonably request, all in form and substance satisfactory to the Administrative Agent;

(ix) Mezzanine Debt Amendment. The Mezzanine Debt Amendment (as defined in Exhibit A) shall have become effective or shall become effective substantially simultaneously with the Amendment No. 3 Effective Date; and

(x) Financial Statements. The Administrative Agent shall have received the Borrower's audited financial statements for the fiscal year ended December 31, 2011 and such audited financial statements shall meet the requirement of Section 6.01 of the Credit Agreement.

Section 4. Post-Effectiveness Covenant. Not later than 60 days after the Amendment No. 3 Effective Date (or such later date as to which the Administrative Agent may agree), the Loan Parties shall take such actions and deliver such documentation with respect to the Mortgaged

Properties as the Administrative Agent shall reasonably request (including, without limitation, if requested, (i) entering into amendments with respect to any existing Mortgages, (ii) obtaining title datedown endorsements with respect to any existing Title Policies or, to the extent such endorsements are not available under applicable law, a new title insurance policy, each dated the date of recording of the amendment and (iii) delivering customary opinions of counsel with respect to any Mortgaged Property, in each case in form and substance reasonably acceptable to the Administrative Agent) in order to ensure the Mortgages continue to secure all Obligations after giving effect to this Amendment with the same priority as was the case prior to giving effect to this Amendment and otherwise to confirm the enforceability, validity and perfection of the Liens in favor of the Secured Parties.

Section 5. Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which when taken together shall constitute a single instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or any other electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

Section 6. Applicable Law.

(a) THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THIS AMENDMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AMENDMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE SITTING IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY, AND BY EXECUTION AND DELIVERY OF THIS AMENDMENT, EACH PARTY HERETO CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AMENDMENT OR ANY OTHER DOCUMENT RELATED HERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN SECTION 10.02 OF EXHIBIT A HERETO. NOTHING IN THIS AMENDMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 7. Headings. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

Section 8. Effect of Amendment. Except as expressly set forth herein, (i) this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Administrative Agent, any other Agent or the Issuing Lenders,

in each case under the Credit Agreement or any other Loan Document, and (ii) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other provision of either such agreement or any other Loan Document. Each and every term, condition, obligation, covenant and agreement contained in the Credit Agreement or any other Loan Document is hereby ratified and re-affirmed in all respects and shall continue in full force and effect. Each Loan Party reaffirms its obligations under the Loan Documents to which it is party and the validity of the Liens granted by it pursuant to the Security Documents. This Amendment shall constitute a Loan Document for purposes of the Credit Agreement and from and after the Amendment No. 3 Effective Date, all references to the Credit Agreement in any Loan Document and all references in the Credit Agreement to “this Agreement,” “hereunder”, “hereof” or words of like import referring to the Credit Agreement, shall, unless expressly provided otherwise, refer to the Credit Agreement as amended by this Amendment. Each of the Loan Parties hereby consents to this Amendment and confirms that all obligations of such Loan Party under the Loan Documents to which such Loan Party is a party shall continue to apply to the Credit Agreement as amended hereby.

Section 9. WAIVER OF RIGHT TO TRIAL BY JURY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AMENDMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AMENDMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AMENDMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AMENDMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 9 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

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

By: _____
Name:
Title:

[Form of Signature Page]

CREDIT AGREEMENT

Dated as of December 1, 2009,
as Amended by Amendment No. 1 on February 17, 2011
as further Amended by Amendment No. 2 on April 15, 2011
as further Amended by Amendment No. 3 on March 30, 2012

among

SEAWORLD PARKS & ENTERTAINMENT, INC.,
as the Borrower,

THE GUARANTORS PARTY HERETO FROM TIME TO TIME,

BANK OF AMERICA, N.A.,
as Administrative and Collateral Agent,

BANK OF AMERICA, N.A.,
as L/C Issuer and Swing Line Lender,

THE OTHER LENDERS PARTY HERETO FROM TIME TO TIME,

BANK OF AMERICA, N.A.
as Amendment No. 3 Lead Arranger,

and

BANK OF AMERICA, N.A.
BARCLAYS CAPITAL
~~DEUTSCHE BANK SECURITIES INC. and BARCLAYS BANK PLC;~~
~~as Amendment No. 1 Co-Syndication Agents;~~

GOLDMAN SACHS LENDING PARTNERS LLC
J.P. MORGAN SECURITIES LLC MACQUARIE
CAPITAL (USA) INC.

and

~~MIZUHO CORPORATE BANK, LTD. and BBVA COMPASS;~~
as Amendment No. 1 ~~Co-Documentation Agents;~~

and

~~MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED;~~
~~as Amendment No. 1 Lead Arranger~~ 3 Joint Bookrunners,

and

~~MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED;~~
~~BARCLAYS CAPITAL,~~
and
~~DEUTSCHE BANK SECURITIES INC.;~~
as Amendment No. 3 Co-Syndication Agents,

and

GOLDMAN SACHS LENDING PARTNERS LLC

~~MIZUHO CORPORATE JPMORGAN CHASE BANK LTD~~, N.A.
and
MACQUARIE CAPITAL (USA) INC.
as Amendment No. ~~1 Joint Bookrunners~~ 3 Co-Documentation Agents

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CREDIT AGREEMENT

This CREDIT AGREEMENT (this "Agreement") is entered into as of December 1, 2009 (as amended by Amendment No. 1 on February 17, 2011, as further amended by Amendment No. 2 on April 15, 2011 and as further amended by Amendment No. 2-3 on April 15, 2011 ~~March 30, 2012~~), among SEAWORLD PARKS & ENTERTAINMENT, INC. (f/k/a SW ACQUISITIONS CO., INC.), a Delaware corporation (the "Borrower"), the Guarantors party hereto from time to time, BANK OF AMERICA, N.A., as Administrative Agent and Collateral Agent, each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), BANK OF AMERICA, N.A., as L/C Issuer and Swing Line Lender, DEUTSCHE BANK SECURITIES INC. and BARCLAYS BANK PLC, as Co-Syndication Agents, and MIZUHO CORPORATE BANK, LTD., as Documentation Agent.

PRELIMINARY STATEMENTS

Pursuant to the equity purchase agreement dated October 7, 2009, as amended on November 30, 2009 (together with schedules and exhibits thereto, the "Acquisition Agreement") by and among the Borrower, each of the limited partnerships identified therein (collectively, "Parent"), and Anheuser-Busch InBev SA/NV, a Belgian corporation, and Anheuser-Busch Companies, Inc., a Delaware corporation ("Seller"), the Borrower has agreed to acquire (the "Acquisition") all of the outstanding equity interests of (x) Busch Entertainment LLC, a Delaware limited liability company ("BEC") and (y) Sea World LLC, a Delaware limited liability company ("SW" and, together with BEC, the "Acquired Company").

To fund a portion of the Acquisition of the Acquired Company, the Investors and certain other investors (including certain providers of the Mezzanine Debt (as defined below)) and associated entities will make a cash equity contribution (the "Equity Contribution") directly or indirectly to the Parent (which shall in turn contribute the same to SW Holdco, Inc., a Delaware corporation and the direct parent of the Borrower ("Holdings"), as cash common equity, which shall in turn contribute the same to the Borrower as cash common equity) in an aggregate amount equal to not less than 40% of the pro forma total consolidated debt and equity capitalization of the Borrower.

To consummate the transactions contemplated by the Acquisition Agreement, the Borrower will obtain unsecured senior mezzanine notes on the Closing Date in an aggregate initial principal amount not in excess of \$400,000,000 pursuant to the terms of the Mezzanine Debt Documentation (as defined below).

The Borrower has requested that the Lenders extend credit to the Borrower in the form of (i) Original Term Loans in an initial aggregate amount of \$1,050,000,000 and (ii) Revolving Credit Commitments in an initial aggregate amount of \$140,000,000. The Revolving Credit Facility may include one or more Swing Line Loans and one or more Letters of Credit from time to time.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.

Definitions and Accounting Terms

Section 1.01. Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Price" has the meaning set forth in Section 2.05(c)(iii).

"Acceptance Date" has the meaning set forth in Section 2.05(c)(ii).

“Acquired Company” has the meaning set forth in the preliminary statements hereto.

“Acquisition” has the meaning set forth in the preliminary statements hereto.

“Acquisition Agreement” has the meaning set forth in the preliminary statements hereto.

“Additional Lender” has the meaning set forth in Section 2.14(a).

“Additional Revolving Credit Commitment” means, with respect to each Additional Revolving Credit Lender, such Additional Revolving Credit Lender’s Revolving Credit Commitment in the amount set forth in the Amendment No. 1 Joinder Agreement.

“Additional Revolving Credit Lenders” means the Persons identified as such in the Amendment No. 1 Joinder Agreement.

“Additional Term B Commitment” means, with respect to the Additional Term B Lender, its commitment to make a Term B Loan on the Amendment No. 1 Effective Date in an amount equal to the excess, if any of (i) the principal amount of Original Term Loans required to be repaid on the Amendment No. 1 Effective Date pursuant to Section 2.05(b)(ix) minus (ii) the amount of the Term A Commitment.

“Additional Term B Lender” means the Person identified as such in the Amendment No. 1 Joinder Agreement.

“Administrative Agent” means Bank of America, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Agent-Related Persons” means the Agents, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Agents” means, collectively, the Administrative Agent, the Collateral Agent, the Co-Syndication Agents, Documentation Agent ~~and~~ the Supplemental Agents (if any) , the Amendment No. 1 Lead Arranger, the Amendment No. 1 Joint Bookrunners, the Amendment No. 3 Lead Arranger and the Amendment No. 3 Joint Bookrunners.

“Aggregate Commitments” means the Commitments of all the Lenders.

~~“Aggregate Term Loan Cap” has the meaning set forth in Section 2.05(b)(x).~~

“Agreement” means this Credit Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

“Amendment No. 1” means Amendment No. 1, dated as of February 17, 2011, to this Agreement.

“Amendment No. 1 Aggregate Term Loan Cap” has the meaning set forth in Section 2.05(b)(x).

“Amendment No. 1 Consenting Lender” means each Lender that provided the Administrative Agent with a counterpart to Amendment No. 1 executed by such Lender.

“Amendment No. 1 Effective Date” means February 17, 2011.

“Amendment No. 1 Joinder Agreement” means the joinder agreement, dated as of the Amendment No. 1 Effective Date, by and among the Borrower, the Administrative Agent, the Additional Term B Lender, the Initial Term A Lender and the Additional Revolving Credit Lenders.

“Amendment No. 1 Joint Bookrunners” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Capital, the investment banking division of Barclays Bank PLC, Deutsche Bank Securities Inc. and Mizuho Corporate Bank, ~~ETF~~ Ltd.

“Amendment No. 1 Lead Arranger” means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Amendment No. 2” means Amendment No. 2, dated as of April 15, 2011, to this Agreement.

“Amendment No. 2 Effective Date” means April 15, 2011.

“Amendment No. 3” means Amendment No. 3, dated as of March 30, 2012, to this Agreement.

“Amendment No. 3 Distribution” means a distribution made by the Borrower to the holders of its outstanding Equity Interests on or after the Amendment No. 3 Effective Date in an amount up to the amount of the Term B Increase Commitment.

“Amendment No. 3 Effective Date” means March 30, 2012.

“Amendment No. 3 Joinder Agreement” means the joinder agreement, dated as of the Amendment No. 3 Effective Date, by and among the Borrower, the Administrative Agent and the Term B Increase Lender.

“Amendment No. 3 Joint Bookrunners” means Bank of America, N.A., Barclays Capital, the investment banking division of Barclays Bank PLC, Deutsche Bank Securities Inc., Goldman Sachs Lending Partners LLC, J.P. Morgan Securities LLC, Macquarie Capital (USA) Inc. and Mizuho Corporate Bank, Ltd.

“Amendment No. 3 Lead Arranger” means Bank of America, N.A..

“Applicable Discount” has the meaning set forth in Section 2.05(c)(iii).

“Applicable ECF Percentage” means, for any fiscal year, (a) 50% if the Total Leverage Ratio as of the last day of the applicable Excess Cash Flow Period is greater than 3.25:1.00, (b) 25% if the Total Leverage Ratio as of the last day of the applicable Excess Cash Flow Period is less than or equal to 3.25:1.00 and greater than 2.75:1.00 and (c) 0% if the Total Leverage Ratio as of the last day of the applicable Excess Cash Flow Period is less than or equal to 2.75:1.00.

“Applicable Rate” means a percentage per annum equal to:

(a) with respect to Term A Loans, (i) until delivery of financial statements for the first full fiscal quarter commencing after the Amendment No. 1 Effective Date pursuant to Section 6.01, (A) for Eurocurrency Rate Loans, 2.75% and (B) for Base Rate Loans, 1.75%, and (ii) thereafter, the following percentages per annum, based upon the Secured Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Pricing Level	Applicable Rate		
	Secured Leverage Ratio	Eurocurrency Rate and Letter of Credit Fees	Base Rate
1	>2.25:1	2.75%	1.75%
2	≤ 2.25:1	2.50%	1.50%

(b) with respect to Term B Loans, ~~(i) until delivery of financial statements for the first full fiscal quarter commencing after the Amendment No. 1 Effective Date pursuant to Section 6.01, (A) for Eurocurrency Rate Loans, 3.00% and (B) for Base Rate Loans, 2.00% ; and (ii) thereafter, the following percentages per annum, based upon the Secured Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a): ;~~

Pricing Level	Applicable Rate		
	Secured Leverage Ratio	Eurocurrency Rate and Letter of Credit Fees	Base Rate
1	>2.25:1	3.00%	2.00%
2	≤ 2.25:1	2.75%	1.75%

(c) with respect to Revolving Credit Loans, unused Revolving Credit Commitments and Letter of Credit fees, (i) until delivery of financial statements for the first full fiscal quarter commencing after the Amendment No. 1 Effective Date pursuant to Section 6.01, (A) for Eurocurrency Rate Loans, 2.75%, (B) for Base Rate Loans, 1.75%, (C) for Letter of Credit fees, 2.75% and (D) for unused commitment fees, 0.50% and (ii) thereafter, the following percentages per annum, based upon the Secured Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Pricing Level	Applicable Rate			
	Secured Leverage Ratio	Eurocurrency Rate and Letter of Credit Fees	Base Rate	Unused Commitment Fee Rate
1	>2.25:1	2.75%	1.75%	0.50%
2	≤ 2.25:1	2.50%	1.50%	0.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Secured Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided that, at the option of the Administrative Agent or the Required Lenders, the higher pricing level shall apply (x) as of the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the pricing level otherwise determined in accordance with this definition shall apply) and (y) as of the first Business Day after an Event of Default under Section 8.01(a) shall have occurred and be continuing, and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the pricing level otherwise determined in accordance with this definition shall apply).

In the event that any financial statements under Section 6.01 or a Compliance Certificate is shown to be inaccurate at any time that this Agreement is in effect and any Loans or Commitments are outstanding hereunder when such inaccuracy is discovered or within 91 days after the date on which all Loans have been repaid and all Commitments have been terminated, and such inaccuracy, if corrected, would have led to a higher Applicable Rate for any period (an "Applicable Period") than the Applicable Rate applied for such Applicable Period, then (i) the Borrower shall promptly (and in no event later than five (5) Business Days thereafter) deliver to the Administrative Agent a correct Compliance Certificate for such Applicable Period, (ii) the Applicable Rate shall be determined by reference to the corrected Compliance Certificate (but in no event shall the Lenders owe any amounts to the Borrower), and (iii) the Borrower shall pay to the Administrative Agent promptly upon demand (and in no event later than five (5) Business Days after demand) any additional interest owing as a result of such increased Applicable Rate for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with the terms hereof. Notwithstanding anything to the contrary in this Agreement, any additional interest hereunder shall not be due and payable until demand is made for such payment pursuant to clause (iii) above and accordingly, any nonpayment of such interest as result of any such inaccuracy shall not constitute a Default (whether retroactively or otherwise), and no such amounts shall be deemed overdue (and no amounts shall accrue interest at the Default Rate), at any time prior to the date that is five (5) Business Days following such demand.

"Appropriate Lender" means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, (b) with respect to Letters of Credit, (i) the relevant L/C Issuer and (ii) the Revolving Credit Lenders and (c) with respect to the Swing Line Facility, (i) the relevant Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

"Approved Bank" has the meaning set forth in clause (c) of the definition of "Cash Equivalents."

"Approved Fund" means any Fund that is administered, advised or managed by a Lender or an Affiliate of the entity that administers, advises or manages any Fund that is a Lender.

"Arrangers" means Banc of America Securities LLC, Barclays Capital, the investment banking division of Barclays Bank PLC, ~~and~~ Deutsche Bank Securities Inc ., the Amendment No. 1 Lead Arranger, the Amendment No. 1 Joint Bookrunners, the Amendment No. 3 Lead Arranger and the Amendment No. 3 Joint Bookrunners.

"Assignees" has the meaning set forth in Section 10.07(b).

"Assignment and Assumption" means an Assignment and Assumption substantially in the form of Exhibit E.

"Attorney Costs" means and includes all reasonable fees, expenses and disbursements of any law firm or other external legal counsel.

"Attributable Indebtedness" means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"Audited Financial Statements" means the audited consolidated balance sheets of the Acquired Company and its Subsidiaries as of each of December 31, 2007 and 2008, and the related audited consolidated statements of operations and of cash flows for the Acquired Company and its Subsidiaries for the fiscal years ended December 31, 2006, 2007 and 2008.

“Auto-Extension Letter of Credit” has the meaning set forth in Section 2.03(b)(iii).

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”; provided that in no event shall the Base Rate with respect to the Term B Loans be less than 2.00% per annum. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Borrower” has the meaning set forth in the preamble hereto.

“Borrower Materials” has the meaning set forth in Section 6.01.

“Borrowing” means a Revolving Credit Borrowing, a Swing Line Borrowing, or a Term Borrowing of a particular Class, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and if such day relates to any Eurocurrency Rate Loan, means any such day on which dealings in deposits are conducted by and between banks in the London interbank eurodollar market.

“CapEx Pull-Forward Amount” has the meaning set forth on Section 7.11(c)(ii).

“Capital Expenditures” means, for any period, the aggregate, without duplication, of (a) all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as additions during such period to property, plant or equipment and other deferred charges included in Capital Expenditures reflected in the consolidated balance sheet of the Borrower and its Restricted Subsidiaries, (b) the value of all assets under Capitalized Leases incurred by the Borrower and its Restricted Subsidiaries during such period (other than as a result of purchase accounting) and (c) Capitalized Software Expenditures; provided that the term “Capital Expenditures” shall not include (i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment solely to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) the purchase of plant, property or equipment or software to the extent financed with the proceeds of Dispositions outside the ordinary course of business that are not required to be applied to prepay Term Loans pursuant to Section 2.05(b), (iv) expenditures that are accounted for as capital expenditures by the Borrower or any Restricted Subsidiary and that actually are paid for by a Person other than the Borrower or any Restricted Subsidiary and for which neither the Borrower nor any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period), (v) expenditures that constitute any part of Consolidated Lease Expense, (vi) expenditures that constitute Permitted Acquisitions, (vii) any capitalized interest expense reflected as additions to property, plant or equipment in the consolidated balance sheet of the Borrower and the Restricted Subsidiaries or (viii) any non-cash compensation or other non-cash costs reflected as additions to property, plant or equipment in the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“Capitalized Leases” means all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability on a balance sheet (excluding the notes thereto) in accordance with GAAP.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“Cash Collateral” has the meaning set forth in Section 2.03(g).

“Cash Collateral Account” means a blocked account at Bank of America (or another commercial bank selected in compliance with Section 9.09) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent.

“Cash Collateralize” has the meaning set forth in Section 2.03(g).

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

(a) Dollars;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States having average maturities of not more than 24 months from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;

(c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development, and is a member of the Federal Reserve System, and (B) has combined capital and surplus of at least \$250,000,000 (any such bank in the foregoing clauses (i) or (ii) being an “Approved Bank”), in each case with maturities not exceeding 12 months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than 12 months from the date of acquisition thereof;

(e) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(f) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of \$250,000,000 for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of the United States, in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations;

(g) securities with average maturities of 12 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) euros or any other foreign currency comparable in credit quality and tenor to those referred to above and instruments equivalent to those referred to in clauses (a) through (h) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above, in each case, customarily used by corporations for cash management purposes in any jurisdiction outside the United States in the ordinary course of business of the Borrower and its Restricted Subsidiaries;

(j) Investments, classified in accordance with GAAP as current assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of at least \$250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (h) of this definition; and

(k) investment funds investing at least 95% of their assets in securities of the types (including as to credit quality and maturity) described in clauses (a) through (j) above.

“Cash Management Obligations” means obligations owed by the Borrower or any Restricted Subsidiary to any Lender or any Affiliate of a Lender (or Person that was a Lender or an Affiliate of a Lender at the time such arrangement was entered into) (a “Cash Management Bank”) in respect of any overdraft and related liabilities arising from treasury, depository, credit card, debit card and cash management services or any automated clearing house transfers of funds.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“Change of Control” shall be deemed to occur if:

(a) at any time prior to a Qualified IPO, any combination of Permitted Holders shall fail to own beneficially (within the meaning of Rule 13d-5 of the Exchange Act as in effect on the Closing Date), directly or indirectly, in the aggregate Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings;

(b) at any time after a Qualified IPO, (i) any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), other than any combination of the Investors or any “group” including any Permitted Holders (provided, that in the case of any such “group,” the Permitted Holders hold a majority of all voting interest in Holdings’ Equity Interests held by all members of such “group”), shall have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting interest in Holdings’ Equity Interests and the Permitted Holders shall own, directly or indirectly, less than such person or “group” on a fully diluted basis of the voting interest in Holdings’ Equity Interests or (ii) during each period of twelve consecutive months, the board of directors of Holdings shall not consist of a majority of the Continuing Directors;

(c) a “change of control” (or similar event) shall occur under the Mezzanine Debt or any Junior Financing with an aggregate principal amount in excess of the Threshold Amount or any Permitted Refinancing Indebtedness in respect of any of the foregoing with an aggregate principal amount in excess of the Threshold Amount; or

(d) Holdings shall cease to own 100% of the Equity Interests of the Borrower.

“Class” (a) when used with respect to Lenders, refers to whether such Lenders are Revolving Credit Lenders, Term B Lenders, Term A Lenders, Lenders holding Incremental Term Loans of a particular Incremental Series, Lenders holding Extended Term Loans under any Extended Term Facility or Lenders holding Refinancing Term Loans under a particular Refinancing Term Facility, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Credit Commitments, Additional Term B Commitments, Term A Commitments or a particular Replacement Revolving Commitment Series and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Credit Loans, Term B Loans, Term A Loans, Extended Term Loans under a particular Extended Term Facility, Refinancing Term Loans under a particular Refinancing Term Facility, Incremental Term Loans of a particular Incremental Series, Replacement Term Loans established on a single date to replace a Class of Term Loans or Replacement Revolving Loans under a particular Replacement Revolving Commitment Series.

“Closing Date” means the first date on which all the conditions precedent in Section 4.02 are satisfied or waived in accordance with Section 4.02, which date is December 1, 2009.

“Closing Fee” has the meaning set forth in Section 2.09(c).

“Code” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means the “Collateral” as defined in the Security Agreement and all the “Collateral” or “Pledged Assets” as defined in any other Collateral Document and any other assets pledged or in which a Lien is granted pursuant to any Collateral Document, including, without limitation, the Mortgaged Property.

“Collateral Agent” means Bank of America, in its capacity as collateral agent or pledgee in its own name under any of the Loan Documents, or any successor collateral agent.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) on the Closing Date the Administrative Agent shall have received each Collateral Document to the extent required to be delivered on the Closing Date pursuant to Section 4.02(e), subject to the limitations and exceptions of this Agreement, duly executed by each Loan Party thereto;

(b) the Obligations shall have been secured by a first-priority security interest in (i) all the Equity Interests of the Borrower and (ii) all Equity Interests of each Restricted Subsidiary of the Borrower that is not an Excluded Subsidiary directly owned by any Loan Party, in each case, subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents (to the extent appropriate in the applicable jurisdiction);

(c) the Obligations shall have been secured by a perfected security interest in, and Mortgages on, substantially all tangible and intangible assets of the Borrower and each Subsidiary Guarantor (including Equity Interests and intercompany debt, accounts, inventory, equipment, investment property, contract rights, intellectual property in the United States, other general intangibles, Material Real Property and proceeds of the foregoing), in each case, subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents (to the extent appropriate in the applicable jurisdiction);

(d) subject to limitations and exceptions of this Agreement (for the avoidance of doubt, including the limitations and exceptions set forth in the proviso of Section 4.02(e)) and the Collateral Documents, to the extent a security interest in and Mortgages on any Material Real Property is required under Section 6.11 or 6.13 (together with any Material Real Property that is subject to a Mortgage on the Closing Date, each, a "Mortgaged Property"), the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to such Mortgaged Property duly executed and delivered by the record owner of such property in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected first-priority Lien (subject only to Liens described in clause (ii) below) on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Mortgage shall be limited to 100% of the fair market value of the property at the time the Mortgage is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value), (ii) fully paid policies of title insurance (or marked-up title insurance commitments having the effect of policies of title insurance) on the Mortgaged Property naming the Collateral Agent as the insured for its benefit and that of the Secured Parties and respective successors and assigns (the "Mortgage Policies") issued by a nationally recognized title insurance company reasonably acceptable to the Administrative Agent in form and substance and in an amount reasonably acceptable to the Administrative Agent (not to exceed 100% of the fair market value of the real properties covered thereby), insuring the Mortgages to be valid subsisting first-priority Liens on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 7.01 and other Liens reasonably acceptable to the Administrative Agent, each of which shall (A) to the extent reasonably necessary, include such reinsurance arrangements (with provisions for direct access, if reasonably necessary) as shall be reasonably acceptable to the Collateral Agent, (B) contain a "tie-in" or "cluster" endorsement, if available under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (C) have been supplemented by such endorsements (or where such endorsements are not available, opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent) as shall be reasonably requested by the Collateral Agent (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit (if available after the applicable Loan Party uses commercially reasonable efforts), doing business, non-imputation, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions; provided, however, the applicable Loan Party shall not be obligated to obtain a "creditor's rights" endorsement), (iii) legal opinions, addressed to the Administrative Agent, the Collateral Agent and the other Secured Parties, reasonably acceptable to the Administrative Agent and the Collateral Agent as to such matters as the Administrative Agent and the Collateral Agent may reasonably request, and (iv) a completed "life of the loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property duly executed and acknowledged by the appropriate Loan Parties; and

(e) after the Closing Date, each Restricted Subsidiary of the Borrower that is not an Excluded Subsidiary shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with Section 6.11 and a party to the applicable Collateral Documents in accordance with Section 6.11; provided that notwithstanding the foregoing provisions, any Subsidiary of the Borrower that Guarantees the Mezzanine Debt shall be a Guarantor hereunder for so long as it Guarantees such Indebtedness.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

(A) the foregoing definition shall not require, unless otherwise stated in this clause (A), the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance or taking other actions with respect to, (i) any fee owned real property (other than Material Real Properties) and any leasehold rights and interests in real property that is not Material Real Property (including landlord waivers, estoppels and collateral access letters), (ii) motor vehicles and other assets subject to certificates of title, letters of credit with a face value of less than \$5,000,000 and commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$5,000,000), (iii) any particular asset, if the pledge thereof or the security interest therein is prohibited by Law other than to the extent such prohibition is expressly deemed ineffective under the Uniform Commercial Code or other applicable Law notwithstanding such prohibition, (iv) Margin Stock and, solely to the extent prohibited by the Organization Documents or any shareholders agreement with shareholders that are not direct or indirect wholly owned Restricted Subsidiaries of the Borrower, Equity Interests in any Person other than wholly owned Restricted Subsidiaries, (v) any rights of any Loan Party with respect to any lease, license or other agreement to the extent a grant of security interest therein is prohibited by such lease, license or other agreement, would result in an invalidation thereof or would create a right of termination in favor of any other party thereto (other than a Loan Party) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable Laws or principle of equity notwithstanding such prohibition, (vi) the creation or perfection of pledges of, security interests in, any property or assets that would result in material adverse tax consequences to Holdings, the Borrower or any of its Subsidiaries, as reasonably determined by the Borrower with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) (it being understood that the Lenders shall not require the Borrower or any of its Subsidiaries to enter into any security agreements or pledge agreements governed under foreign law), (vii) intellectual property to the extent a security interest is not perfected by filing of a UCC financing statement or in respect of registered intellectual property, a filing in the USPTO (if required) or the U.S. Copyright Office (it being understood that such assets are intended to constitute Collateral, though perfection beyond UCC, USPTO and U.S. Copyright Office filings is not required) and (viii) any particular assets if, in the reasonable judgment of the Administrative Agent evidenced in writing, determined in consultation with the Borrower, the burden, cost or consequences of creating or perfecting such pledges or security interests in such assets or obtaining title insurance is excessive in relation to the benefits to be obtained therefrom by the Lenders under the Loan Documents;

(B) (i) the foregoing definition shall not require control agreements and perfection by "control" with respect to any Collateral (including deposit accounts, securities accounts, etc.) other than certificated Equity Interests of the Borrower and, to the extent constituting Collateral, its Restricted Subsidiaries that are Domestic Subsidiaries; (ii) no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S. or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction); and (iii) except to the extent that perfection and priority may be achieved by the filing of a financing statement under the Uniform Commercial Code with respect to the Borrower or a Guarantor,

or, with respect to real property and the recordation of Mortgages in respect thereof, as contemplated by clauses (c) and (d) above, the Loan Documents shall not contain any requirements as to perfection or priority with respect to any assets or property described in this clause (B);

(C) the Administrative Agent in its discretion may grant extensions of time for the creation or perfection of security interests in, and Mortgages on, or obtaining of title insurance or taking other actions with respect to, particular assets (including extensions beyond the Closing Date) or any other compliance with the requirements of this definition where it reasonably determines in writing, in consultation with the Borrower, that the creation or perfection of security interests and Mortgages on, or obtaining of title insurance or taking other actions, or any other compliance with the requirements of this definition cannot be accomplished without undue delay, burden or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents; provided that the Collateral Agent shall have received on or prior to the Closing Date, (i) UCC financing statements in appropriate form for filing under the UCC in the jurisdiction of incorporation or organization of each Loan Party, and (ii) any certificates or instruments representing or evidencing Equity Interests of the Borrower and any Subsidiary Guarantors accompanied by instruments of transfer and stock powers undated and endorsed in blank; and

(D) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth in this Agreement and the Collateral Documents.

“Collateral Documents” means, collectively, the Security Agreement, the Holdings Pledge Agreement, each of the Mortgages, collateral assignments, security agreements, pledge agreements, intellectual property security agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.02, Section 6.11 or Section 6.13, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“Commitment” means a Term Commitment or a Revolving Credit Commitment of any Class, as the context may require.

“Committed Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Company” means the Borrower, together with its successors and assigns.

“Company Material Adverse Effect” means a “Material Adverse Effect” as defined in the Acquisition Agreement.

“Compensation Period” has the meaning set forth in Section 2.12(c)(ii).

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Consolidated EBITDA” means, for any period, the Consolidated Net Income for such period, plus :

(a) without duplication and, except with respect to clauses (viii) and (x) below, to the extent deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP (including, to the extent deducted and not added back in computing Consolidated Net Income, (a) amortization

of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers' acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in mark-to-market valuation of Swap Contracts or other derivative instruments pursuant to GAAP), (d) the interest component of capitalized lease obligations, (e) net payments, if any, pursuant to interest rate Swap Contracts with respect to Indebtedness, (f) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses and (g) any expensing of bridge, commitment and other financing fees) and, to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, franchise and similar taxes (such as Delaware franchise tax, Pennsylvania capital tax or Texas margin tax) and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations,

(iii) depreciation and amortization (including amortization of intangible assets, including Capitalized Software Expenditures),

(iv) (A) severance, relocation costs and expenses, Transaction Expenses, integration costs, transition costs (including any one-time information technology or other costs relating to the separation of the Borrower or its predecessor from Anheuser-Busch InBev NV/SA as part of the Transactions, to the extent incurred on or prior to the last day of the month immediately prior to the second anniversary of the Closing Date), pre-opening, opening, consolidation and closing costs for facilities, costs incurred in connection with any non-recurring strategic initiatives, costs incurred in connection with acquisitions and non-recurring product and intellectual property development after the Closing Date, other business optimization expenses (including costs and expenses relating to business optimization programs and new systems design and implementation costs), project start-up costs and other restructuring charges, accruals or reserves (including restructuring costs related to acquisitions after the Closing Date and to closure/consolidation of facilities, retention charges, systems establishment costs and excess pension charges) in an aggregate amount of all items deducted pursuant to this clause (iv) (other than Transaction Expenses incurred, accrued or paid no later than the end of the first full fiscal quarter ending after the Closing Date) not to exceed (I) with respect to the Transactions \$50,000,000 and (II) otherwise, \$10,000,000 in any period of four consecutive fiscal quarters (it being understood that unused amounts of the cap under clause (II) in any fiscal year (without giving effect to any amount carried over from a prior fiscal year) may be carried over to the next succeeding fiscal year (but not any other fiscal year) (provided that amounts deducted in any fiscal year shall first be deemed to be allocated against the cap for such fiscal year before giving effect to any carryover)), and (B) purchase price adjustments incurred prior to 150 days after the Closing Date;

(v) the amount of any minority interest expense consisting of Restricted Subsidiary income attributable to minority interests of third parties in any non-wholly owned Restricted Subsidiary except to the extent of any cash distributions in respect thereof,

(vi) the amount of management, monitoring, consulting and advisory fees and related expenses paid or accrued to the Investors or their Affiliates (or management companies) under the Investor Management Agreement (for avoidance of doubt, no termination fee paid under the Investor Management Agreement may be included in this clause (vi)),

(vii) any costs or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Equity Interests of the Borrower (other than Disqualified Equity Interests),

(viii) the amount of cost savings, operating expense reductions and synergies projected by the Borrower in good faith to be realized as a result of specified actions taken or with respect to which substantial steps have been taken (in the good faith determination of the Borrower) during such period, including in connection with any Specified Transaction (calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; provided that (A) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent together with the Compliance Certificate required to be delivered pursuant to Section 6.02(a), certifying that (x) such cost savings, operating expense reductions and synergies are reasonably expected and factually supportable in the good faith judgment of the Borrower, (y) such actions are to be taken within (I) in the case of any such cost savings, operating expense reductions and synergies in connection with the Transactions, 18 months after the Closing Date and (II) in all other cases, within 12 months after the consummation of the acquisition, Disposition, restructuring or the implementation of an initiative, which is expected to result in such cost savings, expense reductions or synergies, (B) no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period, (C) the aggregate amount of cost savings and operating expense reductions added pursuant to this clause (viii) does not exceed (x) in the case of the Transaction, \$35,000,000 and (y) in all other cases (1) \$30,000,000 for any individual acquisition or Disposition and (2) for all other initiatives that do not result from acquisitions or Dispositions, \$10,000,000 in the aggregate for any period of four-consecutive fiscal quarters; provided that amounts added back to Consolidated EBITDA pursuant to this clause (C)(y) (2) do not exceed \$30,000,000 in the aggregate for all periods following the Closing Date and (D) projected amounts (and not yet realized) may no longer be added in calculating Consolidated EBITDA pursuant to this clause (viii) to the extent occurring more than four full fiscal quarters after the specified action taken in order to realize such projected cost savings, operating expense reductions and synergies,

(ix) any net loss from disposed, abandoned or discontinued operations,

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xi) non-cash expenses, charges and losses (including impairment charges or asset write-offs, losses from investments recorded using the equity method, stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable or inventory; provided that if any non-cash charges referred to in this clause (xi) represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent paid,

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period), (ii) any net gain from disposed, abandoned or discontinued operations and (iii) the amount of any minority interest income consisting of Restricted Subsidiary losses attributable to minority interests of third parties in any non-wholly owned Restricted Subsidiary; provided that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(xi)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received);

provided that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA (x) currency translation gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) gains or losses on Swap Contracts,

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of Statement of Financial Accounting Standards No. 133 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations,

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any income (loss) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments, and

(D) there shall be excluded in determining Consolidated EBITDA for any period any after-tax effect of non-recurring items (including gains or losses and all fees and expenses relating thereto) relating to curtailments or modifications to pension and post-retirement employee benefit plans for such period.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes (x) any of the fiscal quarters ended December 31, 2008, March 31, 2009, June 30, 2009 and September 30, 2009, Consolidated EBITDA for such fiscal quarters shall be \$21,983,510, \$(87,000), \$143,844,000 and \$204,748,000, respectively or (y) any other period occurring prior to the Closing Date, Consolidated EBITDA shall be calculated on a Pro Forma Basis to give effect to the Transaction.

“Consolidated Interest Expense” means, for any period, the sum, without duplication, of (i) the cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under Swap Contracts, and (ii) any cash payments made during such period in respect of obligations referred to in clause (b) below relating to Funded Debt that were amortized or accrued in a previous period, but excluding, however, (a) amortization of deferred financing costs and any other amounts of non-cash interest, (b) the accretion or accrual of discounted liabilities during such period, (c) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments pursuant to Statement of Financial Accounting Standards No. 133, (d) any cash costs associated with breakage in respect of hedging agreements for interest rates, (e) all non-recurring cash interest

expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP, (f) fees and expenses associated with the consummation of the Transaction, (g) annual agency fees paid to the Administrative Agent and/or Collateral Agent, and (h) costs associated with obtaining Swap Contracts; provided that there shall be excluded from Consolidated Interest Expense for any period the cash interest expense (or income) of all Unrestricted Subsidiaries for such period to the extent otherwise included in Consolidated Interest Expense. Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense (i) for any period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense shall be an amount equal to actual Consolidated Interest Expense from the Closing Date through the date of determination multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the date of determination and (ii) shall exclude the purchase accounting effects described in the last sentence of the definition of "Consolidated Net Income."

"Consolidated Net Income" means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, provided, however, that, without duplication,

(a) any after-tax effect of extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period shall be excluded,

(b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(c) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with Financial Accounting Standards No. 141(R) and gains or losses associated with FASB Interpretation No. 45) shall be excluded,

(d) accruals and reserves that are established or adjusted within twelve months after the Closing Date that are so required to be established or adjusted as a result of the Transactions in accordance with GAAP or changes as a result of adoption or modification of accounting policies in accordance with GAAP shall be excluded,

(e) any net after-tax gains or losses on disposal of abandoned, disposed or discontinued operations shall be excluded,

(f) any net after-tax effect of gains or losses (less all fees, expenses and charges) attributable to asset dispositions or the sale or other disposition of any Equity Interests of any Person in each case other than in the ordinary course of business, as determined in good faith by the Borrower, shall be excluded,

(g) the net income (loss) for such period of any Person that is not a Subsidiary of the Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Borrower shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Borrower or a Restricted Subsidiary thereof in respect of such period,

(h) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(i) any non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs shall be excluded, and any cash charges associated with the rollover, acceleration or payout of Equity Interests by management of the Borrower or any of its direct or indirect parents in connection with the Transactions, shall be excluded,

(j) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days), shall be excluded,

(k) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(l) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of Statement of Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded, and

(m) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of Borrower or is merged into or consolidated with Borrower or any of its Subsidiaries or that Person's assets are acquired by Borrower or any of its Restricted Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated EBITDA on a Pro Forma Basis in accordance with Section 1.09).

For the avoidance of doubt (1) revenue will be accounted for on a GAAP basis and the recognition of any deferred revenue will be included in Consolidated Net Income in the same period as recognized for GAAP and (2) any net gain or loss resulting in such period from mark-to-market adjustments to any liability recorded in connection with the contingent obligation owed to Anheuser Busch InBev NV/SA pursuant to the Acquisition Agreement will be excluded from Consolidated Net Income.

There shall be excluded from Consolidated Net Income for any period the purchase accounting effects of adjustments (including the effects of such adjustments pushed down to the Borrower and its Restricted Subsidiaries) in component amounts required or permitted by GAAP (including in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of the Transactions, any acquisition consummated prior to the Closing Date, any Permitted Acquisitions, or the amortization or write-off of any amounts thereof.

“Consolidated Total Net Debt” means, as of any date of determination, the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but (x) excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transactions or any Permitted Acquisition and (y) any Indebtedness that is issued at a discount to its initial principal amount shall be calculated based on the entire principal amount thereof), consisting of Indebtedness for borrowed money, Attributable Indebtedness, and debt obligations evidenced by promissory notes or similar instruments, minus the aggregate amount of cash and Cash Equivalents (other than Restricted Cash), in each case, that is held by the Borrower and its Restricted Subsidiaries as of such date free and clear of all Liens, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), Section 7.01(p) and Section 7.01(q) and clauses (i) and (ii) of Section 7.01(r); provided that Consolidated Total Net Debt shall not include Indebtedness in respect of (i) letters of credit (including Letters of Credit), except to the extent of unreimbursed amounts thereunder; provided that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Net Debt until 3 Business Days after such amount is drawn and (ii) Unrestricted Subsidiaries; it being understood, for the avoidance of doubt, that obligations under Swap Contracts entered into for non-speculative purposes do not constitute Consolidated Total Net Debt.

“Consolidated Working Capital” means, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; provided that, increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

“Continuing Directors” means the directors of the Borrower on the Closing Date, as elected or appointed after giving effect to the Transactions, and each other director, if, in each case, such other director’s nomination for election to the board of directors of the Borrower is recommended by a majority of the then Continuing Directors or such other director receives the vote of the Permitted Holders in his or her election by the stockholders of the Borrower.

“Contract Consideration” has the meaning set forth in the definition of “Excess Cash Flow.”

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” has the meaning set forth in the definition of “Affiliate.”

“Converted Term Loan” means each Original Term Loan held by an Amendment No. 1 Consenting Lender on the Amendment No. 1 Effective Date immediately prior to the effectiveness of Amendment No. 1.

“Co-Syndication Agents” means Deutsche Bank Securities Inc. and Barclays Bank PLC, as co-syndication agent under this Agreement.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Cumulative Credit” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) the cumulative amount of cash and Cash Equivalent proceeds from (i) the sale of Equity Interests of the Borrower or of any direct or indirect parent of the Borrower after the Closing Date and on or prior to such time (including upon exercise of warrants or options) which proceeds have been contributed as common equity to the capital of the Borrower and (ii) the common Equity Interests of the Borrower (or of Holdings or of any direct or indirect parent of Holdings) (other than Disqualified Equity Interests of the Borrower) issued upon conversion of Indebtedness (other than Indebtedness that is contractually subordinated to the Obligations) of the Borrower or any Restricted Subsidiary of the Borrower owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party, in the case of each of subclause (i) and subclause (ii), not previously applied for a purpose (including a Specified Equity Contribution) other than use in the Cumulative Credit; plus

(c) 100% of the aggregate amount of contributions to the common capital of the Borrower (other than from a Restricted Subsidiary) received in cash and Cash Equivalents after the Closing Date other than from a Specified Equity Contribution; plus

(d) without duplication of any amounts that otherwise increased the amount available for Investments pursuant to Section 7.02, 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary of the Borrower in cash and Cash Equivalents from:

(A) the sale (other than to the Borrower or any such Restricted Subsidiary) of any Equity Interests of an Unrestricted Subsidiary or any minority Investments, or

(B) any dividend or other distribution by an Unrestricted Subsidiary or received in respect of any minority Investments, or

(C) any interest, returns of principal, repayments and similar payments by such Unrestricted Subsidiary or received in respect of any minority Investments, plus

(e) in the event any Unrestricted Subsidiary has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) so long as such Investments were originally made pursuant to Section 7.02(n)(y), plus

(f) to the extent not utilized in connection with other transactions permitted pursuant to Section 7.11(c), the aggregate amount of Retained Declined Proceeds retained by the Borrower, plus

(g) an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary in respect of any Investments made pursuant to Section 7.02(n)(y), minus

(h) any amount of the Cumulative Credit used to make Investments pursuant to Section 7.02(n)(y) after the Closing Date and prior to such time, minus

(i) any amount of the Cumulative Credit used to make Restricted Payments pursuant to Section 7.06(g)(y) or (j) after the Closing Date and prior to such time, minus

(j) any amount of the Cumulative Credit used to make payments or distributions in respect of Junior Financings pursuant to Section 7.13 after the Closing Date and prior to such time, minus

(k) any amount of the Cumulative Credit used to make Capital Expenditures pursuant to Section 7.11(c)(iii) after the Closing Date and prior to such time.

“Cumulative Retained Excess Cash Flow Amount” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow, less the amount of Excess Cash Flow of Foreign Subsidiaries to the extent and for so long as such Excess Cash Flow is excluded from Excess Cash Flow prepayments pursuant to Section 2.05(b)(viii), for each Excess Cash Flow Period ending after the Closing Date and prior to such date.

“Current Assets” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits (but excluding assets held for sale, loans (permitted) to third parties, Pension Plan assets, deferred bank fees and derivative financial instruments).

“Current Liabilities” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination, other than (a) the current portion of any Indebtedness, (b) the current portion of interest, (c) accruals for current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves, (e) deferred revenue and (f) any Revolving Credit Exposure or Revolving Credit Loans.

“Debt Fund Affiliate” means (i) any fund managed by, or under common management with, GSO Capital Partners LP, (ii) any fund managed by GSO Debt Funds Management LLC, Blackstone Debt Advisors L.P., Blackstone Distressed Securities Advisors L.P., Blackstone Mezzanine Advisors L.P. or Blackstone Mezzanine Advisors II L.P. and (iii) any other Affiliate of Holdings that is a bona fide diversified debt fund.

“Debtor Relief Laws” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Proceeds” has the meaning set forth in Section 2.05(b)(vi).

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; provided that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means any Lender whose acts or failure to act, whether directly or indirectly, cause it to meet any part of the definition of “Lender Default.”

“Designation Date” has the meaning set forth in Section 6.14.

“Discount Range” has the meaning set forth in Section 2.05(c)(ii).

“Discounted Prepayment Option Notice” has the meaning set forth in Section 2.05(c)(ii).

“Discounted Voluntary Prepayment” has the meaning set forth in Section 2.05(c)(i).

“Discounted Voluntary Prepayment Notice” has the meaning set forth in Section 2.05(c)(v).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date of all then outstanding Term Loans; provided that if such Equity Interests are issued pursuant to a plan for the benefit of employees of Holdings (or any direct or indirect parent thereof), the Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Borrower or if its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Documentation Agent” means Mizuho Corporate Bank, Ltd., as documentation agent under this Agreement.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“Eligible Assignee” has the meaning set forth in Section 10.07(a).

“Environment” means indoor air, ambient air, surface water, groundwater, drinking water, land surface, subsurface strata, and natural resources such as wetlands, flora and fauna.

“Environmental Laws” means the common law and any applicable Laws, in any case, relating to pollution or the protection of the Environment, or the protection of human health (to the extent relating to exposure to Hazardous Materials) and safety as it relates to the environment, including any applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., and the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., and all analogous state or local statutes, and the regulations promulgated pursuant thereto.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Loan Parties or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the Environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Contribution” has the meaning set forth in the preliminary statements hereto.

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with a Loan Party or any Restricted Subsidiary within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code, whether or not waived; (g) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to a Loan Party or any Restricted Subsidiary; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party, any Restricted Subsidiary or any ERISA Affiliate.

“Eurocurrency Rate” means, for any Interest Period with respect to any Eurocurrency Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period; provided that the Eurocurrency Rate with respect to the Term B Loans shall not be less than 1.00% per annum.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on the Eurocurrency Rate.

“Event of Default” has the meaning set forth in Section 8.01.

“Excess Cash Flow” means, for any period, an amount equal to (a) the sum, without duplication, of (i) Consolidated Net Income for such period, (ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income, (iii) decreases in Consolidated Working Capital and long-term accounts receivable of the Borrower and its Restricted Subsidiaries for such period (other than any such decreases arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries completed during such period) and (iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income minus (b) the sum, without duplication, of (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income and cash charges included in clauses (a) through (m) of the definition of Consolidated Net Income, (ii) without duplication of amounts deducted pursuant to clause (xi) below in prior fiscal years, the amount of Capital Expenditures or acquisitions of intellectual property to the extent not expensed and Capitalized Software Expenditures accrued or made in cash or accrued during such period, to the extent that such Capital Expenditures or acquisitions were financed with internally generated cash or borrowings under the Revolving Credit Facility and were not made by utilizing the Cumulative Retained Excess Cash Flow Amount, (iii) the aggregate amount of all principal payments of Indebtedness of the Borrower or its Restricted Subsidiaries (including (A) the principal component of payments in respect of Capitalized Leases, (B) the amount of any scheduled repayment of Term Loans pursuant to Section 2.07(a) and (C) any mandatory prepayment of Term Loans pursuant to Section 2.05(b)(ii) to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase but excluding (X) all other voluntary and mandatory prepayments of Term Loans, (Y) all prepayments of Revolving Credit Loans and Swing Line Loans made during such period and (Z) all payments in respect of any other revolving credit facility made during such period, except in the case of clause (Z) to the extent there is an equivalent permanent reduction in commitments thereunder), to the extent financed with internally generated cash, (iv) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income, (v) increases in Consolidated Working Capital and long-term accounts receivable of the Borrower and its Restricted Subsidiaries for such period (other than any such increases arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries during such period), (vi) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and its Restricted Subsidiaries other than Indebtedness, (vii) without duplication of amounts deducted pursuant to clause (xi) below in prior fiscal years, the amount of Investments and acquisitions made during such period by the Borrower and its Restricted Subsidiaries on a consolidated basis pursuant to Section 7.02 to the extent that such Investments and acquisitions were financed with internally generated cash and were not made by utilizing the Cumulative Retained Excess Cash Flow Amount, (viii) the amount of Restricted Payments paid during such period pursuant to Section 7.06(h), Section 7.06(g)(x) or Section 7.06(f) to the extent such Restricted Payments were financed with internally generated cash or borrowings under the Revolving Credit Facility, (ix) the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period, (x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness, (xi) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower and its Restricted Subsidiaries pursuant to binding contracts (the “Contract Consideration”) entered into prior to or during such period relating to Permitted Acquisitions or Capital Expenditures or acquisitions of intellectual property to the extent not expensed to be consummated or made, plus any restructuring cash expenses, pension payments or tax contingency payments that have been added to Excess Cash Flow pursuant to clause (a)(ii) above required to be made, in each case during the period of four consecutive fiscal quarters of the Borrower following the end of such period, provided that to the extent the aggregate amount of internally generated cash not utilizing the Cumulative Retained Excess Cash Flow Amount actually utilized to finance such Permitted Acquisitions, Capital Expenditures or acquisitions of intellectual property during such period of four consecutive fiscal quarters is less than the Contract Consideration, the

amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters, (xii) the amount of cash taxes paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, (xiii) cash expenditures in respect of Swap Contracts during such fiscal year to the extent not deducted in arriving at such Consolidated Net Income and (xiv) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset. Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Excess Cash Flow Period” means each fiscal year of the Borrower commencing with the fiscal year ending December 31, 2011 but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount, such period shall commence with the fiscal year ending December 31, 2012 and shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a) and for which any prepayments required by Section 2.05(b)(i) (if any) have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by Section 2.05(b)(i)).

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

“Excluded Subsidiary” means (a) any Subsidiary that is not directly or indirectly a wholly owned Subsidiary of the Borrower, (b) any Subsidiary that does not have total assets or annual revenues in excess of \$20,000,000 individually or in the aggregate with all other Subsidiaries excluded via this clause (b), (c) any Subsidiary acquired following the Closing Date that is prohibited by applicable Law or Contractual Obligations that are in existence at the time of acquisition and not entered into in contemplation thereof from guaranteeing the Obligations or if guaranteeing the Obligation would require governmental (including regulatory) consent, approval, license or authorization (unless such consent, approval license or authorization has been obtained), (d) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent, in consultation with the Borrower, the burden or cost or other consequences (including any material adverse tax consequences) of providing a Guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (e) any Foreign Subsidiary, (f) any non-for-profit Subsidiaries, (g) any Unrestricted Subsidiaries, (h) any special purpose securitization vehicle or a captive insurance subsidiary, (i) any direct or indirect Domestic Subsidiary (x) that is treated as a disregarded entity for federal income tax purposes and (y) substantially all of the assets of which include the Equity Interests of one or more Foreign Subsidiaries and (j) any Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary; provided that no Subsidiary that guarantees any Mezzanine Debt or other Junior Financing shall be deemed to be an Excluded Subsidiary at any time any such guarantee is in effect.

“Excluded Taxes” means, with respect to any Agent, any Lender (including any L/C Issuer), or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) any Taxes imposed on (or measured by) its net income or net profits (or any franchise or similar Taxes in lieu thereof) by the jurisdiction under the laws of which such recipient is organized, in which its principal office is located or in which it is otherwise doing business (other than a business deemed to arise solely by virtue of any of the transactions contemplated by this Agreement) or, in the case of any Lender, in which its Lending Office is located, (b) any Taxes in the nature of branch profits tax within the meaning of section 884(a) of the Code imposed by any jurisdiction described in (a), (c) other than in the case of an assignee pursuant to a request by the Borrower under Section 3.07, any United States federal withholding tax that is imposed on any interest payable to such Person pursuant to any Law in effect at the time such Person becomes a party to this Agreement (or designates a new Lending Office), except to the extent that such Person (or its assignor, if any) was entitled, at the time of designation of a new applicable Lending Office (or assignment), to receive additional amounts with respect to such United States federal withholding Tax pursuant to Section 3.01(a), or (d) a United States federal withholding tax (including backup withholding tax) that is attributable to such Person’s failure to comply with Section 3.01(d).

“Extended Term Facility” means the Extended Term Loans established pursuant to a specified Term Loan Extension Amendment.

“Existing Term Loan Facility” has the meaning set forth in Section 2.16(a).

“Extended Term Loans” has the meaning set forth in Section 2.16(a).

“Extending Term Lender” has the meaning set forth in Section 2.16(b).

“Extension Election” has the meaning set forth in Section 2.16(b).

“Extension Request” has the meaning set forth in Section 2.16(a).

“Facility” means the Term B Loans, the Term A Loans, any Extended Term Facility, any Refinancing Term Facility, the Revolving Credit Facility and any Replacement Revolving Facility, as the context may require.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“First Lien Intercreditor Agreement” means an intercreditor agreement substantially in the form of Exhibit N between the Collateral Agent and one or more collateral agents or representatives for the holders of Permitted Notes issued pursuant to Section 7.03(s) that are intended to be secured on a pari passu basis with the Obligations.

“First Lien Secured Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt (but excluding for purposes of calculating Consolidated Total Net Debt any cash or Cash Equivalents representing proceeds of any Incremental Term Loans, borrowings under any Revolving Credit Commitments established pursuant to any Revolving Commitment Increase or proceeds of Permitted Notes that are secured on a pari passu basis with the Obligations) that is then secured by first priority Liens on property or assets of the Borrower or its Subsidiaries as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“Foreign Disposition” has the meaning set forth in Section 2.05(b)(viii).

“Foreign Subsidiary” means any direct or indirect Restricted Subsidiary of the Borrower which is not a Domestic Subsidiary.

“Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“Funded Debt” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from

such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Granting Lender” has the meaning set forth in Section 10.07(h).

“GS Lenders” means GSLP I Offshore Holdings Fund A, L.P., GSLP I Offshore Holdings Fund B, L.P., GSLP I Offshore Holdings Fund C, L.P. and GSLP I Onshore Holdings Fund, L.L.C.

“Guarantee” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” has the meaning set forth in Section 11.01.

“Guarantors” means Holdings and the Subsidiaries of the Borrower (other than any Excluded Subsidiary) and any other Domestic Subsidiary that, at the option of the Borrower, issues a Guarantee of the Obligations after the Closing Date.

“Guaranty” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“Hazardous Materials” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, mold, electromagnetic radio frequency or microwave emissions, that are regulated pursuant to, or which could give rise to liability under, applicable Environmental Law.

“Holdings” means SW Holdco, Inc. or any Domestic Subsidiary of SW Holdco, Inc. that directly owns 100% of the issued and outstanding Equity Interests in the Borrower, and issues a Guarantee of the Obligations and agrees to assume the obligations of “Holdings” pursuant to this Agreement and the other Loan Documents pursuant to one or more instruments in form and substance reasonably satisfactory to the Administrative Agent.

“Holdings Pledge Agreement” means the Holdings Pledge Agreement substantially in the form of Exhibit H.

“Honor Date” has the meaning set forth in Section 2.03(c)(i).

“Immaterial Subsidiary” has the meaning set forth in Section 8.03.

“Incremental Amendment” has the meaning set forth in Section 2.14(a).

“Incremental Facility Closing Date” has the meaning set forth in Section 2.14(a).

“Incremental Increase Period” has the meaning set forth in Section 2.14(a).

“Incremental Series” has the meaning set forth in Section 2.14(a).

“Incremental Term A Commitment” means, with respect to each Incremental Term A Lender, the commitment of such Incremental Term A Lender to make Incremental Term A Loans hereunder on the Amendment No. 2 Effective Date. The principal amount of each Incremental Term A Lender’s Incremental Term A Commitment is set forth on such Incremental Term A Lender’s signature page to Amendment No. 2. The aggregate principal amount of the Incremental Term A Commitments of all Incremental Term A Lenders as of the Amendment No. 2 Effective Date is \$17,000,000.

“Incremental Term A Lender” means a Lender identified as an Incremental Term A Lender on its signature page to Amendment No. 2.

“Incremental Term A Loan” means a Term A Loan made pursuant to an Incremental Term A Commitment on the Amendment No. 2 Effective Date.

“Incremental Term Loans” has the meaning set forth in Section 2.14(a).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business, (ii) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) liabilities accrued in the ordinary course);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness; and

(g) all obligations of such Person in respect of Disqualified Equity Interests;

if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Net Debt, and (B) in the case of the Borrower and its Restricted Subsidiaries, exclude all intercompany Indebtedness among the Borrower and its Restricted Subsidiaries having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"Indemnified Liabilities" has the meaning set forth in Section 10.05.

"Indemnified Taxes" means any Taxes other than Excluded Taxes.

"Indemnites" has the meaning set forth in Section 10.05.

"Information" has the meaning set forth in Section 10.08.

"Initial Incremental Amount" has the meaning set forth in Section 2.14(a).

"Initial Lenders" means Bank of America, Barclays Bank PLC, Deutsche Bank Trust Company Americas, GSLP I Offshore Holdings Fund A, L.P., GSLP I Offshore Holdings Fund B, L.P., GSLP I Offshore Holdings Fund C, L.P., GSLP I Onshore Holdings Fund, L.L.C. and Mizuho Corporate Bank, Ltd.

“Initial Term A Lender” means the Person identified as such in the ~~Additional Term Loan~~ Amendment No. 1 Joinder Agreement.

“Intellectual Property Security Agreement” has the meaning set forth in the Security Agreement.

“Intercompany Note” means a promissory note substantially in the form of Exhibit G.

“Interest Coverage Ratio” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis, as of the end of any fiscal quarter of the Borrower for the Test Period ending on such date, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter or, to the extent agreed by each Lender of such Eurocurrency Rate Loan, nine or twelve months or less than one month thereafter, as selected by the Borrower in its Committed Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of the Borrower and its Restricted Subsidiaries, intercompany loans, advances or Indebtedness among the Borrower and its Restricted Subsidiaries having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business consistent with past practice) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Investor Management Agreement” means the Transaction and Advisory Fee Agreement among the Borrower, Holdings (or any direct or indirect parent entity of Holdings) and Affiliates of (or

management entities associated with) one or more of the Investors as in effect on the Closing Date and as the same may be amended, supplemented or otherwise modified in a manner not materially adverse to the Lenders; provided that any management, monitoring, consulting and advisory fees payable in advance by the Borrower and its Restricted Subsidiaries shall not exceed an amount equal to (x) with respect to the period from the Closing Date to December 31, 2010, 1.5% of Consolidated EBITDA for such period (which shall initially be estimated to be \$4,000,000) and (y) with respect to any fiscal year thereafter, 1.5% of Consolidated EBITDA for such fiscal year; provided further that in each case, such amounts shall be subject to any adjustments made pursuant to Section 4(c) of the Investor Management Agreement.

“Investors” means Blackstone Capital Partners V L.P., and its Affiliates and any investment funds advised or managed by any of the foregoing (other than any portfolio operating companies of Blackstone Capital Partners V L.P.).

“IP Rights” has the meaning set forth in Section 5.16.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

~~“Joinder Agreement” means the joinder agreement, dated as of the Amendment No. 1 Effective Date, by and among the Borrowers, the Administrative Agent, the Additional Term B Lender, the Initial Term A Lender and the Additional Revolving Credit Lenders.~~

“Junior Financing” has the meaning set forth in Section 7.13(a).

“Junior Financing Documentation” means any documentation governing any Junior Financing.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“L/C Advance” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“L/C Issuer” means Bank of America and any other Lender that becomes an L/C Issuer in accordance with Section 2.03(k) or 10.07 (j), in each case, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all

L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.10. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning set forth in the introductory paragraph to this Agreement and, as the context requires, includes an L/C Issuer and a Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“Lender Default” means (i) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any incurrence of Loans or reimbursement obligations under Section 2.03(c), which refusal or failure is not cured within one Business Day after the date of such refusal or failure; (ii) the failure of any Lender to pay over to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute; or (iii) a Lender has admitted in writing that it is insolvent or such Lender becomes subject to a Lender-Related Distress Event.

“Lender Participation Notice” has the meaning set forth in Section 2.05(c)(iii).

“Lender-Related Distress Event” mean, with respect to any Lender or any person that directly or indirectly controls such Lender (each, a “Distressed Person”), as the case may be, a voluntary or involuntary case with respect to such Distressed Person under any Debtor Relief Law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person or any person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any governmental authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt; provided that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interest in any Lender or any person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Letter of Credit” means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is five (5) days prior to the scheduled Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$50,000,000 and (b) the aggregate amount of the Revolving Credit Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, a Revolving Credit Loan, a Swing Line Loan or a Replacement Revolving Loan (including any extensions of credit under any Revolving Commitment Increase).

“Loan Documents” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Collateral Documents, (iv) each Letter of Credit Application and (v) any amendment to any of the foregoing (including any Incremental Amendment).

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Management Stockholders” means the members of management of Holdings, the Borrower or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

“Margin Stock” has the meaning set forth in Regulation U.

“Master Agreement” has the meaning set forth in the definition of “Swap Contract.”

“Material Adverse Effect” means a (a) material adverse effect on the business, operations, assets, liabilities (actual or contingent) or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform any of their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders or the Collateral Agent under any Loan Document.

“Material Real Property” means any fee owned real property owned by any Loan Party (other than any owned real property subject to a Lien permitted by clause (u) or (w) of Section 7.01 to the extent and for so long as the documentation governing such Lien prohibits the granting of a Mortgage thereon to secure the Obligations) with a fair market value in excess of \$5,000,000 (at the Closing Date or, with respect to real property acquired after the Closing Date, at the time of acquisition, in each case, as reasonably estimated by the Borrower in good faith); provided that if at any time the fair market value of all fee owned real properties that are not “Material Real Property” owned by the Loan Parties would exceed \$25,000,000 in the aggregate, the Loan Parties shall designate additional fee owned real properties as “Material Real Property” and comply with the Collateral and Guarantee Requirement with respect thereto such that such threshold is no longer exceeded.

“Maturity Date” means (i) with respect to the Term A Loans, February 17, 2016, (ii) with respect to the Term B Loans, the earlier of (a) August 17, 2017 and (b) the 91st day prior to the maturity of any Mezzanine Debt with an aggregate principal amount greater than \$50,000,000 outstanding, and (iii) with respect to the Revolving Credit Facility and the Swing Line Facility, February 17, 2016; provided that if any such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

“Maximum Rate” has the meaning set forth in Section 10.10.

“Mezzanine Debt” means \$400,000,000 in aggregate principal amount of 13 ¹/₂ % senior notes due 2016 issued by the Borrower on or prior to the Closing Date as amended by the Mezzanine Debt Amendment.

“Mezzanine Debt Amendment” means the Holder Consent Letter to the Mezzanine Debt Documentation as in effect on the Amendment No. 3 Effective Date.

“Mezzanine Debt Documentation” means any indenture or other loan or purchase agreement governing the Mezzanine Debt and any other documents delivered pursuant thereto.

“Mezzanine Financing” means the issuance of the Mezzanine Debt pursuant to the Mezzanine Debt Documentation.

“Mezzanine Providers” means the holders of the Mezzanine Debt.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage Policies” has the meaning set forth in the definition of “Collateral and Guarantee Requirement.”

“Mortgaged Properties” has the meaning set forth in the definition of “Collateral and Guarantee Requirement.”

“Mortgages” means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property, in form and substance reasonably satisfactory to the Collateral Agent, and any other mortgages executed and delivered pursuant to Sections 6.11 and 6.13.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Loan Party, any Restricted Subsidiary or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Net Proceeds” means:

(a) 100% of the cash proceeds actually received by the Borrower or any of the Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) any amount required to repay (x) Indebtedness (other than pursuant to the Loan Documents) that is secured by a Lien on the assets disposed of and which ranks prior to the Lien securing the Obligations or (y) Indebtedness or other obligations of any Subsidiary that is disposed of in such transaction, (iii) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, (iv) taxes paid or reasonably estimated to be payable as a result thereof, and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries including, without limitation, Pension Plan and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); provided that, if no Default exists, the Borrower or the applicable Restricted Subsidiary may reinvest any portion of such proceeds in assets useful for its business within 12 months of such receipt, such portion of such proceeds shall not constitute Net Proceeds except to the extent not,

within 12 months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such 12 month period but within such 12-month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within 18 months of initial receipt, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso; it being understood that such proceeds shall constitute Net Proceeds notwithstanding any investment notice if there is a Specified Default at the time of a proposed reinvestment unless such proposed reinvestment is made pursuant to a binding commitment entered into at a time when no Specified Default was continuing); provided, further, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless (x) such proceeds shall exceed \$5,000,000 or (y) the aggregate net proceeds exceeds \$15,000,000 in any fiscal year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower or any Restricted Subsidiary shall be disregarded.

“non-cash charges” has the meaning set forth in the definition of the term “Consolidated EBITDA.”

“Non-Consenting Lender” has the meaning set forth in Section 3.07(d).

“Non-Debt Fund Affiliate” means an Affiliate of the Borrower that is not a Debt Fund Affiliate or a Purchasing Borrower Party.

“Non-extension Notice Date” has the meaning set forth in Section 2.03(b)(iii).

“Not Otherwise Applied” means, with reference to any amount of Net Proceeds of any transaction or event, that such amount (a) was not required to be applied to prepay the Loans pursuant to Section 2.05(b), and (b) was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) contingent on receipt of such amount or utilization of such amount for a specified purpose. The Borrower shall promptly notify the Administrative Agent of any application of such amount as contemplated by (b) above.

“Note” means a Term Note, a Revolving Credit Note or a Swing Line Note, as the context may require.

“Obligations” means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Restricted Subsidiaries arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Restricted Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (y) obligations of the Borrower or any Restricted Subsidiary arising under Cash Management Obligations or any Secured Hedge Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Restricted Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, Letter of Credit fees, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“Offered Loans” has the meaning set forth in Section 2.05(c)(iii).

“Organization Documents” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Original Term Commitment” means, as to each Term Lender, its obligation to make a Term Loan to the Borrower pursuant to Section 2.01(a) in an aggregate amount not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01A under the caption “Term Commitment” or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The initial aggregate amount of the Term Commitments is \$1,050,000,000.

“Original Term Loans” means the loans made on the Closing Date under the Original Term Commitments pursuant to Section 2.01 (a).

“Other Taxes” has the meaning set forth in Section 3.01(b).

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Participant” has the meaning set forth in Section 10.07(e).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“Perfection Certificate” means a certificate in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Collateral Agent, as the same shall be supplemented from time to time.

“Permitted Acquisition” has the meaning set forth in Section 7.02(i).

“Permitted Capital Expenditure Amount” has the meaning set forth in Section 7.11(c).

“Permitted Holders” means each of the Investors, the Management Stockholders and the Mezzanine Providers; provided that (a) if the Management Stockholders own beneficially or of record more than ten percent (10%) of the outstanding voting Equity Interests of Holdings in the aggregate, they shall be treated as Permitted Holders of only ten percent (10%) of the outstanding voting Equity Interests of Holdings at such time and (b) if the Mezzanine Providers own beneficially or of record more than ten percent (10%) of the outstanding voting Equity Interests of Holdings in the aggregate, they shall be treated as Permitted Holders of only ten percent (10%) of the outstanding voting Equity Interests of Holdings at such time.

“Permitted Notes” means (i) unsecured senior or senior subordinated debt securities of the Borrower, (ii) debt securities of the Borrower that are secured by a Lien on the Collateral ranking junior to the Liens securing the Obligations pursuant to a Second Lien Intercreditor Agreement or (iii) debt securities of the Borrower that are secured by a Lien ranking pari passu with the Liens securing the Obligations pursuant to a First Lien Intercreditor Agreement; provided that (a) in the case of debt securities issued in reliance on Section 7.03(s)(iii), such debt securities are issued for cash consideration, (b) the terms of such debt securities do not provide for any scheduled repayment, mandatory redemption or sinking fund obligations prior to the Maturity Date of the Term Facility (other than customary offers to repurchase upon a change of control, asset sale or event of loss and customary acceleration rights after an event of default), (c) the covenants, events of default, guarantees, collateral and other terms of which (other than interest rate and redemption premiums), taken as a whole, are not more restrictive to the Borrower and the Restricted Subsidiaries than those in this Agreement; provided that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least three Business Days (or such shorter period as the Administrative Agent may reasonably agree) prior to the incurrence of such debt securities, together with a reasonably detailed description of the material terms and conditions of such debt securities or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement, (d) at the time that any such Permitted Notes are issued (and after giving effect thereto) no Event of Default shall exist, (e) the Borrower shall be in compliance with the covenants set forth in Section 7.11 determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements were required to have been delivered pursuant to Section 6.01(a) or (b), as applicable (or if no Test Period cited in Section 7.11 has passed, the covenants in Section 7.11 for the first Test Period cited in such Section shall be satisfied as of the last four quarters ended), in each case, as if such Permitted Notes had been outstanding on the last day of such four quarter period, and (f) no Subsidiary of the Borrower (other than a Guarantor) shall be an obligor and no Permitted Notes shall be secured by any collateral other than the Collateral.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Sections 7.03(e) or (f), at the time thereof, no Event of Default shall have occurred and be continuing and (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Indebtedness permitted pursuant to Section 7.03(b), 7.03(q), 7.03(s) or 7.13(a) or is otherwise a Junior Financing, (i) to the extent such

Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (ii) the terms and conditions (including, if applicable, as to collateral but excluding as to subordination, interest rate and redemption premium) of any such modified, refinanced, refunded, renewed, replaced or extended Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, taken as a whole; provided that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees) and (iii) such modification, refinancing, refunding, renewal, replacement or extension is incurred by the Person who is the obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established, maintained or contributed to by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Platform” has the meaning set forth in Section 6.01.

“Principal L/C Issuer” means Bank of America and any other L/C Issuer that has issued Letters of Credit having an aggregate Outstanding Amount in excess of \$10,000,000.

“Pro Forma Balance Sheet” has the meaning set forth in Section 5.05(a)(i).

“Pro Forma Basis” means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

“Pro Forma Compliance” means, with respect to any covenant in Section 7.11, compliance on a Pro Forma Basis with such covenant in accordance with Section 1.09.

“Pro Forma Financial Statements” has the meaning set forth in Section 5.05(a).

“Projections” has the meaning set forth in Section 6.01(c).

“Proposed Discounted Prepayment Amount” has the meaning set forth in Section 2.05(c)(ii).

“Pro Rata Share” means, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities at such time; provided that if such Commitments have been terminated, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

“Public Lender” has the meaning set forth in Section 6.01.

“Purchasing Borrower Party” means Holdings or any Subsidiary of Holdings that (x) makes a Discounted Voluntary Prepayment pursuant to Section 2.05(c) or (y) becomes an Eligible Assignees or Participant pursuant to Section 10.07(k).

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified IPO” means the issuance by Holdings or any direct or indirect parent of Holdings of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) (i) pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission in accordance with the Securities Act (whether alone or in connection with a secondary public offering) or (ii) after which the common Equity Interests of Holdings or any direct or indirect parent of Holdings are listed on an internationally recognized securities exchange or dealer quotation system.

“Qualifying Lenders” has the meaning set forth in Section 2.05(c)(iv).

“Qualifying Loans” has the meaning set forth in Section 2.05(c)(iv).

“Ratio-Based Incremental Facility” has the meaning set forth in Section 2.14(a).

“Real Property” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Refinanced Term Loans” has the meaning set forth in Section 10.01.

“Refinancing Effective Date” has the meaning set forth in Section 2.15(a).

“Refinancing Term Facility” means the Refinancing Term Loans established pursuant to a specified Refinancing Term Loan Amendment.

“Refinancing Term Lender” has the meaning set forth in Section 2.15(b).

“Refinancing Term Loan Amendment” has the meaning set forth in Section 2.15(c).

“Refinancing Term Loans” has the meaning set forth in Section 2.15(a).

“Register” has the meaning set forth in Section 10.07(d).

“Rejection Notice” has the meaning set forth in Section 2.05(b)(vi).

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing or migrating in, into, onto or through the Environment or from or through any facility, property or equipment.

“Replacement L/C Issuer” means, with respect to any Replacement Revolving Facility, any Replacement Revolving Lender thereunder from time to time designated by the applicable Borrower as the Replacement L/C Issuer under such Replacement Revolving Facility with the consent of such Replacement Revolving Lender and the Administrative Agent.

“Replacement L/C Obligations” means, at any time with respect to any Replacement Revolving Facility, an amount equal to the sum of (a) the then aggregate undrawn and unexpired amount of the then outstanding Replacement Letters of Credit under such Replacement Revolving Facility and (b) the aggregate amount of drawings under the Replacement Letters of Credit under such Replacement Revolving Facility that have not then been reimbursed.

“Replacement Letter of Credit” means any letter of credit issued pursuant to a Replacement Revolving Facility.

“Replacement Revolving Credit Percentage” means, as to any Replacement Revolving Lender at any time under any Replacement Revolving Facility, the percentage which such Lender’s Replacement Revolving Commitment under such Replacement Revolving Facility then constitutes of the aggregate Replacement Revolving Commitments under such Replacement Revolving Facility (or, at any time after such Replacement Revolving Commitments shall have expired or terminated, the percentage which the aggregate amount of such Lender’s Replacement Revolving Extensions of Credit then outstanding pursuant to such Replacement Revolving Facility constitutes of the amount of the aggregate Replacement Revolving Extensions of Credit then outstanding pursuant to such Replacement Revolving Facility).

“Replacement Revolving Commitment Series” has the meaning specified in Section 2.17(b).

“Replacement Revolving Extensions of Credit” means, as to any Replacement Revolving Lender at any time under any Replacement Revolving Facility, an amount equal to the sum of (a) the aggregate principal amount of all Replacement Revolving Loans made by such Lender pursuant to such Replacement Revolving Facility then outstanding, (b) such Lender’s Replacement Revolving Credit Percentage of the outstanding Replacement L/C Obligations under any Replacement Letters of Credit under such Replacement Revolving Facility and (c) such Lender’s Replacement Revolving Credit Percentage of the Replacement Swing Line Loans then outstanding under such Replacement Revolving Facility.

“Replacement Revolving Facility” means each Replacement Revolving Commitment Series of Replacement Revolving Commitments and the Replacement Revolving Extensions of Credit made hereunder.

“Replacement Revolving Facility Amendment” has the meaning specified in Section 2.17(c).

“Replacement Revolving Commitments” has the meaning specified in Section 2.17(a).

“Replacement Revolving Facility Effective Date” has the meaning specified in Section 2.17(a).

“Replacement Revolving Lender” has the meaning specified in Section 2.17(b).

“Replacement Revolving Loans” has the meaning specified in Section 2.17(a).

“Replacement Swing Line Lender” means, with respect to any Replacement Revolving Facility, any Replacement Revolving Lender thereunder from time to time designated by the applicable Borrower as the Replacement Swing Line Lender under such Replacement Revolving Facility with the consent of such Replacement Revolving Lender and the Administrative Agent

“Replacement Swing Line Loans” means any swing line loan made to the Borrower pursuant to a Replacement Revolving Facility.

“Replacement Term Loans” has the meaning set forth in Section 10.01.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, continuation or conversion of Term Loans or Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Class Lenders” means, as of any date of determination and subject to the limitations set forth in Section 10.07(1), Term Lenders of a particular Class of Term Loans having more than 50% of the aggregate principal amount of outstanding Term Loans of such Class of all Term Lenders in such Class.

“Required Lenders” means, as of any date of determination and subject to the limitations set forth in Section 10.07(1), Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition), (b) aggregate unused Term Commitments and (c) aggregate unused Revolving Credit Commitments and Replacement Revolving Commitments; provided that the unused Term Commitment and unused Revolving Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer of a Loan Party and, as to any document delivered on the Closing Date, any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Cash” means cash and Cash Equivalents held by Restricted Subsidiaries that is contractually restricted from being distributed to the Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof).

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Retained Percentage” means, with respect to any Excess Cash Flow Period, (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

“Revolving Commitment Increase” has the meaning set forth in Section 2.14(a).

“Revolving Commitment Increase Lender” has the meaning set forth in Section 2.14(a).

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(d).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01(d), (b) purchase participations in L/C Obligations in respect of Letters of Credit and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01A under the caption “Revolving Credit Commitment” or, in the case of an Additional Revolving Credit Lender, as set forth in the Amendment No. 1 Joinder Agreement, or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14 and Section 10.07(b)). The aggregate Revolving Credit Commitments of all Revolving Credit Lenders shall be \$172,500,000 on the Amendment No. 2 Effective Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

“Revolving Credit Exposure” means, as to each Revolving Credit Lender, the sum of the amount of the outstanding principal amount of such Revolving Credit Lender’s Revolving Credit Loans and its Pro Rata Share of the L/C Obligations and the Swing Line Obligations at such time.

“Revolving Credit Facility” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time (including Additional Revolving Credit Lenders) or, if the Revolving Credit Commitments have terminated, Revolving Credit Exposure.

“Revolving Credit Loans” has the meaning set forth in Section 2.01(d).

“Revolving Credit Note” means a promissory note of the Borrower payable to any Revolving Credit Lender or its registered assigns, in substantially the form of Exhibit C-2 hereto, evidencing the aggregate Indebtedness of the Borrower to such Revolving Credit Lender resulting from the Revolving Credit Loans made by such Revolving Credit Lender to the Borrower.

“Rollover Amount” has the meaning set forth in Section 7.11(c)(ii).

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“Same Day Funds” means immediately available funds.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Second Lien Intercreditor Agreement” means an intercreditor agreement by and among the Collateral Agent and the collateral agents or other representatives for the holders of Indebtedness secured by Liens that are intended to rank junior to the Liens securing the Obligations and that are otherwise permitted pursuant to Section 7.01 providing that all proceeds of Collateral shall first be applied to repay the Obligations in full prior to being applied to any obligations under the Indebtedness secured by such junior Liens and that until the termination of the Aggregate Commitments and the repayment in full (or cash collateralization of Letters of Credit) of all Obligations outstanding under this Agreement, the Collateral Agent shall have the sole right to exercise remedies against the Collateral (subject to customary exceptions for limited protective actions that may be taken by the holders of such junior Lien Indebtedness) and otherwise in form and substance reasonably satisfactory to the Collateral Agent.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VII that is entered into by and between the Borrower or any Subsidiary and any Person that is a Lender or an Affiliate of a Lender (or was a Lender or an Affiliate of a Lender at the time such Swap Contract was entered into (a “Hedge Bank”).

“Secured Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt that is then secured by Liens on property or assets of the Borrower or its Restricted Subsidiaries as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“Secured Parties” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the Hedge Banks, the Cash Management Banks, the Supplemental Agents and each co-agent or sub-agent appointed by the Administrative Agent or Collateral Agent from time to time pursuant to Section 9.02.

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

“Security Agreement” means a Security Agreement substantially in the form of Exhibit F.

“Security Agreement Supplement” has the meaning set forth in the Security Agreement.

“Seller” has the meaning set forth in the preliminary statements hereto.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“SPC” has the meaning set forth in Section 10.07(h).

“Specified Acquisition Agreement Representations” means those representations and warranties relating to the Acquired Company and its Subsidiaries in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that the Borrower has the right to terminate its obligations under the Acquisition Agreement as a result of a breach of such representations and warranties in the Acquisition Agreement.

“Specified Default” means a Default under Section 8.01(a), (f) or (g).

“Specified Equity Contribution” means any cash contribution to the common equity of Holdings and/or any purchase or investment in an Equity Interest of Holdings other than Disqualified Equity Interests.

“Specified Transaction” means any incurrence or repayment of Indebtedness (other than for working capital purposes) or Incremental Term Loan or Revolving Commitment Increase or Investment that results in a Person becoming a Restricted Subsidiary or an Unrestricted Subsidiary, any Permitted Acquisition or any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which (i) a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, (ii) more than half of the issued share capital is at the time beneficially owned or (iii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor” means any Guarantor other than Holdings.

“Successor Company” has the meaning set forth in Section 7.04(d).

“Supplemental Agent” has the meaning set forth in Section 9.13(a) and “Supplemental Agents” shall have the corresponding meaning.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Facility” means the swing line loan facility made available by the Swing Line Lenders pursuant to Section 2.04.

“Swing Line Lender” means Bank of America, in its capacity as provider of Swing Line Loans or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning set forth in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

“Swing Line Note” means a promissory note of the Borrower payable to any Swing Line Lender or its registered assigns, in substantially the form of Exhibit C-3 hereto, evidencing the aggregate Indebtedness of the Borrower to such Swing Line Lender resulting from the Swing Line Loans.

“Swing Line Obligations” means, as at any date of determination, the aggregate principal amount of all Swing Line Loans outstanding.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$20,000,000 and (b) the aggregate amount of the Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

“Tax Group” has the meaning set forth in Section 7.06(h)(iii).

“Taxes” means any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings or other charges imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or other basis and any and all liabilities (including interest, fines, penalties or additions to tax) with respect to the foregoing.

~~“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Class and Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(b) or (c).~~

~~“Term Lender” means, at any time, any Lender that has an Additional Term B Commitment, Term A Commitment, Term A Loan or Term B Loan at such time.~~

“Term A Commitment” means with respect to the Initial Tranche A Lender, its commitment to make a Term A Loan in the amount of \$150,000,000 on the Amendment No. 1 Effective Date.

“Term A Lender” means, at any time, any Lender that has a Term A Commitment or a Term A Loan at such time.

“Term A Loan” means a Loan made pursuant to Section 2.01(c), together with all Incremental Term A Loans.

~~“Term Loan” means each Original Term Loan, Term A Loan, Term B Loan, Extended Term Loan and Incremental Term Loan.~~

~~“Term B Lender” means, at any time, any Lender that has an Additional Term B Commitment or Term B Loan at such time.~~

“Term B Increase Commitment” means, with respect to the Term B Increase Lender, its commitment to make a Term B Loan on the Amendment No. 3 Effective Date in an amount equal to \$500.0 million.

“Term B Increase Lender” means the Person identified as such in the Amendment No. 3 Joinder Agreement.

“Term B Lender” means, at any time, any Lender that has an Additional Term B Commitment, a Term B Increase Commitment or Term B Loan at such time.

“Term B Loans” has the meaning set forth in Section 2.01(b).

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Class and Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(b) or (c).

“Term Commitment” means any Original Term Commitment, Additional Term B Commitment, Term A Commitment, Incremental Term A Commitment or Term B Increase Commitment.

“Term Lender” means, at any time, any Lender that has an Additional Term B Commitment, Term A Commitment, Incremental Term A Commitment, Term B Increase Commitment, Term A Loan or Term B Loan at such time.

“Term Loan” means each Original Term Loan, Term A Loan, Term B Loan, Extended Term Loan and Incremental Term Loan.

“Term Loan Extension Amendment” has the meaning set forth in Section 2.16(c).

“Term Note” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit C-1 hereto (with appropriate modifications in the case or any Term Loan that is not an Original Term Loan), evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans of each Class made by such Term Lender.

“Test Period” means, for any date of determination under this Agreement, the latest four consecutive fiscal quarters of the Borrower for which financial statements have been delivered to the Administrative Agent on or prior to the Closing Date and/or for which financial statements are required to be delivered pursuant to Section 6.01, as applicable.

“Threshold Amount” means \$25,000,000.

“Total Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations and Replacement L/C Obligations.

“Transaction Expenses” means any fees or expenses incurred or paid by the Investors, Holdings, the Borrower or any of its (or their) Subsidiaries in connection with the Transactions (including expenses in connection with hedging transactions), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“Transactions” means, collectively, (a) the Acquisition and other related transactions contemplated by the Acquisition Agreement, (b) the Equity Contribution, (c) the issuance and the funding of the Mezzanine Debt, (d) the funding of the Loans on the Closing Date and the execution and delivery of Loan Documents to be entered into on the Closing Date, (e) the funding of any amounts into escrow on the Closing Date in connection with any escrow identified to the Initial Lenders on or prior to the date hereof, (f) the repayment of certain Indebtedness of the Acquired Company and its subsidiaries existing on the Closing Date (if any) and (g) the payment of Transaction Expenses.

“Transferred Guarantor” has the meaning set forth in Section 11.09.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“Unaudited Financial Statements” means (a) the unaudited consolidated balance sheet of the Acquired Company and its Subsidiaries as of September 30, 2009 and (b) the related unaudited consolidated statements of operations for the Acquired Company and its Subsidiaries for the fiscal quarter ended September 30, 2009.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“United States” and “U.S.” mean the United States of America.

“United States Tax Compliance Certificate” has the meaning set forth in Section 3.01(d)(ii)(C) and is in substantially the form of Exhibit I hereto.

“Unreimbursed Amount” has the meaning set forth in Section 2.03(c)(i).

“Unrestricted Subsidiary” means (i) each Subsidiary of the Borrower listed on Schedule 1.01B and (ii) any Subsidiary of the Borrower designated by the board of directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

“wholly owned” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

Section 1.02 . Other Interpretive Provisions .

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(d) The term “including” is by way of example and not limitation.

(e) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(f) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

(g) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03 . Accounting Terms .

All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Section 1.04. Rounding .

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05. References to Agreements, Laws, Etc .

Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06. Times of Day .

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07. Timing of Payment of Performance.

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08. Cumulative Credit Transactions.

If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.09. Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, the Total Leverage Ratio, the Secured Leverage Ratio, the First Lien Secured Leverage Ratio and the Interest Coverage Ratio shall be calculated in the manner prescribed by this Section 1.09; provided that notwithstanding anything to the contrary in clauses (b), (c) or (d) of this Section 1.09, when calculating the Total Leverage Ratio, the Secured Leverage Ratio, the First Lien Secured Leverage Ratio and the Interest Coverage Ratio, as applicable, for purposes of (i) the Applicable ECF Percentage of Excess Cash Flow and (ii) determining actual compliance (and not Pro Forma Compliance or compliance on a Pro Forma Basis) with any covenant pursuant to Section 7.11, the events described in this Section 1.09 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect.

(b) For purposes of calculating the Total Leverage Ratio, the Secured Leverage Ratio, the First Lien Secured Leverage Ratio and the Interest Coverage Ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period and (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then the Total Leverage Ratio, the Secured Leverage Ratio, the First Lien Secured Leverage Ratio and the Interest Coverage Ratio shall be calculated to give pro forma effect thereto in accordance with this Section 1.09.

(c) Whenever pro forma effect is to be given to a Specified Transaction, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions and synergies projected by the Borrower in good faith to be realized as a result of specified actions taken or with respect to which the Borrower in good faith expects that substantial steps will have been taken within 6 months after the closing date of such Specified Transaction (calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions; provided that any increase in Consolidated EBITDA as a result of cost savings, operating expense reductions and synergies shall be subject to the limitations set forth in the definition of Consolidated EBITDA.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of the Total Leverage Ratio, the Secured Leverage Ratio, the First Lien Secured Leverage Ratio and the Interest Coverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable Test Period and (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Total Leverage Ratio, the Secured Leverage Ratio and the Interest Coverage Ratio shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on (A) the last day of the applicable Test Period in the case of the Total Leverage Ratio, the First Lien Secured Leverage Ratio or the Secured Leverage Ratio and (B) the first day of the applicable Test Period in the case of the Interest Coverage Ratio. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any hedging obligations applicable to such Indebtedness); provided, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chose, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

Section 1.10. Letter of Credit Amounts .

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II. The Commitments and Credit Extensions

Section 2.01. The Loans .

(a) The Term Borrowings. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make to the Borrower on the Closing Date loans denominated in Dollars in an aggregate amount not to exceed the amount of such Term Lender's Original Term Commitment. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(b) The Term B Borrowings. (i) Subject to the terms and conditions set forth in Amendment No. 1 (~~ix~~) the Additional Term B Lender agrees to make a loan to the Borrower denominated in Dollars (a "Term B Loan") on the Amendment No. 1 Effective Date in an aggregate amount not to exceed the amount of its Additional Term B Commitment and (~~ix~~) all or a portion of each Converted Term Loan of each Amendment No. 1 Consenting Lender shall be converted into a Term B Loan of such Lender effective as of the

Amendment No. 1 Effective Date in a principal amount equal to the principal amount of such Lender's Converted Term Loan immediately prior to such conversion. For the avoidance of doubt, such conversion shall not constitute a novation of any interest owing to any Amendment No. 1 Consenting Lender and each Amendment No. 1 Consenting Lender shall receive all accrued and unpaid interest owing to it from the Borrower through but not including the Amendment No. 1 Effective Date with respect to its Converted Term Loan (which, in the case of accrued interest, shall be payable on the Amendment No. 1 Effective Date). The Term B Loans may from time to time be Eurocurrency Rate Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Section 2.02; provided that all Term B Loans shall on the Amendment No. 1 Effective Date initially be Eurodollar Rate Loans with an Interest Period equal to the remaining Interest Period on the Converted Term Loans immediately prior to the effectiveness of Amendment No. 1. Repaid Term B Loans may not be reborrowed.

(ii) Subject to the terms and conditions set forth in Amendment No. 3, the Term B Increase Lender agrees to make a Term B Loan to the Borrower denominated in Dollars on the Amendment No. 3 Effective Date in an aggregate amount equal to the amount of its Term B Increase Commitment. Amounts borrowed under this Section 2.01(b)(ii) may not be reborrowed. The Term B Loans may from time to time be Eurocurrency Rate Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Section 2.02; provided that all Term B Loans made on the Amendment No. 3 Effective Date shall initially be Eurodollar Rate Loans with an Interest Period equal to the remaining Interest Period on the Term B Loans outstanding immediately prior to the effectiveness of Amendment No. 3.

(c) The Term A Borrowings. Subject to the terms and conditions set forth herein, the Initial Term A Lender agrees to make loans to the Borrower on the Amendment No. 1 Effective Date denominated in Dollars in an aggregate amount not to exceed the amount of the Term A Commitment. Amounts borrowed under this Section 2.01(c) and repaid or prepaid may not be reborrowed. Term A Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein; provided that all Term A Loans shall on the Amendment No. 1 Effective Date initially be Eurodollar Rate Loans with an Interest Period equal to the remaining Interest Period on the Converted Term Loans immediately prior to the effectiveness of Amendment No. 1.

(d) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein each Revolving Credit Lender severally agrees to make Revolving Credit Loans denominated in Dollars pursuant to Section 2.02 to the Borrower from its applicable Lending Office (each such loan, a "Revolving Credit Loan") from time to time, on any Business Day during the period from the Closing Date until the Maturity Date of the Revolving Credit Facility, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender's Revolving Credit Commitment; provided that after giving effect to any Revolving Credit Borrowing, the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment. Within the limits of each Lender's Revolving Credit Commitments, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(d), prepay under Section 2.05, and reborrow under this Section 2.01(d). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 2.02. Borrowings, Conversions and Continuations of Loans.

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent (except that, subject to Section 3.05, a notice in connection with the initial Credit Extensions hereunder may be revoked if the Closing Date does

not occur on the proposed date of borrowing), which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (i) 11:00 a.m. (New York City time) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (ii) 10:00 a.m. (New York City time) on the Business Day of any Borrowing of Base Rate Loans (or, in the case of Borrowings on the Amendment No. 1 Effective Date, such shorter period as to which the Administrative Agent may consent). Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Section 2.14(a), each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount of \$2,500,000 or a whole multiple of \$500,000, in excess thereof. Except as provided in Section 2.03(c), 2.04(c), 2.14(a) or the last sentence of this paragraph, each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Term Borrowing of a particular Class, a Revolving Credit Borrowing, a conversion of Term Loans of any Class or Revolving Credit Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Term Loans of a Class or Revolving Credit Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 2:00 p.m. (New York City time) on the Business Day specified in the applicable Committed Loan Notice. The Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are Swing Line Loans or L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowing, second, to the payment in full of any such Swing Line Loans, and third, to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the existence of an Event of Default, the Administrative Agent or the Required Lenders may require that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Term Borrowings, all Revolving Credit Borrowings, all conversions of Term Loans or Revolving Credit Loans from one Type to the other, and all continuations of Term Loans or Revolving Credit Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect with respect to all Revolving Credit Borrowings and not more than five (5) Interest Periods in effect with respect to all Term Borrowings.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

Section 2.03. Letters of Credit.

(a) The Letter of Credit Commitment. (i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars for the account of the Borrower (provided that any Letter of Credit may be for the benefit of any Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drafts under the Letters of Credit and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; provided that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Revolving Credit Exposure of any Revolving Credit Lender would exceed such Lender's Revolving Credit Commitment or (y) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) An L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or direct that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such L/C Issuer is not otherwise compensated hereunder);

(B) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless the Lenders holding a majority of the Revolving Credit Commitments have approved such expiry date;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders have approved such expiry date;

(D) the issuance of such Letter of Credit would violate any Laws binding upon such L/C Issuer;

(E) such Letter of Credit is denominated in a currency other than Dollars;

(F) any Revolving Credit Lender is at such time a Defaulting Lender, unless such L/C Issuer has received (as set forth in clause (a) (iv) below) Cash Collateral or similar security satisfactory to such L/C Issuer (in its sole discretion) from either the Borrower or such Defaulting Lender or such Defaulting Lender's Pro Rata Share of the L/C Obligations has been reallocated pursuant to clause (a)(iv) below in respect of such Defaulting Lender's obligation to fund under Section 2.03(c); or

(G) such Letter of Credit is in an initial amount less than \$100,000.

(iii) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(iv) In the case where any Revolving Credit Lender is at any time a Defaulting Lender, the Borrower and such Defaulting Lender each agree, within one Business Day following notice by the Administrative Agent, to cause to be deposited with the Administrative Agent for the benefit of the L/C Issuer, Cash Collateral in the full amount of such Defaulting Lender's Pro Rata Share of the outstanding L/C Obligations; provided that, at the Borrower's option, the Borrower may, by notice to the Administrative Agent, elect to reallocate all or any part of the Defaulting Lender's Pro Rata Share of the L/C Obligations among all Revolving Credit Lenders that are not Defaulting Lenders but only to the extent (x) the total Revolving Credit Exposure of all Revolving Credit Lenders that are not Defaulting Lenders plus such Defaulting Lender's Pro Rata Share of the L/C Obligations and any Swing Line Loans, in each case, except to the extent Cash Collateralized, does not exceed the aggregate Revolving Credit Commitments (excluding the Revolving Credit Commitment of any Defaulting Lender except to the extent of any outstanding Revolving Credit Loans of such Defaulting Lender) and (y) the conditions set forth in Section 4.02 are satisfied at such time (in which case (i) the Revolving Credit Commitments of all Defaulting Lenders shall be deemed to be zero (except to the extent Cash Collateral has been posted in respect of any portion of such Defaulting Lender's L/C Obligations or participations in Swing Line Loans) for purposes of any determination of the Revolving Credit Lenders' respective Pro Rata Shares of L/C Obligations (including for purposes of all fee calculations hereunder). The Borrower and/or such Defaulting Lender hereby grant to the Administrative Agent, for the benefit of such L/C Issuer, a security interest in any Cash Collateral and all proceeds of the foregoing with respect to such Defaulting Lender's participations in Letters of Credit deposited hereunder. Such Cash Collateral shall be maintained in blocked deposit accounts at Bank of America and may be invested in Cash Equivalents reasonably acceptable to the Administrative Agent. If at any time the Administrative Agent determines that any funds held as Cash Collateral under this clause (a)(iv) are subject to any right or claim of any Person other than the Administrative Agent for the benefit of such L/C Issuer or that the total amount of such funds is less than such Defaulting Lender's Pro Rata Share of all L/C Obligations that has not been reallocated as provided above, the Borrower and/or such Defaulting Lender will, promptly upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (I) such Defaulting Lender's Pro Rata Share of all L/C Obligations that have not been so reallocated over (II) the total amount of funds, if any, then held as Cash Collateral in respect thereof under this clause (a)(iv) that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse such L/C Issuer. If the Lender that triggers the Cash Collateral requirement under this clause (a)(iv) ceases to be a Defaulting Lender (as determined by such L/C Issuer in good faith), or if there are no L/C Obligations outstanding, any funds held as Cash Collateral pursuant to the foregoing provisions shall thereafter be returned to the Borrower or the Defaulting Lender, whichever provided the funds for the Cash Collateral, and the Pro Rata Share of the L/C Obligations of each Revolving Credit Lender shall thereafter take into account such Revolving Credit Lender's Revolving Credit Commitment.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the relevant L/C Issuer and the Administrative Agent not later than 11:00 a.m. (New York City time) at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (b) the amount thereof; (c) the expiry date thereof; (d) the name and address of the beneficiary thereof; (e) the documents to be presented by such beneficiary in case of any drawing thereunder; (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (g) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the relevant L/C Issuer may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Application, the relevant L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the relevant L/C Issuer shall agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the relevant L/C Issuer to prevent any such extension at least once in each twelve month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-extension Notice Date") in each such twelve month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the Borrower shall not be required to make a specific request to the relevant L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the relevant L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided that the relevant L/C Issuer shall (A) not be required to permit any such extension if the relevant L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its extended form under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), and (B) shall not permit any such extension if it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-extension Notice Date from the Administrative Agent, any Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.01 is not then satisfied.

(iv) Promptly after issuance of any Letter of Credit or any amendment to a Letter of Credit, the relevant L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations. (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. Not later than 2:00 p.m. (New York City time) on the Business Day immediately following any payment by an L/C Issuer under a Letter of Credit with notice to the Borrower (each such date, an "Honor Date"), the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing in Dollars. The L/C Issuer shall notify the Borrower of the amount of the drawing promptly following the determination or revaluation thereof. If the Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Appropriate Lender's Pro Rata Share thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans but subject to the amount of the unutilized portion of the Revolving Credit Commitments of the Appropriate Lenders and the conditions set forth in Section 4.01 (other than the delivery of a Committed Loan Notice). Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Appropriate Lender (including any Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer in Dollars at the Administrative Agent's Office for payments in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 1:00 p.m. (New York City time) on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Appropriate Lender that so makes funds available shall be deemed to have made a Revolving Credit Loan that is a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.01 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the relevant L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate for Revolving Credit Loans. In such event, each Appropriate Lender's payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Appropriate Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of the relevant L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse an L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided

that each Revolving Credit Lender's obligation to make Revolving Credit Loans (but not L/C Advances) pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.01 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c) (ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. A certificate of the relevant L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations. (i) If, at any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the amount received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the relevant L/C Issuer for each drawing under each Letter of Credit issued by it and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the relevant L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the relevant L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party; provided that the foregoing shall not excuse any L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are caused by such L/C Issuer's gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(f) Role of L/C Issuers. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the relevant L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, any Agent-Related Person nor any of the respective correspondents, participants or assignees of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Lenders holding a majority of the Revolving Credit Commitments, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of any L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); provided that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit, in each case as determined in a final and non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral. (i) If, as of the Letter of Credit Expiration Date, any Letter of Credit may for any reason remain outstanding and partially or wholly undrawn, (ii) if any Event of Default occurs and is continuing and the Administrative Agent or the Lenders holding a majority of the Revolving Credit Commitments, as applicable, require the Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02 or (iii) an Event of Default set forth under Section 8.01(f) occurs and is continuing, the Borrower shall Cash Collateralize the then Outstanding Amount of all L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such L/C Borrowing or the Letter of Credit Expiration Date, as the case may be), and shall do so not later than 2:00 P.M., New York City time, on (x) in the case of the immediately preceding clauses (i) through (iii), (1) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 12:00 Noon, New York City time, or (2) if clause (1) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (y) in the case of the immediately preceding clause (iii), the Business Day on which an Event of Default set forth under Section 8.01(f) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances ("Cash Collateral") pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked accounts at the Administrative Agent and may be invested in readily available Cash Equivalents. If at any time the Administrative Agent determines that any funds held as Cash Collateral are expressly subject to any right or claim of any Person other than the Administrative Agent (on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the deposit accounts at the Administrative Agent as aforesaid, an amount equal to the excess of (a) such aggregate Outstanding Amount over (b) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrower. To the extent any Event of Default giving rise to the requirement to Cash Collateralize any Letter of Credit pursuant to this Section 2.03(g) is cured or otherwise waived by the Required Lenders, then so long as no other Event of Default has occurred and is continuing, all Cash Collateral pledged to Cash Collateralize such Letter of Credit shall be refunded to the Borrower.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Pro Rata Share a Letter of Credit fee for each Letter of Credit issued pursuant to this Agreement equal to the Applicable Rate times the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit); provided that (x) if any portion of a Defaulting Lender's Pro Rata Share of any Letter of Credit is Cash Collateralized by the Borrower or reallocated to the other Revolving Credit Lenders pursuant to Section 2.03(a)(iv), then the Borrower shall not be required to pay a Letter of Credit fee with respect to such portion of such Defaulting Lender's Pro Rata Share so long as it is Cash Collateralized by the Borrower or reallocated to the other Revolving Credit Lenders and (y) if any portion of a Defaulting Lender's Pro Rata Share is not Cash Collateralized or reallocated pursuant to Section 2.03(a)(iv), then the Letter of Credit fee with respect to such Defaulting Lender's Pro Rata Share shall be payable to the applicable L/C Issuer until such Pro Rata Share is Cash Collateralized or such Lender ceases to be a Defaulting Lender. Such Letter of Credit fees shall be computed on a quarterly basis in arrears. Such Letter of Credit fees shall be due and payable in Dollars on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers. The Borrower shall pay directly to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued by it to the Borrower equal to the greater of (x) 0.125% per annum (or such other amount as may be mutually agreed by the Borrower and the applicable L/C Issuer) of the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit) and (y) to the extent the L/C Issuer is the Administrative Agent or an Affiliate thereof, \$1,500 per annum. Such fronting fees shall be computed on a quarterly basis in arrears. Such fronting fees shall be due and payable in Dollars on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the Borrower shall pay directly to each L/C Issuer for its own account with respect to each Letter of Credit issued to the Borrower the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(j) Conflict with Letter of Credit Application. Notwithstanding anything else to the contrary in this Agreement, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(k) Addition of an L/C Issuer. A Revolving Credit Lender may become an additional L/C Issuer hereunder pursuant to a written agreement among the Borrower, the Administrative Agent and such Revolving Credit Lender. The Administrative Agent shall notify the Revolving Credit Lenders of any such additional L/C Issuer.

Section 2.04. Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, Bank of America, in its capacity as Swing Line Lender, may in its sole discretion, agree to make loans in Dollars to the Borrower (each such loan, a "Swing Line Loan"), from time to time on any Business Day during the period beginning on the Closing Date and until the Maturity Date in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Pro Rata Share of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Swing Line Lender's Revolving Credit Commitment; provided that, after giving effect to any Swing Line Loan, (i) the Revolving Credit Exposure shall not exceed the aggregate Revolving Credit Commitment and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender (other than the relevant Swing Line Lender), plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment then in effect; provided further that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Swing Line Loan.

Notwithstanding the foregoing, before making any Swing Line Loans (if at such time any Revolving Credit Lender is a Defaulting Lender), the applicable Swing Line Lender may condition the provision of any Swing Line Loans on its receipt of Cash Collateral or similar security satisfactory to such Swing Line Lender (in its sole discretion) from either the Borrower or such Defaulting Lender in respect of such Defaulting Lender's risk participation in such Swing Line Loans as set forth below. The Borrower and/or such Defaulting Lender hereby grants to the Administrative Agent, for the benefit of the Swing Line Lender, a security interest in all such Cash Collateral and all proceeds of the foregoing. Such Cash Collateral shall be maintained in blocked deposit accounts at Bank of America and may be invested in Cash Equivalents reasonably acceptable to the Administrative Agent. If at any time the Administrative Agent determines that any funds held as Cash Collateral under this paragraph are subject to any right or claim of any Person other than the Administrative Agent for the benefit of the Swing Line Lender or that the total amount of such funds is less than the aggregate risk participation of such Defaulting Lender in the applicable Swing Line Loan, the Borrower and/or such Defaulting Lender will, promptly upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate risk participation over (y) the total amount of funds, if any, then held as Cash Collateral under this paragraph that the Administrative Agent determines to be free and clear of any such right and claim. If the Revolving Credit Lender that triggers the Cash Collateral requirement under this paragraph ceases to be a Defaulting Lender (as determined by the Swing Line Lender in good faith), or if the Swing Line Commitments have been permanently reduced to zero, the funds held as Cash Collateral shall thereafter be returned to the Borrower or the Defaulting Lender, whichever provided the funds for the Cash Collateral.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. (New York City time) on the requested borrowing date and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000 and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the relevant Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice (by telephone or in writing), the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, such Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless (x) the relevant Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. (New York City time) on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.01 is not then satisfied or (y) such Swing Line Lender has determined in its sole discretion not to make such Swing Line Loan, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 5:00 p.m. (New York City time) on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower.

(c) Refinancing of Swing Line Loans. (i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf the Borrower (which hereby irrevocably authorizes such Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Pro Rata Share of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the aggregate Revolving Credit Commitments and the conditions set forth in Section 4.01. The relevant Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Pro Rata Share of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m.

(New York City time) on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the relevant Swing Line Lender as set forth herein shall be deemed to be a request by such Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by the Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) (but not to purchase and fund risk participations in Swing Line Loans) is subject to the conditions set forth in Section 4.01. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations. (i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the relevant Swing Line Lender receives any payment on account of such Swing Line Loan, such Swing Line Lender will distribute to such Lender its Pro Rata Share of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by such Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Federal Funds Rate. The Administrative Agent will make such demand upon the request of a Swing Line Lender. The obligations of the Revolving Credit Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Revolving Credit

Lender funds its Base Rate Loan, Eurocurrency Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Pro Rata Share of any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

Section 2.05. Prepayments .

(a) Optional. (i) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans of any Class and Revolving Credit Loans in whole or in part and, except as set forth below in clause (d) below, without premium or penalty; provided that (1) such notice must be received by the Administrative Agent not later than 11:00 a.m. (New York City time) (A) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$2,500,000, or a whole multiple of \$500,000 in excess thereof; (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; and (4) no Extended Term Loan under any Extended Term Facility shall be prepaid prior to the date on which all Term Loans of the Class from which such Extended Term Loans were converted unless such prepayment is accompanied by a pro rata prepayment of Term Loans under the original Class (or in the case of prepayments made on the Amendment No. 1 Effective Date, such shorter notice period as to which the Administrative Agent may consent). Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans and the order of Borrowing(s) to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or, if such prepayment is being made pursuant to Section 2.05(c) or Section 10.07(k), such Lender's share, of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(a), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares (other than if pursuant to Section 2.05(c) or Section 10.07(k)).

(ii) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (1) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. (New York City time) on the date of the prepayment, and (2) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a)(i) or 2.05(a)(ii) if such prepayment would have resulted from a refinancing of all of the Facilities, which refinancing shall not be consummated or shall otherwise be delayed. Each prepayment of Term Loans of any Class pursuant to this Section 2.05(a) shall be applied in an order of priority to repayments thereof required pursuant to Section 2.07(a) as directed by the Borrower and, absent such direction, shall be applied in direct order of maturity to repayments thereof required pursuant to Section 2.07(a).

(b) Mandatory. (i) Within six (6) Business Days after financial statements have been delivered pursuant to Section 6.01(a) (commencing with the fiscal year ended December 31, 2011) and the related Compliance Certificate has been delivered pursuant to Section 6.02 (a), the Borrower shall cause to be prepaid an aggregate amount of Term Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period covered by such financial statements minus (B) the sum of (1) all voluntary prepayments of Term Loans during such fiscal year pursuant to Section 2.05(a) and the amount expended by any Purchasing Borrower Party to prepay any Term Loans pursuant to Section 2.05(c) or Section 10.07(k) and (2) all voluntary prepayments of Revolving Credit Loans and Swing Line Loans during such fiscal year to the extent the Revolving Credit Commitments are permanently reduced by the amount of such payments, in the case of each of the immediately preceding clauses (1) and (2), to the extent such prepayments are not funded with the proceeds of Indebtedness.

(ii) If (1) the Borrower or any Restricted Subsidiary of the Borrower Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a)(i), (b), (c), (d), (e), (f), (g), (h), (l), (n), (p) or (q), or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be offered to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received; provided that if any Permitted Notes have been issued in compliance with Section 7.01 and 7.03 with Liens ranking pari passu with the Liens securing the Obligations pursuant to the First Lien Intercreditor Agreement, then the Borrower may, to the extent required pursuant to the terms of the documentation governing such Permitted Notes, prepay Term Loans and purchase such Permitted Notes (at a purchase price no greater than par plus accrued and unpaid interest) on a pro rata basis in accordance with the respective principal amounts thereof.

(iii) If the Borrower or any Restricted Subsidiary (A) incurs or issues any Indebtedness after the Closing Date (x) pursuant to Section 7.03(s)(iii) or (y) that is not otherwise permitted to be incurred pursuant to Section 7.03, or (B) if any Refinancing Term Loans are borrowed, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom, in the case of Clause (A) on or prior to the date which is six (6) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds and, in the case of clause (B), on the date of such incurrence.

(iv) If for any reason the aggregate Revolving Credit Exposures at any time exceeds the aggregate Revolving Credit Commitments then in effect, the Borrower shall promptly prepay or cause to be promptly prepaid Revolving Credit Loans and Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(iv) unless after the prepayment in full of the Revolving Credit Loans and Swing Line Loans such aggregate Outstanding Amount exceeds the aggregate Revolving Credit Commitments then in effect.

(v) Each prepayment of Term Loans pursuant to (x) Section 2.05(b)(i), (ii) or (iii) shall (except to the extent that any Incremental Amendment, Term Loan Extension Amendment or Refinancing Term Loan Amendment provides that the Incremental Term Loans, Extended Term Loans or Refinancing Term Loans established thereby shall participate on a less than pro rata basis with any existing Class of Term Loans) be applied pro rata to each Class of Term Loans in direct order of maturity to repayments thereof required pursuant to Section 2.07(a); and each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares, subject to clause (vi) of this Section 2.05(b) or (y) Section 2.05(b)(x) or (xi) shall be applied to repay the Term B Loans and shall be applied to scheduled repayments thereof required by Section 2.07(a) on a pro rata basis; and each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares.

(vi) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clause (i) or (ii) of this Section 2.05(b) at least four (4) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Term Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "Declined Proceeds") of Term Loans required to be made pursuant to clauses (i) and (ii) of this Section 2.05(b) by providing written notice (each, a "Rejection Notice") to the Administrative Agent and the Borrower no later than 5:00 p.m. one (1) Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds shall be retained by the Borrower.

(vii) Funding Losses, Etc. All prepayments under this Section 2.05 shall be made together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date other than the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05. Notwithstanding any of the other provisions of Section 2.05(b), so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05(b), prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05(b). Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with this Section 2.05(b).

(viii) Foreign Dispositions. Notwithstanding any other provisions of this Section 2.05, (i) to the extent that any of or all the Net Proceeds of any Disposition by a Foreign Subsidiary ("Foreign Disposition") or Excess Cash Flow attributable to Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05 but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be immediately effected and such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05 and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or Foreign Subsidiary Excess Cash Flow would have material adverse tax cost consequences with respect to such Net Proceeds or Excess Cash Flow, such Net Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary; provided that, in the case of this clause (ii), on or before the date on which any such Net Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to Section 2.05(b) or any such Excess Cash Flow would have been required to be applied to prepayments pursuant to Section 2.05(b), the Borrower applies an amount equal to such Net Proceeds or Excess Cash Flow to such reinvestments or prepayments, as applicable, as if such Net Proceeds or Excess Cash Flow had been received by the Borrower rather than such Foreign Subsidiary, less the amount of additional taxes that would have been payable or reserved against if such Net Proceeds or Excess Cash Flow had been repatriated (or, if less, the Net Proceeds or Excess Cash Flow that would be calculated if received by such Foreign Subsidiary).

(ix) The Borrower shall prepay all Term Loans that are not Converted Term Loans on the Amendment No. 1 Effective Date.

(x) If immediately after giving effect to Amendment No.1 Effective Date the aggregate outstanding amount of Term A Loans and Term B Loans exceeds \$1,050,000,000 (the “Amendment No. 1 Aggregate Term Loan Cap”), the Borrower shall prepay an amount of Term B Loans on the Amendment No. 1 Effective Date to the extent required to reduce the aggregate principal amount of outstanding Term A Loans and Term B Loans to the Amendment No. 1 Aggregate Term Loan Cap.

(xi) The Borrower shall prepay Term B Loans with the Net Proceeds of any Term A Loan Increase promptly upon receipt thereof.

(c) (i) Notwithstanding anything to the contrary in Section 2.05(a), 2.12(a) or 2.13 (which provisions shall not be applicable to this Section 2.05(c)), any Purchasing Borrower Party shall have the right at any time and from time to time to prepay Term Loans of any Class to the Lenders at a discount to the par value of such Loans and on a non pro rata basis (each, a “Discounted Voluntary Prepayment”) pursuant to the procedures described in this Section 2.05(c); provided that (A) no Discounted Voluntary Prepayment shall be made from the proceeds of any Revolving Credit Loan or Swing Line Loan, (B) immediately after giving effect to any Discounted Voluntary Prepayment, the sum of (x) the excess of the aggregate Revolving Credit Commitments at such time less the aggregate Revolving Credit Exposure plus (y) the amount of unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries shall be not less than \$50,000,000, (C) any Discounted Voluntary Prepayment shall be offered to all Lenders with Term Loans of the specified Class on a pro rata basis, (D) such Purchasing Borrower Party shall deliver to the Administrative Agent a certificate stating that (1) no Default or Event of Default has occurred and is continuing or would result from the Discounted Voluntary Prepayment (after giving effect to any related waivers or amendments obtained in connection with such Discounted Voluntary Prepayment), (2) each of the conditions to such Discounted Voluntary Prepayment contained in this Section 2.05(c) has been satisfied, (3) such Purchasing Borrower Party does not have any material non-public information (“MNPI”) with respect to Holdings or any of its Subsidiaries that either (a) has not been disclosed to the Lenders (other than Lenders that do not wish to receive MNPI with respect to Holdings, any of its Subsidiaries or Affiliates) prior to such time or (b) if not disclosed to the Lenders, could reasonably be expected to have a material effect upon, or otherwise be material, (i) to a Lender’s decision to participate in any Discounted Voluntary Prepayment or (ii) to the market price of the Term Loans.

(ii) To the extent a Purchasing Borrower Party seeks to make a Discounted Voluntary Prepayment, such Purchasing Borrower Party will provide written notice to the Administrative Agent substantially in the form of Exhibit J hereto (each, a “Discounted Prepayment Option Notice”) that such Purchasing Borrower Party desires to prepay Term Loans in an aggregate principal amount specified therein by the Purchasing Borrower Party (each, a “Proposed Discounted Prepayment Amount”), in each case at a discount to the par value of such Term Loans as specified below. The Proposed Discounted Prepayment Amount of Term Loans shall not be less than \$5,000,000. The Discounted Prepayment Option Notice shall further specify with respect to the proposed Discounted Voluntary Prepayment: (A) the Proposed Discounted Prepayment Amount of Term Loans, (B) a discount range (which may be a single percentage) selected by the Purchasing Borrower Party with respect to such proposed Discounted Voluntary Prepayment (representing the percentage of par of the principal amount of Term Loans to be prepaid) (the “Discount Range”), and (C) the date by which Lenders are required to indicate their election to participate in such proposed Discounted Voluntary Prepayment which shall be at least five Business Days following the date of the Discounted Prepayment Option Notice (the “Acceptance Date”).

(iii) Upon receipt of a Discounted Prepayment Option Notice in accordance with Section 2.05(c)(ii), the Administrative Agent shall promptly notify each applicable Lender thereof. On or prior to the

Acceptance Date, each such Lender may specify by written notice substantially in the form of Exhibit K hereto (each, a “Lender Participation Notice”) to the Administrative Agent (A) a minimum price (the “Acceptable Price”) within the Discount Range (for example, 80% of the par value of the Loans to be prepaid) and (B) a maximum principal amount (subject to rounding requirements specified by the Administrative Agent) of Term Loans of the applicable Class with respect to which such Lender is willing to permit a Discounted Voluntary Prepayment at the Acceptable Price (“Offered Loans”). Based on the Acceptable Prices and principal amounts of Term Loans specified by the Lenders in the applicable Lender Participation Notice, the Administrative Agent, in consultation with the Purchasing Borrower Party, shall determine the applicable discount for Term Loans (the “Applicable Discount”), which Applicable Discount shall be (A) the percentage specified by the Purchasing Borrower Party if the Purchasing Borrower Party has selected a single percentage pursuant to Section 2.05(c)(ii) for the Discounted Voluntary Prepayment or (B) otherwise, the lowest Acceptable Price at which the Purchasing Borrower Party can pay the Proposed Discounted Prepayment Amount in full (determined by adding the principal amounts of Offered Loans commencing with the Offered Loans with the lowest Acceptable Price); provided, however, that in the event that such Proposed Discounted Prepayment Amount cannot be repaid in full at any Acceptable Price, the Applicable Discount shall be the highest Acceptable Price specified by the Lenders that is within the Discount Range. The Applicable Discount shall be applicable for all Lenders who have offered to participate in the Voluntary Discounted Prepayment and have Qualifying Loans (as defined below). Any Lender with outstanding Term Loans of the applicable Class whose Lender Participation Notice is not received by the Administrative Agent by the Acceptance Date shall be deemed to have declined to accept a Discounted Voluntary Prepayment of any of its Term Loans at any discount to their par value within the Applicable Discount.

(iv) The Purchasing Borrower Party shall make a Discounted Voluntary Prepayment by prepaying those Term Loans of the applicable Class (or the respective portions thereof) offered by the Lenders (“Qualifying Lenders”) that specify an Acceptable Price that is equal to or lower than the Applicable Discount (“Qualifying Loans”) at the Applicable Discount; provided that if the aggregate proceeds required to prepay all Qualifying Loans (disregarding any interest payable at such time) would exceed the amount of aggregate proceeds required to prepay the Proposed Discounted Prepayment Amount, such amounts in each case calculated by applying the Applicable Discount, the Purchasing Borrower Party shall prepay such Qualifying Loans ratably among the Qualifying Lenders based on their respective principal amounts of such Qualifying Loans (subject to rounding requirements specified by the Administrative Agent). If the aggregate proceeds required to prepay all Qualifying Loans (disregarding any interest payable at such time) would be less than the amount of aggregate proceeds required to prepay the Proposed Discounted Prepayment Amount, such amounts in each case calculated by applying the Applicable Discount, the Purchasing Borrower Party shall prepay all Qualifying Loans.

(v) Each Discounted Voluntary Prepayment shall be made within four Business Days of the Acceptance Date (or such other date as the Administrative Agent shall reasonably agree, given the time required to calculate the Applicable Discount and determine the amount and holders of Qualifying Loans), without premium or penalty (but subject to Section 3.05), upon irrevocable notice substantially in the form of Exhibit L hereto (each a “Discounted Voluntary Prepayment Notice”), delivered to the Administrative Agent no later than 11:00 a.m. (New York City time), three Business Days prior to the date of such Discounted Voluntary Prepayment, which notice shall specify the date and amount of the Discounted Voluntary Prepayment and the Applicable Discount determined by the Administrative Agent. Upon receipt of any Discounted Voluntary Prepayment Notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any Discounted Voluntary Prepayment Notice is given, the amount specified in such notice shall be due and payable to the applicable Lenders, subject to the Applicable Discount on the applicable Loans, on the date specified therein together with accrued interest (on the par principal amount) to but not including such date on the amount prepaid.

(vi) To the extent not expressly provided for herein, each Discounted Voluntary Prepayment shall be consummated pursuant to reasonable procedures (including as to timing, rounding and calculation of Applicable Discount in accordance with Section 2.05(c)(iii) above) established by the Administrative Agent in consultation with the Borrower.

(vii) Prior to the delivery of a Discounted Voluntary Prepayment Notice, upon written notice to the Administrative Agent, the Purchasing Borrower Party may withdraw its offer to make a Discounted Voluntary Prepayment pursuant to any Discounted Prepayment Option Notice.

(d) Prepayment Premium. In the event that, at any time after the Amendment No. 1 Effective Date and on or prior to ~~August 17, 2011~~, ~~March 30, 2013~~, (i) this Agreement is amended and such amendment to this Agreement has the effect of reducing the interest rate applicable to the Term B Loans (other than any waiver of default interest) or (ii) the Borrower makes any mandatory or voluntary prepayment of Term B Loans with the proceeds of any term loan Indebtedness under any credit facility (including, without limitation, any new or additional Term Loans under this Agreement, ~~but excluding any Term A Loan Increase~~) which term loan Indebtedness has a lower interest rate margin than the highest interest rate ~~that may, under any circumstances, be payable~~ then applicable with respect to the Term B Loans (provided that solely for the purposes of the foregoing clause (ii), the interest rate margins applicable to any term loan Indebtedness shall be deemed to include all upfront or similar fees or original issue discount payable by the Borrower generally to the lenders providing such term loan Indebtedness based on an assumed four-year life to maturity and, if the lowest possible Eurocurrency Rate applicable to such term loan Indebtedness is greater than 1.00% or the lowest possible Base Rate applicable to such term loan Indebtedness is greater than 2.00%, the difference between such "floor" and 1.00% in the case of Eurocurrency Rate Term B Loans, or 2.00%, in the case of Base Rate Term B Loans, shall be equated to interest rate margin for purposes of the foregoing clause (ii)), then the Borrower agrees to pay to the Administrative Agent, (x) in the case of clause (i), for the account of each Term B Lender that agrees to such amendment a fee in an amount equal to 1.00% of such Lender's Term B Loans outstanding on the effective date of such amendment and (y) in the case of clause (ii), for the account of each Term B Lender a fee in an amount equal to 1.00% of such Lender's Term B Loans that are being prepaid as a result of such prepayment.

Section 2.06. Termination or Reduction of Commitments.

(a) Optional. The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; provided that (i) any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in a minimum aggregate amount of \$1,000,000, as applicable, or any whole multiple of \$250,000, in excess thereof and (iii) if, after giving effect to any reduction of the Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Credit Facility, such sublimit shall be automatically reduced by the amount of such excess. The amount of any such Commitment reduction shall not otherwise be applied to the Letter of Credit Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of the Commitments if such termination would have resulted from a refinancing of all of the Facilities, which refinancing shall not be consummated or otherwise shall be delayed.

(b) Mandatory. The Original Term Commitment of each Term Lender shall be automatically and permanently reduced to \$0 upon the funding of Term Loans to be made by it on the Closing Date. The Additional Term B Commitment of the Additional Term B Lender and the Term A Commitment of the Initial Term A Lender shall be automatically and permanently reduced to \$0 upon the funding of Term B Loans and Term A Loans to be made by such respective Lenders on the Amendment No. 1 Effective Date or if the Amendment No. 1 Effective Date does not occur on or prior to 5:00 p.m. (New York, New York time) on the date of Amendment No. 1. The Term B Increase Commitment of the Term B Increase Lender shall be automatically and permanently reduced to \$0 upon the funding of the Term B Loans to be made by such Term B Increase Lender on the Amendment No. 3 Effective Date or if the Amendment No. 3 Effective Date does not occur on or prior to 5:00 p.m. (New York, New York time) on the date of Amendment No. 3. The Revolving Credit Commitment of each Revolving Credit Lender shall automatically and permanently terminate on the Maturity Date or if the Closing Date does not occur on or prior to 5:00 p.m. (New York, New York time) on the date of this Agreement.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit or the Swing Line Sublimit or the unused Commitments of any Class under this Section 2.06. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07). All commitment fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

Section 2.07. Repayment of Loans.

(a) Term Loans. The Borrower shall repay to the Administrative Agent for the ratable account of (x) the Term A Lenders (i) on the last Business Day of each March, June, September and December, commencing with the first full quarter after the Closing Date, an aggregate amount equal to \$1,875,000 (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05, but which payments shall not be increased to give effect to any Term A Loan Increase) and (ii) on the Maturity Date for the Term A Loans, the aggregate principal amount of all Term A Loans outstanding on such date and (y) the Term B Lenders (i) on the last Business Day of each March, June, September and December, commencing with the first full quarter after the Closing Date, ~~June 30, 2012,~~ an aggregate amount equal to ~~0.25% of the aggregate principal amount of all Term B Loans outstanding on the Closing Date~~ \$3,457,393.48 (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and (ii) on the Maturity Date for the Term B Loans, the aggregate principal amount of all Term B Loans outstanding on such date. The Incremental Term Loans of any Class shall mature as provided in the applicable Incremental Amendment. The Extended Term Loans under any Extended Term Facility shall mature as provided in the applicable Extended Term Loan Amendment. The Refinancing Term Loans shall mature as provided in the applicable Refinancing Term Loan Amendment.

(b) Revolving Credit Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all of the Borrower's Revolving Credit Loans under such Facility outstanding on such date.

(c) Swing Line Loans. The Borrower shall repay the aggregate principal amount of its Swing Line Loans on the earlier to occur of (i) the date five (5) Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility.

Section 2.08. Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan (which shall not include any Swing Line Loan) shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate, for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Credit Loans.

(b) During the continuance of a Default under Section 8.01(a), the Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; provided that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09. Fees .

In addition to certain fees described in Sections 2.03(h) and (i):

(a) Commitment Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender under each Facility in accordance with its Pro Rata Share, a commitment fee equal to the Applicable Rate with respect to commitment fees times the actual daily amount by which the aggregate Revolving Credit Commitment exceeds the sum of (A) the Outstanding Amount of Revolving Credit Loans (which shall exclude, for the avoidance of doubt, any Swing Line Loans) and (B) the Outstanding Amount of L/C Obligations; provided that (x) any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time and (y) no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee on each Revolving Credit Facility shall accrue at all times from the Closing Date until the Maturity Date for the Revolving Credit Facility, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date during the first full fiscal quarter to occur after the Closing Date, and on the Maturity Date for the Revolving Credit Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(c) Closing Fees. The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement on the Closing Date (other than the GS Lenders), as fee compensation for the funding of such Lender's Original Term Loan and making of such Lender's Revolving Credit Commitment, a closing fee (the "Closing Fee") in an amount equal to (x) 3.00% of the stated principal amount of such Lender's Revolving Credit Commitment on the Closing Date and (y) 1.50% of the stated principal amount of such Lender's Term Loan made on the Closing Date. Such Closing Fee will be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter and, in the case of the Original Term Loans, such Closing Fee shall be netted against Original Term Loans made by such Lender.

Section 2.10. Computation of Interest and Fees.

All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of three hundred sixty-five (365) days, or three hundred sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11. Evidence of Indebtedness.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(a) and (b), and by each Lender in its account or accounts pursuant to Sections 2.11(a) and (b), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12. Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Same Day Funds not later than 2:00 p.m. (New York City time) on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided in Section 2.05(b)(vi) or Section 2.05(c) or as otherwise provided herein) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m. (New York City time), shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the greater of (x) the applicable Federal Funds Rate from time to time in effect and (y) a rate determined by the Administrative Agent in accordance with banking rules governing interbank compensation. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit and Swing Line Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.04. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the sum of (a) the Outstanding Amount of all Loans outstanding at such time and (b) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

(h) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(b), 2.03(c), 2.04(c), 2.12(c) or 2.13, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.13. Sharing of Payments.

If, other than as expressly provided in Section 2.05(b)(vi), Section 2.05(c), Section 7.03(s)(iv), Section 10.07(k) or as otherwise provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, or the participations in L/C Obligations and Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise

all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14. Incremental Credit Extensions .

(a) The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request (a) one or more additional Classes or additions to an existing Class of Term Loans (the "Incremental Term Loans" and any such Class, an "Incremental Series") or (b) one or more increases in the amount of the Revolving Credit Commitments on the same terms as the Revolving Credit Facility (except for interest rate margins and commitment fees; provided that if any such additional Revolving Credit Commitment is requested prior to February 17, 2013, if the interest rate margins or commitment fees in respect of any such additional Revolving Credit Commitment exceed the interest rate margins or commitment fees in respect of any of the existing Revolving Credit Commitments by more than 50 basis points, the interest rate margins and commitment fees for such existing Revolving Credit Commitments shall be increased to 50 basis points less than such interest rate margins or commitment fees with respect to such new Revolving Credit Commitments) (a "Revolving Commitment Increase"), provided that (i) both at the time of any such request and upon the effectiveness of any Incremental Amendment referred to below, no Event of Default shall exist and at the time that any such Incremental Term Loan is made (and after giving effect thereto) no Event of Default shall exist and (ii) the Borrower shall be in compliance with the covenants set forth in Section 7.11 determined on a Pro Forma Basis as of the date of the most recently ended Test Period (or, if no Test Period cited in Section 7.11 has passed, the covenants in Section 7.11 for the first Test Period cited in such Section shall be satisfied as of the last four quarters ended), in each case, as if such Incremental Term Loans or any borrowings under any such Revolving Commitment Increases, as applicable, had been outstanding on the last day of such fiscal quarter of the Borrower for testing compliance therewith. Each tranche of Incremental Term Loans and each Revolving Commitment Increase shall be in an aggregate principal amount that is not less than \$25,000,000 and shall be in an increment of \$1,000,000 (provided that such amount may be less than \$25,000,000 if such amount represents all remaining availability under the limit set forth in the next sentence). Notwithstanding anything to the contrary herein, the aggregate amount of the Incremental Term Loans and the Revolving Commitment Increases, when aggregated with the amount of Permitted Notes issued in reliance on Section 7.03(s)(i) and Section 7.03(s)(ii), shall not exceed (x) \$150,000,000 (the "Initial Incremental Amount"); provided that during the sixty (60) consecutive day period beginning on the Amendment No. 1 Effective Date (the "Incremental Increase Period") the Borrower may incur a Revolving Commitment Increase in an amount not to exceed \$50.0 million and an increase to the Term A Loan in an amount not to exceed \$50.0 million (the "Term A Loan Increase"), in each case without reducing the amount available for future Incremental Term Loans or Revolving Commitment Increases under the Initial Incremental Amount, so long as, in the case of any Term A Loan Increase, the Net Proceeds therefrom shall be used to repay Term B Loans pursuant to Section 2.05(b)(xi) plus (y) the Borrower may incur additional Incremental Term Loans and/or Revolving Commitment Increases (a "Ratio-Based Incremental Facility") so long as the Borrower's First Lien Secured Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements were required to have been delivered pursuant to Section 6.01(a) or (b), as applicable (or, if no Test Period has passed, as of the last four quarters ended), in each case, as if such Ratio-Based Incremental Facility (and Revolving Credit Loans in an amount equal to the full amount of any such Revolving Commitment Increase) had been outstanding on the last day of such four quarter period, shall not exceed 2.75 to 1.00. The Incremental Term Loans (a) shall rank pari passu in right of payment and of security with the Revolving Credit Loans and the Term Loans, (b) shall not

mature earlier than the Maturity Date with respect to the Term B Loans (except in the case of any Term A Loan Increase, which shall mature on the Maturity Date with respect to the Term A Loans), (c) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of then-existing Term B Loans (except in the case of any Term A Loan Increase, which shall have the same weighted average life to maturity as that of the Term A Loans) and (d) the Applicable Rate for the Incremental Term Loan, and subject to clause (c) above, amortization for the Incremental Term Loans shall be determined by the Borrower and the applicable new Lenders (except that in the case of any Term A Loan Increase, such Applicable Rate and amortization shall be the same as that of the Term A Loans); provided, however, that if any such additional Incremental Term Loans are requested prior to ~~February 17, 2013~~, March 30, 2014, (i) the interest rate margins for the Incremental Term Loans shall not be greater than the highest interest rate margins that may, under any circumstances, be payable with respect to Term B Loans plus 50 basis points (unless the interest rate margins applicable to the Term B Loans are increased to the extent necessary to achieve the foregoing), (ii) solely for purposes of the foregoing clause (i), the interest rate margins applicable to any Term Loans or Incremental Term Loans shall be deemed to include all upfront or similar fees or original issue discount payable by the Borrower generally to the Lenders providing such Term Loans or such Incremental Term Loans based on an assumed four-year life to maturity and (iii) if the lowest permissible Eurocurrency Rate is greater than 1.00% or the lowest permissible Base Rate is greater than 2.00% for such Incremental Term Loans, the difference between such "floor" and 1.00%, in the case of Eurocurrency Rate Incremental Term Loans, or 2.00%, in the case of Base Rate Incremental Term Loans, shall be equated to interest rate margin for purposes of clause (i) above; provided that except as provided above, the terms and conditions applicable to Incremental Term Loans may be materially different from those of the Term Loans to the extent such differences are reasonably satisfactory to the Administrative Agent. Each notice from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans or Revolving Commitment Increases. Incremental Term Loans may be made, and Revolving Commitment Increases may be provided, by any existing Lender (but each existing Lender will not have an obligation to make a portion of any Incremental Term Loan or any portion of any Revolving Commitment Increase) or by any other bank or other financial institution (any such other bank or other financial institution being called an "Additional Lender"), provided that the Administrative Agent, L/C Issuer and/or Swing Line Lender, as applicable, shall have consented (not to be unreasonably withheld, conditioned or delayed) to such Lender's or Additional Lender's making such Incremental Term Loans or providing such Revolving Commitment Increases to the extent any such consent would be required under Section 10.07(b) for an assignment of Loans or Revolving Credit Commitments, as applicable, to such Lender or Additional Lender. Commitments in respect of Incremental Term Loans and Revolving Commitment Increases shall become Commitments (or in the case of a Revolving Commitment Increase to be provided by an existing Revolving Credit Lender, an increase in such Lender's applicable Revolving Credit Commitment) under this Agreement pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender agreeing to provide such Commitment, if any, each Additional Lender, if any, and the Administrative Agent. The Incremental Amendment may, without the consent of Borrower, or any other Loan Party, Agents or Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. The Borrower will use the proceeds of the Incremental Term Loans and Revolving Commitment Increases for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Term Loans or Revolving Commitment Increases, unless it so agrees. Upon each increase in the Revolving Credit Commitments pursuant to this Section 2.14, (a) if the increase relates to the Revolving Credit Facility, each Revolving Credit Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing a portion of the Revolving Commitment Increase (each, a "Revolving Commitment Increase Lender"), and each such Revolving Commitment Increase Lender will automatically and without further act be deemed to have assumed (in the case of an increase to the Revolving Credit Facility only), a portion of such Revolving Credit Lender's participations hereunder in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (i) participations hereunder in Letters of Credit and (ii) participations hereunder in Swing Line Loans held by each Revolving Credit Lender (including each such Revolving Commitment Increase Lender) will equal the percentage of the aggregate Revolving Credit Commitments of all Revolving Credit Lenders represented by such Revolving Credit Lender's Revolving Credit Commitment and (b) if, on the date of such increase, there are

any Revolving Credit Loans under the applicable Facility outstanding, such Revolving Credit Loans shall on or prior to the effectiveness of such Revolving Commitment Increase be prepaid from the proceeds of additional Revolving Credit Loans made hereunder (reflecting such increase in Revolving Credit Commitments), which prepayment shall be accompanied by accrued interest on the Revolving Credit Loans being prepaid and any costs incurred by any Lender in accordance with Section 3.05. The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(b) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.15. Refinancing Term Loans .

(a) The Borrower may by written notice to Administrative Agent elect to request the establishment of one or more additional tranches of term loans denominated in Dollars under this Agreement (“Refinancing Term Loans”) to refinance an outstanding Class of Term Loans. Each such notice shall specify the date (each, a “Refinancing Effective Date”) on which the Borrower proposes that the Refinancing Term Loans shall be made, which shall be a date not less than five Business Days after the date on which such notice is delivered to the Administrative Agent; provided that:

(i) before and after giving effect to the borrowing of such Refinancing Term Loans on the Refinancing Effective Date each of the conditions set forth in Section 4.01 shall be satisfied;

(ii) such Refinancing Term Loans shall mature no earlier than, and the Weighted Average Life to Maturity of such Refinancing Term Loans shall not be shorter than the then remaining Weighted Average Life to Maturity of the Term B Loans at the time of such refinancing;

(iii) all other terms applicable to such Refinancing Term Loans (other than provisions relating to original issue discount, upfront fees and interest rates which shall be as agreed between the Borrower and the Lenders providing such Refinancing Term Loans) shall be substantially identical to, or less favorable to the Lenders providing such Refinancing Term Loans than, those applicable to the then outstanding Term Loans of the applicable Class except to the extent such covenants and other terms apply solely to any period after the latest final maturity of all Classes of Term Loans and Revolving Commitments in effect on the Refinancing Effective Date immediately prior to the borrowing of such Refinancing Term Loans;

(iv) the Loan Parties and the Collateral Agent shall enter into such amendments to the Collateral Documents as may be requested by the Collateral Agent (which shall not require any consent from any Lender) in order to ensure that the Refinancing Term Loans are provided with the benefit of the applicable Collateral Documents and shall deliver such other documents, certificates and opinions of counsel in connection therewith as may be requested by the Collateral Agent; and

(v) the Net Proceeds of the Refinancing Term Loans shall be applied to the repayment of the then outstanding Term Loans in accordance with Section 2.05(b).

(b) The Borrower may approach any Lender or any other Person that would be a permitted Assignee pursuant to Section 10.07 to provide all or a portion of the Refinancing Term Loans (a “Refinancing Term Lender”); provided that any Lender offered or approached to provide all or a portion of the Refinancing Term Loans may elect or decline, in its sole discretion, to provide a Refinancing Term Loan. Any Refinancing Term Loans made on any Refinancing Effective Date shall be designated a Class of Refinancing Term Loans for all purposes of this Agreement; provided that any Refinancing Term Loans may, to the extent provided in the applicable Refinancing Term Loan Amendment, be designated as an increase in any previously established Class of Term Loans made to the Borrower that were Refinancing Term Loans.

(c) The Refinancing Term Loans shall be established pursuant to an amendment to this Agreement among the Borrower, the Administrative Agent and the Refinancing Term Lenders providing such Refinancing Term Loans (a "Refinancing Term Loan Amendment") which shall be consistent with the provisions set forth in paragraph (a) above (which shall not require the consent of any other Lender). Each Refinancing Term Loan Amendment shall be binding on the Lenders, the Loan Parties and the other parties hereto.

(d) This Section 2.15 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.16. Extended Term Loans.

(a) The Borrower may at any time and from time to time request that all or a portion of the Term Loans under any Facility (an "Existing Term Loan Facility") be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any principal amount of such Term Loans (any such Term Loans which have been so converted, "Extended Term Loans") and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Term Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Facility) (an "Extension Request") setting forth the proposed terms of the Extended Term Loans to be established which shall be identical to the Class of Term Loans from which such Extended Term Loans are to be converted except that:

(i) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization payments of principal of the Class of Term Loans being converted to the extent provided in the applicable Term Loan Extension Amendment;

(ii) the interest margins with respect to the Extended Term Loans may be different than the interest margins for the Class of Term Loans being converted and upfront fees may be paid to the Extending Term Lenders, in each case, to the extent provided in the applicable Term Loan Extension Amendment;

(iii) the Term Loan Extension Amendment may provide for other covenants and terms that apply solely to any period after the latest final maturity of all Classes of Term Loans and Revolving Commitments in effect on the effective date of the Term Loan Extension Amendment immediately prior to the establishment of such Extended Term Loans; and

(iv) no Extended Term Loans may be optionally prepaid prior to the date on which the Term Loans under the Class from which they were converted are repaid in full unless such optional prepayment is accompanied by a pro rata optional prepayment of the Term Loans under such Class that were not converted.

Any Extended Term Loans converted pursuant to any Extension Request shall be designated a Class of Extended Term Loans for all purposes of this Agreement; provided that any Extended Term Loans converted may, to the extent provided in the applicable Term Loan Extension Amendment, be designated as an increase in any previously established Class of Extended Term Loans.

(b) The Borrower shall provide the applicable Extension Request to all Lenders of such Class that is subject to the Extension Request at least five (5) Business Days prior to the date on which Lenders under such Class being converted are requested to respond. No Lender shall have any obligation to agree to have any of its Term Loans of such class converted into Extended Term Loans pursuant to any Extension Request.

Any Lender (an “Extending Term Lender”) wishing to have all or a portion of its Term Loans under such Class being converted into Extended Term Loans shall notify the Administrative Agent (an “Extension Election”) on or prior to the date specified in such Extension Request of the amount of its Term Loans of such Class which it has elected to request be converted into Extended Term Loans (subject to any minimum denomination requirements reasonably imposed by the Administrative Agent). In the event that the aggregate amount of Term Loans under such Class being converted exceeds the amount of Extended Term Loans requested pursuant to the Extension Request, Term Loans subject to Extension Elections shall be converted to Extended Term Loans on a pro rata basis based on the amount of Term Loans included in each such Extension Election.

(c) Extended Term Loans shall be established pursuant to an amendment (a “Term Loan Extension Amendment”) to this Agreement among the Borrower, the Administrative Agent and each Extending Term Lender providing an Extended Term Loan thereunder which shall be consistent with the provisions set forth in paragraph (a) above (but which shall not require the consent of any other Lender). Each Term Loan Extension Amendment shall be binding on the Lenders, the Loan Parties and the other parties hereto. In connection with any Term Loan Extension Amendment, the Loan Parties and the Collateral Agent shall enter into such amendments to the Collateral Documents as may be reasonably requested by the Collateral Agent (which shall not require any consent from any Lender) in order to ensure that the Extended Term Loans are provided with the benefit of the applicable Collateral Documents and shall deliver such other documents, certificates and opinions of counsel in connection therewith as may be requested by the Collateral Agent.

(d) This Section 2.16 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.17. Replacement Revolving Commitments.

(a) The Borrower may by written notice to Administrative Agent elect to request the establishment of one or more additional Facilities providing for revolving commitments (“Replacement Revolving Commitments” and the revolving loans thereunder “Replacement Revolving Loans”). Each such notice shall specify the date (each, a “Replacement Revolving Facility Effective Date”) on which the Borrower proposes that the Replacement Revolving Commitments shall become effective, which shall be a date not less than five Business Days after the date on which such notice is delivered to the Administrative Agent; provided that:

(i) before and after giving effect to the establishment of such Replacement Revolving Commitments on the Replacement Revolving Facility Effective Date each of the conditions set forth in Section 4.01 shall be satisfied;

(ii) after giving effect to the establishment of any Replacement Revolving Commitments and any concurrent reduction in the aggregate amount of any other Revolving Credit Commitments, the aggregate amount of Revolving Credit Commitments shall not exceed the aggregate amount of the Revolving Credit Commitments outstanding on the Amendment No. 1 Effective Date;

(iii) no Replacement Revolving Commitments shall have a scheduled termination date prior to the Maturity Date of the Revolving Credit Facility (or if later, the date required pursuant to any Replacement Revolving Facility Amendment);

(iv) all other terms applicable to such Replacement Revolving Facility (other than provisions relating to (x) fees and interest rates which shall be as agreed between the Borrower and the Lenders providing such Replacement Revolving Commitments and

(y) the amount of any Letter of Credit Sublimit and Swing Line Sublimit under such Replacement Revolving Facility which shall be as agreed between the Borrower, the Lenders providing such Replacement Revolving Commitments, the

Administrative Agent and the Replacement L/C Issuer and Replacement Swing Line Lender, if any, under such Replacement Revolving Commitments) shall be substantially identical to, or less favorable to the Lenders providing such Replacement Revolving Commitments than, those applicable to the Revolving Credit Facility;

(v) there shall be no more than two Classes, in the aggregate, of Revolving Credit Commitments and Replacement Revolving Commitment Series in effect at any time any Replacement Revolving Commitment Series is established; and

(vi) the Loan Parties and the Collateral Agent shall enter into such amendments to the Collateral Documents as may be reasonably requested by the Collateral Agent (which shall not require any consent from any Lender) in order to ensure that the Replacement Revolving Loans are provided with the benefit of the applicable Collateral Documents on a pari passu basis with the other Obligations and shall deliver such other documents, certificates and opinions of counsel in connection therewith as may be reasonably requested by the Collateral Agent.

(b) The Borrower may approach any Lender or any other Person that would be a permitted Assignee of a Revolving Credit Commitment pursuant to Section 10.07 to provide all or a portion of the Replacement Revolving Commitments (a "Replacement Revolving Lender"); provided that any Lender offered or approached to provide all or a portion of the Replacement Revolving Commitments may elect or decline, in its sole discretion, to provide a Replacement Revolving Commitment and the selection of Replacement Revolving Lender shall be subject to any consent that would be required pursuant to Section 10.07. Any Replacement Revolving Commitment made on any Replacement Revolving Facility Effective Date shall be designated a series (a "Replacement Revolving Commitment Series") of Replacement Revolving Commitments for all purposes of this Agreement; provided that any Replacement Revolving Commitments may, to the extent provided in the applicable Replacement Revolving Facility Amendment, be designated as an increase in any previously established Replacement Revolving Commitment Series of the Borrower.

(c) The Replacement Revolving Commitments shall be established pursuant to an amendment to this Agreement among the Borrower, the Administrative Agent, the Replacement Revolving Lenders providing such Replacement Revolving Loans and any Replacement L/C Issuer and/or Replacement Swing Line Lender thereunder (a "Replacement Revolving Facility Amendment") which shall be consistent with the provisions set forth in paragraph (a) above (but which shall not require the consent of any other Lender).

(d) On any Replacement Revolving Facility Effective Date, subject to the satisfaction of the foregoing terms and conditions, each of the Replacement Revolving Lenders with Replacement Revolving Commitments of such Replacement Revolving Commitment Series shall purchase from each of the other Lenders with Replacement Revolving Commitment Series of such Replacement Revolving Commitment Series, at the principal amount thereof and in the applicable currencies, such interests in the Replacement Revolving Loans under such Replacement Revolving Commitment Series outstanding on such Replacement Revolving Facility Effective Date as shall be necessary in order that, after giving effect to all such assignments and purchases, the Replacement Revolving Loans of such Replacement Revolving Commitment Series will be held by Replacement Revolving Lenders thereunder ratably in accordance with their Replacement Revolving Credit Percentages.

(e) This Section 2.17 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

ARTICLE III.
Taxes, Increased Costs Protection and Illegality

Section 3.01. Taxes.

(a) Unless required by applicable Laws (as determined in good faith by the applicable withholding agent), any and all payments made by or on account of any Loan Party under any Loan Document shall be made free and clear of and without deduction for Taxes. If the Loan Party or other applicable withholding agent shall be required by any Laws to withhold or deduct any Indemnified Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable by such Loan Party shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01) have been made, each of such Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the relevant Loan Party is the applicable withholding agent, shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary Taxes and any other excise, property, intangible or mortgage recording Taxes, or charges or levies of the same character, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document, other than any such Taxes that are imposed as a result of a Lender's voluntary assignment in such Lender's interest in the Loan hereunder, but only to the extent such assignment-related Taxes are imposed as a result of such Lender's current or former connection with the jurisdiction imposing such Taxes (other than any connections arising from such Lender having executed, delivered, enforced, become a party to, performed its obligations or received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to, any Loan Document) (the "Other Taxes").

(c) Each of the Loan Parties agrees to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes payable by such Agent or such Lender (whether or not such Taxes are legally imposed) and (ii) any expenses arising therefrom or with respect thereto, provided such Agent or Lender, as the case may be, provides the relevant Loan Party with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts. If the Borrower reasonably believes that such Indemnified Taxes or Other Taxes were not correctly or legally asserted, the Administrative Agent and each Lender and L/C Issuer will use reasonable efforts to cooperate with Borrower for the Borrower to file for and obtain a refund of such Indemnified Taxes or Other Taxes so long as such efforts would not, in the sole determination of the Administrative Agent, such Lender, or such L/C Issuer, result in any additional costs, expenses or risks or be otherwise disadvantageous to it.

(d) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, the Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Without limiting the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from federal backup withholding.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit I (any such certificate a “United States Tax Compliance Certificate”) and (B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN,

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (provided that, if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owner). Each Lender shall deliver to the Borrower and the Administrative Agent two further original copies of any previously delivered form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate and promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower or the Administrative Agent, or promptly notify the Borrower and the Administrative Agent that it is unable to do so. Each Lender shall promptly notify the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form or certification to the Borrower or the Administrative Agent, or

(E) two properly completed and duly signed original copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a deduction in, United States federal withholding tax on any payments to such Lender under the Loan Documents.

Notwithstanding any other provision of this clause (d), a Lender shall not be required to deliver any form that such Lender is not legally able to deliver.

(e) Any Lender claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to change the jurisdiction of its Lending Office (or take any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

(f) If any Lender or Agent determines, in its sole discretion, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by any Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to the Loan Party, net of all out-of-pocket expenses of the Lender or Agent, as the case may be and without interest (other than any interest paid by the relevant taxing authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); provided that the Loan Party, upon the request of the Lender or Agent, as the case may be, agrees promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. This section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other person.

Section 3.02. Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03. Inability to Determine Rates.

If the Administrative Agent or the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the applicable Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or that the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that Dollar deposits are not being offered to banks in the London interbank eurodollar, or other applicable, market for the applicable amount and the Interest Period of such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of such Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request, if applicable, into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04. Eurocurrency Rate Loans Increased Cost and Reduced Return; Capital Adequacy; Reserves on.

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Closing Date, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurocurrency Rate Loans (or in the case of Taxes, any Loan) or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes (which are covered by Section 3.01), or any Excluded Taxes or (ii) reserve requirements contemplated by Section 3.04(c)) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining the Eurocurrency Rate Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by such Lender, then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, in each case after the Closing Date, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within fifteen (15) days after receipt of such demand.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Borrower and at the Borrower's expense, use commercially reasonable efforts to designate another Lending Office for any Loan or Letter of Credit affected by such event; provided that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and provided further that nothing in this Section 3.04(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.04(a), (b), (c) or (d).

Section 3.05. Funding Losses.

Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurocurrency Rate Loan of the Borrower on a day other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurocurrency Rate Loan of the Borrower on the date or in the amount notified by the Borrower;

including any loss or expense (excluding loss of anticipated profits) arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.06. Matters Applicable to All Requests for Compensation.

(a) Any Agent or any Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01, 3.02, 3.03 or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; provided that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another applicable Eurocurrency Rate Loan, or, if applicable, to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan, or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period (s) for such Eurocurrency Rate Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

Section 3.07. Replacement of Lenders Under Certain Circumstances.

(a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.04 as a result of any condition described in such Sections or any Lender ceases to make any Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) any Lender becomes a Defaulting Lender or (iii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on ten (10) Business Days' prior written notice to the Administrative Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (with the assignment fee to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement (in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (iii)) to one or more Eligible Assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and provided further that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender or L/C Issuer, as the case may be, and (1) in the case of a Lender (other than an L/C Issuer), repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date and (2) in the case of an L/C Issuer, repay all Obligations of the Borrower owing to such L/C Issuer relating to the Loans and participations held by the L/C Issuer as of such termination date and cancel or backstop on terms satisfactory to such L/C Issuer any Letters of Credit issued by it; provided that in the case of any such termination of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable facility only in the case of clause (i) or, with respect to a Class vote, clause (iii).

(b) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's applicable Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans in respect thereof, and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans, Commitments and participations so assigned shall

be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Assumption and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Note or Notes executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender or Defaulting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such Non-Consenting Lender or Defaulting Lender, then such Non-Consenting Lender or Defaulting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender or Defaulting Lender.

(c) Notwithstanding anything to the contrary contained above, any Lender that acts as an L/C Issuer may not be replaced hereunder at any time that it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such L/C Issuer (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer reasonably satisfactory to such L/C Issuer or the depositing of Cash Collateral into a Cash Collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to each such outstanding Letter of Credit and the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.09.

(d) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of all affected Lenders in accordance with the terms of Section 10.01 or all the Lenders with respect to a certain Class of the Loans and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain Class, the Required Class Lenders) have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "Non-Consenting Lender."

Section 3.08. Survival.

All of the Borrower's obligations under this Article III shall survive any assignment of rights by, or the replacement of, a Lender (including any L/C Issuer) and termination of the Aggregate Commitments and repayment, satisfaction and discharge of all other Obligations hereunder.

ARTICLE IV.

Conditions Precedent to Credit Extensions

Section 4.01. All Credit Events After the Closing Date .

The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) after the Closing Date is subject to the following conditions precedent:

(i) The representations and warranties of each Loan Party set forth in Article V and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(ii) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(iii) The Administrative Agent and, if applicable, the relevant L/C Issuer or the relevant Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.01(i) and (ii) have been satisfied on and as of the date of the applicable Credit Extension.

Section 4.02. First Credit Event .

Each Lender shall make the Credit Extension to be made by it on the Closing Date subject only to the following conditions precedent, unless otherwise waived by the Initial Lenders in their sole discretion:

(a) This Agreement shall have been duly executed and delivered by the Borrower and each Guarantor.

(b) The Administrative Agent and, if applicable, the relevant L/C Issuer or the relevant Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(c) The Administrative Agent shall have received, on behalf of itself, the Collateral Agent, the Lenders and each L/C Issuer, an opinion of (i) Simpson Thacher & Bartlett LLP, special counsel for the Loan Parties, and (ii) from each local counsel for the Loan Parties listed on Schedule 4.02(c), in each case, dated the Closing Date and addressed to each L/C Issuer, the Administrative Agent, the Collateral Agent and the Lenders, in each case in form and substance customary for senior secured credit facilities in transactions of this kind.

(d) The Administrative Agent shall have received (i) a copy of the certificate or articles of incorporation or organization, including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing (where relevant) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority and (ii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws or operating (or limited liability company) agreement of such Loan Party as in effect on the Closing Date, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or organization of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, and (D) as to the incumbency and specimen signature of each officer executing any Loan Document on behalf of such Loan Party and countersigned by another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (ii) above.

(e) (i) The Administrative Agent shall have received the results of (x) searches of the Uniform Commercial Code filings (or equivalent filings) and (y) judgment and tax lien searches, made with respect to the Loan Parties in the states or other jurisdictions of formation of such Person and with respect to such

other locations and names listed on the Perfection Certificate, together with (in the case of clause (y)) copies of the financing statements (or similar documents) disclosed by such search and (ii) the Security Agreement and the Holdings Pledge Agreement shall have been duly executed and delivered by each Loan Party that is to be a party thereto, together with (x) certificates, if any, representing the Pledged Equity of the Borrower and the Domestic Subsidiaries accompanied by undated stock powers executed in blank and (y) documents and instruments to be recorded or filed that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement; provided, however, that each of the requirements set forth in clauses (i) and (ii) above, including lien searches (other than Uniform Commercial Code, tax and lien searches) and the delivery of documents and instruments necessary to satisfy the Collateral and Guarantee Requirement (other than the pledge and perfection of domestic assets with respect to which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code or, to the extent applicable, the delivery of a stock certificate and related stock power of the Borrower and any Domestic Subsidiary on the Closing Date) shall not constitute conditions precedent to the Credit Extension on the Closing Date after the Borrower's use of commercially reasonable efforts to provide such items on or prior to the Closing Date if the Borrower agrees to deliver or cause to be delivered such search results, documents and instruments, or take or cause to be taken such other actions as may be required to perfect such security interests within 120 days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion).

(f) The Administrative Agent shall have received a certified copy of the Acquisition Agreement, duly executed by the parties thereto (together with all material ancillary agreements entered into in connection therewith and all exhibits and schedules thereto). Prior to or substantially simultaneously with the initial Credit Extension on the Closing Date, the Acquisition shall have been consummated pursuant to the Acquisition Agreement, and no provision of the Acquisition Agreement shall have been waived or amended in any material respect by Holdings or Parent in a manner materially adverse to the Lenders without the consent of the Initial Lenders, such consent not to be unreasonably withheld, conditioned or delayed (it being understood that the good faith determination by the parties to the Acquisition Agreement that the Acquisition Agreement closing conditions specified in Sections 6.1 and 6.2 have been satisfied (other than conditions which by their nature may be satisfied only at the Closing) shall be conclusive).

(g) The Administrative Agent shall have received confirmation from the Investors or their representatives that the Equity Contribution and the Mezzanine Financing shall have been consummated, or substantially simultaneously with the initial borrowing hereunder shall be consummated.

(h) The Administrative Agent shall have received a certificate, dated the Closing Date and signed by the Chief Financial Officer of the Borrower, certifying that the Borrower and its Subsidiaries, on a consolidated basis after giving effect to the Transactions on the Closing Date, are Solvent as of the Closing Date.

(i) On the Closing Date, the representations and warranties made by the Loan Parties in Sections 5.01(a) (solely as to the Borrower), 5.01(b)(ii) (solely as to the Loan Parties), 5.02(a) (solely as to the Loan Documents), 5.02(b)(i) and (b)(iii) (in each case, solely as to the Loan Documents), 5.04, 5.13, 5.17 and 5.18 shall be true and correct in all material respects.

(j) The Initial Lenders shall have received all documentation and other information required by regulatory authorities with respect to the Borrower reasonably requested by the Initial Lenders under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act; provided that the Initial Lenders shall use commercially reasonable efforts to ensure that such requests are delivered at least 10 days prior to the Closing Date and are not unduly burdensome on any person unless required by applicable Law.

(k) The Initial Lenders shall have received the Audited Financial Statements, the Unaudited Financial Statements and the Pro Forma Financial Statements.

ARTICLE V. Representations
and Warranties

The Borrower and each of the Subsidiary Guarantors party hereto represent and warrant to the Agents and the Lenders at the time of each Credit Extension that:

Section 5.01. Existence, Qualification and Power; Compliance with Laws.

Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing (where relevant) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in the case of clause (a) (other than with respect to the Borrower), (b)(i) (other than with respect to the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, are within such Loan Party's corporate or other powers, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) (A) referred to in clause (b)(ii)(x), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect, and (B) solely for purposes of Section 4.02, referred to in clauses (b)(iii), to the extent that such violation could not reasonably be expected to have a Company Material Adverse Effect.

Section 5.03. Governmental Authorization; Other Consents.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full

force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 5.04. Binding Effect.

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitute legal, valid and binding obligations of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity, (ii) the need for filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (iii) the effect of foreign Laws, rules and regulations as they relate to pledges, if any, of Equity Interests in Foreign Subsidiaries.

Section 5.05. Financial Statements; No Material Adverse Effect.

(a) (i) The unaudited pro forma consolidated balance sheet of the Borrower and its Subsidiaries as at the last day of the most recent fiscal quarter for which Unaudited Financial Statements have been delivered prior to the Closing Date (including the notes thereto describing the pro forma adjustments) (the "Pro Forma Balance Sheet") and the unaudited pro forma consolidated statement of operations of the Borrower and its Subsidiaries for the twelve months ended on the last day of the most recent fiscal quarter for which Unaudited Financial Statements have been delivered prior to the Closing Date (together with the Pro Forma Balance Sheet, the "Pro Forma Financial Statements"), copies of which will be furnished to each Lender prior to the Closing Date, have been prepared giving effect (as if such events had occurred on such date or at the beginning of such periods, as the case may be) to the Transactions. The Pro Forma Financial Statements have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a pro forma basis the estimated consolidated financial position of the Borrower and its Subsidiaries as at the last day of the most recent fiscal quarter for which Unaudited Financial Statements have been delivered and its estimated consolidated results of operations for the periods covered thereby, assuming that the events specified in the preceding sentence had actually occurred at such date or at the beginning of the periods covered thereby.

(ii) The Audited Financial Statements fairly present in all material respects the consolidated financial condition of the Acquired Company as of the dates thereof and its consolidated results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(iii) The Unaudited Financial Statements fairly present in all material respects the consolidated financial condition of the Acquired Company as of the dates thereof and its results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and subject to normal year-end audit adjustments.

(b) The forecasts of income statements of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent prior to the Closing Date have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such forecasts, it being understood that actual results may vary from such forecasts and that such variations may be material.

(c) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) As of the Closing Date, neither the Acquired Company nor any of its Subsidiaries has any Indebtedness or other obligations or liabilities, direct or contingent (other than (i) the liabilities reflected on Schedule 5.05, (ii) obligations arising under the Loan Documents and the Mezzanine Debt Documentation, (iii) liabilities incurred in the ordinary course of business, (iv) liabilities disclosed in the Pro Forma Financial Statements and (v) liabilities under the Acquisition Agreement) that, either individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06. Litigation .

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened in writing or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07. No Default .

Neither the Borrower nor any of its Restricted Subsidiaries is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.08. Ownership of Property; Liens .

(a) The Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Property necessary in the ordinary conduct of its business, free and clear of all Liens except as set forth on Schedule 5.08 hereto and except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) As of the Closing Date, Schedule 5.08 contains a true and complete list of each Material Real Property owned by the Borrower and the Subsidiaries as of the Closing Date.

(c) No Casualty Event. As of the Closing Date, except as otherwise disclosed to the Administrative Agent, (i) no Loan Party has received any notice of, nor has any knowledge of, the occurrence (and still pending as of the Closing Date) or pendency or contemplation of any Casualty Event affecting all or any portion of a Mortgaged Property, and (ii) no Mortgage encumbers improved Mortgaged Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the National Flood Insurance Act of 1968 unless flood insurance available under such Act has been obtained in accordance with Section 6.07.

Section 5.09. Environmental Matters.

Except as specifically disclosed in Schedule 5.09(a) or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) each Loan Party and its properties are and have been in compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits required under such Environmental Laws to carry on the business and operations of the Loan Parties;

(b) the Loan Parties have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Loan Parties nor any of their properties is the subject of any claims, investigations, liens, demands or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened under any Environmental Law or to revoke or modify any Environmental Permit held by any of the Loan Parties;

(c) there has been no release, discharge or disposal of Hazardous Materials on, at, under or from any property owned, leased or operated by any of the Loan Parties, or, to the knowledge of the Borrower, any property formerly owned, operated or leased by any Loan Party or arising out of the conduct of the Loan Parties that could reasonably be expected to require investigation, response or corrective action, or could reasonably be expected to result in the Borrower incurring liability, under Environmental Laws; and

(d) there are no facts, circumstances or conditions arising out of or relating to the operations of the Loan Parties or any property owned, leased or operated by any of the Loan Parties or, to the knowledge of the Borrower, any property formerly owned, operated or leased by the Loan Parties or any of their predecessors in interest that could reasonably be expected to require investigation, response or corrective action, or could reasonably be expected to result in any of the Loan Parties incurring liability, under Environmental Laws.

Section 5.10. Taxes.

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Loan Parties and their Subsidiaries have filed all tax returns required to be filed, and have paid all Taxes levied or imposed upon them or their properties, that are due and payable (including in their capacity as a withholding agent) and taking into account applicable extensions, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Parties against the Loan Parties that would, if made, individually or in the aggregate, have a Material Adverse Effect.

Section 5.11. ERISA Compliance.

(a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws.

(b) (i) No ERISA Event has occurred during the five year period prior to the date on which this representation is made or deemed made; (ii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of

ERISA with respect to a Multiemployer Plan; and (iv) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 5.11(b), as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) The Pension Plans of the Loan Parties and the Subsidiaries are funded to the extent required by Law, in each case, except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.12. Subsidiaries; Equity Interests .

As of the Closing Date (after giving effect to any part of the Transactions that is consummated on or prior to the Closing Date), no Loan Party has any material Subsidiaries other than those specifically disclosed in Schedule 5.12, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such material Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such material Subsidiaries are owned free and clear of all Liens except (i) those created under the Collateral Documents and (ii) any Lien that is permitted under Section 7.01. As of the Closing Date, Schedule 5.12(a) sets forth the name and jurisdiction of each Domestic Subsidiary that is a Loan Party and (b) sets forth the ownership interest of the Borrower and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership.

Section 5.13. Margin Regulations; Investment Company Act .

(a) The Borrower is not engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings or drawings under any Letter of Credit will be used for any purpose that violates Regulation U.

(b) None of the Borrower, any Person Controlling the Borrower, or any of its Restricted Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.14. Disclosure .

To the best of the Borrower's knowledge, no report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information and information of a general economic or industry nature) to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and pro forma financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.15. Labor Matters.

Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of the Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with such matters; and (c) all payments due from the Borrower or any of its Restricted Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

Section 5.16. Intellectual Property; Licenses, Etc.

Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, the Borrower and its Restricted Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how, rights in databases, design rights and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses as currently conducted, and, to the knowledge of the Borrower and its Restricted Subsidiaries, such IP Rights do not conflict with the rights of any Person, except to the extent such failure to own, license or possess or such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No advertisement, product, process, method or substance used by any Loan Party or any of its Subsidiaries in the operation of their respective businesses as currently conducted infringes upon any IP Rights held by any Person except for such infringements which individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights is filed and presently pending or, to the knowledge of the Borrower, presently threatened against any Loan Party or any of its Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Except pursuant to written licenses and other user agreements entered into by each Loan Party in the ordinary course of business, as of the Closing Date, all registrations listed in Schedule 8(a) or 8(b) to the Perfection Certificate are valid and in full force and effect, except, in each individual case, to the extent that such a registration is not valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

Section 5.17. Solvency.

On the Closing Date after giving effect to the Transactions, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 5.18. Security Documents.

(a) Valid Liens. Each Collateral Document delivered pursuant to Sections 4.02, 6.11 and 6.13 will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby and (i) when financing statements and other filings in appropriate form are filed in the offices specified on Schedule 4 to the Perfection Certificate and (ii) upon the

taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by the Security Agreement), the Liens created by the Collateral Documents shall constitute fully perfected Liens on, and security interests in (to the extent intended to be created thereby), all right, title and interest of the grantors in such Collateral to the extent perfection can be obtained by filing financing statements, in each case subject to no Liens other than Liens permitted hereunder.

(b) PTO Filing; Copyright Office Filing. When the Security Agreement or a short form thereof is properly filed in the United States Patent and Trademark Office and the United States Copyright Office, to the extent such filings may perfect such interests, the Liens created by such Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in Patents and Trademarks (each as defined in the Security Agreement) registered or applied for with the United States Patent and Trademark Office or Copyrights (as defined in such Security Agreement) registered or applied for with the United States Copyright Office, as the case may be, in each case free and clear of Liens other than Liens permitted under Section 7.01 hereof (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to establish a Lien on registered Patents, Trademarks and Copyrights registered or applied for by the grantors thereof after the Closing Date).

(c) Mortgages. Upon recording thereof in the appropriate recording office, each Mortgage is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable perfected first-priority Liens on, and security interest in, all of the Loan Parties' right, title and interest in and to the Mortgaged Properties thereunder and the proceeds thereof, subject only to Liens permitted hereunder, and when the Mortgages are filed in the offices specified on Schedule 4 to the Perfection Certificate dated the Closing Date (or, in the case of any Mortgage executed and delivered after the date thereof in accordance with the provisions of Sections 6.11 and 6.13, when such Mortgage is filed in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of Sections 6.11 and 6.13), the Mortgages shall constitute fully perfected first-priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, in each case prior and superior in right to any other Person, other than Liens permitted by hereunder.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or the Collateral Documents or (C) on the Closing Date and until required pursuant to Section 6.13 or Section 4.02(e), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.02(e).

ARTICLE VI
Affirmative Covenants

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than Cash Management Obligations or obligations under Secured Hedge Agreements) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or a backstop letter of credit reasonably satisfactory to the applicable L/C Issuer is in place), then from and after the Closing Date, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of its Restricted Subsidiaries to:

Section 6.01. Financial Statements .

(a) Deliver to the Administrative Agent for prompt further distribution to each Lender, as soon as available, but in any event within one hundred eighty (180) days after the end of the fiscal year ending December 31, 2009 and within ninety (90) days after the end of each subsequent fiscal year, beginning with the fiscal year ending December 31, 2010, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity (other than with respect to the fiscal year ending December 31, 2009) and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; provided that no later than 90 days following the Borrower's fiscal year ending December 31, 2009, the Borrower shall deliver to the Administrative Agent, (i) audited combined financial statements of the Acquired Company and its Subsidiaries (but otherwise satisfying the requirements set forth above including with respect to an audit opinion) for the portion of the 2009 fiscal year ending on the day prior to the Closing Date and as of the day prior to the Closing Date and (ii) unaudited consolidated financial statements (otherwise satisfying the requirements set forth above except that such financial statements shall be unaudited) for the Borrower and its Subsidiaries for the period from the Closing Date to December 31, 2009 and as of December 31, 2009, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP subject to the absence of footnotes and the finalization of purchase accounting adjustments;

(b) Deliver to the Administrative Agent for prompt further distribution to each Lender, as soon as available, but in any event within (x) sixty (60) days after the end of the fiscal quarter ending March 31, 2010 and (y) within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower for fiscal quarters ended on or after June 30, 2010, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter and the related (i) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for such fiscal quarter and the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) Deliver to the Administrative Agent for prompt further distribution to each Lender, as soon as available, and in any event no later than ninety (90) days after the end of the fiscal year ending December 31, 2009 and no later than sixty (60) days after the end of each subsequent fiscal year of the Borrower, beginning with the fiscal year ending December 31, 2010, a detailed consolidated budget for the following fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material; and

(d) Deliver to the Administrative Agent with each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b) above, the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of the Borrower (or any direct or indirect parent of the Borrower) or (B) the Borrower's (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to clauses (A) and (B), (i) to the extent such information relates to a parent of the Borrower, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Borrower (or such parent), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualifications or exception as to the scope of such audit.

Documents required to be delivered pursuant to Section 6.01 and Sections 6.02(c) and (d) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any direct or indirect parent of the Borrower) posts such documents, or provides a link thereto on the website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent; provided, however, that if such Compliance Certificate is first delivered by electronic means, the date of such delivery by electronic means shall constitute the date of delivery for purposes of compliance with Section 6.02(a). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws; provided that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08; (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and each Arranger shall be entitled to treat any

Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the Borrower shall not be under any obligation to mark any Borrower Materials “PUBLIC.”

Section 6.02. Certificates; Other Information

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the delivery of the financial statements referred to in Section 6.01(a) and (b), commencing with the first full fiscal quarter completed after the Closing Date, a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) no later than five (5) days after the delivery of the financial statements referred to in Section 6.01(a), but only if available after the use of commercially reasonable efforts, a certificate (or other appropriate reporting means in accordance with applicable auditing standards) of its independent registered public accounting firm stating that in making the examination necessary therefor no knowledge was obtained of any Event of Default under Section 7.11 or, if any such Event of Default shall exist, stating the nature and status of such event;

(c) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly after the furnishing thereof, copies of any material requests or material notices received by any Loan Party (other than in the ordinary course of business) or material statements or material reports furnished to any holder of debt securities (other than in connection with any board observer rights) of any Loan Party or of any of its Restricted Subsidiaries pursuant to the terms of any Mezzanine Debt Documentation, or Junior Financing Documentation in each case in a principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to any clause of this Section 6.02;

(e) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections describing the legal name and the jurisdiction of formation of each Loan Party and the location of the Chief Executive Office of each Loan Party of the Perfection Certificate or confirming that there has been no change in such information since the Closing Date or the date of the last such report, (ii) a description of each event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.05(b) and (iii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate (to the extent that there have been any changes in the identity of such Subsidiaries since the Closing Date or the most recent list provided); and

(f) promptly, such additional customary information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Section 6.03. Notices

Promptly after a Responsible Officer of the Borrower or any Subsidiary Guarantor has obtained knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) Adverse Effect; and of any matter that has resulted or could reasonably be expected to result in a Material

(c) of the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority with respect to any Loan Document.

Each notice pursuant to this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b) or (c) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04. Payment of Obligations

Pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its Taxes (whether or not shown on a Tax return), except, in each case, to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05. Preservation of Existence, Etc

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization and (b) take all reasonable action to maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of (a) or (b), (i) (other than with respect to the Borrower) to the extent that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to a transaction permitted by Section 7.04 or 7.05.

Section 6.06. Maintenance of Properties

Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice and in the normal conduct of its business.

Section 6.07. Maintenance of Insurance

(a) Generally. Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons.

(b) Requirements of Insurance. Not later than ninety (90) days after the Closing Date (or the date any such insurance is obtained, in the case of insurance obtained after the Closing Date), the Borrower shall use commercially reasonable efforts to ensure that (i) all such insurance with respect to any Collateral shall provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 10 days (or, to the extent reasonably available, 30 days) after receipt by the Collateral Agent of written notice thereof (the Borrower shall deliver a copy of the policy (and to the extent any such policy is renewed, a renewal policy) or other evidence thereof to the Administrative Agent and the Collateral Agent, or insurance certificate with respect thereto) and (ii) all such insurance with respect to any Collateral shall name the Collateral Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) and loss payee (in the case of property insurance), as applicable.

(c) Flood Insurance. With respect to each Mortgaged Property, obtain flood insurance in such total amount as the Administrative Agent or the Required Lenders may from time to time reasonably require, if at any time the area in which any material improvements are located on any Mortgaged Property is designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.

Section 6.08. Compliance with Laws

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09. Books and Records

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP consistently applied and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles that are applicable in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10. Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (other than records of the Board of Directors of such Loan Party or such Subsidiary), and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense; provided further that when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower nor any Restricted Subsidiary shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or (iii) is subject to attorney client or similar privilege or constitutes attorney work-product.

Section 6.11. Additional Collateral; Additional Guarantors.

At the Borrower's expense, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon (x) the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by the Borrower, (y) any Excluded Subsidiary ceasing to constitute an Excluded Subsidiary or (z) or the designation in accordance with Section 6.14 of any existing direct or indirect wholly owned Domestic Subsidiary (other than an Excluded Subsidiary) as a Restricted Subsidiary:

(i) within 60 days after such formation, acquisition, cessation or designation, or such longer period as the Administrative Agent may agree in writing in its discretion:

(A) cause each such Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note and other security agreements and documents (including, with respect to such Mortgages, the documents listed in Section 6.13(b)), as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent, subject to local law requirements, with the Mortgages, Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date), in each case granting first-priority Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement (and the parent of each such Domestic Subsidiary that is a Guarantor) to deliver any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Restricted Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and each direct or indirect parent of such Restricted Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement or the Collateral Documents, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement or the Collateral Documents;

(ii) if reasonably requested by the Administrative Agent or the Collateral Agent, within forty-five (45) days after such request (or such longer period as the Administrative Agent may agree in writing in its sole discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request;

(iii) as promptly as practicable after the request therefor by the Administrative Agent or Collateral Agent, deliver to the Collateral Agent with respect to each Material Real Property, any existing title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; provided, however, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report whose disclosure to the Administrative Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if reasonably requested by the Administrative Agent or the Collateral Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in writing in its sole discretion), deliver to the Collateral Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement or the Collateral Documents, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (b) below.

(b) Not later than one hundred twenty (120) days after the acquisition by any Loan Party of Material Real Property as determined by the Borrower (acting reasonably and in good faith) (or such longer period as the Administrative Agent may agree in writing in its sole discretion) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, which property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, cause such property to be subject to a first-priority Lien and Mortgage in favor of the Collateral Agent for the benefit of the Secured Parties and take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

(c) Always ensuring that the Obligations are secured by a first-priority security interest in all the Equity Interests of the Borrower.

Section 6.12. Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Loan Parties are required by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13. Further Assurances and Post-Closing Conditions.

(a) Within ninety (90) days after the Closing Date (subject to extension by the Administrative Agent in its reasonable discretion), deliver each Collateral Document required to satisfy the Collateral and Guarantee Requirement or required pursuant to the terms of any Collateral Document, duly executed by each Loan Party required to be party thereto, together with all documents and instruments required to perfect the security interest or Lien of the Collateral Agent in the Collateral (if any) free of any other pledges, security interests or mortgages, except Liens permitted under the Collateral and Guarantee Requirement, to the extent required pursuant to the Collateral and Guarantee Requirement or the Collateral Documents.

(b) Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement or the Collateral Documents. If the Administrative Agent or the Collateral Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of the Real Property of any Loan Party subject to a mortgage constituting Collateral, the Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA.

Section 6.14. Designation of Subsidiaries.

The Borrower may at any time after the Closing Date designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Borrower shall be in compliance with the covenants set forth in Section 7.11, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period (or, if no Test Period cited in Section 7.11 has passed, the covenants in Section 7.11 for the first Test Period cited in such Section shall be satisfied as of the last four quarters ended), in each case, as if such designation had occurred on the last day of

such fiscal quarter of the Borrower and, as a condition precedent to the effectiveness of any such designation, the Borrower shall deliver to the Administrative Agent a certificate setting forth in reasonable detail the calculations demonstrating such compliance), (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" for the purpose of the Mezzanine Debt, or any Junior Financing, as applicable, (iv) no Restricted Subsidiary may be designated an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary and (v) if a Restricted Subsidiary is being designated as an Unrestricted Subsidiary hereunder, the sum of (A) the fair market value of assets of such Subsidiary as of such date of designation (the "Designation Date"), plus (B) the aggregate fair market value of assets of all Unrestricted Subsidiaries designated as Unrestricted Subsidiaries pursuant to this Section 6.14 prior to the Designation Date (in each case measured as of the date of each such Unrestricted Subsidiary's designation as an Unrestricted Subsidiary) shall not exceed \$75,000,000 as of such Designation Date pro forma for such designation. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower's investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower's Investment in such Subsidiary.

Section 6.15. Maintenance of Ratings.

The Borrower shall use commercially reasonable efforts to maintain a public corporate rating from S&P and a public corporate family rating from Moody's, in each case in respect of the Borrower, and a public rating of the Facilities by each of S&P and Moody's.

ARTICLE VII.
Negative Covenants

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than Cash Management Obligations or obligations under Secured Hedge Agreements) which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or a backstop letter of credit reasonably satisfactory to the applicable L/C Issuer is in place), then from and after the Closing Date:

Section 7.01. Liens.

Neither the Borrower nor the Restricted Subsidiaries shall, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date; provided that any Lien securing Indebtedness in excess of (x) \$2,500,000 individually or (y) \$10,000,000 in the aggregate (when taken together with all other Liens securing obligations outstanding in reliance on this clause (b) that are not listed on Schedule 7.01(b)) shall only be permitted to the extent such Lien is listed on Schedule 7.01(b), and any modifications, replacements, renewals, refinancings or extensions thereof; provided that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof, and (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;

(c) Liens for Taxes that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP to the extent required by GAAP;

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, that are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP to the extent required by GAAP;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Restricted Subsidiaries;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) letters of credit and bank guarantees required or requested by any Governmental Authority) incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, and any exceptions on the Mortgage Policies issued in connection with the Mortgaged Properties;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of setoff) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institutions general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.02 (i) or (n) or, to the extent related to any of the foregoing, Section 7.02(r) to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party or (ii) in favor of the Borrower or any Subsidiary Guarantor;

(n) any interest or title of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business permitted by this Agreement; Section 7.02;

(p) Liens deemed to exist in connection with Investments in repurchase agreements under

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of setoff or rights of pledge (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(s) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(t) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 7.03(e); provided that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) Liens on property of any Restricted Subsidiary that is not a Loan Party securing Indebtedness of the applicable Subsidiary permitted under Section 7.03;

(w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the Closing Date (including Capital Leases); provided that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) (a) the obligations secured thereby do not exceed \$75,000,000 at any time outstanding and (b) the Indebtedness secured thereby is permitted under Section 7.03(g);

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by clauses (u) and (w) of this Section 7.01; provided that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness);

(bb) other Liens (which may be Liens on the Collateral so long as any such Liens securing Indebtedness for money borrowed are junior to the Liens securing the Obligations and any such obligations secured by junior Lien on the Collateral in excess of \$10,000,000 in the aggregate shall be expressly subject to a Second Lien Intercreditor Agreement) securing obligations in an aggregate principal amount outstanding at any time not to exceed \$75,000,000;

(cc) Liens securing Permitted Notes issued pursuant to Section 7.03(s) so long as such Liens are subject to the First Lien Intercreditor Agreement or a Second Lien Intercreditor Agreement;

(dd) Liens in favor of the Borrower or a Restricted Subsidiary securing Indebtedness (other than Indebtedness of a Loan Party to a Restricted Subsidiary that is not a Loan Party) permitted under Section 7.03(d); and

(ee) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods.

Section 7.02. Investments.

Neither the Borrower nor the Restricted Subsidiaries shall directly or indirectly, make or hold any Investments, except:

(a) Investments by the Borrower or any of its Restricted Subsidiaries in assets that were Cash Equivalents when such Investment was made;

(b) loans or advances to officers, directors and employees of any Loan Party (or any direct or indirect parent thereof) or any of its Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings or any direct or indirect parent thereof (provided that the amount of such loans and advances shall be contributed to the Borrower in cash as common equity) and (iii) for any other purposes not described in the foregoing clauses (i) and (ii); provided that the aggregate principal amount outstanding at any time under clause (iii) above shall not exceed \$15,000,000;

(c) Investments (i) by the Borrower or any Restricted Subsidiary in any Loan Party and (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party;

(d) Investments (i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and (ii) received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(e) Investments consisting of (x) transactions permitted under Sections 7.01, 7.03 (other than 7.03(c) and (d)), 7.04 (other than 7.04(d) and (e)) and 7.05 (other than 7.05(e)), (y) Restricted Payments permitted by Section 7.06 and (z) repayments or other acquisitions of Indebtedness of the Company or a Subsidiary Guarantor not prohibited by Section 7.13;

(f) Investments (i) existing or contemplated on the Closing Date and set forth on Schedule 7.02(f) and any modification, replacement, renewal, reinvestment or extension thereof and (ii) existing on the Closing Date by the Borrower or any Restricted Subsidiary in the Borrower or any other Restricted Subsidiary and any modification, renewal or extension thereof; provided that the amount of any original Investment under this clause (f) is not increased except by the terms of such Investment as of the Closing Date or as otherwise permitted by Section 7.02;

(g) Investments in Swap Contracts permitted under Section 7.03;

(h) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05;

(i) any acquisition of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares or any options for Equity Interests that cannot, as a matter of law, be cancelled, redeemed or otherwise extinguished without the express agreement of the holder thereof at or prior to acquisition) in, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired in a Permitted Acquisition), in a single transaction or series of related transactions, if immediately after giving effect thereto: (i) no Event of Default shall have occurred and be continuing or would result therefrom (other than in respect of any Permitted Acquisition made pursuant to a legally binding commitment entered into at a time when no Default exists or would result therefrom); (ii) the Borrower and the Restricted Subsidiaries shall be in Pro Forma Compliance with the covenants set forth in Section 7.11 after giving effect to such acquisition or investment and any related transactions; (iii) any acquired or newly formed Restricted Subsidiary shall not be liable for any Indebtedness except for Indebtedness otherwise permitted by Section 7.03; (iv) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary or an Unrestricted Subsidiary (it being understood that the acquisition of an Unrestricted Subsidiary as part of a Permitted Acquisition shall be deemed to be an Investment made in reliance on a provision of this

Section 7.02 other than this clause (i)) shall become Guarantors, in each case, in accordance with Section 6.11, and (v) the aggregate amount of such Investments by Loan Parties in assets that are not (or do not become) owned by a Loan Party or in Equity Interests in Persons that do not become Loan Parties upon consummation of such acquisition shall not exceed \$75,000,000 (any such acquisition, a "Permitted Acquisition");

(j) Investments made in connection with the Transactions;

(k) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances to the Borrower and any other direct or indirect parent of the Borrower, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments permitted to be made to such parent in accordance with Section 7.06(f), (g) or (h);

(n) other Investments (including in connection with Permitted Acquisitions as contemplated pursuant to Sections 7.02(i)(iv) and (i) (v)) in an aggregate amount outstanding pursuant to this clause (n) (valued at the time of the making thereof, and without giving effect to any write downs or write offs thereof) at any time not to exceed (x) \$175,000,000 (net of any return in respect thereof, including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) plus (y) the portion, if any, of the Cumulative Credit on the date of such election that the Borrower elects to apply to this subsection (y), such election to be specified in a written notice of a Responsible Officer of the Borrower calculating in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied;

(o) advances of payroll payments to employees in the ordinary course of business;

(p) (i) Investments made in the ordinary course of business and consistent with past practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors in the ordinary course of business and consistent with past practice and (ii) Investments to the extent that payment for such Investments is made solely with Equity Interests of the Borrower (or any direct or indirect parent of the Borrower);

(q) Investments of a Restricted Subsidiary acquired after the Closing Date or of a corporation merged or amalgamated or consolidated into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary, in each case in accordance with Section 7.04 after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation, do not constitute a material portion of the aggregate assets acquired by the Borrower and its Restricted Subsidiaries in such transaction and were in existence on the date of such acquisition, merger or consolidation;

(r) Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary contemplated pursuant to Section 7.02(n) or permitted under Section 7.02(i)(v);

(s) Guarantees by the Borrower or any of its Restricted Subsidiaries of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business; and

(t) loans and leases of animals to third parties for the purposes of exhibition, storage or breeding, as the case may be, in each case in the ordinary course of business and consistent with past practices.

Section 7.03. Indebtedness.

Neither the Borrower nor any of the Restricted Subsidiaries shall directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party under the Loan Documents;

(b) Indebtedness (i) outstanding on the Closing Date and listed on Schedule 7.03(b) and any refinancing thereof and (ii) intercompany Indebtedness outstanding on the Closing Date and any refinancing thereof, of which any amount owed by a Restricted Subsidiary that is not a Loan Party to a Loan Party shall be evidenced by an Intercompany Note; provided that all such Indebtedness of any Loan Party owed to any Restricted Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; provided that (A) no Guarantee of any Mezzanine Debt or Junior Financing shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary of a Loan Party) to the extent constituting an Investment permitted by Section 7.02; provided that all such Indebtedness shall be evidenced by an Intercompany Note;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any Restricted Subsidiary prior to or within 270 days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset in an aggregate amount not to exceed \$30,000,000 (together with any Permitted Refinancings thereof) at any time outstanding, (ii) Attributable Indebtedness arising out of sale-leaseback transactions permitted by Section 7.05(m) and (iii) any Permitted Refinancing of any of the foregoing;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes;

(g) Indebtedness of the Borrower or any Restricted Subsidiary (A) assumed in connection with any Permitted Acquisition, provided that such Indebtedness is not incurred in contemplation of such Permitted Acquisition, and any Permitted Refinancing thereof or (B) incurred to finance a Permitted Acquisition and any Permitted Refinancing thereof; provided that (w) in the case of clauses (A) and (B), such Indebtedness

and all Indebtedness resulting from a Permitted Refinancing thereof is unsecured (except for Liens permitted by Section 7.01(w) securing Indebtedness (together with Permitted Refinancings thereof) incurred pursuant to clause (A) in an aggregate principal outstanding not to exceed \$75,000,000 and Liens securing Indebtedness incurred pursuant to clause (A) permitted by Section 7.01(bb)), (x) in the case of clauses (A) and (B), both immediately prior and after giving effect thereto, (1) no Default shall exist or result therefrom (other than a Permitted Acquisition made pursuant to a legally binding commitment entered into at a time when no Default exists or would result therefrom), and (2) the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.11 and (y) in the case of any such incurred Indebtedness under clause (B), such Indebtedness matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the seventh anniversary of the Closing Date; provided, further, that the amount of Indebtedness incurred by Restricted Subsidiaries that are not Loan Parties under this Section 7.03(g) shall not exceed \$50,000,000 in the aggregate;

(h) Indebtedness representing deferred compensation to employees of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower or any direct or indirect parent of the Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including customary earnouts) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Borrower or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions, and Permitted Acquisitions or any other Investment expressly permitted hereunder;

(l) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections and similar arrangements in each case in connection with deposit accounts in the ordinary course of business;

(m) Indebtedness of the Borrower or any of its Restricted Subsidiaries, in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed \$125,000,000;

(n) Indebtedness consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(o) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 30 days following the due date thereof;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) Indebtedness constituting the Mezzanine Debt and any Permitted Refinancing thereof;

(r) Indebtedness supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

(s) (i) Permitted Notes in an aggregate principal amount, when aggregated with the amount of Incremental Term Loans and Revolving Commitment Increases pursuant to Section 2.14, not to exceed \$150,000,000, (ii) to the extent Permitted Notes may not be issued in reliance on the foregoing subclause (i), Permitted Notes that are secured on a pari passu basis with the Obligations in an aggregate principal amount that would not cause the First Lien Secured Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements were required to have been delivered pursuant to Section 6.01(a) or (b), as applicable (or, if no Test Period has passed, as of the last four quarters ended), as if such Permitted Notes had been outstanding on the last day of such four quarter period, to exceed 2.75 to 1.00, (iii) Permitted Notes, the Net Proceeds of which are applied to the permanent repayment of Term Loans pursuant to Section 2.05(b)(iii), (iv) Permitted Notes that are offered on a pro rata basis to all Lenders that are “Qualified Institutional Buyers” (as defined in Rule 144A under the Securities Act of 1933, as amended) holding Term Loans and in a principal amount not to exceed the amount of Term Loans exchanged for such Permitted Notes pursuant to procedures reasonably acceptable to the Administrative Agent (including procedures designed to comply with securities laws); provided that any Term Loans exchanged for such Permitted Notes shall be deemed to have been repaid immediately upon the effectiveness of such exchange, and (v) in the case of Permitted Notes incurred under any of the foregoing clauses (i), (ii), (iii) and (iv), Permitted Refinancings thereof; and

(t) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (s) above.

For purposes of determining compliance with this Section 7.03, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in clauses (a) through (t) above, the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; provided that (i) all Indebtedness outstanding under the Loan Documents will at all times be deemed to be outstanding in reliance only on the exception in clause (a) of Section 7.03, and (ii) all Indebtedness constituting Mezzanine Debt will be deemed to be outstanding in reliance only on the exception in clause (q) of Section 7.03.

Section 7.04. Fundamental Changes

Neither the Borrower nor any of the Restricted Subsidiaries shall merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction in the United States); provided that the Borrower shall be the continuing or surviving Person or (ii) one or more other Restricted Subsidiaries; provided that when any Person that is a Loan Party is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person;

(b) (i) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party and (ii) any Subsidiary may liquidate or dissolve or the Borrower or any Subsidiary may change its legal form if the Borrower determines in good faith that such action is in the best interest of the Borrower and its Subsidiaries and if not materially disadvantageous to the Lenders (it being understood that in the case of any change in legal form, a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; provided that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or the Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 7.02 (other than Section 7.02(e)) and 7.03, respectively;

(d) so long as no Default exists or would result therefrom, the Borrower may merge with any other Person; provided that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "Successor Company"), (A) the Successor Company shall be an entity organized or existing under the Laws of the United States, any state thereof, the District of Columbia or any territory thereof, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Company's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Company's obligations under the Loan Documents, (E) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Administrative Agent) confirmed that its obligations thereunder shall apply to the Successor Company's obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; provided, further, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Default exists or would result therefrom (in the case of a merger involving a Loan Party), any Restricted Subsidiary may merge with any other Person in order to effect an Investment permitted pursuant to Section 7.02; provided that the continuing or surviving Person shall be a Restricted Subsidiary or the Borrower, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) the Borrower and the Restricted Subsidiaries may consummate the Acquisition, related transactions contemplated by the Acquisition Agreement (and documents related thereto) and the Transactions; and

(g) so long as no Default exists or would result therefrom, a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05.

Section 7.05. Dispositions

Neither the Borrower nor any of the Restricted Subsidiaries shall, directly or indirectly, make any Disposition or enter into any agreement to make any Disposition (other than as part of or in connection with the Transaction), except:

(a) (i) Dispositions of obsolete, surplus or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions in the ordinary course of business of property no longer used or useful in the conduct of the business of the Borrower or any of its Restricted Subsidiaries and (ii) Dispositions of property no longer used or useful in the conduct of the business of the Borrower and its Restricted Subsidiaries outside the ordinary course of business (and for consideration complying with the requirements applicable to Dispositions pursuant to clause (j) below) in an aggregate amount not to exceed \$25,000,000;

(b) Dispositions of inventory, goods held for sale in the ordinary course of business and immaterial assets (including allowing any registrations or any applications for registration of any intellectual property to lapse or go abandoned) in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or any Restricted Subsidiary; provided that if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party or (ii) if such transaction constitutes an Investment, such transaction is permitted under Section 7.02;

(e) to the extent constituting Dispositions, the granting of Liens permitted by Section 7.01, the making of Investments permitted by Section 7.02, mergers, consolidations and liquidations permitted by Section 7.04 (other than Section 7.04(g)) and Restricted Payments permitted by Section 7.06;

(f) Dispositions made on the Closing Date to consummate the Transaction;

(g) Dispositions of Cash Equivalents;

(h) leases, subleases, licenses or sublicenses (including the provision of software or the licensing of other intellectual property rights), in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(i) transfers of property subject to Casualty Events;

(j) Dispositions of property not otherwise permitted under this Section 7.05 in an aggregate amount during the term of this Agreement not to exceed \$500,000,000; provided that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default exists), no Default shall exist or would result from such Disposition, (ii) with respect to any Disposition pursuant to this clause (j) for a purchase price in excess of \$5,000,000, the Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Sections 7.01(a), (f), (k), (p), (q), (bb) and (cc) and clauses (i) and (ii) of Section 7.01(r)); provided, however, that for the purposes of this clause (j)(ii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary associated with the assets or Restricted Subsidiary sold in such Disposition that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by such the Borrower or the applicable Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed \$10,000,000 at any

time (net of any non-cash consideration converted into cash and Cash Equivalents), and (iii) to the extent that the aggregate amount of Net Proceeds received by the Borrower or a Restricted Subsidiary from all Dispositions made pursuant to this Section 7.05(j) exceeds \$250,000,000, all Net Proceeds in excess of such amount shall be applied to prepay Term Loans in accordance with Section 2.05(b)(ii) and may not be reinvested in the business of the Borrower or a Restricted Subsidiary;

(k) Dispositions listed on Schedule 7.05(k);

(l) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business;

(m) Dispositions of property pursuant to sale-leaseback transactions; provided that the fair market value of all property so Disposed of after the Closing Date shall not exceed \$50,000,000;

(n) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrower and its Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(o) Unrestricted Subsidiary; any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an

(p) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements; and

(q) the unwinding of any Swap Contracts pursuant to its terms;

provided that any Disposition of any property pursuant to Section 7.05(j) or (m) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent or the Collateral Agent, as applicable, shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06. Restricted Payments .

Neither the Borrower shall, nor shall the Borrower permit any of its Restricted Subsidiaries to, directly or indirectly, declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower, and other Restricted Subsidiaries of the Borrower (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 7.03) of such Person;

(c) Restricted Payments made (i) on the Closing Date to consummate the Transactions, (ii) in respect of working capital adjustments or purchase price adjustments pursuant to the Acquisition Agreement and (iii) in order to satisfy indemnity and other similar obligations under the Acquisition Agreement;

(d) to the extent constituting Restricted Payments, the Borrower and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.02 (other than 7.02(e)), 7.04 or Section 7.08 (other than Section 7.08(f));

(e) repurchases of Equity Interests in the Borrower (or any direct or indirect parent thereof) or any Restricted Subsidiary of the Borrower deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(f) the Borrower and each Restricted Subsidiary may pay (or make Restricted Payments to allow the Borrower or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of such Restricted Subsidiary (or of the Borrower or any other such direct or indirect parent thereof) by any future, present or former employee, officer, director, manager or consultant of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent of such Restricted Subsidiary) or any of its Subsidiaries upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; provided that the aggregate amount of Restricted Payments made pursuant to this clause (f) shall not exceed \$15,000,000 in any calendar year (which shall increase to \$25,000,000 subsequent to the consummation of a Qualified IPO of Holdings or any direct or indirect parent thereof, as the case may be) (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$25,000,000 in any calendar year (which shall increase to \$50,000,000 subsequent to the consummation of a Qualified IPO of Holdings or any direct or indirect parent thereof, as the case may be)); provided further that such amount in any calendar year may be increased by an amount not to exceed:

(i) to the extent contributed to the Borrower, the Net Proceeds from the sale of Equity Interests of any of the Borrower's direct or indirect parent companies, in each case to members of management, managers, directors or consultants of Holdings, the Borrower, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Closing Date; plus

(ii) the Cash Proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries; less

(iii) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (i) and (ii) of this Section 7.06(f);

(g) the Borrower may make Restricted Payments in an aggregate amount equal to ~~when combined with the amount applied to make prepayments of Junior Financing pursuant to Section 7.13(a)(v) (x) \$100,000,000, plus (y) if~~ the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this paragraph so long as (i) the Total Leverage Ratio determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements were required to have been delivered pursuant to Section 6.01(a) or (b), as applicable (or, if no Test Period has passed, as of the last four quarters ended), as if such Restricted Payment had been made on the last day of such four quarter period, is less than or equal to 3.25: 1.00, the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this paragraph, such election to 1.00 and (ii) no Default has occurred and is continuing; provided that any election made pursuant to this clause (g) shall be specified in a written notice of a Responsible Officer of the Borrower calculating in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied; provided that with respect to any Restricted Payment made pursuant to clause (y) above, no Default has occurred and is continuing or would result therefrom;

(h) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(i) to pay its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries so long as allocable to such entity in accordance with GAAP, Transaction Expenses and any reasonable and customary indemnification claims made by directors or officers of such parent attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(ii) the proceeds of which shall be used by such parent to pay franchise taxes and other fees, taxes and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iii) for any taxable period in which the Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of Borrower is the common parent (a "Tax Group"), to pay federal, foreign, state and local income Taxes of such Tax Group that are attributable to the taxable income of the Borrower and/or its Subsidiaries; provided that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the Borrower and the Subsidiaries would have been required to pay as a stand-alone Tax Group, reduced by any portion of such income Taxes directly paid by the Borrower or any of its Subsidiaries; provided further that the permitted payment pursuant to this clause (iii) with respect to any Taxes of any Unrestricted Subsidiary for any taxable period shall be limited to the amount actually paid with respect to such period by such Unrestricted Subsidiary to the Borrower or its Restricted Subsidiaries for the purposes of paying such consolidated, combined or similar Taxes;

(iv) to finance any Investment that would be permitted to be made pursuant to Section 7.02 if such parent were subject to such section; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 6.11;

(v) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of Holdings or any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries;

(vi) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering by Holdings (or any direct or indirect parent thereof) that is directly attributable to the operations of the Borrower and its Restricted Subsidiaries; and

(vii) the proceeds of which shall be used to pay customary costs, fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering permitted by this Agreement;

(i) payments made or expected to be made by the Borrower or any of the Restricted Subsidiaries in respect of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options; ~~and~~

(j) after a Qualified IPO, (i) any Restricted Payment by the Borrower or any other direct or indirect parent of the Borrower to pay listing fees and other costs and expenses attributable to being a publicly traded company which are reasonable and customary and (ii) Restricted Payments of up to 6% per annum of the net proceeds received by (or contributed to) the Borrower and its Restricted Subsidiaries from such Qualified IPO ; and

(k) the Borrower may make the Amendment No. 3 Distribution .

Section 7.07. Change in Nature of Business .

The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business reasonably related, complementary, synergistic or ancillary thereto (including related, complementary, synergistic or ancillary technologies) or reasonable extensions thereof.

Section 7.08. Transactions with Affiliates .

Neither the Borrower shall, nor shall the Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than (a) transactions among the Borrower and its Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such transaction, (b) on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions, (d) the issuance of Equity Interests to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries in connection with the Transactions, (e) if no Event of Default is occurring or would result therefrom, the payment of management, monitoring, consulting, transaction and advisory fees (but for avoidance of doubt, excluding termination fees) in an aggregate amount not to exceed the amount payable pursuant to the terms of the Investor Management Agreement and related indemnities and reasonable expenses, (f) Restricted Payments permitted under Section 7.06, (g) loans and other transactions among the Borrower and its Subsidiaries and joint ventures (to the extent any such Subsidiary that is not a Restricted Subsidiary or any such joint venture is only an Affiliate as a result of Investments by the Borrower and its Restricted Subsidiaries in such Subsidiary or joint venture) to the extent otherwise permitted under this Article VII, (h) employment and severance arrangements between the Borrower and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements in the ordinary course of business, (i) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of the Borrower and its Restricted Subsidiaries (or any

direct or indirect parent of the Borrower) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, (j) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect, (k) customary payments by the Borrower and any of its Restricted Subsidiaries to the Investors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by the majority of the members of the board of directors or managers or a majority of the disinterested members of the board of directors or managers of the Borrower, in good faith, (l) payments by the Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Borrower to the extent attributable to the ownership or operation of the Borrower and the Subsidiaries, but only to the extent permitted by Section 7.06(h)(iii), (m) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any Affiliate of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof, (n) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the board of directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party, (o) any payments required to be made pursuant to the Acquisition Agreement, (p) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to shareholders pursuant to the Shareholder Agreement and (q) any termination fees payable pursuant to the Investor Management Agreement not to exceed the amount set forth in the Investor Management Agreement as in effect on the Closing Date; provided that in the case of payments under this clause (q), (A) the Borrower and its Subsidiaries shall be in Pro Forma Compliance with the covenants set forth in Section 7.11 after giving effect to such payments, and (B) the Total Leverage Ratio shall be less than or equal to 4.0 to 1.00 after giving effect to such payments.

Section 7.09. Burdensome Agreements.

The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of (a) any Restricted Subsidiary of the Borrower that is not a Guarantor to make Restricted Payments to the Borrower or any Guarantor or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; provided that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.09) are listed on Schedule 7.09 hereto and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation, (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower; provided further that this clause (ii) shall not apply to Contractual Obligations that are binding on a Person that becomes a Restricted Subsidiary pursuant to Section 6.14, (iii) represent Indebtedness of a Restricted Subsidiary of the Borrower which is not a Loan Party which is permitted by Section 7.03, (iv) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition, (v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.02 and applicable solely to such joint venture entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by such Indebtedness, (vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate

to the assets subject thereto, (viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e), (g) or (m) and to the extent that such restrictions apply only to the property or assets securing such Indebtedness or to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, (xii) are customary restrictions contained in the Mezzanine Debt Documents or (xiii) arise in connection with cash or other deposits permitted under Sections 7.01 and 7.02 and limited to such cash or deposit.

Section 7.10. Use of Proceeds.

The proceeds of the Original Term Loans received on the Closing Date, together with the Equity Contribution and the proceeds of the Mezzanine Debt, shall be used solely to pay the cash consideration for the Acquisition (and related transactions) and to pay Transaction Expenses and for other purposes contemplated by, or otherwise fund, the Transactions. The proceeds of the Revolving Credit Loans and Swing Line Loans, shall be used to pay the cash consideration for the Acquisition and to pay Transaction Expenses, for working capital, general corporate purposes, and any other purpose not prohibited by this Agreement including Permitted Acquisitions, and other Investments; provided that on the Closing Date, after consummating the Transactions, the sum of (x) the excess of the aggregate Revolving Credit Commitments at such time less the aggregate Revolving Credit Exposure plus (y) the amount of unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries shall be not less than \$50,000,000. The Letters of Credit shall be used solely to support obligations of the Borrower and its Subsidiaries incurred for working capital, general corporate purposes and any other purpose not prohibited by this Agreement.

Section 7.11. Financial Covenants.

(a) Total Leverage Ratio. The Borrower shall not permit the Total Leverage Ratio as of the last day of any Test Period ending during any period set forth in the table below (commencing with the first full fiscal quarter completed after Closing Date) to be greater than the ratio set forth below opposite the last day of such Test Period:

	<u>Test Period</u>		<u>Total Leverage Ratio</u>
January 1, 2010	-	December 31, 2010	5.15 to 1.0
January 1, 2011	-	December 31, 2011	4.95 to 1.0
January 1, 2012	-	December 31, 2012	4.65 <u>6.25</u> to 1.0
January 1, 2013	-	December 31, 2013	4.15 <u>5.75</u> to 1.0
January 1, 2014	-	December 31, 2014	3.75 <u>5.25</u> to 1.0
January 1, 2015 and thereafter			3.65 <u>4.50</u> to 1.0

(b) Interest Coverage Ratio. The Borrower shall not permit the Interest Coverage Ratio as of the last day of any Test Period ending during any period set forth in the table below (commencing with the first full fiscal quarter completed after Closing Date) to be less than the ratio set forth below opposite the last day of such Test Period:

	Test Period		Interest Coverage Ratio
January 1, 2010	-	December 31, 2010	1.70 to 1.0
January 1, 2011	-	December 31, 2011	1.80 to 1.0
January 1, 2012	-	December 31, 2012	1.90 to 1.0
January 1, 2013	-	December 31, 2013	1.95 to 1.0
January 1, 2014 and thereafter			2.05 to 1.0

(c) Maximum Capital Expenditures. (i) The Borrower shall not and shall not permit the Restricted Subsidiaries to make any Capital Expenditures that would cause the aggregate amount of Capital Expenditures made by the Borrower and the Restricted Subsidiaries in any fiscal year commencing with the fiscal year ending December 31, 2010 to exceed \$ ~~165,000,000~~ 165,000,000; provided that up to an aggregate amount of \$65.0 million of Capital Expenditures made by the Borrower and the Restricted Subsidiaries for improving worker safety conditions related to Orca infrastructure spending (“ Orca Infrastructure CapEx ”) incurred on or after January 1, 2012 shall be excluded for purposes of determining compliance with this Section 7.11(c).

(ii) Notwithstanding anything to the contrary contained in clause (c)(i) above, (x) to the extent that the aggregate amount of Capital Expenditures made by the Borrower and the Restricted Subsidiaries in any fiscal year (for the avoidance of doubt, after giving effect to any CapEx Pull-Forward Amount utilized in the preceding year that reduced the amount of Capital Expenditures that could be made in such year but disregarding any Capital Expenditures made in reliance on any Rollover Amount utilized during such year) pursuant to such clause (i) is less than the amount set forth therein, the amount of such difference (the “Rollover Amount”) may be carried forward and used to make Capital Expenditures in the immediately succeeding fiscal year (with such Rollover Amount deemed utilized first in such succeeding year); provided that any Orca Infrastructure CapEx made prior to January 1, 2012 shall be excluded from the aggregate amount of Capital Expenditures made in a given fiscal year for purposes of determining the Rollover Amount and (y) for any fiscal year, the amount of Capital Expenditures that would otherwise be permitted in such fiscal year pursuant to this Section 7.11(c) (including as a result of the application of clause (x) of this clause (ii)) may be increased by an amount not to exceed \$25,000,000 (the “CapEx Pull-Forward Amount”). The actual CapEx Pull-Forward Amount in respect of any such fiscal year shall reduce, on a dollar-for-dollar basis, the amount of Capital Expenditures that are permitted to be made in the immediately succeeding fiscal year.

(iii) In addition to the Capital Expenditures permitted pursuant to the preceding paragraphs (i) and (ii), the Borrower and its Restricted Subsidiaries may make additional Capital Expenditures at any time in an amount not to exceed the portion, if any, of the Cumulative Credit on the date of such Capital Expenditure that the Borrower elects to apply to this Section 7.11(c)(iii).

Section 7.12. Accounting Changes.

The Borrower shall not make any change in its fiscal year; provided, however, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 7.13. Prepayments, Etc. of Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest shall be permitted) the Mezzanine Debt, any Indebtedness constituting a Permitted Refinancing of the Mezzanine Debt, any subordinated Indebtedness incurred under Section 7.03(g) or any other Indebtedness that is required to be subordinated to the Obligations pursuant to the terms of the Loan Documents (collectively, "Junior Financing") or make any payment in violation of any subordination terms of any Junior Financing Documentation, except (i) the refinancing thereof with the Net Proceeds of any Indebtedness constituting a Permitted Refinancing; provided that if such Indebtedness was originally incurred under Section 7.03(g), such Permitted Refinancing is permitted pursuant to Section 7.03(g), (ii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents, (iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary to the extent not prohibited by the subordination provisions contained in the Intercompany Note, (iv) prepayments or purchases of Junior Financing with Declined Proceeds as required pursuant to the Junior Financing Documentation and (v) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed ~~when combined with the amount of Restricted Payments pursuant to Section 7.06(g) \$100,000,000 plus~~, if the Total Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements were required to have been delivered pursuant to Section 6.01(a) or (b), as applicable (or, if no Test Period has passed, as of the last four quarters ended), as if such prepayment, redemption, purchase, defeasance or other payment in respect of Junior Financings had been made on the last day of such four quarter period, is less than or equal to 3.25 to 1.00, the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this paragraph ~~such~~; provided that any election to made pursuant to this clause (a) shall be specified in a written notice of a Responsible Officer of the Borrower calculating in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied.

(b) The Borrower shall not, nor shall it permit any of the Restricted Subsidiaries to, directly or indirectly, amend, modify or change in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation without the consent of the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed); provided that the Mezzanine Debt Amendment shall be deemed to not be materially adverse to the interests of the Lenders for purposes of this Section 7.13(b).

Section 7.14. Permitted Activities.

Holdings shall not engage in any material operating or business activities; provided that the following shall be permitted in any event: (i) its ownership of the Equity Interests of Borrower and activities incidental thereto, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents and any other Indebtedness, (iv) any public offering of its common stock or any other issuance or sale of its Equity Interests, (v) financing activities, including the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of the Borrower and guaranteeing the obligations of the Borrower, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (vii) holding any cash or property (but not operating any property), (viii) providing

indemnification to officers, managers and directors and (ix) any activities incidental to the foregoing. Holdings shall not incur any Liens on Equity Interests of the Borrower other than those for the benefit of the Obligations and Holdings shall not own any Equity Interests other than those of the Borrower.

ARTICLE VIII.
Events Of Default and Remedies

Section 8.01. Events of Default .

Any of the following from and after the Closing Date shall constitute an event of default (an "Event of Default"):

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03 (a) or 6.05(a) (solely with respect to the Borrower) or Article VII; provided that the covenants in Section 7.11(a) and (b) are subject to cure pursuant to Section 8.05; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after notice thereof by the Administrative Agent or the Required Lenders to the Borrower; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period with respect thereto, if any, (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder) having an outstanding aggregate principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Agreements, termination events or equivalent events pursuant to the terms of such Swap Agreements), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; provided that this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; provided further that such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Revolving Credit Commitments or acceleration of the Loans pursuant to Section 8.02; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Restricted Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material

part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Restricted Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or Collateral Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(j) Change of Control. There occurs any Change of Control; or

(k) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 6.11 or 6.13 shall for any reason (other than pursuant to the terms thereof including as a result of a transaction not prohibited under this Agreement) cease to create a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, (i) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements and (ii) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(l) ERISA. (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of a Loan Party or a Restricted Subsidiary in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party, any Restricted Subsidiary or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect.

Section 8.02. Remedies upon Event of Default

If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Section 8.03. Exclusion of Immaterial Subsidiaries

Solely for the purpose of determining whether a Default or Event of Default has occurred under clause (f) or (g) of Section 8.01, any reference in any such clause to any Restricted Subsidiary or Loan Party shall be deemed not to include any Restricted Subsidiary (an "Immaterial Subsidiary") affected by any event or circumstances referred to in any such clause that did not, as of the last day of the most recent completed fiscal quarter of the Borrower, have assets with a fair market value in excess of 5% of the consolidated total assets of the Borrower and the Restricted Subsidiaries (it being agreed that all Restricted Subsidiaries affected by any event or circumstance referred to in any such clause shall be considered together, as a single consolidated Restricted Subsidiary, for purposes of determining whether the condition specified above is satisfied).

Section 8.04. Application of Funds

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent or the Collateral Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest and fees on the Loans, Commitments, Letters of Credit and L/C Borrowings, and any fees, premiums and scheduled periodic payments due under Cash Management Obligations or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings (including to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit), and any breakage, termination or other payments under Cash Management Obligations or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Borrower that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, to the Borrower as applicable.

Section 8.05. Borrower's Right to Cure

(a) Notwithstanding anything to the contrary contained in Section 8.01 or 8.02, in the event of any Event of Default or potential Event of Default under the covenants set forth in Sections 7.11(a) and/or (b) and at any time until the expiration of the tenth (10th) day after the date on which financial statements are required to be delivered with respect to the applicable fiscal quarter hereunder, the Investors may make a Specified Equity Contribution to Holdings, and Holdings may apply the amount of the net cash proceeds thereof to increase Consolidated EBITDA with respect to such applicable quarter; provided that such net cash proceeds (i) are actually received by the Borrower as cash common equity (including through capital contribution of such net cash proceeds to the Borrower) no later than ten (10) days after the date on which financial statements are required to be delivered with respect to such fiscal quarter hereunder and (ii) are Not Otherwise Applied. The parties hereby acknowledge that this Section 8.05(a) may not be relied on for purposes of calculating any financial ratios other than as applicable to Section 7.11 and shall not result in any adjustment to any amounts other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

(b) (i) In each period of four consecutive fiscal quarters, there shall be at least two fiscal quarters in which no Specified Equity Contribution is made, (ii) no more than three Specified Equity Contributions will be made in the aggregate during the term of this Agreement, (iii) the amount of any Specified Equity Contribution shall be no more than the amount required to cause the Borrower to be in Pro Forma Compliance with Section 7.11(a) and/or (b) for any applicable period and (iv) there shall be no pro forma

reduction in Indebtedness with the proceeds of any Specified Equity Contribution for determining compliance with Sections 7.11(a) and/or (b) for the fiscal quarter immediately prior to the fiscal quarter in which such Specified Equity Contribution was made.

ARTICLE IX.

Administrative Agent and Other Agents

Section 9.01. Appointment and Authorization of Agents

(a) Each Lender hereby irrevocably appoints, designates and authorizes each of the Administrative Agent and the Collateral Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, neither the Administrative Agent nor the Collateral Agent shall have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent or the Collateral Agent have or be deemed to have any fiduciary relationship with any Lender or Participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each such L/C Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term “Agent” as used in this Article IX and in the definition of “Agent-Related Person” included such L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such L/C Issuer.

(c) Each of the Secured Parties hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Secured Party for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent), shall be entitled to the benefits of all provisions of this Article IX (including, Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent under the Loan Documents) as if set forth in full herein with respect thereto.

Section 9.02. Delegation of Duties

Each of the Administrative Agent and the Collateral Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the

Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct (as determined in the final non-appealable judgment of a court of competent jurisdiction).

Section 9.03. Liability of Agents .

No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or Participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent or the Collateral Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

Section 9.04. Reliance by Agents .

(a) Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by such Agent. Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 4.01 with respect to Credit Extensions on the Closing Date or Section 4.02, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 9.05. Notice of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default and stating that such notice is a “notice of default.” The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders in accordance with Article VIII; provided that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.06. Credit Decision: Disclosure of Information by Agents.

Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates which may come into the possession of any Agent-Related Person.

Section 9.07. Indemnification of Agents.

Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person’s own gross negligence or willful misconduct, as determined by the final non-appealable judgment of a court of competent jurisdiction; provided that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07; provided further that any obligation to indemnify an L/C Issuer pursuant to this

Section 9.07 shall be limited to Revolving Credit Lenders only. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse each of the Administrative Agent and the Collateral Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent or the Collateral Agent, as the case may be, in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent or the Collateral Agent, as the case may be, is not reimbursed for such expenses by or on behalf of the Loan Parties. The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent or the Collateral Agent, as the case may be.

Section 9.08. Agents in Their Individual Capacities.

Bank of America and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower and its respective Affiliates as though Bank of America were not the Administrative Agent, the Collateral Agent or an L/C Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Bank of America or its Affiliates may receive information regarding the Borrower or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower or such Affiliate) and acknowledge that neither the Administrative Agent nor the Collateral Agent shall be under any obligation to provide such information to them. With respect to its Loans, Bank of America and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent, the Collateral Agent or an L/C Issuer, and the terms “Lender” and “Lenders” include Bank of America in its individual capacity. Any successor to Bank of America as the Administrative Agent or the Collateral Agent shall also have the rights attributed to Bank of America under this paragraph.

Section 9.09. Successor Agents.

Each of the Administrative Agent and the Collateral Agent may resign as the Administrative Agent or the Collateral Agent, as applicable, upon thirty (30) days’ notice to the Lenders and the Borrower and if either the Administrative Agent or the Collateral Agent is a Defaulting Lender, the Borrower may remove such Defaulting Lender from such role upon fifteen (15) days’ notice to the Lenders. If the Administrative Agent or the Collateral Agent resigns under this Agreement or is removed by the Borrower, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) or (g) (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor agent is appointed prior to the effective date of the resignation or removal of the Administrative Agent or the Collateral Agent, as applicable, the Administrative Agent or the Collateral Agent, as applicable in the case of a resignation, and the Borrower, in the case of a removal, may appoint, after consulting with the Lenders and the Borrower (in the case of a resignation), a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent or retiring Collateral Agent and the term “Administrative Agent” or “Collateral Agent” shall mean such successor administrative agent or collateral agent and/or Supplemental Agent, as the case may be, and the retiring Administrative Agent’s or Collateral Agent’s appointment, powers and duties as the Administrative Agent or Collateral Agent shall be terminated. After the retiring Administrative Agent’s or the Collateral Agent’s resignation or removal hereunder as the Administrative Agent or Collateral

Agent, the provisions of this Article IX and Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent or Collateral Agent under this Agreement. If no successor agent has accepted appointment as the Administrative Agent or the Collateral Agent by the date which is thirty (30) days following the retiring Administrative Agent's or Collateral Agent's notice of resignation or fifteen (15) days following the Borrower's notice of removal, the retiring Administrative Agent's or the retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent or Collateral Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon the acceptance of any appointment as the Administrative Agent or Collateral Agent hereunder by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (a) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (b) otherwise ensure that Section 6.11 is satisfied, the Administrative Agent or Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Administrative Agent or Collateral Agent, and the retiring Administrative Agent or Collateral Agent shall be discharged from its duties and obligations under the Loan Documents. After the retiring Administrative Agent's or Collateral Agent's resignation hereunder as the Administrative Agent or the Collateral Agent, the provisions of this Article IX shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent or the Collateral Agent.

Section 9.10. Administrative Agent May File Proofs of Claim

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower or the Collateral Agent) shall be (to the fullest extent permitted by mandatory provisions of applicable Law) entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Collateral Agent and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Collateral Agent and the Administrative Agent and their respective agents and counsel and all other amounts due to the Lenders, the Collateral Agent and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, curator, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent or the Collateral Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent or the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent or the Collateral Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.11. Collateral and Guaranty Matters

The Lenders irrevocably agree:

(a) that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document shall be automatically released (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (x) Cash Management Obligations or obligations under Secured Hedge Agreements not yet due and payable and (y) contingent obligations not yet accrued and payable) and the expiration or termination or Cash Collateralization of all Letters of Credit, (ii) at the time the property subject to such Lien is Disposed or to be substantially simultaneously Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document to any Person other than a Person required to grant a Lien to the Administrative Agent or the Collateral Agent under the Loan Documents (or, if such transferee is a Person required to grant a Lien to the Administrative Agent or the Collateral Agent on such asset, at the option of the applicable Loan Party, such Lien on such asset may still be released in connection with the transfer so long as (x) the transferee grants a new Lien to the Administrative Agent or Collateral Agent on such asset substantially concurrently with the transfer of such asset, (y) the transfer is between parties organized under the laws of different jurisdictions and the transferee is a Foreign Subsidiary and (z) the priority of the new Lien is the same as that of the original Lien), (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders or (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below;

(b) the Collateral Agent is authorized to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document on any assets that are excluded from the Collateral;

(c) that any Guarantor shall be automatically released from its obligations under the Guaranty if such Person ceases to be a Restricted Subsidiary or becomes an Excluded Subsidiary (other than pursuant to (i) clause (a) of the definition thereof unless such Restricted Subsidiary ceases to be a Restricted Subsidiary or (ii) clause (b) of the definition thereof unless, in the case of this subclause (ii), the Borrower delivers a written request to the Administrative Agent for such release and no Default has occurred and is continuing at such time) as a result of a transaction or designation permitted hereunder; provided that no such release shall occur if such Guarantor continues to be a guarantor in respect of the Mezzanine Debt or any Junior Financing; and

(d) (x) the Collateral Agent may, without any further consent of any Lender, enter into or amend (i) a First Lien Intercreditor Agreement with the collateral agent or other representatives of the holders of Permitted Notes issued pursuant to Section 7.03(s) that are intended to be secured on a pari passu basis with the Obligations and/or (ii) a Second Lien Intercreditor Agreement with the collateral agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral ranking junior to the Lien securing the Obligations that is permitted by Section 7.03, (y) the Collateral Agent may rely exclusively on a certificate of a Responsible Officer of the Borrower as to whether any such other Liens are permitted and (z) any First Lien Intercreditor Agreement or Second Lien Intercreditor Agreement entered into by the Collateral Agent shall be binding on the Secured Parties.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.11. In each case as specified in this Section 9.11, the

Administrative Agent or the Collateral Agent will (and each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as the Borrower may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.11.

Section 9.12. Other Agents; Arrangers and Managers .

None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent," "documentation agent," "joint bookrunner" or "arranger" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 9.13. Appointment of Supplemental Agents .

(a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent or the Collateral Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent and the Collateral Agent are hereby authorized to appoint an additional individual or institution selected by the Administrative Agent or the Collateral Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a "Supplemental Agent" and collectively as "Supplemental Agents").

(b) In the event that the Collateral Agent appoints a Supplemental Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Collateral Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Agent to the extent, and only to the extent, necessary to enable such Supplemental Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Agent shall run to and be enforceable by either the Collateral Agent or such Supplemental Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Agent and all references therein to the Collateral Agent shall be deemed to be references to the Collateral Agent and/or such Supplemental Agent, as the context may require.

(c) Should any instrument in writing from any Loan Party be required by any Supplemental Agent so appointed by the Administrative Agent or the Collateral Agent for more fully and certainly vesting in and confirming to it or its such rights, powers, privileges and duties, such Loan Party shall execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent or the Collateral Agent. In case any Supplemental Agent, or a successor thereto, shall die, become

incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Agent.

Section 9.14. Withholding Tax Indemnity.

(a) To the extent required by any applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective), such Lender shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 3.01 and Section 3.04 and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such tax was correctly or legally imposed or asserted by the relevant governmental authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. The agreements in this Section 9.14 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Agreement and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE X.
Miscellaneous

Section 10.01. Amendments, Etc.

Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of each Lender holding such Commitment (it being understood that a waiver of any condition precedent or of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce or forgive the amount of, any payment of principal or interest under Section 2.07 or 2.08 without the written consent of each Lender holding the applicable Obligation (it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Term Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest and it being understood that any change to the definition of "Secured Leverage Ratio" or in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest);

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, or L/C Borrowing, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or change the timing of payments of such fees or

other amounts) without the written consent of each Lender holding such Loan, L/C Borrowing or to whom such fee or other amount is owed (it being understood that any change to the definition of "Secured Leverage Ratio" or in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest); provided that, only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01, the definition of "Required Lenders," without the written consent of each Lender, or the definition of "Required Class Lenders," Section 8.04 or, following an exercise of remedies pursuant to Section 8.02(a), the definition of "Pro Rata Share" or Section 2.12(a), 2.12(g) or 2.13 without the written consent of each Lender directly affected thereby;

(e) other than in connection with a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in connection with a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender;

(g) without the written consent of each Lender adversely affected thereby, amend the portion of the definition of "Interest Period" that reads as follows: "one, two, three or six months thereafter or, to the extent agreed by each Lender of such Eurocurrency Rate Loan, nine or twelve months or less than one month thereafter"; or

(h) waive or modify any mandatory prepayment of the Term Loans required under Section 2.05 without the written consent of the Required Class Lenders;

and provided further that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of an L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by a Swing Line Lender in addition to the Lenders required above, affect the rights or duties of such Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent or the Collateral Agent, as applicable, in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent or the Collateral Agent, as applicable, under this Agreement or any other Loan Document; and (iv) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the Revolving Credit Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders. Notwithstanding the foregoing, this Agreement may be amended to adjust the borrowing mechanics related to Swing Line Loans with only the written consent of the Administrative Agent, the applicable Swing Line Lender(s) and the Borrower so long as the obligations of the Revolving Credit Lenders and, if applicable, the other Swing Line Lender are not affected thereby.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Term Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("Refinanced Term

Loans”) with a replacement term loan tranche denominated in Dollars (“Replacement Term Loans”) hereunder; provided that (a) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Refinanced Term Loans, (b) the Applicable Rate for such Replacement Term Loans shall not be higher than the Applicable Rate for such Refinanced Term Loans, (c) the Weighted Average Life to Maturity of Replacement Term Loans shall not be shorter than the Weighted Average Life to Maturity of such Refinanced Term Loans, at the time of such refinancing (except to the extent of nominal amortization for periods where amortization has been eliminated as a result of prepayment of the applicable Term Loans) and (d) all other terms applicable to such Replacement Term Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Term Loans, than those applicable to such Refinanced Term Loans except to the extent necessary to provide for covenants and other terms applicable to any period after the latest final maturity of the Term Loans in effect immediately prior to such refinancing.

Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent to the extent necessary to integrate any Refinancing Term Loans, any Extended Term Loans or any Replacement Revolving Loans on substantially the same basis as the Term Loans or Revolving Loans, as applicable.

Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments, waivers and consents hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether the Required Class Lenders, the Required Lenders or all of the Lenders, as required, have approved any such amendment, waiver or consent (and the definitions of “Required Class Lenders” and “Required Lenders” will automatically be deemed modified accordingly for the duration of such period); provided that any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary contained in this Section 10.01, the Borrower and the Administrative Agent may without the input or consent of the Lenders, effect amendments to this Agreement and the other Loan Documents as may be necessary or appropriate in the opinion of the Administrative Agent to effect the provisions of Section 2.14.

Notwithstanding anything to the contrary contained in this Section 10.01, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended, supplemented and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment, supplement or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities, omissions, mistakes or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Section 10.02. Notices and Other Communications: Facsimile Copies .

(a) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or the Administrative Agent, the Collateral Agent, an L/C Issuer or a Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower and the Administrative Agent, the Collateral Agent, an L/C Issuer or a Swing Line Lender.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of Section 10.02(d)), when delivered; provided that notices and other communications to the Administrative Agent, the Collateral Agent, an L/C Issuer and a Swing Line Lender pursuant to Article II shall not be effective until actually received by such Person. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(b) Effectiveness of Facsimile Documents and Signatures. Loan Documents may be transmitted and/or signed by facsimile or other electronic communication. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually signed originals and shall be binding on all Loan Parties, the Agents and the Lenders.

(c) Reliance by Agents and Lenders. The Administrative Agent, the Collateral Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction. All telephonic notices to the Administrative Agent or Collateral Agent may be recorded by the Administrative Agent or the Collateral Agent, and each of the parties hereto hereby consents to such recording.

(d) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or

intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Section 10.03. No Waiver; Cumulative Remedies.

No failure by any Lender or the Administrative Agent or the Collateral Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 10.04. Attorney Costs and Expenses.

The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Collateral Agent, the Co-Syndication Agents and the Arrangers for all reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby (including all Attorney Costs, which shall be limited to Cahill Gordon & Reindel LLP (and one local counsel in each applicable jurisdiction and, in the event of a conflict of interest, one additional counsel of each type to the affected parties)) and (b) from and after the Closing Date, to pay or reimburse the Administrative Agent, the Collateral Agent, the Co-Syndication Agents, the Arrangers and each Lender for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs, which shall be limited to Attorney Costs of one counsel to the Administrative Agent and Joint Bookrunners (and one local counsel in each applicable jurisdiction and, in the event of any conflict of interest, one additional counsel of each type to the affected parties)). The foregoing costs and expenses shall include all reasonable search, filing, recording and title insurance charges and fees related thereto, and other reasonable out-of-pocket expenses incurred by any Agent. The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within ten (10) Business Days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail; provided that, with respect to the Closing Date, all amounts due under this Section 10.04 shall be paid on the Closing Date solely to the extent invoiced to the Borrower within three (3) Business Days of the Closing Date. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

Section 10.05. Indemnification by the Borrower.

Whether or not the transactions contemplated hereby are consummated, from and after the Closing Date, the Borrower shall indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, and directors, officers, employees, counsel, agents, trustees, investment advisors and

attorneys-in-fact of each of the foregoing (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Joint Bookrunners and one counsel to the other Lenders (and one local counsel in each applicable jurisdiction and, in the event of any actual conflict of interest, one additional counsel of each type to the affected parties)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, or (c) any actual or alleged presence or Release of Hazardous Materials at, on, under or from any property or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary, or any Environmental Liability related in any way to any Loan Parties or any Subsidiary, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities") in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that, notwithstanding the foregoing, such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction or (y) a material breach of its obligations under the Loan Documents by such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee as determined by the final non-appealable judgment of a court of competent jurisdiction. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee or the Borrower or any Subsidiary have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, any Loan Party's directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within ten (10) Business Days after demand therefor; provided, however, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification rights with respect to such payment pursuant to the express terms of this Section 10.05. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent or the Collateral Agent, the replacement of, or assignment of rights by, any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, any indemnification relating to Taxes, other than Taxes resulting from any non-Tax claim, shall be covered by Sections 3.01 and 3.04 and shall not be covered by this Section 10.05.

Section 10.06. Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required

(including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall, to the fullest extent possible under provisions of applicable Law, be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Federal Funds Rate from time to time in effect.

Section 10.07. Successors and Assigns .

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an “Eligible Assignee”), (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void); Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“Assignees”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations and in Swing Line Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for (i) an assignment of all or a portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund, (ii) an assignment related to Revolving Credit Commitments or Revolving Credit Exposure to a Revolving Credit Lender or an Affiliate of a Revolving Credit Lender or an Approved Fund of a Revolving Credit Lender or (iii) if an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing, any Assignee;

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender or an Approved Fund;

(C) each Principal L/C Issuer at the time of such assignment, provided that no consent of the Principal L/C Issuers shall be required for any assignment not related to Revolving Credit Commitments or Revolving Credit Exposure or any assignment to an Agent or an Affiliate of an Agent; and

(D) the Swing Line Lenders; provided that no consent of a Swing Line Lender shall be required for any assignment not related to Revolving Credit Commitments or Revolving Credit Exposure or any assignment to an Agent or an Affiliate of an Agent.

Notwithstanding the foregoing or anything to the contrary set forth herein, any assignment of any Loans or Commitments to a Purchasing Borrower Party or a Non-Debt Fund Affiliate shall also be subject to the requirements set forth in Section 10.07(k).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than an amount of \$5,000,000 (in the case of each Revolving Credit Loan) or \$1,000,000 (in the case of a Term Loan), and shall be in increments of an amount of \$1,000,000 in excess thereof unless each of the Borrower and the Administrative Agent otherwise consents, provided that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent, in its sole discretion, may elect to waive such processing and recordation fee; and

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and the amounts due under Section 2.03, owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Any Lender may at any time sell participations to any Person (other than a natural person, Holdings or any of its Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such

Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that requires the affirmative vote of such Lender. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of such Sections, including the requirement to provide the forms and certificates pursuant to Section 3.01(d)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"). The entries in the Participant Register shall be conclusive and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The Loan Parties and each Non-Debt Fund Affiliate (by its acquisition of a participation in any Lender's rights and/or obligations under this Agreement) hereby agree that if a case under Title 11 of the United States Code is commenced against any Loan Party, to the extent that any Non-Debt Fund Affiliate would have the right to direct any Participant with respect to any vote with respect to any plan of reorganization with respect to any Loan Party (or to directly vote on such plan of reorganization) as a result of any participation taken by such Non-Debt Fund Affiliate pursuant to this Section 10.07(e), such Loan Party shall seek (and each Non-Debt Fund Affiliate shall consent) to provide that the vote of any Non-Debt Fund Affiliate (in its capacity as a Participant) with respect to any plan of reorganization of such Loan Party shall not be counted except that such Non-Debt Fund Affiliate's vote (in its capacity as a Participant) may be counted to the extent any such plan of reorganization proposes to treat the participation in any Obligations held by such Non-Debt Fund Affiliate in a manner that is less favorable in any material respect to such Non-Debt Fund Affiliate than the proposed treatment of similar Obligations held by Lenders or Participants that are not Affiliates of the Borrower. Each Non-Debt Fund Affiliate hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Non-Debt Fund Affiliate's attorney-in-fact, with full authority in the place and stead of such Non-Debt Fund Affiliate and in the name of such Non-Debt Fund Affiliate, from time to time in the Administrative Agent's discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this paragraph.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the

limitations of such Sections, including the requirement to provide the forms and certificates pursuant to Section 3.01(d)), but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement, unless the grant to the SPC was made with the prior written consent of the Borrower, not to be unreasonably withheld or delayed (for the avoidance of doubt, the Borrower shall have reasonable basis for withholding consent if an exercise by SPC immediately after the grant would result in materially increased indemnification obligation to the Borrower at such time), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; provided that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained herein, any L/C Issuer or Swing Line Lender may, upon thirty (30) days' notice to the Borrower and the Lenders, resign as an L/C Issuer or Swing Line Lender, respectively; provided that on or prior to the expiration of such 30-day period with respect to such resignation, the relevant L/C Issuer or Swing Line Lender shall have identified a successor L/C Issuer or Swing Line Lender reasonably acceptable to the Borrower willing to accept its appointment as successor L/C Issuer or Swing Line Lender, as applicable. In the event of any such resignation of an L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor L/C Issuer or Swing Line Lender hereunder; provided that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant L/C Issuer or the Swing Line Lender, as the case may be, except as expressly provided above. If an L/C Issuer resigns as an L/C Issuer, it shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans, Eurocurrency Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c).

(k) (i) Notwithstanding anything else to the contrary contained in this Agreement, any Lender may assign all or a portion of its Term Loans to any Non-Debt Fund Affiliate or Purchasing Borrower Party in accordance with Section 10.07(b); provided that:

(A) no Default or Event of Default has occurred or is continuing or would result therefrom;

(B) the assigning Lender and Non-Debt Fund Affiliate or Purchasing Borrower Party purchasing such Lender's Term Loans, as applicable, shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit M hereto (an "Affiliated Lender Assignment and Assumption") in lieu of an Assignment and Assumption;

(C) for the avoidance of doubt, Lenders shall not be permitted to assign Revolving Credit Commitments or Revolving Credit Loans to any Purchasing Borrower Party or Non-Debt Fund Affiliate;

(D) any Term Loans assigned to any Purchasing Borrower Party shall be automatically and permanently cancelled for upon the effectiveness of such assignment and will thereafter no longer be outstanding for any purpose hereunder;

(E) (i) no Purchasing Borrower Party may use the proceeds from Revolving Credit Loans or Swing Line Loans to purchase any Term Loans and (ii) Term Loans may only be purchased by a Purchaser Borrowing Party if, after giving effect to any such purchase, the sum of (x) the excess of the aggregate Revolving Credit Commitments at such time less the aggregate Revolving Credit Exposure plus (y) the amount of unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries shall be not less than \$50,000,000; and

(F) no Term Loan may be assigned to a Non-Debt Fund Affiliates pursuant to this Section 10.07(k), if after giving effect to such assignment, Non-Debt Fund Affiliates in the aggregate would own in excess of 25% of all Term Loans then outstanding.

(i) Notwithstanding anything to the contrary in this Agreement, no Non-Debt Fund Affiliate shall have any right to (i) attend (including by telephone) any meeting or discussions (or portion thereof) among the Administrative Agent or any Lender to which representatives of the Loan Parties are not invited, and (ii) receive any information or material prepared by Administrative Agent or any Lender or any communication by or among Administrative Agent and/or one or more Lenders, except to the extent such information or materials have been made available to any Loan Party or its representatives (and in any case, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans required to be delivered to Lenders pursuant to Article II), or (iii) make or bring (or participate in, other than as a passive participant in or recipient of its pro rata benefits of) any claim, in its capacity as a Lender, against Administrative Agent, the Collateral Agent or any other Lender with respect to any duties or obligations or alleged duties or obligations of such Agent or any other such Lender under the Loan Documents.

(I) Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" to the contrary, for purposes of determining whether the Required Lenders or the Required Class Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent, Collateral Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document:

(x) all Term Loans held by any Non-Debt Fund Affiliate shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders or Required Class Lenders have taken any actions; and

(y) all Term Loans, Revolving Credit Commitments and Revolving Credit Exposure held by Debt Fund Affiliates may not account for more than 50% of the Term Loans, Revolving Credit Commitments and Revolving Credit Exposure of consenting Lenders included in determining whether the Required Lenders or the Required Class Lender have consented to any action pursuant to Section 10.01.

Additionally, the Loan Parties and each Non-Debt Fund Affiliate hereby agree that if a case under Title 11 of the United States Code is commenced against any Loan Party, such Loan Party shall seek (and each Non-Debt Fund Affiliate shall consent) to provide that the vote of any Non-Debt Fund Affiliate (in its capacity as a Lender) with respect to any plan of reorganization of such Loan Party shall not be counted except that such Non-Debt Fund Affiliate's vote (in its capacity as a Lender) may be counted to the extent any such plan of reorganization proposes to treat the Obligations held by such Non-Debt Fund Affiliate in a manner that is less favorable in any material respect to such Non-Debt Fund Affiliate than the proposed treatment of similar Obligations held by Lenders that are not Affiliates of the Borrower. Each Non-Debt Fund Affiliate hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Non-Debt Fund Affiliate's attorney-in-fact, with full authority in the place and stead of such Non-Debt Fund Affiliate and in the name of such Non-Debt Fund Affiliate, from time to time in the Administrative Agent's discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this paragraph.

Section 10.08. Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or self regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender or its Affiliates); (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions substantially the same as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any pledgee referred to in Section 10.07(g), counterparty to a Swap Contract, Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in any of its rights or obligations under this Agreement; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 or becomes available to the Administrative Agent, any Arranger, any Lender, the L/C Issuer or any of their respective Affiliates on a non-confidential basis from a source other than a Loan Party or any Investor or their respective related parties (so long as such source is not known to the Administrative Agent, such Arranger, such Lender, the L/C Issuer or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party); (h) to any Governmental Authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender; (i) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender) or to the CUSIP Service Bureau or any similar organization; or (j) in connection with the exercise of any remedies hereunder, under any other Loan Document or the enforcement of its rights hereunder or thereunder. In addition, the Agents and the Lenders may disclose the existence of this Agreement and publicly available information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Credit Extensions. For the purposes of this Section 10.08, "Information" means all information received from the Loan Parties relating to any Loan Party, its Affiliates or its Affiliates' directors, managers, officers, employees, trustees, investment advisors or agents, relating to Holdings, the Borrower or any of their Subsidiaries or its business, other than any such information that is publicly available to any Agent, any L/C Issuer or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08; provided that, in the case of information received from a Loan Party after the Closing Date, such information is clearly identified at the time of delivery as confidential or is delivered pursuant to Section 6.01, 6.02 or 6.03 hereof.

Section 10.09. Setoff.

In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Collateral Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Collateral Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Lender and its Affiliates or the Collateral Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, the Collateral Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, the Collateral Agent and such Lender may have at Law.

Section 10.10. Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11. Counterparts.

This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier.

Section 10.12. Integration: Termination.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.13. Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 10.14. Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.15. GOVERNING LAW.

THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(a) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN

SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16. WAIVER OF RIGHT TO TRIAL BY JURY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.16 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.17. Binding Effect .

This Agreement shall become effective when it shall have been executed by the Loan Parties and the Administrative Agent shall have been notified by each Lender, the Swing Line Lenders and L/C Issuer that each such Lender, Swing Line Lender and L/C Issuer has executed it and thereafter shall be binding upon and inure to the benefit of the Loan Parties, each Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Loan Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

Section 10.18. USA Patriot Act .

Each Lender that is subject to the USA Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name, address and tax identification number of the Borrower and other information regarding the Borrower that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders and the Administrative Agent.

Section 10.19. No Advisory or Fiduciary Responsibility .

In connection with all aspects of each transaction contemplated hereby, each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial

transaction between the Borrower and its Affiliates, on the one hand, and the Agents, the Arrangers and the Lenders, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) in connection with the process leading to such transaction, each of the Agents, the Arrangers and the Lenders is and has been acting solely as a principal and except as expressly agreed in writing by the relevant parties, is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Agents, the Arrangers or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto except as expressly agreed in writing by the relevant parties, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Agent or Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Agents, the Arrangers or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Agents, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Agents, the Arrangers or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Agents, the Arrangers and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

ARTICLE XI Guarantee

Section 11.01. The Guarantee .

Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Notes, if any, held by each Lender of, the Borrower (other than such Guarantor), and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document or the Borrower or any Restricted Subsidiary under any Secured Hedge Agreement or any Cash Management Obligations, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "Guaranteed Obligations"). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02. Obligations Unconditional .

The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and

several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or except as permitted pursuant to Section 11.09, any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, an L/C Issuer or any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 11.09 or otherwise.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against the Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 11.03. Reinstatement.

The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.04. Subrogation; Subordination.

Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party permitted pursuant to Section 7.03(b)(ii) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 11.05. Remedies.

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.06. Instrument for the Payment of Money.

Each Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.07. Continuing Guarantee.

The guarantee in this Article XI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.08. General Limitation on Guarantee Obligations.

In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law

affecting the rights of creditors generally, if the obligations of any Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.09. Release of Guarantors .

If, in compliance with the terms and provisions of the Loan Documents, Equity Interests of any Subsidiary Guarantor (a “Transferred Guarantor”) are sold or otherwise transferred, following which transfer such Subsidiary Guarantor ceases to be a Subsidiary, such Transferred Guarantor shall, upon the consummation of such sale or transfer, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and the other Loan Documents and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Collateral Agent shall take such actions as are necessary to effect the releases described in this Section 11.09.

When all Commitments hereunder have terminated, and all Loans or other Obligation hereunder which are accrued and payable have been paid or satisfied, and no Letter of Credit remains outstanding (except any Letter of Credit the Outstanding Amount of which the Obligations related thereto has been Cash Collateralized or for which a backstop letter of credit reasonably satisfactory to the applicable L/C Issuer has been put in place), this Agreement and the Guarantees made herein shall terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

Section 11.10. Right of Contribution.

Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor’s right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Lenders, and each Subsidiary Guarantor shall remain liable to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Lenders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this “**Agreement**”), dated as of December 17, 2012, is entered into between SeaWorld of Texas Holdings, LLC, a Texas limited liability company, SeaWorld of Texas Management, LLC, a Texas limited liability company, and SeaWorld of Texas Beverage, LLC, a Texas limited liability company (collectively, the “**New Subsidiaries**” and each a “**New Subsidiary**”) and Bank of America, N.A., in its capacity as Administrative Agent and Collateral Agent (the “**Agent**”) under that certain Credit Agreement, dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among SeaWorld Parks and Entertainment, Inc., a Delaware corporation (the “**Borrower**”), SW Holdco, Inc., the direct parent of the Borrower, the Guarantors from time to time party thereto, Bank of America, N.A., as Administrative Agent and Collateral Agent, each lender from time to time party thereto (collectively, the “**Lenders**” and individually, a “**Lender**”), Bank of America, N.A., as L/C Issuer and Swing Line Lender, and the other agents named therein. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

The New Subsidiaries and the Agent, for the benefit of the Lenders, hereby agree as follows:

1. Each New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, such New Subsidiary will be deemed to be a “Loan Party” under the Credit Agreement and a “Subsidiary Guarantor” for all purposes of the Credit Agreement and shall have all of the obligations of a Loan Party and a Subsidiary Guarantor thereunder as if it had executed the Credit Agreement. Each New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article V of the Credit Agreement, (b) all of the covenants set forth in Articles VI and VII of the Credit Agreement and (c) all of the guaranty obligations set forth in Article XI of the Credit Agreement.

2. If required, each New Subsidiary is, simultaneously with the execution of this Agreement, executing and delivering such Collateral Documents (and such other documents and instruments) as requested by the Agent in accordance with the Credit Agreement.

3. The address of each New Subsidiary for purposes of Section 10.02 of the Credit Agreement is as follows:

10500 Sea World Drive
San Antonio, TX 78521
Attention: Park President

4. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

5. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, each New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

SEAWORLD OF TEXAS HOLDINGS, LLC

By: /s/ Daniel Decker
Name: Daniel Decker
Title: Manager

By: /s/ Marcus VanVleet
Name: Marcus VanVleet
Title: Manager

By: /s/ Charles Wetesnick
Name: Charles Wetesnick
Title: Manager

SEAWORLD OF TEXAS MANAGEMENT, LLC

By: /s/ Daniel Decker
Name: Daniel Decker
Title: Manager

By: /s/ Marcus VanVleet
Name: Marcus VanVleet
Title: Manager

By: /s/ Charles Wetesnick
Name: Charles Wetesnick
Title: Manager

[*Signature Page to Joinder*]

SEAWORLD OF TEXAS BEVERAGE, LLC

By: /s/ Daniel Decker
Name: Daniel Decker
Title: Manager

By: /s/ Marcus VanVleet
Name: Marcus VanVleet
Title: Manager

By: /s/ Charles Wetesnick
Name: Charles Wetesnick
Title: Manager

[*Signature Page to Joinder*]

Acknowledged and accepted:

BANK OF AMERICA, N.A., as Administrative Agent
and Collateral Agent

By: /s/ Liliana Claar

Name: Liliana Claar

Title: Vice President

[*Signature Page to Joinder*]

SECURITY AGREEMENT

dated as of

December 1, 2009

among

THE GRANTORS IDENTIFIED HEREIN

and

BANK OF AMERICA, N.A.,
as Collateral Agent

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SECURITY AGREEMENT dated as of December 1, 2009, among the Grantors (as defined below) and Bank of America, N.A., as Collateral Agent for the Secured Parties (in such capacity, the “**Collateral Agent**”).

Reference is made to the Credit Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among SW Acquisitions Co., Inc., a Delaware corporation (the “**Borrower**”), SW Holdco, Inc., the direct parent of the Borrower, certain other Guarantors from time to time party thereto, Bank of America, N.A., as Administrative Agent and Collateral Agent, each lender from time to time party thereto (collectively, the “**Lenders**” and individually, a “**Lender**”), Bank of America, N.A., as L/C Issuer and Swing Line Lender, and the other agents named therein. The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. Holdings and the Subsidiary Parties are affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement, and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01 Credit Agreement.

(a) Capitalized terms used in this Agreement and not otherwise defined herein have the meanings specified in the Credit Agreement. All terms defined in the UCC (as defined herein) and not defined in this Agreement have the meanings specified therein; the term “instrument” shall have the meaning specified in Article 9 of the UCC.

(b) The rules of construction specified in Article I of the Credit Agreement also apply to this Agreement.

Section 1.02 Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**Account Debtor**” means any Person who is or who may become obligated to any Grantor under, with respect to or on account of an Account.

“**Accounts**” has the meaning specified in Article 9 of the UCC.

“**Agreement**” means this Security Agreement.

“**Article 9 Collateral**” has the meaning assigned to such term in Section 3.01(a).

“**Borrower**” has the meaning assigned to such term in the recitals of this Agreement.

“**Collateral**” means the Article 9 Collateral and the Pledged Collateral.

“**Collateral Agent**” has the meaning assigned to such term in the recitals of the Agreement.

“ **Collateral Documents** ” has the meaning assigned to such term in the Credit Agreement.

“ **Commercial Tort Claims** ” has the meaning specified in Article 9 of the UCC.

“ **Copyright License** ” means any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now owned or hereafter acquired by any Grantor or that such Grantor otherwise has the right to license, or granting any right to any Grantor under any Copyright now owned or hereafter acquired by any third party, and all rights of such Grantor under any such agreement.

“ **Copyrights** ” means all of the following now owned or hereafter acquired by any Person: (a) all copyright rights in any work subject to the copyright laws of the United States, whether as author, assignee, transferee or otherwise, and (b) all registrations and applications for registration of any such copyright in the United States, including registrations and pending applications for registration in the USCO.

“ **Credit Agreement** ” has the meaning assigned to such term in the preliminary statement of this Agreement.

“ **Excluded Assets** ” means:

(a) any General Intangible, Investment Property, Intellectual Property or rights of a Grantor with respect to any contract, lease, license or other agreement if (but only to the extent that) the grant of a security interest therein would (x) constitute a violation (including a breach or default) of, a restriction in respect of, or result in the abandonment, invalidation or unenforceability of, such General Intangible, Investment Property, Intellectual Property or rights in favor of a third party or in conflict with any law, regulation, permit, order or decree of any Governmental Authority, unless and until all required consents shall have been obtained (for the avoidance of doubt, the restrictions described herein shall not include negative pledges or similar undertakings in favor of a lender or other financial counterparty) or (y) expressly give any other party (other than another Grantor or its Affiliates) in respect of any such contract, lease, license or other agreement, the right to terminate its obligations thereunder, *provided, however*, that the limitation set forth in this clause (a) shall not affect, limit, restrict or impair the grant by a Grantor of a security interest pursuant to this Agreement in any such Collateral to the extent that an otherwise applicable prohibition or restriction on such grant is rendered ineffective by any applicable Law, including the UCC; *provided*, further, that, at such time as the condition causing the conditions in subclauses (x) and (y) of this clause (a) shall be remedied, whether by contract, change of law or otherwise, the contract, lease, instrument, license or other documents shall immediately cease to be an Excluded Asset, and any security interest that would otherwise be granted herein shall attach immediately to such contract, lease, instrument, license or other agreement, or to the extent severable, to any portion thereof that does not result in any of the conditions in subclauses (x) or (y) above;

(b) any assets to the extent and for so long as (i) the pledge of or security interest in such assets is prohibited by law and such prohibition is not overridden by the UCC or other applicable law or (ii) the grant of such security interest would require governmental consent, approval, license or authorization (except that the cash Proceeds of dispositions thereof in accordance with applicable law, including, without limitation, rules and regulations of any governmental authority or agency shall not be an Excluded Asset);

(c) motor vehicles and other assets subject to certificates of title, letters of credit with a face value of less than \$5,000,000 and commercial tort claims where the amount of damages claimed by the applicable Grantor is less than \$5,000,000, the perfection of a security interest in which cannot be perfected through the filing of financing statements under the UCC in the relevant jurisdiction;

(d) Margin Stock;

(e) Excluded Security;

(f) any Intellectual Property to the extent that the attachment of the security interest of this Agreement thereto, or any assignment thereof, would result in the forfeiture, cancellation, invalidation, unenforceability, or other loss of the Grantors' rights in such property including, without limitation, any License pursuant to which Grantor is licensee under terms which prohibit the granting of a security interest or under which granting such an interest would give rise to a breach or default by Grantor, and any Trademark applications filed in the USPTO on the basis of such Grantor's "intent-to-use" such Trademark, unless and until acceptable evidence of use of such Trademark has been filed with and accepted by the USPTO pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.), to the extent that granting a lien in such Trademark application prior to such filing would adversely affect the enforceability, validity, or other rights in such Trademark application;

(g) assets (including Equity Interests) owned by any Grantor on the date hereof or hereafter acquired that are subject to (A) a Lien of the type described in Section 7.01 (u), (w) and (aa) (to the extent relating to Liens originally incurred pursuant to Section 7.01(u) or (w)) of the Credit Agreement that is permitted to be incurred pursuant to the provisions of the Credit Agreement or (B) a contract or agreement permitted under clauses (i) or (xiii) of the proviso to Section 7.09 of the Credit Agreement, in each case, if and to the extent that the contract or other agreement pursuant to which such Lien is granted or to which such assets are subject (or the documentation relating thereto) prohibits the creation of any other Lien on such asset;

(h) any particular assets if, in the reasonable judgment of the Borrower evidenced in writing and with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), creating a pledge thereof or security interest therein to the Collateral Agent for the benefit of the Secured Parties would result in any material adverse tax consequences to the Borrower or its Subsidiaries; and

(i) any particular assets if, in the reasonable judgment of the Administrative Agent, determined in consultation with the Borrower and evidenced in writing, the burden, cost or consequences (including any material adverse tax consequences) to the Borrower or its Subsidiaries of creating or perfecting such pledges or security interests in such assets in favor of the Collateral Agent for the benefit of the Secured Parties is excessive in relation to the benefits to be obtained therefrom by the Secured Parties.

“ Excluded Security ” means

(a) more than 65% of the issued and outstanding Equity Interests of any Foreign Subsidiary;

(b) more than 65% of the issued and outstanding Equity Interests of any Domestic Subsidiary that is a disregarded entity under the Code if substantially all of its assets consist of the Equity Interests of one or more Subsidiaries that are controlled foreign corporations within the meaning of Section 957 of the Code;

(c) any interest in a joint venture or non-wholly owned Restricted Subsidiary to the extent the granting of a security interest therein is prohibited by the terms of the Organizational Documents of such joint venture or non-wholly owned Restricted Subsidiary;

(d) any Equity Interests of any Unrestricted Subsidiary (until such time, if at all, as such Unrestricted Subsidiary becomes a Restricted Subsidiary in accordance with the Credit Agreement);

(e) any Equity Interest of any Subsidiary the pledge of which is prohibited by applicable Law or by agreements permitted under the Credit Agreement containing anti-assignment clauses to the extent not over-riden by the UCC or the pledge of which would require governmental (including regulatory) consent, approval, license or authorization;

(f) any Equity Interest of any not-for-profit Subsidiaries; and

(g) any Equity Interest of any special purpose securitization vehicle or a captive insurance subsidiary.

“ **General Intangibles** ” has the meaning specified in Article 9 of the UCC.

“ **Grantor** ” means the Borrower, each Subsidiary Guarantor that is a party hereto, and each Subsidiary Guarantor that is a Domestic Subsidiary that becomes a party to this Agreement after the Closing Date.

“ **Immaterial Subsidiary** ” means any Subsidiary that does not have total assets or annual revenues in excess of \$20,000,000 individually or in the aggregate with all other “Immaterial Subsidiaries”.

“ **Intellectual Property** ” means all intellectual property now owned or hereafter acquired by any Person, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, the intellectual property rights in software and databases and related documentation, and all additions and improvements to the foregoing.

“ **Intellectual Property Security Agreements** ” means the short-form Patent Security Agreement, short-form Trademark Security Agreement, and short-form Copyright Security Agreement, each substantially in the form attached hereto as Exhibits III, IV and V, respectively.

“ **License** ” means any Patent License, Trademark License, Copyright License or other Intellectual Property license or sublicense agreement to which any Grantor is a party, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder or with respect thereto including damages and payments for past, present or future infringements or violations thereof, and (iii) rights to sue for past, present and future violations thereof.

“ **Margin Stock** ” has the meaning specified in Regulation U of the Board of Governors of the Federal Reserve System.

“ **Mortgages** ” has the meaning assigned to such term in the Credit Agreement.

“ **Mortgaged Property** ” has the meaning assigned to such term in the Credit Agreement.

“ **Patent License** ” means any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now owned or hereafter acquired by any Grantor or that any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a Patent, now owned or hereafter acquired by any third party, is in existence, and all rights of any Grantor under any such agreement.

“ **Patents** ” means all of the following now owned or hereafter acquired by any Person: (a) all letters Patent of the United States in or to which any Grantor now or hereafter has any right, title or interest therein, all registrations thereof, and all applications for letters Patent of the United States, including registrations and pending applications in the USPTO, and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

“ **Perfection Certificate** ” means a certificate substantially in the form of Exhibit II, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by a Responsible Officer of the Borrower.

“ **Pledged Collateral** ” has the meaning assigned to such term in Section 2.01.

“ **Pledged Debt** ” has the meaning assigned to such term in Section 2.01.

“ **Pledged Equity** ” has the meaning assigned to such term in Section 2.01.

“ **Pledged Securities** ” means the Pledged Equity and Pledged Debt.

“ **Secured Obligations** ” means the “Obligations” (as defined in the Credit Agreement).

“ **Secured Parties** ” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the Hedge Banks, the Cash Management Banks, the Supplemental Agents and each co-agent or sub-agent appointed by the Administrative Agent or the Collateral Agent from time to time pursuant to Section 9.02 of the Credit Agreement.

“ **Security Agreement Supplement** ” means an instrument substantially in the form of Exhibit I hereto.

“ **Subsidiary Parties** ” means (a) the Restricted Subsidiaries identified on Schedule I and (b) each other Restricted Subsidiary that becomes a party to this Agreement as a Subsidiary Party after the Closing Date.

“ **Trademark License** ” means any written agreement, now or hereafter in effect, granting to any third party any right to use any trademark now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, or granting to any Grantor any right to use any trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

“ **Trademarks** ” means all of the following now owned or hereafter acquired by any Person: (a) all trademarks, service marks, trade names, corporate names, trade dress, logos, designs, fictitious business names other source or business identifiers, now owned or hereafter acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the USPTO or any similar offices in any State of the United States or any jurisdiction thereof, and all extensions or renewals thereof, and (b) all goodwill associated therewith.

“ **UCC** ” means the Uniform Commercial Code as from time to time in effect in the State of New York; *provided that*, if perfection or the effect of perfection or non-perfection or the priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “ **UCC** ” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“ USCO ” means the United States Copyright Office.

“ USPTO ” means the United States Patent and Trademark Office.

ARTICLE II

Pledge of Securities

Section 2.01 Pledge. As security for the payment or performance, as the case may be, in full of the Secured Obligations, including the Guarantees, each of the Grantors hereby assigns and pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in all of such Grantors' right, title and interest in, to and under

(i) all Equity Interests held by it that are listed on Schedule II and any other Equity Interests obtained in the future by such Grantor and the certificates representing all such Equity Interests (the “ **Pledged Equity** ”) of (x) any wholly owned Restricted Subsidiary and (y) non-wholly owned Subsidiaries to the extent permitted by the terms of the Organizational Documents of such non-wholly owned Restricted Subsidiaries; *provided* that the Pledged Equity shall not include (a) Excluded Assets and (b) the Equity Interests of an Immaterial Subsidiary;

(ii)(A) the debt securities owned by it and listed opposite the name of such Grantor on Schedule II, (B) any debt securities obtained in the future by such Grantor and (C) the promissory notes and any other instruments evidencing such debt securities (the “ **Pledged Debt** ”); *provided* that the Pledged Debt shall not include any Excluded Assets;

(iii) all other property that may be delivered to and held by the Collateral Agent pursuant to the terms of this Section 2.01;

(iv) subject to Section 2.06, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the securities referred to in clauses (i) and (ii) above;

(v) subject to Section 2.06, all rights and privileges of such Grantor with respect to the securities and other property referred to in clauses (i), (ii), (iii) and (iv) above; and

(vi) all Proceeds of any of the foregoing (the items referred to in clauses (i) through (v) above being collectively referred to as the “ **Pledged Collateral** ”).

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth.

Section 2.02 Delivery of the Pledged Securities.

(a) Each Grantor agrees promptly (but in any event within 30 days after receipt by such Grantor) to deliver or cause to be delivered to the Collateral Agent, for the benefit of the Secured Parties, any and all (i) Pledged Equity to the extent certificated and (ii) to the extent required to be delivered pursuant to paragraph (b) of this Section 2.02, Pledged Debt.

(b) Each Grantor will cause any Indebtedness for borrowed money having an aggregate principal amount in excess of \$5,000,000 owed to such Grantor by any Person that is evidenced by a duly executed promissory note to be pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the terms hereof.

(c) Upon delivery to the Collateral Agent, any Pledged Securities shall be accompanied by stock or security powers duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be deemed to supplement Schedule II and made a part hereof; provided that failure to supplement Schedule II shall not affect the validity of such pledge of such Pledged Security. Each schedule so delivered shall supplement any prior schedules so delivered.

Section 2.03 Representations, Warranties and Covenants. Each Grantor represents, warrants and covenants to and with the Collateral Agent, for the benefit of the Secured Parties, that:

(a) As of the date hereof, Schedule II includes all Equity Interests, debt securities and promissory notes required to be pledged by such Grantor hereunder in order to satisfy the Collateral and Guarantee Requirement;

(b) the Pledged Equity issued by the Borrower or a wholly owned Restricted Subsidiary have been duly and validly authorized and issued by the issuers thereof and are fully paid and nonassessable;

(c) except for the security interests granted hereunder, such Grantor (i) is, subject to any transfers made in compliance with the Credit Agreement, the direct owner, beneficially and of record, of the Pledged Equity indicated on Schedule II, (ii) holds the same free and clear of all Liens, other than Liens created by the Collateral Documents or permitted pursuant to Section 7.01 of the Credit Agreement, and (iii) if requested by the Collateral Agent, will defend its title or interest thereto or therein against any and all Liens (other than the Liens permitted pursuant to this Section 2.03(c)), however arising, of all Persons whomsoever;

(d) except for restrictions and limitations (i) imposed or permitted by the Loan Documents or securities laws generally or (ii) described in the Perfection Certificate, the Pledged Collateral is freely transferable and assignable, and none of the Pledged Collateral is subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect in any manner material and adverse to the Secured Parties the pledge of such Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(e) the execution and performance by the Grantors of this Agreement are within each Grantor's corporate, limited liability or limited partnership powers and have been duly authorized by all necessary corporate, limited liability or limited partnership action or other organizational action;

(f) no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given, or made or to be in full force and effect pursuant to the Collateral and Guarantee Requirement);

(g) by virtue of the execution and delivery by each Grantor of this Agreement, and delivery of the Pledged Securities to and continued possession by the Collateral Agent in the State of New York, the Collateral Agent for the benefit of the Secured Parties has a legal, valid and perfected lien upon and security interest in such Pledged Security as security for the payment and performance of the Secured Obligations to the extent such perfection is governed by the UCC; and

(h) the pledge effected hereby is effective to vest in the Collateral Agent, for the benefit of the Secured Parties, the rights of the Collateral Agent in the Pledged Collateral to the extent intended hereby.

Subject to the terms of this Agreement and to the extent permitted by Applicable Law, each Grantor hereby agrees that upon the occurrence and during the continuance of an Event of Default, it will comply with instructions of the Collateral Agent with respect to the Equity Interests in such Grantor that constitute Pledged Equity hereunder that are not certificated without further consent by the applicable owner or holder of such Equity Interests.

Notwithstanding anything to the contrary in this Agreement, to the extent any provision of this Agreement or the Credit Agreement excludes any assets from the scope of the Pledged Collateral, or from any requirement to take any action to perfect any security interest in favor of the Collateral Agent in the Pledged Collateral (including the Equity Interests of Immaterial Subsidiaries), the representations, warranties and covenants made by any relevant Grantor in this Agreement with respect to the creation, perfection or priority (as applicable) of the security interest granted in favor of the Collateral Agent (including, without limitation, this Section 2.03) shall be deemed not to apply to such excluded assets.

Section 2.04 Certification of Limited Liability Company and Limited Partnership Interests. No interest in any limited liability company or limited partnership controlled by any Grantor that constitutes Pledged Equity shall be represented by a certificate unless (i) the limited liability company agreement or partnership agreement expressly provides that such interests shall be a “security” within the meaning of Article 8 of the UCC of the applicable jurisdiction, and (ii) such certificate shall be delivered to the Collateral Agent in accordance with Section 2.02. Any limited liability company and any limited partnership controlled by any Grantor shall either (a) not include in its operative documents any provision that any Equity Interests in such limited liability company or such limited partnership be a “security” as defined under Article 8 of the Uniform Commercial Code or (b) certificate any Equity Interests in any such limited liability company or such limited partnership. To the extent an interest in any limited liability company or limited partnership controlled by any Grantor and pledged under Section 2.01 is certificated or becomes certificated, (i) each such certificate shall be delivered to the Collateral Agent, pursuant to Section 2.02(a) and (ii) such Grantor shall fulfill all other requirements under Section 2.02 applicable in respect thereof. Such Grantor hereby agrees that if any of the Pledged Collateral are at any time not evidenced by certificates of ownership, then each applicable Grantor shall, to the extent permitted by applicable law, if necessary or desirable to perfect a security interest in such Pledged Collateral, upon the reasonable request of the Collateral Agent, cause such pledge to be recorded on the equity holder register or the books of the issuer, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Collateral Agent the right to transfer such Pledged Collateral under the terms hereof.

Section 2.05 Registration in Nominee Name; Denominations. If an Event of Default shall have occurred and be continuing and the Collateral Agent shall give the Borrower prior notice of its intent to exercise such rights, (a) the Collateral Agent, on behalf of the Secured Parties, shall have the right to hold the Pledged Securities in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent and each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Equity registered in the name of such Grantor and (b) the Collateral Agent shall have the right to exchange the certificates representing Pledged Equity for certificates of smaller or larger denominations for any purpose consistent with this Agreement, to the extent permitted by the documentation governing such Pledged Securities.

Section 2.06 Voting Rights; Dividends and Interest.

(a) Unless and until an Event of Default shall have occurred and be continuing and the Collateral Agent shall have provided prior notice to the Borrower that the rights of the Grantors under this Section 2.06 are being suspended:

(i) Each Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Securities or any part thereof, and each Grantor agrees that it shall exercise such rights for purposes consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents;

(ii) The Collateral Agent shall promptly (after reasonable advance notice) execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above; and

(iii) Each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Securities to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable Laws; *provided* that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity or Pledged Debt, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities or received in exchange for Pledged Securities or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral, and, if received by any Grantor, shall not be commingled by such Grantor with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent and the Secured Parties and shall be promptly (and in any event within 10 Business Days) delivered to the Collateral Agent in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). So long as no Default or Event of Default has occurred and is continuing, the Collateral Agent shall promptly deliver to each Grantor any Pledged Securities in its possession if requested to be delivered to the issuer thereof in connection with any exchange or redemption of such Pledged Securities permitted by the Credit Agreement in accordance with this Section 2.06(a)(iii).

(b) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have notified the Borrower of the suspension of the Grantors' rights under paragraph (a)(iii) of this Section 2.06, then all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (a)(iii) of this Section 2.06 shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 2.06 shall be held in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of such Grantor and shall be promptly (and in any event within 10 days) delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (b) shall be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and shall be applied in accordance with the provisions of Section 4.02. After all Events of Default have been cured or waived, the Collateral Agent shall promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (a)(iii) of this Section 2.06 and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have provided the Borrower with notice of the suspension of the rights of the Grantors under paragraph (a)(i) of this Section 2.06, then, all rights of any Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 2.06, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.06, shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; *provided* that, unless otherwise directed by the Required Lenders, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all Events of Default have been cured or waived, each Grantor shall have the exclusive right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (a)(i) above, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.06 shall be reinstated.

(d) Any notice given by the Collateral Agent to the Borrower under Section 2.05 or Section 2.06 (i) shall be given in writing, (ii) may be given with respect to one or more Grantors at the same or different times and (iii) may suspend the rights of the Grantors under paragraph (a)(i) or paragraph (a)(iii) of this Section 2.06 in part without suspending all such rights (as specified by the Collateral Agent in its sole and absolute discretion) and without waiving or otherwise affecting the Collateral Agent's rights to give additional notices from time to time suspending other rights so long as an Event of Default has occurred and is continuing.

ARTICLE III

Security Interests in Personal Property

Section 3.01 Security Interest.

(a) As security for the payment or performance, as the case may be, in full of the Secured Obligations, including the Guarantees, each Grantor hereby collaterally assigns and pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest (the "**Security Interest**") in, all right, title or interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "**Article 9 Collateral**"):

-
- (i) all Accounts;
 - (ii) all Chattel Paper;
 - (iii) all Documents;
 - (iv) all Equipment;
 - (v) all General Intangibles;
 - (vi) all Goods;
 - (vii) all Instruments;
 - (viii) all Inventory;
 - (ix) all Investment Property;
 - (x) all books and records pertaining to the Article 9 Collateral;
 - (xi) all Fixtures;
 - (xii) all Letter of Credit and Letter-of-Credit Rights in excess of \$5,000,000;
 - (xiii) all Intellectual Property;
 - (xiv) all Commercial Tort Claims listed on Schedule III and on any supplement thereto received by the Collateral Agent pursuant to Section 3.03(g); and
 - (xv) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all supporting obligations, collateral security and guarantees given by any Person with respect to any of the foregoing;

provided that, notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in any Excluded Asset.

(b) Subject to Section 3.01(e), each Grantor hereby irrevocably authorizes the Collateral Agent for the benefit of the Secured Parties at any time and from time to time to file in any relevant jurisdiction any initial financing statements with respect to the Article 9 Collateral or any part thereof and amendments thereto that (i) indicate the Article 9 Collateral as “all assets” or “all personal property” of such Grantor or words of similar effect as being of an equal or lesser scope or with greater detail and (ii) contain the information required by Article 9 of the UCC or the analogous legislation of each applicable jurisdiction for the filing of any financing statement or amendment, including whether such Grantor is an organization, the type of organization and, if required, any organizational identification number issued to such Grantor. Each Grantor agrees to provide such information to the Collateral Agent promptly upon any reasonable request.

(c) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

(d) The Collateral Agent is authorized to file with the USPTO or the USCO (or any successor office) such documents executed by any Grantor as may be necessary or advisable for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest in United States registered and applied for Intellectual Property of each Grantor in which a security interest has been granted by each Grantor and naming any Grantor or the Grantor as debtors and the Collateral Agent as secured party.

(e) Notwithstanding anything to the contrary in the Loan Documents, none of the Grantors shall be required, nor is the Collateral Agent authorized, (i) to perfect the Security Interests granted by this Security Agreement (including Security Interests in Investment Property and Fixtures) by any means other than by (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of the relevant State(s), and filings in the applicable real estate records with respect to any fixtures relating to Mortgaged Property, (B) filings in United States government offices with respect to United States registered and applied for Intellectual Property of Grantor as expressly required elsewhere herein, (C) delivery to the Collateral Agent to be held in its possession of all Collateral consisting of Instruments as expressly required elsewhere herein or (D) other methods expressly provided herein, (ii) to enter into any deposit account control agreement, securities account control agreement or any other control agreement with respect to any deposit account, securities account or any other Collateral that requires perfection by "control", (iii) to take any action (other than the actions listed in clause (i)(A) and (C) above) with respect to any assets located outside of the United States, (iv) to perfect in any assets subject to a certificate of title statute or (v) to deliver any Equity Interests except as expressly provided in Section 2.01.

Section 3.02 Representations and Warranties. Each Grantor represents and warrants to the Collateral Agent and the Secured Parties that:

(a) Subject to Liens permitted by Section 7.01 of the Credit Agreement, each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained.

(b) The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein is correct and complete in all material respects (except the information therein with respect to the exact legal name of each Grantor shall be correct and complete in all respects) as of the Closing Date. Subject to Section 3.01(e), the UCC financing statements or other appropriate filings, recordings or registrations prepared by the Collateral Agent based upon the information provided to the Collateral Agent in the Perfection Certificate for filing in the applicable filing office (or specified by notice from the Borrower to the Collateral Agent after the Closing Date in the case of filings, recordings or registrations (other than filings required to be made in the USPTO and the USCO in order to perfect the Security Interest in Article 9 Collateral consisting of United States registered and applied for Patents, Trademarks and Copyrights), in each case, as required by Section 6.11 of the Credit Agreement), are all the filings, recordings and registrations that are necessary to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code, and no further or subsequent filing, re-filing, recording, rerecording, registration or re-registration is necessary in any such jurisdiction, except as provided under applicable Law with respect to the filing of continuation statements.

(c) Each Grantor represents and warrants that short-form Intellectual Property Security Agreements substantially in the form attached hereto as Exhibits II, IV and V and containing a description of all Article 9 Collateral consisting of material United States registered and applied for Patents, United States registered Trademarks (and Trademarks for which United States registration applications are pending, unless it constitutes an Excluded Asset) and United States registered Copyrights, respectively, have been delivered to the Collateral Agent for recording by the USPTO and the USCO pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable, (for the benefit of the Secured Parties) in respect of all Article 9 Collateral consisting of registrations and applications for United States Patents, Trademarks and Copyrights. To the extent a security interest may be perfected by filing, recording or registration in USPTO or USCO under the Federal intellectual property laws, then no further or subsequent filing, re-filing, recording, rerecording, registration or re-registration is necessary (other than (i) such filings and actions as are necessary to perfect the Security Interest with respect to any Article 9 Collateral consisting of United States registered and applied for Patents, Trademarks and Copyrights acquired or developed by any Grantor after the date hereof and (ii) the UCC financing and continuation statements contemplated in Section 3.02(b)).

(d) The Security Interest constitutes (i) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations and (ii) subject to the filings described in Section 3.02(b), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code in the relevant jurisdiction. Subject to Section 3.01(e) of this Agreement, the Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, other than (i) any statutory or similar Lien that has priority as a matter of Law and (ii) any Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement.

(e) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, except for Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement. None of the Grantors has filed or consented to the filing of (i) any financing statement or analogous document under the Uniform Commercial Code or any other applicable Laws covering any Article 9 Collateral, (ii) any assignment in which any Grantor assigns any Article 9 Collateral owned by any Grantor or any security agreement or similar instrument covering any Article 9 Collateral owned by any Grantor with the USPTO or the USCO, or (iii) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement and assignments permitted by the Credit Agreement.

(f) As of the date hereof, no Grantor has any Commercial Tort Claim in excess of \$5,000,000, other than the Commercial Tort Claims listed on Schedule III.

Section 3.03 Covenants .

(a) The Borrower agrees to notify the Collateral Agent in writing promptly, but in any event within 60 days, after any change in (i) the legal name of any Grantor, (ii) the identity or type of organization or corporate structure of any Grantor or (iii) the jurisdiction of organization of any Grantor.

(b) Subject to Section 3.01(e), each Grantor shall, at its own expense, upon the reasonable request of the Collateral Agent, take any and all commercially reasonable actions necessary to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Collateral Agent in the Article 9 Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 7.01 of the Credit Agreement; *provided* that, nothing in this Agreement shall prevent any Grantor from discontinuing the operation or maintenance of any of its assets or properties if such discontinuance is (x) determined by such Grantor to be desirable in the conduct of its business and (y) permitted by the Credit Agreement.

(c) Subject to Section 3.01(e), each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements or other documents in connection herewith or therewith. If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of \$5,000,000 shall be or become evidenced by any promissory note, other instrument or debt security, such note, instrument or debt security shall be promptly (and in any event within 30 days of its acquisition) pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, duly endorsed in a manner reasonably satisfactory to the Collateral Agent.

(d) At its option, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not permitted pursuant to Section 7.01 of the Credit Agreement, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or any other Loan Document and within a reasonable period of time after the Collateral Agent has requested that it do so, and each Grantor jointly and severally agrees to reimburse the Collateral Agent within 10 Business Days after demand for any payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; *provided, however*, the Grantors shall not be obligated to reimburse the Collateral Agent with respect to any Intellectual Property that any Grantor has failed to maintain or pursue, or otherwise allowed to lapse, terminate or be put into the public domain in accordance with Section 3.03(f)(iv). Nothing in this paragraph shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

(e) If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other Person, the value of which is in excess of \$5,000,000 to secure payment and performance of an Account, such Grantor shall promptly assign such security interest to the Collateral Agent for the benefit of the Secured Parties. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other Person granting the security interest.

(f) *Intellectual Property Covenants* .

(i) Other than to the extent not prohibited herein or in the Credit Agreement or with respect to registrations and applications no longer used or useful, except to the extent failure to act would not, as deemed by the applicable Grantor in its reasonable business judgment, reasonably be expected to have a Material Adverse Effect, with respect to registration or pending application of each item of its Intellectual Property for which such Grantor has standing to do so, each

Grantor agrees to take, at its expense, all reasonable steps, including, without limitation, in the USPTO, the USCO and any other governmental authority located in the United States, to pursue the registration and maintenance of each Patent, Trademark, or Copyright registration or application, now or hereafter included in the Intellectual Property of such Grantor that are not Excluded Assets.

(ii) Other than to the extent not prohibited herein or in the Credit Agreement, or with respect to registrations and applications no longer used or useful, or except as would not, as deemed by the applicable Grantor in its reasonable business judgment, reasonably be expected to have a Material Adverse Effect, no Grantor shall do or permit any act or knowingly omit to do any act whereby any of its Intellectual Property, excluding Excluded Assets, may prematurely lapse, be terminated, or become invalid or unenforceable or placed in the public domain (or in the case of a trade secret, become publicly known).

(iii) Other than as excluded or as not prohibited herein or in the Credit Agreement, or with respect to Patents, Copyrights or Trademarks which are no longer used or useful in the applicable Grantor's business operations or except where failure to do so would not, as deemed by the applicable Grantor in its reasonable business judgment, reasonably be expected to have a Material Adverse Effect, each Grantor shall take all reasonable steps to preserve and enforce each item of its Intellectual Property, including, without limitation, maintaining the quality of any and all products or services used or provided in connection with any of the Trademarks, consistent with the quality of the products and services as of the date hereof, and taking reasonable steps necessary to ensure that all licensed users of any of the material Trademarks abide by the applicable license's terms with respect to standards of quality.

(iv) Notwithstanding any other provision of this Agreement, nothing in this Agreement or any other Loan Document prevents or shall be deemed to prevent any Grantor from disposing of, discontinuing the use or maintenance of, failing to pursue, or otherwise allowing to lapse, expire, terminate or be put into the public domain, any of its Intellectual Property to the extent permitted by the Credit Agreement if such Grantor determines in its reasonable business judgment that such discontinuance is desirable in the conduct of its business.

(v) Within 30 days after each March 31 and September 30, the Borrower shall provide a list of any additional registrations of Intellectual Property of all Grantors with the USPTO and USCO not previously disclosed to the Collateral Agent including such information as is necessary for such Grantor to make appropriate filings in the USPTO and USCO.

(g) *Commercial Tort Claims* . If the Grantors shall at any time hold or acquire a Commercial Tort Claim in an amount reasonably estimated by such Grantor to exceed \$5,000,000 for which this clause has not been satisfied and for which a complaint in a court of competent jurisdiction has been filed, such Grantor shall within 45 days after the end of the fiscal quarter in which such complaint was filed notify the Collateral Agent thereof in a writing signed by such Grantor including a summary description of such claim and grant to the Collateral Agent, for the benefit of the Secured Parties, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement.

ARTICLE IV

Remedies

Section 4.01 Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, it is agreed that the Collateral Agent shall have the right to exercise any and all rights afforded to a secured party with respect to the Secured Obligations, including the Guarantees, under the Uniform Commercial Code or other applicable Law and also may (i) require each Grantor to, and each Grantor agrees that it will at its expense and upon request of the Collateral Agent promptly, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place and time to be designated by the Collateral Agent that is reasonably convenient to both parties; (ii) occupy any premises owned or, to the extent lawful and permitted, leased by any of the Grantors where the Collateral or any part thereof is assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under Law, without obligation to such Grantor in respect of such occupation; *provided* that the Collateral Agent shall provide the applicable Grantor with notice thereof prior to such occupancy; (iii) exercise any and all rights and remedies of any of the Grantors under or in connection with the Collateral, or otherwise in respect of the Collateral; *provided* that the Collateral Agent shall provide the applicable Grantor with notice thereof prior to such exercise; and (iv) subject to the mandatory requirements of applicable Law and the notice requirements described below, sell or otherwise dispose of all or any part of the Collateral securing the Secured Obligations at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized at any such sale of securities (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any sale of Collateral shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by Law) all rights of redemption, stay and appraisal which such Grantor now has or may at any time in the future have under any Law now existing or hereafter enacted.

The Collateral Agent shall give the applicable Grantors 10 days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by Law, private) sale made pursuant to this Agreement, any Secured Party may bid for or purchase, free (to the extent permitted by Law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by Law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes

hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at Law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 4.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

Section 4.02 Application of Proceeds . The Collateral Agent shall apply the proceeds of any collection or sale of Collateral, including any Collateral consisting of cash in accordance with Section 8.04 of the Credit Agreement.

The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

The Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on information supplied to it as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations, provided that nothing in this sentence shall prevent any Grantor from contesting any amounts claimed by any Secured Party in any information so supplied. All distributions made by the Collateral Agent pursuant to this Section 4.02 shall be (subject to any decree of any court of competent jurisdiction) final (absent manifest error), and the Collateral Agent shall have no duty to inquire as to the application by the Administrative Agent of any amounts distributed to it.

Section 4.03 Grant of License to Use Intellectual Property . For the exclusive purpose of enabling the Collateral Agent to exercise rights and remedies under this Agreement at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies at any time after and during the continuance of an Event of Default, each Grantor hereby grants to the Collateral Agent a non-exclusive, royalty-free, limited license (until the termination or cure of the Event of Default) to use, license or, solely to the extent necessary to exercise those rights and remedies, sublicense any of the Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same are located, and including in such license necessary access to media in which such licensed items are recorded or stored and to computer software and programs used for the compilation or printout thereof; *provided, however* , that all of the foregoing rights of the Collateral Agent to use such licenses, sublicenses and other rights, and (to the extent permitted by the terms of such licenses and sublicenses) all licenses and sublicenses granted thereunder, shall expire immediately upon the termination or cure of all Events of Default and shall be exercised by the Collateral Agent solely during the continuance of an Event of Default and upon 10 Business Days' prior written notice to the applicable Grantor; *provided, further* , that nothing in this Section 4.03 shall require Grantors to grant any license that is prohibited by any rule of law, statute or regulation, or is prohibited by, or constitutes a breach or default under or results in the termination of or gives rise to any right of cancellation under any contract, license, agreement, instrument or other document evidencing, giving rise to or theretofore granted, to the extent permitted by the Credit Agreement,

with respect to such property or otherwise prejudices the value thereof to the relevant Grantor; *provided, further*, that such licenses granted hereunder with respect to Trademarks material to the business of such Grantor shall be subject to restrictions, including, without limitation restrictions as to goods or services associated with such Trademarks and the maintenance of quality standards with respect to the goods and services on which such Trademarks are used, sufficient to preserve the validity and value of such Trademarks. For the avoidance of doubt, the use of such license by the Collateral Agent may be exercised, at the option of the Collateral Agent, only during the continuation of an Event of Default and upon 10 Business Days' prior written notice to the applicable Grantor. Upon the occurrence and during the continuance of an Event of Default and upon 10 Business Days' prior written notice to the applicable Grantor, the Collateral Agent may also exercise the rights afforded under Section 4.01 of this Agreement with respect to Intellectual Property contained in the Article 9 Collateral.

ARTICLE V

Subordination

Section 5.01 Subordination.

(a) Notwithstanding any provision of this Agreement to the contrary, all rights of the Grantors of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the payment in full in cash of the Secured Obligations. No failure on the part of the Borrower or any Grantor to make the payments required under applicable law or otherwise shall in any respect limit the obligations and liabilities of any Grantor with respect to its obligations hereunder, and each Grantor shall remain liable for the full amount of the obligations of such Grantor hereunder.

(b) Each Grantor hereby agrees that upon the occurrence and during the continuance of an Event of Default and after notice from the Collateral Agent, all Indebtedness owed to it by any other Grantor shall be fully subordinated to the payment in full in cash of the Secured Obligations.

ARTICLE VI

Miscellaneous

Section 6.01 Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.02 of the Credit Agreement. All communications and notices hereunder to the Borrower or any other Grantor shall be given to it in care of the Borrower as provided in Section 10.02 of the Credit Agreement.

Section 6.02 Waivers; Amendment.

(a) No failure or delay by any Secured Party in exercising any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of the Secured Parties herein provided, and provided under each other Loan Document, are cumulative and are not exclusive of any rights, remedies, powers and privileges provided by Law. No waiver of any provision of this Agreement or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 6.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan, the issuance of a Letter of Credit or the provision of services under Cash Management Obligations or Secured Hedge Agreements shall not be construed as a waiver of any Default, regardless of whether any Secured Party may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Grantor or Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.01 of the Credit Agreement.

Section 6.03 Collateral Agent's Fees and Expenses; Indemnification.

(a) The parties hereto agree that the Collateral Agent shall be entitled to reimbursement of its reasonable out-of-pocket expenses incurred hereunder and indemnity for its actions in connection herewith, in each case, as provided in Sections 10.04 and 10.05 of the Credit Agreement.

(b) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Collateral Documents. The provisions of this Section 6.03 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Secured Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section 6.03 shall be payable within 10 days of written demand therefor.

Section 6.04 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 6.05 Survival of Agreement. All covenants, agreements, representations and warranties made by the Grantors hereunder and in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Secured Parties and shall survive the execution and delivery of the Loan Documents, the making of any Loans and issuance of any Letters of Credit and the provision of services under Cash Management Obligations or Secured Hedge Agreements, regardless of any investigation made by any Secured Party or on its behalf and notwithstanding that any Secured Party may have had notice or knowledge of any Default at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as this Agreement has not been terminated or released pursuant to Section 6.12 below.

Section 6.06 Counterparts; Effectiveness; Several Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by facsimile or other electronic communication of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement. This Agreement shall become effective as to any Grantor when a counterpart hereof executed on behalf of such Grantor shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Grantor and the Collateral Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Grantor, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no Grantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

Section 6.07 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 6.08 Right of Set-Off. In addition to any rights and remedies of the Secured Parties provided by Law, upon the occurrence and during the continuance of any Event of Default, each Secured Party and its Affiliates is authorized at any time and from time to time, without prior notice to any Grantor, any such notice being waived by each Grantor to the fullest extent permitted by applicable Law, to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Secured Party and its Affiliates to or for the credit or the account of the respective Grantors against any and all Obligations owing to such Secured Party and its Affiliates hereunder, now or hereafter existing, irrespective of whether or not such Secured Party or Affiliate shall have made demand under this Agreement and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Secured Party agrees promptly to notify the applicable Grantor and the Collateral Agent after any such set-off and application made by such Secured Party; *provided*, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section 6.08 are in addition to other rights and remedies (including other rights of set-off) that such Secured Party may have at Law.

Section 6.09 Governing Law; Jurisdiction; Venue; Waiver of Jury Trial; Consent to Service of Process.

(a) The terms of Sections 10.15 and 10.16 of the Credit Agreement with respect to governing law, submission of jurisdiction, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

(b) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 6.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

Section 6.10 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 6.11 Security Interest Absolute. To the extent permitted by Law, all rights of the Collateral Agent hereunder, the Security Interest, the grant of a security interest in the Pledged Collateral and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement.

Section 6.12 Termination or Release.

(a) This Agreement, the Security Interest and all other security interests granted hereby shall terminate with respect to all Secured Obligations and any Liens arising therefrom shall be automatically released upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (i) Cash Management Obligations or obligations under Secured Hedge Agreements not yet due and payable and (ii) contingent obligations not yet accrued and payable) and the expiration or termination of all Letters of Credit (other than Letters of Credit in which the Outstanding Amount of the L/C Obligations related thereto have been Cash Collateralized or, if satisfactory to the relevant L/C Issuer in its reasonable discretion, for which a backstop letter of credit is in place).

(b) A Subsidiary Party shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Subsidiary Party shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Subsidiary Party ceases to be a Subsidiary of the Borrower or becomes an Excluded Subsidiary; *provided* that the Required Lenders shall have consented to such transaction (if and to the extent required by the Credit Agreement) and the terms of such consent did not provide otherwise.

(c) Upon any sale or transfer by any Grantor of any Collateral that is permitted under the Credit Agreement (other than a sale or transfer to another Loan Party), or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Section 10.01 of the Credit Agreement, the security interest in such Collateral shall be automatically released.

(d) In connection with any termination or release pursuant to paragraph (a), (b) or (c) of this Section 6.12, the Collateral Agent shall execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor shall reasonably request to evidence such termination or release and shall perform such other actions reasonably requested by such Grantor to effect such release, including delivery of certificates, securities and instruments. Any execution and delivery of documents pursuant to this Section 6.12 shall be without recourse to or warranty by the Collateral Agent.

(e) Notwithstanding anything to the contrary set forth in this Agreement, each Hedge Bank and each Cash Management Bank by the acceptance of the benefits under this Agreement hereby acknowledges and agrees that (i) the Security Interests granted under this Agreement of the Obligations of any Grantor and its Subsidiaries under any Secured Hedge Agreement and any Cash Management Obligations shall be automatically released upon termination of the Commitments and payment in full of all other Obligations and the expiration or termination of all Letters of Credit (other than Letters of Credit in which the Outstanding Amount of the L/C Obligations related thereto have been Cash Collateralized or, if satisfactory to the relevant L/C Issuer in its reasonable discretion, for which a backstop letter of credit is in place), in each case, unless the Obligations under the Secured Hedge Agreement or the Cash Management Obligations are due and payable at such time (it being understood and agreed that this Agreement and Security Interests granted herein shall survive solely as to such due and payable Obligations and until such time as such due and payable Obligations have been paid in full) and (ii) any release of Collateral or of a Grantor, as the case may be, effective in the manner permitted by this Agreement shall not require the consent of any Hedge Bank or any Cash Management Bank that is not a Lender.

Section 6.13 Additional Grantors. Pursuant to Section 6.11 of the Credit Agreement, certain additional Restricted Subsidiaries of the Borrower may be required to enter in this Agreement as Grantors. Upon execution and delivery by the Collateral Agent and a Restricted Subsidiary of a Security Agreement Supplement, such Restricted Subsidiary shall become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such instrument shall not require the consent of any other Grantor hereunder. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

Section 6.14 Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Grantor's true and lawful agent (and attorney-in-fact) of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof at any time after and during the continuance of an Event of Default, which appointment is irrevocable and coupled with an interest (provided that the Collateral Agent shall provide the applicable Grantor with notice thereof prior to exercising such rights). Without limiting the generality of the foregoing, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Event of Default and notice by the Collateral Agent to the applicable Grantor of the Collateral Agent's intent to exercise such rights, with full power of substitution either in the Collateral Agent's name or in the name of such Grantor (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral or Mortgaged Property; (c) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral or Mortgaged Property; (d) to send verifications of Accounts Receivable to any Account Debtor; (e) to commence and prosecute any and all suits, actions or proceedings at Law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or Mortgaged Property or to enforce any rights in respect of any Collateral or Mortgaged Property; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral or Mortgaged Property; (g) to notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; (h) to make, settle and adjust claims in respect of Article 9 Collateral or Mortgaged Property under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance; (i) to make all determinations and decisions with respect thereto; (j) to obtain or maintain the policies of insurance required by Section 6.07 of the Credit Agreement or paying any premium in whole or in part relating thereto; and (k) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral or Mortgaged Property, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral or Mortgaged Property for all purposes; provided that nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or Mortgaged Property or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence, bad faith, or willful misconduct or that of any of their Affiliates, directors, officers, employees, counsel, agents or attorneys-in-fact, in each case, as determined by a final non-appealable judgment of a court of competent jurisdiction. All sums disbursed by the Collateral Agent in connection with this paragraph, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, within 10 days of demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

Section 6.15 General Authority of the Collateral Agent. By acceptance of the benefits of this Agreement and any other Collateral Documents, each Secured Party (whether or not a signatory hereto) shall be deemed irrevocably (a) to consent to the appointment of the Collateral Agent as its agent hereunder and under such other Collateral Documents, (b) to confirm that the Collateral Agent shall

have the authority to act as the exclusive agent of such Secured Party for the enforcement of any provisions of this Agreement and such other Collateral Documents against any Grantor, the exercise of remedies hereunder or thereunder and the giving or withholding of any consent or approval hereunder or thereunder relating to any Collateral or any Grantor's obligations with respect thereto, (c) to agree that it shall not take any action to enforce any provisions of this Agreement or any other Collateral Document against any Grantor, to exercise any remedy hereunder or thereunder or to give any consents or approvals hereunder or thereunder except as expressly provided in this Agreement or any other Collateral Document and (d) to agree to be bound by the terms of this Agreement and any other Collateral Documents.

Section 6.16 Reasonable Care. The Collateral Agent is required to use reasonable care in the custody and preservation of any of the Collateral in its possession; provided, that the Collateral Agent shall be deemed to have used reasonable care in the custody and preservation of any of the Collateral or Mortgaged Property, if such Collateral or Mortgaged Property is accorded treatment substantially similar to that which the Collateral Agent accords its own property.

Section 6.17 Delegation; Limitation. The Collateral Agent may execute any of the powers granted under this Agreement or the Mortgages and perform any duty hereunder either directly or by or through agents or attorneys-in-fact, and shall not be responsible for the gross negligence or willful misconduct of any agents or attorneys-in-fact selected by it with reasonable care and without gross negligence or willful misconduct.

Section 6.18 Reinstatement. The obligations of the Grantors under this Security Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Secured Obligations is rescinded or must be otherwise restored by any holder of any of the Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 6.19 Miscellaneous. The Collateral Agent shall not be deemed to have actual, constructive, direct or indirect notice or knowledge of the occurrence of any Event of Default unless and until the Collateral Agent shall have received a notice of Event of Default or a notice from the Grantor or the Secured Parties to the Collateral Agent in its capacity as Collateral Agent indicating that an Event of Default has occurred.

[*Signature Pages Follow*]

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

SW ACQUISITIONS CO., INC.

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Chief Financial Officer and Secretary

BUSCH ENTERTAINMENT LLC

**BUSCH ENTERTAINMENT COMPANY
INTERNATIONAL, INC.**

LANGHORNE FOOD SERVICES LLC

SEA WORLD LLC

SEA WORLD OF FLORIDA LLC

SEA WORLD OF TEXAS LLC

By: /s/ Howard J. Demsky
Name: Howard J. Demsky
Title: Secretary

BANK OF AMERICA, N.A., as Collateral Agent

By: /s/ Liliana Claar

Name: Liliana Claar

Title: Vice President

SUPPLEMENT NO. _____ dated as of [•], to the Security Agreement (the “**Security Agreement**”), dated as of December 1, 2009, among the Grantors identified therein and Bank of America, N.A., as Collateral Agent.

A. Reference is made to the Credit Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among SW Acquisitions Co., a Delaware corporation (the “**Borrower**”), SW Holdco, Inc., the direct parent of the Borrower, the Guarantors from time to time party thereto, Bank of America, N.A., as Administrative Agent and Collateral Agent, each lender from time to time party thereto (collectively, the “**Lenders**” and individually, a “**Lender**”), Bank of America, N.A., as L/C Issuer and Swing Line Lender, and the other agents named therein.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Security Agreement.

C. The Grantors have entered into the Security Agreement in order to induce the Lenders to make Loans and the L/C Issuers to issue Letters of Credit. Section 6.13 of the Security Agreement provides that additional Restricted Subsidiaries of the Borrower may become Grantors under the Security Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned (the “**New Grantor**”) is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Grantor under the Security Agreement in order to induce the Lenders to make additional Loans and the L/C Issuers to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Grantor agree as follows:

SECTION 1. In accordance with Section 6.13 of the Security Agreement, the New Grantor by its signature below becomes a Grantor under the Security Agreement with the same force and effect as if originally named therein as a Grantor and the New Grantor hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct on and as of the date hereof. In furtherance of the foregoing, the New Grantor, as security for the payment and performance in full of the Secured Obligations, does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Grantor’s right, title and interest in and to the Collateral (as defined in the Security Agreement) of the New Grantor. Each reference to a “Grantor” in the Security Agreement shall be deemed to include the New Grantor. The Security Agreement is hereby incorporated herein by reference.

SECTION 2. The New Grantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral

Agent shall have received a counterpart of this Supplement that bears the signature of the New Grantor and the Collateral Agent has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile transmission or other electronic communication shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. The New Grantor hereby represents and warrants that (a) set forth on Schedule I attached hereto is a true and correct schedule of the information required by Schedules II and III to the Security Agreement applicable to it and its and its' subsidiaries legal name, jurisdiction of formation and location of Chief Executive Office and (b) set forth under its signature hereto is the true and correct legal name of the New Grantor, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 7. If any provision of this Supplement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Supplement shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 6.01 of the Security Agreement.

SECTION 9. The New Grantor agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with the execution and delivery of this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Collateral Agent.

[*Signature pages follow*]

IN WITNESS WHEREOF, the New Grantor and the Collateral Agent have duly executed this Supplement to the Security Agreement as of the day and year first above written.

[NAME OF NEW GRANTOR]

By: _____
Name: _____
Title: _____

Legal Name:
Jurisdiction of Formation:
Location of Chief Executive office:

BANK OF AMERICA, N.A.,
as Collateral Agent

By: _____
Name: _____
Title: _____

EQUITY INTERESTS

<u>Issuer</u>	<u>Number of Certificate</u>	<u>Registered Owner</u>	<u>Number and Class of Equity Interest</u>	<u>Percentage of Equity Interests</u>
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INSTRUMENTS AND DEBT SECURITIES

<u>Issuer</u>	<u>Principal Amount</u>	<u>Date of Note</u>	<u>Maturity Date</u>
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[FORM OF] PERFECTION CERTIFICATE

**FORM OF
PATENT SECURITY AGREEMENT (SHORT FORM)**

PATENT SECURITY AGREEMENT

Patent Security Agreement, dated as of [], by [] and [] (the "Grantor"), in favor of BANK OF AMERICA, N.A., in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the "Collateral Agent").

WITNESSETH:

W HEREAS, the Grantor is party to a Security Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement") in favor of the Collateral Agent pursuant to which the Grantor is required to execute and deliver this Patent Security Agreement;

N OW, T HEREFOR E, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into the Credit Agreement, the Grantor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. The Grantor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral (excluding any Excluded Assets) of the Grantor:

(a) Patents of the Grantor listed on Schedule I attached hereto.

SECTION 3. The Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Patents made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the termination of the Security Agreement in accordance with Section 6.12 thereof, the Collateral Agent shall, at the expense of the Grantor, execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the lien on and security interest in the Patents under this Patent Security Agreement and any other documents required to evidence the termination of the Collateral Agent's interest in the Patents.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.

[Signature pages follow.]

[GRANTOR]

By: _____
Name:
Title:

BANK OF AMERICA, N.A.,
as Collateral Agent

By: _____

Name:

Title:

Schedule I
to
PATENT SECURITY AGREEMENT
UNITED STATES PATENTS AND PATENT APPLICATIONS

Patents:

<u>OWNER</u>	<u>PATENT NUMBER</u>	<u>TITLE</u>
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Patent Applications:

<u>OWNER</u>	<u>APPLICATION NUMBER</u>	<u>TITLE</u>
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**FORM OF
TRADEMARK SECURITY AGREEMENT (SHORT FORM)**

TRADEMARK SECURITY AGREEMENT

Trademark Security Agreement, dated as of [], by [] and [] (the “**Grantor**”), in favor of BANK OF AMERICA, N.A., in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the “**Collateral Agent**”).

WITNESSETH:

WHEREAS, the Grantor is party to a Security Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”) in favor of the Collateral Agent pursuant to which the Grantor is required to execute and deliver this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into the Credit Agreement, the Grantor hereby agrees with the Collateral Agent as follows:

SECTION 1. **Defined Terms**. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. **Grant of Security Interest in Trademark Collateral**. The Grantor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral (excluding any Excluded Assets) of the Grantor:

(a) registered Trademarks of the Grantor listed on Schedule I attached hereto.

SECTION 3. **The Security Agreement**. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademarks made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. **Termination**. Upon the termination of the Security Agreement in accordance with Section 6.12 thereof, the Collateral Agent shall, at the expense of the Grantor, execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the lien on and security interest in the Trademarks under this Trademark Security Agreement and any other documents required to evidence the termination of the Collateral Agent’s interest in the Trademarks.

SECTION 5. **Counterparts**. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.

[Signature pages follow]

[GRANTOR]

By: _____
Name:
Title:

BANK OF AMERICA, N.A.,
as Collateral Agent

By: _____

Name:

Title:

Schedule I
to
TRADEMARK SECURITY AGREEMENT
UNITED STATES TRADEMARK REGISTRATIONS AND APPLICATIONS

Trademark Registrations:

OWNER	REGISTRATION NUMBER	TRADEMARK
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Trademark Applications:

OWNER	APPLICATION NUMBER	TRADEMARK
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**FORM OF
COPYRIGHT SECURITY AGREEMENT (SHORT FORM)**

COPYRIGHT SECURITY AGREEMENT

Copyright Security Agreement, dated as of [], by [] and [] (the “**Grantor**”), in favor of BANK OF AMERICA, N.A., in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the “**Collateral Agent**”).

WITNESSETH:

WHEREAS, the Grantor is party to a Security Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”) in favor of the Collateral Agent pursuant to which the Grantor is required to execute and deliver this Copyright Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into the Credit Agreement, the Grantor hereby agrees with the Collateral Agent as follows:

SECTION 1. **Defined Terms**. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. **Grant of Security Interest in Copyright Collateral**. The Grantor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral (excluding any Excluded Assets) of the Grantor:

(a) registered Copyrights of the Grantor listed on Schedule I attached hereto.

SECTION 3. **The Security Agreement**. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyrights made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. **Termination**. Upon termination of the Security Agreement in accordance with Section 6.12 thereof, the Collateral Agent shall, at the expense of the Grantor, execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the lien on and security interest in the Copyrights under this Copyright Security Agreement and any other documents required to evidence the termination of the Collateral Agent’s interest in the Copyrights.

SECTION 5. **Counterparts**. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.

[Signature pages follow.]

[GRANTOR]

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as Collateral Agent

By: _____
Name:
Title:

**Schedule I
to
COPYRIGHT SECURITY AGREEMENT
UNITED STATES COPYRIGHT REGISTRATIONS**

OWNER

REGISTRATION NUMBER

COPYRIGHT TITLE

SUPPLEMENT NO. 1 dated as of December 17, 2012, to the Security Agreement (the “**Security Agreement**”), dated as of December 1, 2009, among the Grantors identified therein and Bank of America, N.A., as Collateral Agent.

A. Reference is made to the Credit Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among SeaWorld Parks and Entertainment, Inc., a Delaware corporation (the “**Borrower**”), SW Holdco, Inc., the direct parent of the Borrower, the Guarantors from time to time party thereto, Bank of America, N.A., as Administrative Agent and Collateral Agent, each lender from time to time party thereto (collectively, the “**Lenders**” and individually, a “**Lender**”), Bank of America, N.A., as L/C Issuer and Swing Line Lender, and the other agents named therein.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Security Agreement.

C. The Grantors have entered into the Security Agreement in order to induce the Lenders to make Loans and the L/C Issuers to issue Letters of Credit. Section 6.13 of the Security Agreement provides that additional Restricted Subsidiaries of the Borrower may become Grantors under the Security Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned (each a “**New Grantor**”) is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Grantor under the Security Agreement in order to induce the Lenders to make additional Loans and the L/C Issuers to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and each New Grantor agree as follows:

SECTION 1. In accordance with Section 6.13 of the Security Agreement, each New Grantor by its signature below becomes a Grantor under the Security Agreement with the same force and effect as if originally named therein as a Grantor and each New Grantor hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct on and as of the date hereof. In furtherance of the foregoing, each New Grantor, as security for the payment and performance in full of the Secured Obligations, does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Grantor’s right, title and interest in and to the Collateral (as defined in the Security Agreement) of the New Grantor. Each reference to a “Grantor” in the Security Agreement shall be deemed to include each New Grantor. The Security Agreement is hereby incorporated herein by reference.

SECTION 2. Each New Grantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received a counterpart of this Supplement that bears the signature of each New Grantor and the Collateral Agent has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile transmission or other electronic communication shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. Each New Grantor hereby represents and warrants that (a) set forth on Schedule I attached hereto is a true and correct schedule of the information required by Schedules II and III to the Security Agreement applicable to it and its and its' subsidiaries legal name, jurisdiction of formation and location of Chief Executive Office and (b) set forth under its signature hereto is the true and correct legal name of each New Grantor, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 7. If any provision of this Supplement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Supplement shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 6.01 of the Security Agreement.

SECTION 9. Each New Grantor agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with the execution and delivery of this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Collateral Agent.

[*Signature pages follow*]

IN WITNESS WHEREOF, each New Grantor and the Collateral Agent have duly executed this Supplement to the Security Agreement as of the day and year first above written.

SEAWORLD OF TEXAS HOLDINGS, LLC

By: /s/ Daniel Decker

Name: Daniel Decker
Title: Manager

By: /s/ Marcus VanVleet

Name: Marcus VanVleet
Title: Manager

By: /s/ Charles Wetesnick

Name: Charles Wetesnick
Title: Manager

Legal Name: SeaWorld of Texas Holdings, LLC
Jurisdiction of Formation: Texas
Location of Chief Executive Office: 10500 Sea World Drive, San Antonio, TX 78521

SEAWORLD OF TEXAS MANAGEMENT, LLC

By: /s/ Daniel Decker

Name: Daniel Decker
Title: Manager

By: /s/ Marcus VanVleet

Name: Marcus VanVleet
Title: Manager

By: /s/ Charles Wetesnick

Name: Charles Wetesnick
Title: Manager

Legal Name: SeaWorld of Texas Management, LLC
Jurisdiction of Formation: Texas
Location of Chief Executive Office: 10500 Sea World Drive, San Antonio, TX 78521

[*Signature Page to Supplement No. 1*]

SEAWORLD OF TEXAS BEVERAGE, LLC

By: /s/ Daniel Decker

Name: Daniel Decker
Title: Manager

By: /s/ Marcus VanVleet

Name: Marcus VanVleet
Title: Manager

By: /s/ Charles Wetesnick

Name: Charles Wetesnick
Title: Manager

Legal Name: SeaWorld of Texas Beverage, LLC
Jurisdiction of Formation: Texas
Location of Chief Executive Office: 10500 Sea World
Drive, San Antonio, TX 78521

[*Signature Page to Supplement No. 1*]

BANK OF AMERICA, N.A.,
as Collateral Agent

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

[*Signature Page to Supplement No. 1*]

EQUITY INTERESTS

<u>Issuer</u>	<u>Number of Certificate</u>	<u>Registered Owner</u>	<u>Number and Class of Equity Interest</u>	<u>Percentage of Equity Interests</u>
SeaWorld of Texas Holdings, LLC	N/A	Sea World of Texas LLC	N/A	100%
SeaWorld of Texas Management, LLC	N/A	SeaWorld of Texas Holdings, LLC	N/A	100%
SeaWorld of Texas Beverage, LLC	N/A	SeaWorld of Texas Management, LLC	N/A	100%

INSTRUMENTS AND DEBT SECURITIES

None.

PLEDGE AGREEMENT

dated as of

December 1, 2009

Between

SW HOLDCO, INC.

and

BANK OF AMERICA, N.A.

as Collateral Agent

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Schedule I Pledged Equity

PLEDGE AGREEMENT dated as of December 1, 2009, among SW Holdco, Inc., a Delaware corporation (“**Holdings**”) and Bank of America, N.A., as Collateral Agent for the Secured Parties (in such capacity, the “**Collateral Agent**”).

Reference is made to (i) that certain Credit Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among SW Acquisitions Co., Inc. (the “**Borrower**”), Holdings, the other Guarantors party thereto from time to time, Bank of America, N.A., as Administrative Agent and Collateral Agent, each lender from time to time party thereto (collectively, the “**Lenders**” and individually, a “**Lender**”), Bank of America, N.A., as L/C Issuer and Swing Line Lender, and the other agents named therein and (ii) that certain Security Agreement dated as of December 1, 2009 among the grantors identified therein (the “**Grantors**”) and the Collateral Agent. The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. Holdings is the direct parent of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and is willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Credit Agreement. (a) Capitalized terms used in this Agreement and not otherwise defined herein have the meanings specified in the Credit Agreement. All terms defined in the UCC (as defined herein) and not defined in this Agreement have the meanings specified therein; the term “instrument” shall have the meaning specified in Article 9 of the UCC.

(b) The rules of construction specified in Article I of the Credit Agreement also apply to this Agreement.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**Agreement**” means this Pledge Agreement.

“**Borrower**” has the meaning assigned to such term in the recitals of this Agreement.

“**Collateral Agent**” has the meaning assigned to such terms in the recitals of this Agreement.

“**Credit Agreement**” has the meaning assigned to such term in the preliminary statement of this Agreement.

“**Holdings**” has the meaning assigned to such term in the recitals of this Agreement.

“**Lenders**” has the meaning assigned to such term in the recitals of this Agreement.

“**Perfection Certificate**” means a certificate substantially in the form of Exhibit II to the Security Agreement, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by a Responsible Officer of Holdings.

“ **Pledged Collateral** ” has the meaning assigned to such term in Section 2.01.

“ **Pledged Equity** ” has the meaning assigned to such term in Section 2.01.

“ **Secured Obligations** ” means the “Obligations” (as defined in the Credit Agreement).

“ **Secured Parties** ” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the Hedge Banks, the Cash Management Banks, the Supplemental Agents and each co-agent or sub-agent appointed by the Administrative Agent or the Collateral Agent from time to time pursuant to Section 9.02 of the Credit Agreement.

“ **Security Agreement** ” has the meaning assigned to such term in the recitals of this Agreement.

“ **UCC** ” means the Uniform Commercial Code as from time to time in effect in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of the security interest in any Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “ **UCC** ” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

ARTICLE II

Pledge of Securities

SECTION 2.01. Pledge. As security for the payment or performance, as the case may be, in full of the Secured Obligations, including the Guarantees, Holdings hereby assigns and pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in (i) all of Holdings’ right, title and interest in, to and under all Equity Interests issued by the Borrower and any successor entity (the “ **Pledged Equity** ”); (ii) all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the Pledged Equity; (iii) all rights and privileges of Holdings with respect to the securities and other property referred to in clauses (i) and (ii) above; and (iv) all Proceeds of any of the foregoing (the items referred to in clauses (i) through (iv) above being collectively referred to as the “ **Pledged Collateral** ”).

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, forever, *subject* , *however* , to the terms, covenants and conditions hereinafter set forth.

SECTION 2.02. Delivery of the Pledged Equity. (a) Holdings agrees promptly (but in any event within 30 days after receipt by Holdings) to deliver or cause to be delivered to the Collateral Agent, for the benefit of the Secured Parties, any and all Pledged Equity to the extent certificated.

(b) Upon delivery to the Collateral Agent, any Pledged Equity shall be accompanied by stock or security powers duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request. Each delivery of Pledged Equity shall be accompanied by a schedule describing the securities, which schedule shall be deemed to supplement Schedule I and made a part hereof; *provided* that failure to supplement Schedule I shall not affect the validity of such pledge of such Pledged Equity. Each schedule so delivered shall supplement any prior schedules so delivered.

SECTION 2.03. Representations, Warranties and Covenants. Holdings represents, warrants and covenants to and with the Collateral Agent, for the benefit of the Secured Parties, that:

(a) As of the date hereof, Schedule I includes all Equity Interests required to be pledged by Holdings hereunder in order to satisfy the Collateral and Guarantee Requirement and all such Equity Interests have been delivered to the Collateral Agent;

(b) the Pledged Equity has been duly and validly authorized and issued by the issuers thereof and are fully paid and nonassessable;

(c) except for the security interests granted hereunder, Holdings (i) is, subject to any transfers made in compliance with the Credit Agreement, the direct owner, beneficially and of record, of the Pledged Equity indicated on Schedule I, (ii) holds the same free and clear of all Liens, other than Liens created by the Collateral Documents, and (iii) if requested by the Collateral Agent, will defend its title or interest thereto or therein against any and all Liens (other than the Liens permitted pursuant to this Section 2.03(c)), however arising, of all Persons whomsoever;

(d) except for restrictions and limitations (i) imposed or permitted by the Loan Documents or securities laws generally or (ii) described in the Perfection Certificate, the Pledged Collateral is and will continue to be freely transferable and assignable, and none of the Pledged Collateral is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect in any manner material and adverse to the Secured Parties the pledge of such Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(e) the execution and performance by Holdings of this Agreement are within Holdings' corporate powers and have been duly authorized by all necessary corporate action or other organizational action;

(f) no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby, except for (i) filing of a UCC-1 financing statement with the Delaware Secretary of State naming Holdings as debtor and the Collateral Agent as secured party and describing the Pledged Collateral and (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect;

(g) by virtue of the execution and delivery by Holdings of this Agreement, and delivery of the Pledged Equity to and continued possession by the Collateral Agent in the State of New York, the Collateral Agent for the benefit of the Secured Parties has a legal, valid and perfected lien upon and security interest in such Pledged Equity as security for the payment and performance of the Secured Obligations; and

(h) the pledge effected hereby is effective to vest in the Collateral Agent, for the benefit of the Secured Parties, the rights of the Collateral Agent in the Pledged Collateral to the extent intended hereby.

Subject to the terms of this Agreement and to the extent permitted by Applicable Law, Holdings hereby agrees that upon the occurrence and during the continuance of an Event of Default, it will comply with instructions of the Collateral Agent with respect to the Equity Interests in Holdings that constitute Pledged Equity hereunder that are not certificated without further consent by the applicable owner or holder of such Equity Interests.

SECTION 2.04. Registration in Nominee Name; Denominations. If an Event of Default shall have occurred and be continuing and the Collateral Agent shall give Holdings prior notice of its intent to exercise such rights, (a) the Collateral Agent, on behalf of the Secured Parties, shall have the right to hold the Pledged Equity in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of Holdings, endorsed or assigned in blank or in favor of the Collateral Agent and Holdings will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Equity registered in the name of Holdings and (b) the Collateral Agent shall have the right to exchange the certificates representing Pledged Equity for certificates of smaller or larger denominations for any purpose consistent with this Agreement, to the extent permitted by the documentation governing such Pledged Equity.

SECTION 2.05. Voting Rights; Dividends and Interest. (a) Unless and until an Event of Default shall have occurred and be continuing and the Collateral Agent shall have provided prior notice to Holdings that its rights under this Section 2.05 are being suspended:

(i) Holdings shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Equity or any part thereof, and Holdings agrees that it shall exercise such rights for purposes consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents;

(ii) The Collateral Agent shall promptly (after reasonable advance notice) execute and deliver to Holdings, or cause to be executed and delivered to Holdings, all such proxies, powers of attorney and other instruments as Holdings may reasonably request for the purpose of enabling Holdings to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above; and

(iii) Holdings shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Equity to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable Laws; *provided* that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Equity or received in exchange for Pledged Equity or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral, and, if received by Holdings, shall not be commingled by Holdings with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent and the Secured Parties and shall be promptly (and in any event within 10 Business Days) delivered to the Collateral Agent in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). So long as no Default or Event of Default has occurred and is continuing, the Collateral Agent shall promptly deliver to Holdings any Pledged Equity in its possession if requested to be delivered to the issuer thereof in connection with any exchange or redemption of such Pledged Equity permitted by the Credit Agreement in accordance with this Section 2.05(a)(iii).

(b) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have notified Holdings of the suspension of its rights under paragraph (a)(iii) of this Section 2.05, then all rights of Holdings to dividends, interest, principal or other distributions that Holdings is authorized to receive pursuant to paragraph (a)(iii) of this Section 2.05 shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal or other distributions received by Holdings contrary to the provisions of this Section 2.05 shall be held in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of Holdings and shall be promptly (and in any event within 10 days) delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (b) shall be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and shall be applied in accordance with the provisions of Section 3.02. After all Events of Default have been cured or waived, the Collateral Agent shall promptly repay to Holdings (without interest) all dividends, interest, principal or other distributions that Holdings would otherwise be permitted to retain pursuant to the terms of paragraph (a)(iii) of this Section 2.05 and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have provided Holdings with notice of the suspension of its rights under paragraph (a)(i) of this Section 2.05, then all rights of Holdings to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 2.05, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.05, shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; *provided* that, unless otherwise directed by the Required Lenders, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit Holdings to exercise such rights. After all Events of Default have been cured or waived, Holdings shall have the exclusive right to exercise the voting and/or consensual rights and powers that Holdings would otherwise be entitled to exercise pursuant to the terms of paragraph (a)(i) above, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.05 shall be reinstated.

(d) Any notice given by the Collateral Agent to Holdings under Section 2.04 or Section 2.05 shall be given in writing and may suspend the rights of Holdings under paragraph (a)(i) or paragraph (a)(iii) of this Section 2.05 in part without suspending all such rights (as specified by the Collateral Agent in its sole and absolute discretion) and without waiving or otherwise affecting the Collateral Agent's rights to give additional notices from time to time suspending other rights so long as an Event of Default has occurred and is continuing.

ARTICLE III

Remedies

SECTION 3.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, it is agreed that the Collateral Agent shall have the right to exercise any and all rights afforded to a secured party with respect to the Secured Obligations, including the Guarantees, under the Uniform Commercial Code or other applicable Law and also may (i) exercise any and all rights and remedies of Holdings under or in connection with the Pledged Collateral, or otherwise in respect of the Pledged Collateral; *provided* that the Collateral Agent shall provide Holdings with notice thereof prior to such exercise; and (ii) subject to the mandatory requirements of applicable Law and the notice requirements described below, sell or otherwise dispose of all or any part of

the Pledged Collateral securing the Secured Obligations at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized at any such sale of securities (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Pledged Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Pledged Collateral so sold. Each such purchaser at any sale of Pledged Collateral shall hold the property sold absolutely, free from any claim or right on the part of Holdings, and Holdings hereby waives (to the extent permitted by Law) all rights of redemption, stay and appraisal which Holdings now has or may at any time in the future have under any Law now existing or hereafter enacted.

The Collateral Agent shall give Holdings 10 days' written notice (which Holdings agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Pledged Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Pledged Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Pledged Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Pledged Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Pledged Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Pledged Collateral is made on credit or for future delivery, the Pledged Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Pledged Collateral so sold and, in case of any such failure, such Pledged Collateral may be sold again upon like notice. At any public (or, to the extent permitted by Law, private) sale made pursuant to this Agreement, any Secured Party may bid for or purchase, free (to the extent permitted by Law) from any right of redemption, stay, valuation or appraisal on the part of Holdings (all said rights being also hereby waived and released to the extent permitted by Law), the Pledged Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from Holdings as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to Holdings therefor. For purposes hereof, a written agreement to purchase the Pledged Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and Holdings shall not be entitled to the return of the Pledged Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at Law or in equity to foreclose this Agreement and to sell the Pledged Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 3.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

SECTION 3.02. Application of Proceeds. The Collateral Agent shall apply the proceeds of any collection or sale of Pledged Collateral, including any Pledged Collateral consisting of cash in accordance with Section 8.04 of the Credit Agreement.

The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Pledged Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Pledged Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

The Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on information supplied to it as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations, *provided* that nothing in this sentence shall prevent Holdings from contesting any amounts claimed by any Secured Party in any information so supplied. All distributions made by the Collateral Agent pursuant to this Section 3.02 shall be (subject to any decree of any court of competent jurisdiction) final (absent manifest error), and the Collateral Agent shall have no duty to inquire as to the application by the Administrative Agent of any amounts distributed to it.

ARTICLE IV

Miscellaneous

SECTION 4.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.02 of the Credit Agreement.

SECTION 4.02. Waivers, Amendment. (a) No failure or delay by any Secured Party in exercising any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of the Secured Parties herein provided, and provided under each other Loan Document, are cumulative and are not exclusive of any rights, remedies, powers and privileges provided by Law. No waiver of any provision of this Agreement or consent to any departure by Holdings therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 4.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan, the issuance of a Letter of Credit or the provision of services under Cash Management Obligations or Secured Hedge Agreements shall not be construed as a waiver of any Default, regardless of whether any Secured Party may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and Holdings, subject to any consent required in accordance with Section 10.01 of the Credit Agreement.

SECTION 4.03. Collateral Agent's Fees and Expenses; Indemnification. (a) The parties hereto agree that the Collateral Agent shall be entitled to reimbursement of its reasonable out-of-pocket expenses incurred hereunder and indemnity for its actions in connection herewith, in each case, as provided in Sections 10.04 and 10.05 of the Credit Agreement.

(b) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Collateral Documents. The provisions of this Section 4.03 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Secured Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section 4.03 shall be payable within 10 days of written demand therefor.

SECTION 4.04. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 4.05. Survival of Agreement. All covenants, agreements, representations and warranties made by Holdings hereunder and in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Secured Parties and shall survive the execution and delivery of the Loan Documents, the making of any Loans and issuance of any Letters of Credit and the provision of services under Cash Management Obligations or Secured Hedge Agreements, regardless of any investigation made by any Secured Party or on its behalf and notwithstanding that any Secured Party may have had notice or knowledge of any Default at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as this Agreement has not been terminated or released pursuant to Section 4.12 below.

SECTION 4.06. Counterparts; Effectiveness, Several Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by facsimile or other electronic communication of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement. This Agreement shall become effective as to Holdings when a counterpart hereof executed on behalf of Holdings shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon Holdings and the Collateral Agent and their respective permitted successors and assigns, and shall inure to the benefit of Holdings, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that Holdings shall not have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Pledged Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement.

SECTION 4.07. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 4.08. Right of Set-Off. In addition to any rights and remedies of the Secured Parties provided by Law, upon the occurrence and during the continuance of any Event of Default, each Secured Party and its Affiliates is authorized at any time and from time to time, without prior notice to Holdings, any such notice being waived by Holdings to the fullest extent permitted by applicable Law, to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Secured Party and its Affiliates to or for the credit or the account of Holdings against any and all Obligations owing to such Secured Party and its Affiliates hereunder, now or hereafter existing, irrespective of whether or not such Secured Party or Affiliate shall have made demand under this Agreement and although such Obligations may be contingent or unmatured

or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Secured Party agrees promptly to notify Holdings and the Collateral Agent after any such set-off and application made by such Secured Party; *provided*, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section 4.08 are in addition to other rights and remedies (including other rights of set-off) that such Secured Party may have at Law.

SECTION 4.09. Governing Law; Jurisdiction; Venue; Waiver of Jury Trial; Consent to Service of Process.

(a) The terms of Sections 10.15 and 10.16 of the Credit Agreement with respect to governing law, submission of jurisdiction, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

(b) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 4.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

SECTION 4.10. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 4.11. Security Interest Absolute. To the extent permitted by Law, all rights of the Collateral Agent hereunder, the grant of a security interest in the Pledged Collateral and all obligations of Holdings hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Holdings in respect of the Secured Obligations or this Agreement.

SECTION 4.12. Termination or Release. (a) This Agreement and all security interests granted hereby shall terminate with respect to all Secured Obligations and any Liens arising therefrom shall be automatically released upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (i) Cash Management Obligations or obligations under Secured Hedge Agreements not yet due and payable and (ii) contingent obligations not yet accrued and payable) and the expiration or termination of all Letters of Credit (other than Letters of Credit in which the Outstanding Amount of the L/C Obligations related thereto have been Cash Collateralized or, if satisfactory to the relevant L/C Issuer in its reasonable discretion, for which a backstop letter of credit is in place).

(b) Upon any sale or transfer by Holdings of any Pledged Collateral that is permitted under the Credit Agreement (other than a sale or transfer to another Grantor), or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Pledged Collateral pursuant to Section 10.01 of the Credit Agreement, the security interest in such Collateral shall be automatically released.

(c) In connection with any termination or release pursuant to paragraph (a) or (b) of this Section 4.12, the Collateral Agent shall execute and deliver to Holdings, at Holdings' expense, all documents that Holdings shall reasonably request to evidence such termination or release and shall perform such other actions reasonably requested by Holdings to effect such release, including delivery of certificates, securities and instruments. Any execution and delivery of documents pursuant to this Section 4.12 shall be without recourse to or warranty by the Collateral Agent.

(d) Notwithstanding anything to the contrary set forth in this Agreement, each Hedge Bank and each Cash Management Bank by the acceptance of the benefits under this Agreement hereby acknowledges and agrees that (i) the security interests granted under this Agreement of the Obligations of Holdings under any Secured Hedge Agreement and any Cash Management Obligations shall be automatically released upon termination of the Commitments and payment in full of all other Obligations and the expiration or termination of all Letters of Credit (other than Letters of Credit in which the Outstanding Amount of the L/C Obligations related thereto have been Cash Collateralized or, if satisfactory to the relevant L/C Issuer in its reasonable discretion, for which a backstop letter of credit is in place), in each case, unless the Obligations under the Secured Hedge Agreement or the Cash Management Obligations are due and payable at such time (it being understood and agreed that this Agreement and the security interests granted herein shall survive solely as to such due and payable Obligations and until such time as such due and payable Obligations have been paid in full) and (ii) any release of Collateral effective in the manner permitted by this Agreement shall not require the consent of any Hedge Bank or any Cash Management Bank that is not a Lender.

SECTION 4.13. Collateral Agent Appointed Attorney-in-Fact. Holdings hereby appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Grantor's true and lawful agent (and the attorney-in-fact) of Holdings for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof at any time after and during the continuance of an Event of Default, which appointment is irrevocable and coupled with an interest (*provided* that the Collateral Agent shall provide the applicable Grantor with notice thereof prior to exercising such rights). Without limiting the generality of the foregoing, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Event of Default and notice by the Collateral Agent to Holdings of the Collateral Agent's intent to exercise such rights, with full power of substitution either in the Collateral Agent's name or in the name of Holdings (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Pledged Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Pledged Collateral; (c) to commence and prosecute any and all suits, actions or proceedings at Law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Pledged Collateral or to enforce any rights in respect of any Pledged Collateral; (d) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Pledged Collateral; (e) to endorse the name of Holdings on any check, draft, instrument or other item of payment representing or included in the Pledged Collateral; (f) to make all determinations and decisions with respect thereto; and (g) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Pledged Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Pledged Collateral for all purposes; *provided* that nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Pledged Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to Holdings for any act or failure to act hereunder, except for their own gross negligence, bad faith, or willful misconduct or that of any of their Affiliates, directors, officers, employees, counsel, agents or attorneys-in-fact, in each case, as determined by a final nonappealable judgment of a court of competent jurisdiction. All sums disbursed by the Collateral Agent in connection with this paragraph, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, within 10 days of demand, by Holdings to the Collateral Agent and shall be additional Secured Obligations secured hereby.

SECTION 4.14. General Authority of the Collateral Agent. By acceptance of the benefits of this Agreement and any other Collateral Documents, each Secured Party (whether or not a signatory hereto) shall be deemed irrevocably (a) to consent to the appointment of the Collateral Agent as its agent hereunder and under such other Collateral Documents, (b) to confirm that the Collateral Agent shall have the authority to act as the exclusive agent of such Secured Party for the enforcement of any provisions of this Agreement and such other Collateral Documents against Holdings, the exercise of remedies hereunder or thereunder and the giving or withholding of any consent or approval hereunder or thereunder relating to any Pledged Collateral or Holdings' obligations with respect thereto, (c) to agree that it shall not take any action to enforce any provisions of this Agreement or any other Collateral Document against Holdings, to exercise any remedy hereunder or thereunder or to give any consents or approvals hereunder or thereunder except as expressly provided in this Agreement or any other Collateral Document and (d) to agree to be bound by the terms of this Agreement and any other Collateral Documents.

SECTION 4.15. Reasonable Care. The Collateral Agent is required to use reasonable care in the custody and preservation of any of the Pledged Collateral in its possession; *provided*, that the Collateral Agent shall be deemed to have used reasonable care in the custody and preservation of any of the Pledged Collateral, if such Pledged Collateral is accorded treatment substantially similar to that which the Collateral Agent accords its own property.

SECTION 4.16. Delegation; Limitation. The Collateral Agent may execute any of the powers granted under this Agreement and perform any duty hereunder either directly or by or through agents or attorneys-in-fact, and shall not be responsible for the gross negligence or willful misconduct of any agents or attorneys-in-fact selected by it with reasonable care and without gross negligence or willful misconduct.

SECTION 4.17. Reinstatement. The obligations of Holdings under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Secured Obligations is rescinded or must be otherwise restored by any holder of any of the Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

SECTION 4.18. Miscellaneous. The Collateral Agent shall not be deemed to have actual, constructive, direct or indirect notice or knowledge of the occurrence of any Event of Default unless and until the Collateral Agent shall have received a notice of Event of Default or a notice from Holdings or the Secured Parties to the Collateral Agent in its capacity as Collateral Agent indicating that an Event of Default has occurred.

[*Signature Pages Follow.*]

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

SW HOLDCO, INC.

By: /s/ Howard J. Demsky

Name: Howard J. Demsky

Title: Chief Financial Officer and Secretary

Signature Page to Pledge Agreement

BANK OF AMERICA, N.A. ,
as Collateral Agent

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

Signature Page to Pledge Agreement

PATENT SECURITY AGREEMENT

Patent Security Agreement, dated as of December 1, 2009, by BUSCH ENTERTAINMENT LLC (the “Grantor”), in favor of BANK OF AMERICA, N.A., in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantor is party to a Security Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent pursuant to which the Grantor is required to execute and deliver this Patent Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into the Credit Agreement, the Grantor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. The Grantor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral (excluding any Excluded Assets) of the Grantor:

(a) Patents of the Grantor listed on Schedule I attached hereto.

SECTION 3. The Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Patents made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the termination of the Security Agreement in accordance with Section 6.12 thereof, the Collateral Agent shall, at the expense of the Grantor, execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the lien on and security interest in the Patents under this Patent Security Agreement and any other documents required to evidence the termination of the Collateral Agent’s interest in the Patents.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.

[Signature pages follow.]

BUSCH ENTERTAINMENT LLC

By: /s/ Howard J. Demsky

Name: Howard J. Demsky

Title: Secretary

Signature Page to Patent Security Agreement

BANK OF AMERICA, N.A.,
as Collateral Agent

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

Signature Page to Patent Security Agreement

TRADEMARK SECURITY AGREEMENT

Trademark Security Agreement, dated as of December 1, 2009, by BUSCH ENTERTAINMENT LLC (the “Grantor”), in favor of BANK OF AMERICA, N.A., in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantor is party to a Security Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent pursuant to which the Grantor is required to execute and deliver this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into the Credit Agreement, the Grantor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. The Grantor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral (excluding any Excluded Assets) of the Grantor:

(a) registered Trademarks of the Grantor listed on Schedule I attached hereto.

SECTION 3. The Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademarks made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the termination of the Security Agreement in accordance with Section 6.12 thereof, the Collateral Agent shall, at the expense of the Grantor, execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the lien on and security interest in the Trademarks under this Trademark Security Agreement and any other documents required to evidence the termination of the Collateral Agent’s interest in the Trademarks.

SECTION 5. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.

[Signature pages follow]

BUSCH ENTERTAINMENT LLC

By: /s/ Howard J. Demsky

Name: Howard J. Demsky

Title: Secretary

Signature Page to Trademark Security Agreement

BANK OF AMERICA, N.A.,
as Collateral Agent

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

Signature Page to Trademark Security Agreement

TRADEMARK SECURITY AGREEMENT

Trademark Security Agreement, dated as of December 1, 2009, by SEA WORLD LLC (the “Grantor”), in favor of BANK OF AMERICA, N.A., in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantor is party to a Security Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent pursuant to which the Grantor is required to execute and deliver this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into the Credit Agreement, the Grantor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. The Grantor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral (excluding any Excluded Assets) of the Grantor:

(a) registered Trademarks of the Grantor listed on Schedule I attached hereto.

SECTION 3. The Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademarks made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the termination of the Security Agreement in accordance with Section 6.12 thereof, the Collateral Agent shall, at the expense of the Grantor, execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the lien on and security interest in the Trademarks under this Trademark Security Agreement and any other documents required to evidence the termination of the Collateral Agent’s interest in the Trademarks.

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[Signature pages follow]

SEA WORLD LLC

By: /s/ Howard J. Demsky

Name: Howard J. Demsky

Title: Secretary

Signature Page to Trademark Security Agreement

BANK OF AMERICA, N.A.,
as Collateral Agent

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

Signature Page to Trademark Security Agreement

COPYRIGHT SECURITY AGREEMENT

Copyright Security Agreement, dated as of December 1, 2009, by BUSCH ENTERTAINMENT LLC (the “Grantor”), in favor of BANK OF AMERICA, N.A., in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantor is party to a Security Agreement dated as of December 1, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent pursuant to which the Grantor is required to execute and deliver this Copyright Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into the Credit Agreement, the Grantor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. The Grantor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral (excluding any Excluded Assets) of the Grantor:

(a) registered Copyrights of the Grantor listed on Schedule I attached hereto.

SECTION 3. The Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyrights made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon termination of the Security Agreement in accordance with Section 6.12 thereof, the Collateral Agent shall, at the expense of the Grantor, execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the lien on and security interest in the Copyrights under this Copyright Security Agreement and any other documents required to evidence the termination of the Collateral Agent’s interest in the Copyrights.

SECTION 5. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.

[Signature pages follow.]

BUSCH ENTERTAINMENT LLC

By: /s/ Howard J. Demsky

Name: Howard J. Demsky

Title: Secretary

Signature Page to Copyright Security Agreement

BANK OF AMERICA, N.A.,
as Collateral Agent

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

Signature Page to Copyright Security Agreement

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SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. The Grantor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral (excluding any Excluded Assets) of the Grantor:

(a) registered Copyrights of the Grantor listed on Schedule I attached hereto.

SECTION 3. The Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyrights made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon termination of the Security Agreement in accordance with Section 6.12 thereof, the Collateral Agent shall, at the expense of the Grantor, execute, acknowledge, and deliver to the Grantor an instrument in writing in recordable form releasing the lien on and security interest in the Copyrights under this Copyright Security Agreement and any other documents required to evidence the termination of the Collateral Agent’s interest in the Copyrights.

SECTION 5. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.

[Signature pages follow.]

SEA WORLD LLC

By: /s/ Howard J. Demsky

Name: Howard J. Demsky

Title: Secretary

Signature Page to Copyright Security Agreement

BANK OF AMERICA, N.A.,
as Collateral Agent

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

Signature Page to Copyright Security Agreement

**SEA WORLD
DOCUMENTS**

**Lease Amendment
Document No 762304
January 9, 1978**

- Perez Cove Marina, Atlantis and Sea World leases, lease amendments and premises merged.
- Lease Term—40 years commencing January 1, 1978 and expiring December 31, 2018.
- Master Plan filed as Document No. 762202.
- Percentage Rents.

First \$600,000 of Food & Non-alcoholic Beverages	2-1/2%
Food & Non-alcoholic Beverages in excess of \$600,000	3%
Sale of General Admission tickets	2-1/2%
Alcoholic beverages	5%
Parking lots	7%
Other	7%
Boat rides, Skyride, Shamu ride, Sky Tower	3%
Animal food	3%
Game or amusement devices	5%
Institutional advertising	2-1/2%
Petroleum products except diesel	3%
Diesel	1-1/2%
Boats, motors & accessories sold at time of initial sale	2%
Boat service, sale of parts and accessories	4%
Boat storage	7%
Boat slips	20%

- Liability insurance: One Million Dollars (\$1,000,000) Dollars Combined Single Limit liability
- Subsequent encumbrances must be approved by City Manager.
- Institutional Advertising promulgated

LEASE AMENDMENT

THIS LEASE AMENDMENT, executed in duplicate 14 day of December 1977, at San Diego, California, by and between THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, hereinafter referred to as the "CITY" and Sea World, Inc., a Delaware corporation, whose address is 1720 South Shores Road, San Diego, California 92109, hereinafter referred to as "LESSEE", is entered into in reference to the following:

1. The Lease between City of San Diego and Marine Park Corporation (by change of corporate name and subsequent merger now vested in Sea World, Inc.) dated July 11, 1963 and the Amendments thereto:

- First Amendment dated January 13, 1966;
- Second Amendment dated June 30, 1966;
- Third Amendment dated December 5, 1967;
- Fourth Amendment dated September 24, 1968;
- Fifth Amendment dated March 12, 1971;
- Sixth Amendment dated November 10, 1975;

of Premises occupied by Sea World Park.

2. The Lease between City of San Diego and Sea World, Inc. dated February 7, 1967 of Premises occupied by the Atlantis Restaurant, and Amendments as follows:

- June 12, 1967;
- December 27, 1967.

3. The Lease between City of San Diego and Herman Poe, Herbert Bruggeman and Emet A. Ries subsequently assigned to BRP, Inc. dated September 8, 1960 of Premises occupied by Perez Cove Marina, Mission Bay Park and the following Amendments thereto:

- First Amendment dated February 19, 1962;
- Second Amendment dated August 6, 1962;
- Third Amendment dated December 23, 1963;
- Fourth Amendment dated June 25, 1964;
- Fifth Amendment dated April 27, 1965;
- Sixth Amendment as deleted dated December 16, 1965;
- Seventh Amendment dated March 16, 1967;
- Eighth Amendment dated April 27, 1971.

4. Sea World, Inc. and BRP, Inc. have entered into an agreement, subject to the approval of the City, providing for the assignment of the Lease of The Perez Cove Marina Premises to Sea World and Sea World's purchase of leasehold improvements situated thereon.

5. The Perez Cove Marina property is contiguous on one side of the property covered by the Sea World Lease and on another side by property covered by the Atlantis Restaurant Lease. Upon consummation of the Perez Cove Assignment the three properties will constitute a contiguous parcel under one ownership.

6. The foregoing leases contain numerous provisions that are identical or similar in both language and legal effect.

7. To simplify management of the property and administering the leases it is desired that the three Lease Agreements be consolidated into a single document, and that the property be managed and leases administered accordingly.

Therefore, in consideration of each of the parties agreeing to the modification of the commitments on their part to be performed, which are contained in said leases; of the benefits to each of the parties derived from such modifications; and in further consideration of the promises, covenants and mutual commitments herein set forth, the parties agree that each of the foregoing referred to Leases and Amendments thereto, are terminated in their entirety on the effective date of this Agreement, which date in hereinabove set forth and, in lieu thereof, the parties enter into this Lease Agreement as follows:

WITNESSETH

ARTICLE I

DEMISE

THE CITY hereby leases to LESSEE and LESSEE hereby leases and hires from CITY those parcels of real property and water area, together with appurtenances thereto situated in the COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, which are set forth in Exhibit "1". Said parcels are herein collectively referred to as the Premises, and individually are referred to as Parcel "A", Parcel "B" and Parcel "C".

ARTICLE II

TERM

The term hereafter referred to as the "Term", of this Lease shall be the period of 40 years, beginning January 1, 1978 and ending December 31, 2012.

ARTICLE III

USE OF THE PREMISES

A. Parcel "A: of the Premises herein referred to as Parcel "A" shall be used for the primary purpose of constructing, operating and maintaining thereon an ocean aquarium exhibit (also referred to herein as "marine life exhibit") substantially of the type and nature described in the Precise Plan of development of said Parcel (also referred to herein as

“Master Plan”) filed in the Office of the City Clerk as Document No. 762202, as mutually revised in writing between CITY and LESSEE, and for the following incidental uses: Operating and maintaining boat rides, skyride, sky tower and shamu ride concessions; snack bars; gift shops, institutional advertising which is incidental to the foregoing uses as described in Article XXXIX, herein, and for such other incidental uses as are specifically approved in writing by the City Manager of CITY; provided, however, all incidental activities and uses stated herein or hereafter authorized shall be complimentary to the primary use of an ocean aquarium exhibit or otherwise deemed desirable in the opinion of the City Manager to serve the patrons of said ocean aquarium exhibit; provided further, that boat rides and institutional advertising as authorized herein shall be subject to the provisions of Articles XXXIX and XL, respectively, hereof.

B. Parcel “B” of the Premises are leased for the purpose of constructing, operating and maintaining thereon a marina facility to serve the general boating public, which facility may include boat launching facilities, boatslips, boat storage, marine fuel dock, sale of marine hardware, parts and accessories; those commercial facilities permitted for Parcel “B” under the study entitled Mission Bay Park Master Plan for Land and Water Use, 1976; offices, service facilities and laboratories for Sea World Park and Hubbs-Sea World Research Institute; and, may include at LESSEE’s option, a restaurant and cocktail lounge, snack bar, the sale of beer for off-site consumption, and such other allied uses which are first approved in writing by the City Manager of CITY.

C. Parcel “C” of the Premises shall be used for the primary purpose and LESSEE shall have the right of constructing, operating and maintaining thereon a quality restaurant and cocktail lounge, a skyride terminal, a boat pier and selling rides on watercraft, and a banquet facility. LESSEE shall in addition to the foregoing have the right to use Parcel “C” to operate and maintain thereon activities which are incidental to the foregoing and such activities as may from time to time be desirable to serve the patrons of restaurant and the public as may have first been approved by the City Manager in writing.

D. In connection with the maintenance and operation and selling of rides on watercraft from or upon Parcels “A” and “C”, LESSEE shall have and CITY hereby grants and extends to LESSEE the right and privilege to operate watercraft in the public waterways of Mission Bay; LESSEE shall also have the right to embark and disembark passengers at Parcels “A” and “C” and the right to construct and maintain into the said Parcel “A” and “C” from the waterways fronting on said Parcels a channel at the location and of the dimension indicated on the Master Plan.

Granting of this right and privilege in connection with use and operation of watercraft on the waters of Mission Bay may be suspended by the CITY at any time when, in the opinion of the City Manager, such use becomes detrimental or hazardous to the other uses of Mission Bay. In any event, the CITY shall have the right upon ten (10) days written notice to require LESSEE to suspend the use and operation of watercraft for limited and predetermined periods when in the opinion of the City Manager, such use and operation would duly interfere with the use of Mission Bay for major public events.

Such suspension shall be without liability to the CITY for damages of any kind suffered by the LESSEE as a result of such suspension. The rights and privileges hereby granted shall be subject to the availability of operating area at approved speeds, and under such other municipals, state and federal rules and regulations as are applicable to the operation of watercraft.

E. In connection with Parcels "A" and "C", LESSEE shall have the right to operate an aerial sky ride over the waters of Mission Bay Park between the points Mission Bay Co-ordinates North 6,121.00 feet and West 12,864.36 feet, and North 6,460.00 feet and West 14,229.00 feet of said San Diego City Engineer's Mission Bay Co-ordinates Systems. Further, LESSEE shall have the right to construct and maintain two supporting towers for the sky ride in a 20-foot square-area, the center of which is located at the following points:

- (a) Mission Bay Co-ordinates North 6,206.59 feet and West 13,205.92 feet.
- (b) Mission Bay Co-ordinates North 6,368.30 feet and West 13,919.36 feet.

F. LESSEE shall use the Premises only for the purpose of conducting thereon the businesses for which they are demised, and shall diligently conduct such businesses so produce a reasonable and substantial gross income.

ARTICLE IV

RENT

The rent which LESSEE hereby agrees to pay to CITY and which shall be paid at the Office of the Treasurer of the CITY OF SAN DIEGO, Room 162, Civic Center, San Diego, California 92101, is as follows:

A. LESSEE shall pay to CITY a sum of money equal to the total of the sums computed on the basis of the various percentages of LESSEE's gross income from this Premises as hereinafter set forth in this ARTICLE IV, or the minimum yearly rent as hereinafter set forth in this ARTICLE IV, whichever of the two sums is the greater.

1. The percentage rental which LESSEE agrees to pay CITY shall be computed on the basis of the following percentages:

a. TWO AND ONE HALF PERCENT (2-1/2%) of the first \$600,000.00 of gross income derived from the dispensing of the food and non-alcoholic beverages upon Parcel "C" including gross income derived from the operation of any restaurant, snack bar, cocktail lounge, bar, delicatessen, and from the sale of groceries during each year.

b. THREE PERCENT (3%) of all gross income in excess of the \$600,000.00 referred to in the preceding sub-paragraph a., derived from the dispensing of food and non-alcoholic beverages including such gross income derived from the operation of any restaurant, snack bar, cocktail lounge, bar, delicatessen or from the sale of groceries.

c. TWO AND ONE-HALF PERCENT (2-1/2%) of the gross income derived from the sale of general admission tickets which tickets are defined as those tickets which permit entry into the Sea World Park area.

d. FIVE PERCENT (5%) of the gross income from operations of any cocktail lounge, bar or other facility whose primary function is dispensing alcoholic beverages or from the sale or service of any alcoholic beverages dispensed from any facility regardless of its primary function, excepting meals or food served on the Premises from any such facility shall be subject to the rent stated in a. and b. above.

e. SEVEN PERCENT (7%) of the gross income, if any, from operation of the parking lot or lots.

f. SEVEN PERCENT (7%) of the gross income, from any other sale, service or operation on the Premises approved under the purposes for which this Lease is granted; or such other percentage of gross income as maybe agreed upon by the City Manager prior to the commencement of any. such activity, service or operation. In the event the parties cannot reach an agreement on the percentage rent to be paid to CITY, then such activity, service or operation shall not be entered into by LESSEE.

g. Rent paid to City from coin-operated vending machines shall be computed and included in the computation of rent due in accordance with sub-paragraphs a., b. or d. of this paragraph 1., on the basis of total income from said machines. Provided, however, that said rent paid for telephones, cigarette machines and other coin-operated vending machines which may from time to time be mutually acknowledged and agreed to be installed primarily for the public convenience; shall, be computed on the basis of the income received by LESSEE rather than on the gross income of the machine, if LESSEE has no ownership equity in said machine and if the total gross income from all vending machines on the leased Premises does not exceed \$800.00 per month.

h. THREE PERCENT (3%) of the gross income from operation of the boat rides, skyride and shamu ride concessions, and THREE PERCENT (3%) of the gross income from operation of the sky tower ride concession. Any other ride concession that may be added by approval of the City Manager pursuant to ARTICLE III hereof shall be subject to such rent as is mutually agreed in writing between the City Manager and LESSEE.

i. THREE PERCENT (3%) of the gross income derived from sale of animal food for feeding animals by spectators.

j. FIVE PERCENT (5%) of the gross income derived from any game or amusement device.

k. TWO AND ONE-HALF PERCENT (2-1/2%) of gross income from all institutional advertising as authorized herein.

l. THREE PERCENT (3%) of gross income from sale of petroleum products excepting diesel fuel.

m. ONE AND ONE-HALF PERCENT (1-1/2%) of gross income from sale of diesel fuel.

n. TWO PERCENT (2%) of gross income from sale of boats and motors, including any accessories installed at the time of initial sale.

o. FOUR PERCENT (4%) of gross income from service of boats and motors, sale of boat and motor parts, accessories to boats and motors, and of marine hardware.

p. SEVEN PERCENT (7%) of gross income from rental of boat storage, and related boating operations.

q. TWENTY PERCENT (20%) of gross income from the rental of boat slips.

r. All income received by LESSEE from the sale of licenses or permits for a governmental agency, shall be excluded from computation of gross income as defined above. Also, all income to LESSEE from sale of merchandise to other dealers, at actual cost, with no mark-up, as a method of changing inventories and resulting in no profit for LESSEE shall be excluded from computation of gross income. Galley sales of food and beverages made from boats operating from the Premises outside of Mission Bay shall be excluded from computation of gross income. Also, allowances made by LESSEE for "traded-in" merchandise shall all be excluded from computation of gross income, provided LESSEE keeps adequate records, in the opinion of the CITY, from which CITY can determine what allowances were made.

2. The minimum annual rental for the Premises shall be the sum of Two Hundred Eighty Thousand Dollars (\$280,000). Provided, that for the second five years of this Lease Agreement, commencing with the sixth year of this Lease Agreement, and for each subsequent five-year period during the term of this Lease Agreement, the annual minimum rent, at CITY'S option, may be adjusted to a figure of not more than sixty-six and two-thirds percent (66-2/3%) of the average actual rent paid during the previous five-year period, but in no event shall said annual minimum rent be less than \$280,000.

B. When a portion of the Premises is leased by LESSEE to a sub lessee, the rental and use of the Premises shall be subject to approval of the CITY in the manner set forth in ARTICLE XL of this Agreement. It is contemplated that the CITY shall not receive less rent under a sub-lease agreement than if that operation were conducted by the LESSEE. The rent received by LESSEE from the sub-Lessee above rental to CITY shall not be computed as part of the LESSEE's gross income against which the percentage rental applies.

C. LESSEE shall render monthly to CITY on accounting of gross income and rent due based upon the percentage rental therein set forth and shall, in accordance with such accounting, pay to CITY percentage rent due for such month on or before the thirtieth day following the month in which such gross income was earned and specified in ARTICLE V of this Lease Agreement. In the event LESSEE fails to pay such rent when due, LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to 5% of said delinquent rent. In the event said delinquent rent is still unpaid after fifteen days of becoming delinquent, LESSEE shall pay CITY, in addition to delinquent rent, a sum of money equal to 10% of said delinquent rent. Such additional sum, or sums, shall be deemed compensation to CITY for loss and expenses resulting from such delinquency, including cost of servicing the delinquent account. The City Manager of CITY may for a good cause waive any such delinquency compensation charge upon written application of LESSEE prior to the delinquent period,.

Notwithstanding the foregoing provisions for delinquent rent compensation, a failure of LESSEE to pay said rent when due shall constitute a default which at the option of the City Manager shall be grounds for termination by CITY under the provisions of ARTICLE XVI of this Agreement.

ARTICLE V

MAINTENANCE OF RECORDS

Gross income as used in this Lease shall include all income resulting from occupancy of the demised Premises from whatever source derived whether received or to be come due, (except such income as shall be specifically excluded elsewhere in this Agreement) including the amount of any manufacturer's or importer's excise tax included in the prices of property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross income, however, shall not include Federal, state or Municipal taxes collected from the consumer as a separate charge and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

Whenever the rent hereunder is depended on percentage calculations of gross income accruing to LESSEE, LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books from which the CITY can at all times determine the nature and amounts of income subject to rental percentage from the operation of the Premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents or original entry or original entry such as sales slips, cash register tapes, purchase invoices and tickets issued. In the event of admission charges, LESSEE shall either (i.) issue serially-numbered tickets for each paid admission and shall keep adequate records of said serial numbers issued and of those unused or (ii) record admission charges by means of a cash register system which automatically issues a customer's receipt. All sales or rentals of merchandise and services rendered shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. All said cash register systems shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. Said books of account and records shall be kept or made available at one location within the limits of the City of San Diego. Not later than the thirtieth of each month, LESSEE shall render to CITY a detailed statement as to the source of the receipts showing all money accrued and sales made during the preceding month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. CITY shall, through its duly authorized agents or representatives, have the right to at any and all reasonable times examine and audit said records for the purpose of determining the accuracy thereof, and of the monthly statements of moneys accrued and sales made on said Premises.

ARTICLE VI

QUIET POSSESSION

LESSEE, paying the said rent and performing the covenants and agreements aforesaid, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the Premises for the Term aforesaid. If CITY for any reason whatsoever cannot deliver possession of the Premises to LESSEE at commencement of said Term as hereinbefore specified, or, if LESSEE is dispossessed through actions of a title superior to

CITY'S, then and in either of such events, this Lease shall not be void or voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom; but there shall be determined and stated in writing by the City Manager of CITY a proportionate deduction of the rent covering the period or periods during which LESSEE is prevented from having the quiet possession of the demised Premises.

ARTICLE VII

INSURANCE RISKS

The LESSEE shall not use, or permit the Premises, or any part thereof, to be used, for any purpose or purposes other than the purpose or purposes for which the Premises are hereby leased. Unless included within said purposes authorized by CITY or necessarily incidental to such uses, no use shall be made or permitted to be made, or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the building or buildings, if any, belonging to CITY which may be located on the Premises or in which the Premises may be located, or cause a cancellation of any insurance policy covering said building or buildings, or any part thereof, nor shall any article which may be prohibited by the standard form of fire insurance policy be or be permitted, to be kept, used, or sold in or about said Premises. The LESSEE shall at its sole cost and expense, comply with any and all requirements, pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said buildings and appurtenances.

ARTICLE VIII

MECHANIC'S LIEN BOND

LESSEE will save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with improvements, repair or alterations to the Premises, and the cost of defending against such claims, including reasonable attorney's fees.

In the event that improvements, repairs, or alterations are being constructed on the Premises by anyone other than the CITY and a lien is filed, LESSEE shall file with the CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by the LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

ARTICLE IX

ENTRY AND INSPECTION

CITY reserves, and shall always have the right to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the Premises or to inspect the operations conducted on said Premises. In the event that such entry or inspection by CITY discloses in the opinion of the City Manager, that the Premises are not in a safe, healthy and satisfactory condition or a violation of any Municipal, State or Federal ordinance, statute or law, or any breach of condition of Lease, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done for and at the expense of the LESSEE. LESSEE agrees to pay promptly any and all costs

incurred, including reasonable expenses of CITY in having such necessary work done in order to keep said Premises in a safe, healthy and satisfactory condition and to cure any violations of breach of conditions of Lease. Repayment thereof shall be deemed to be a part of the rental and paid as such on the next day upon which said rent becomes due.

Upon demand by CITY, LESSEE shall file a faithful performance bond in an amount equal to one-half of the annual rent paid to CITY based on the previous twelve-month period. The rights reserved in this and the following section shall not create any obligation on CITY or increase obligations elsewhere in this Lease imposed on CITY.

ARTICLE X

ASSIGNMENT

LESSEE shall not assign this Lease or any interest herein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, officers and employees of CITY excepted) to occupy or use the Premises, except as consistent with the purpose of this Agreement, without prior written consent of the City Manager of CITY. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void. This Lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager. Provided, however, any lender whose loan has been approved by the CITY has the option to take over as LESSEE, as provided in ARTICLE XXVIII – Lease Encumbrance.

ARTICLE XI

COMPLIANCE WITH LAW

LESSEE shall, at its sole cost and expense, comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, or the operations conducted thereon, and shall faithfully observe, and secure observance with, in the use of the Premises, all Municipal ordinances and State and Federal statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments and fees assessed or levied upon the LESSEE or the Premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business or either activities of LESSEE upon or in connection with the said demised Premises. The Final Judgement after appeal, if appeal is taken, of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them or any of them, whether CITY is a party thereto or not, that the LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the Premises shall be conclusive of that fact as between CITY and LESSEE.

ARTICLE XII

ASSIGNS

Time is of the essence of each and all of the terms and provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this Lease shall extend to and bind any assigns or SUBLESSEES of LESSEE.

ARTICLE XIII

WAIVER

The Waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this Lease, other than failure of LESSEE to pay the particular rental so accepted, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent, nor shall any failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this Lease be construed as in any manner changing the terms hereof or to stop CITY from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of the CITY and LESSEE.

ARTICLE XIV

MERGER

The voluntary or other surrender of this Lease by LESSEE or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an Assignment to it of any or all such subleases or subtenancies.

ARTICLE XV

NOTICES

Control and administration of this Lease is under the jurisdiction of the City Manager of THE CITY OF SAN DIEGO and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this Lease or by law to be given or served upon CITY may be given or served by letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Civic Center, San Diego, California 92101; any notice or notices provided for by this Lease or by law to be given or served upon LESSEE may be given or served by letter deposited in the United States mails, postage prepaid, and addressed to LESSEE at 1720 South Shores Road, San Diego, California 92109; or to such other addresses, as CITY or LESSEE may from time to time designate by written notice to the other of such change of address. In lieu of notice by use of United States mail, notice may be personally served upon either CITY or LESSEE or any person hereafter authorized by LESSEE to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served. A copy of any notice or notices sent to LESSEE shall be also sent by registered or certified mail to any lender whose loan has been approved by the CITY.

ARTICLE XVI
REMEDIES OF CITY

A. Default by Lessee. In the event that:

- (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against him any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors; then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE in or to the said Premises or in or to further possession thereof and CITY may thereupon enter and take possession of said Premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part A, (1) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this Lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

Provided further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee, or beneficiary shall have thirty (30) days' from service of such notice within which to commence such cure as may be necessary and this Lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty-day period shall be extended during the time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure.

Provided, however, that in the event rent paid to CITY is calculated on the basis of a percentage or percentages of LESSEE'S gross income, and during said period required for mortgagee or beneficiary to perfect a cure of any default or defaults which have been caused by LESSEE'S failure to pay said rent; then in those events if CITY is paid the minimum rent due under this Agreement, CITY will not prosecute its right to terminate the mortgagee's or beneficiary's interest. Provided further, that when the mortgagee or beneficiary has secured control of said Premises, and before an assignment to a new lessee, mortgagee or beneficiary shall cause to be paid to CITY, any amounts due CITY, as a result of the gross income of the said Premises exceeding that amount necessary for payment of the minimum rent. In computing the gross rent upon which the computation of the CITY rent is based, reasonable administrative expenses of a court appointed receiver may first be deducted.

B. City Recourse. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

- (1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefore (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs; or,
- (2) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY; or,
- (3) CITY may terminate this Lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new lessee reasonably satisfactory to the mortgagee or beneficiary.

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this Lease and this Lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty-day period after service upon it of said written notice by CITY of the default. In the event of the election by mortgagee or beneficiary to so substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this Lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default, if possible, by mortgagee or beneficiary and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

C. Abandonment by LESSEE. Even though LESSEE may have breached the Lease and abandoned the property, this Lease shall continue in effect for so long as CITY does not terminate LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said Lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession; (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property. (2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the Lease.

D. Damages. Damages which CITY may recover in the event of default under this Lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the Term after the date of award, or for any shorter period of time specified in the Lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

ARTICLE XVII

HOLDING OVER

Any holding-over after the expiration of the Term for any cause shall be construed to be a tenancy from month to month, at any rental selected by CITY which has been in effect during the Term, and shall otherwise be on the terms and conditions herein specified so far as applicable. Such holding over shall include any time employed by LESSEE in removing fixtures and improvements as hereinbefore provided.

ARTICLE XVIII

HOLD HARMLESS

CITY, its agents, officers and employees, shall not be, nor be held liable, for any claims, liabilities, penalties, fines, or for any damage to the goods, properties or effects of LESSEE or any of the LESSEE'S representatives, agents, employees,, guests, licensees, invitees, patrons or clientele or of any other persons whatsoever, nor for personal injuries to, or for deaths of them, or any of them, whether caused by or resulting from any acts or omission of LESSEE in or about the Lease Premises, or any act or omission of any person or from any defect in any part of the Leased Premises or from any other cause or reason whatsoever. LESSEE further agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor. Provided, however, that this Hold Harmless Clause between LESSEE and CITY shall not apply to any injury, death, or damage caused solely by the CITY, its officers, employees, or authorized agents.

ARTICLE XIX

WASTE, DAMAGE OR DESTRUCTION OF PREMISES

LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the Leased Premises within ten days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the Leased Premises shall be

damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the Leased Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the Premises shall be commenced by LESSEE within thirty days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said Premises are untenable by reason of such damage.

ARTICLE XX

OWNERSHIP OF IMPROVEMENTS

All buildings and improvements of a permanent nature, excepting trade fixtures, installed by LESSEE in accordance with the provisions hereof shall become the property of the CITY at CITY'S option, upon expiration or sooner termination of this Agreement. Trade fixtures installed by LESSEE shall be and remain the property of LESSEE. LESSEE shall have the right to remove said trade fixtures within a reasonable time after the termination of this Agreement at LESSEE'S own expense, provided that any damage to the remaining improvement shall be repaired and the Premises left in good order and condition. In the event LESSEE does not so remove said trade fixtures, CITY may remove, or sell, or destroy the same at the expense of LESSEE, and LESSEE shall pay to CITY the reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of the CITY, any property, real or personal, not reverting to CITY, not so removed by LESSEE may be deemed abandoned, and may be removed.

ARTICLE XXI

IMPROVEMENTS, REPAIRS, ALTERATIONS

LESSEE shall not make any major exterior alterations or changes in the Leased Premises or any building situated thereon, or cause to be made, built or installed thereupon any improvement (other than improvement, alteration or change to the interior of a building, the exterior design of which has heretofore been approved in writing by the City Manager of the CITY), except in accordance with plans and specifications previously submitted to the City Manager of said CITY and approved, in writing, by him. LESSEE shall submit to the CITY a realistic estimate of the cost of any improvements to be installed by the LESSEE upon the Leased Premises prior to the commencement of construction. This estimate shall be subject to verification by the CITY upon completion of improvements.

LESSEE agrees to take good care of the Leased Premises, fixtures and appurtenances, and of all alterations, additions and improvements to any of them and make all repairs in and about the same that may be necessary to preserve them in good order and condition (which repairs shall be equal to the original work in respect to quality), and promptly pay the expense of such repairs.

CITY shall not be required to make any improvements, repairs or alterations not herein specifically required. LESSEE hereby waives all right to make repairs at the expense of CITY as provided in Section 1942 of the Civil Code of the State of California and all rights provided by Section 1941 of said Civil Code.

PARAGRAPH ADDED, AMENDED 6/24/85

ARTICLE XXII

SIGNS

All signs installed on the Premises shall comply with CITY'S ordinances applicable to such signs. CITY and LESSEE shall agree upon the type, size and design of a directional sign or signs or a sign or signs identifying Sea World, Inc. to be installed on the Premises in accordance with the established sign policy for Mission Bay Park.

ARTICLE XXIII

INSURANCE

During the entire Term of this Lease, LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company satisfactory to CITY licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom; suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sub-lessees or any person acting for CITY, or LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of CITY, or LESSEE, or its sub-lessees, or any person acting for CITY or LESSEE, or under its control or direction, Such insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire Term of this Lease in the amount of not less than One Million Dollars (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance or evidence thereof to the CITY on or before the effective date of this Agreement indicating full coverage of the contractual liability imposed by this Agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty days prior written notice thereof to CITY. If the operation under this Agreement results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that the minimum limits hereinabove designated shall be changed accordingly, but within reasonable limits, upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of its sub-lessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire Term of this Lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased Premises. Said policy shall name the CITY as an additional insured and shall be written by an insurance company satisfactory to CITY licensed to transact business in the State of California and shall be in an amount or under an insurance program providing for an amount sufficient to cover at least 80% of the replacement costs of said property. LESSEE agrees to submit a certificate of said policy to the CITY on or before the effective date of this Lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in ARTICLE XIX, WASTE, DAMAGE OR DESTRUCTION OF PREMISES, hereof; provided, however,, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

- A. As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to LESSEE.

Provided further, however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgage or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary and CITY.

- B. In the event that this Lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY or LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. LESSEE agrees, at his sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said-Premises, building and appurtenances.

ARTICLE XXIV

NONCOMPETITION

The operation by LESSEE of the facilities of Sea World Park as referred to in ARTICLE III A. hereof, upon the Leased Premises constitutes a valuable asset to the CITY and generally the metropolitan area of San Diego in that Sea World, by reason of the successful promotion of its exhibits, is now recognized throughout the United States and that world as being an outstanding marine attraction resulting in an increase in tourism in San Diego to the benefit of the CITY. LESSEE and CITY recognize that the successful operation and continued growth of the marine facilities at Sea World is attributable to the unique experience and capabilities of the management of LESSEE. In recognition of the unique attraction created by LESSEE in the area known as Sea World and its attraction for tourists o the CITY, LESSEE agrees that LESSEE shall not establish, operate, manage and/or maintain, whether as a corporation, partnership, joint venture, or as individuals, any marine facility similar to that presently operated on the Leased Premises anywhere in that area of the State of California known as Southern California comprising all of the counties south of the Tehachapi Mountains and the entire State of Arizona or in any part of the State of Baja California, Republic of Mexico, which is within a radius of 560 miles measured from San Diego as the center of the circle, hereinafter called "the noncompetition area", the parties recognizing that the noncompetition area is generally considered to be that market from which San Diego draws its visitors, a principal attraction of such visitors being the continued maintenance and operation of Sea World of San Diego.

ARTICLE XXV

ENVIRONMENTAL MATTERS

ADDED, AMENDED 6/29/98

ARTICLE XXVI

DAMAGED EQUIPMENT

LESSEE agrees to salvage within 24 hours, any of LESSEE'S equipment within Mission Bay declared by CITY to be a menace to navigation or a nuisance and to salvage or cause to be salvaged any sunken vessel or equipment upon the Leased Premises irrespective of ownership. CITY may require that any boats not kept in a clean and orderly condition be removed from the Leased Premises.

ARTICLE XXVII

TAXES

As further consideration for the execution of this Agreement LESSEE shall pay and discharge before delinquency all taxes and assessments which may be levied during said Term upon the Premises.

ARTICLE XXVIII

LEASE ENCUMBRANCE

The CITY does hereby consent and agree that the LESSEE may encumber this Lease, leasehold estate and the improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE in accordance with the financial plan approved in writing by City Manager upon the express condition that the net proceeds of such loan or loans received by LESSEE be devoted exclusively to the purpose of developing the Premises and for the primary Purpose of constructing the facilities in accordance with the said Master Plan for the Premises; however, a reasonable portion of the loan proceeds may be disbursed for or applied to payment of incidental costs of, such construction, including but not limited to, any one or more or all of the following: Off-site improvements for service of the Premises; on-site improvements, escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums and reasonable loan costs, such as discounts, interest and commissions; also architectural, engineering, and attorney's fees or such other normal expenses. Any subsequent encumbrances on the real property must first be approved in writing by City Manager.

In the event it is desired to assign the beneficial interest of any deed of trust, mortgage or other type security instrument, such assignment must first be approved by CITY. Any assignee of a beneficial interest shall have the same rights under this Lease as the assignor, CITY agrees not to unreasonably withhold Consent to assignments of the beneficial interest. The CITY further consents and agrees that in the event said deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, the CITY will accept the mortgagee or beneficiary thereof previously approved by it as its new tenant under this Lease with all the rights and privileges of the original LESSEE, and that in the event that said mortgagee or beneficiary desires to assign this Lease to its nominee, and said nominee is a reputable, qualified and financially responsible operator in the opinion of the CITY, the CITY hereby agrees that upon the filing of an application for the consent to such assignment, the CITY will give its consent thereto, and agrees not to unreasonably withhold such consent.

Anything in this Lease to the contrary notwithstanding, CITY shall not exercise any remedy available to it for default hereof by LESSEE, unless and until CITY, as a condition precedent to such exercise, shall have given notice to said beneficiary or mortgagee, by registered or certified mail, postage prepaid, addressed as said beneficiary or mortgagee shall from time to time instruct CITY (or, in the absence of such instruction, addressed as shown on said deed of trust or mortgage), which notice shall specify the nature and extent of said claimed default. Thereafter, said beneficiary or mortgagee shall have the right and power to cure said default in the manner hereinafter provided and thereby cause this Lease to remain in full force and effect.

- A. If said default be in the payment of rental, taxes, insurance premiums, amount claimed under mechanic's lien on the Leased Premises or any other sum of money required to be paid by LESSEE, said beneficiary or mortgagee may pay the same to CITY or other proper payee within 60 days after the mailing aforesaid; if so paid, said default shall be cured and this Lease shall remain in full force and effect. If, after any such payment to CITY, LESSEE pays the same to CITY, or in the event CITY waives default, CITY shall promptly refund said payment to said beneficiary or mortgagee.

- B. If said default be other than specified in subparagraph (A) above, CITY shall not exercise any such remedy if:
- (1) Within 60 days after the mailing aforesaid, said beneficiary or mortgagee commences foreclosure (by judicial action or trustee's sale) of its mortgage or deed of trust; and
 - (2) Such foreclosure be prosecuted with reasonable diligence; and
 - (3) Prior thereto, said beneficiary or mortgagee shall first have obtained, in writing, the approval of CITY of all prospective purchasers participating at said foreclosure sale other than beneficiary or mortgagee as to their reputation, qualifications, and financial responsibility, which approval CITY agrees not unreasonably to withhold; and
 - (4) Within a reasonable time after foreclosure sale, the purchaser thereat cures such default, if said default is curable from both a feasible and practical standpoint, or if said default is not curable from a feasible and practical standpoint, or if default is impossible to cure, said default shall be incontrovertibly deemed cured upon such foreclosure sale.

ARTICLE XXIX

UTILITIES

City agrees to provide the following utilities services: water, sewer, power and communications service and road to the property line of the Leased Premises to be occupied by the LESSEE and in such a manner as to enable the LESSEE to connect with and utilize said services. Any special or unusual utility services will be provided by LESSEE. LESSEE shall order, obtain and pay for all utilities and service and installation charges in connection therewith. All water, sewer, power and communication lines installed by the LESSEE shall be installed underground at LESSEE'S expense according to specifications of said CITY. CITY shall have the right to connect to water, sewer, telephone, gas or other utility lines as are now or hereafter installed upon the Leased Premises, and shall have the right of access to make and maintain such connections. CITY agrees to pay the cost incidental to such connections and to provide such separate metering devices as may be necessary in order that CITY may pay for the services used by it. LESSEE shall install and maintain fire hydrants on the Leased Premises as recommended and approved by CITY, it being understood and agreed that CITY shall perform for the Leased Premises usual fire and police protection.

ARTICLE XXX

SCHEDULE OF OPERATIONS

LESSEE agrees to operate the Premises and associated facilities continuously throughout the entire Term of this Agreement after such Premises are first opened to the public in order to serve the public interest and in accordance with sound business practices. Closing of portions of the Premises for limited periods for remodeling, or alterations during times of least interference with the public's use of the Premises will be granted by the CITY upon request in writing with reasonable notice by the LESSEE. All facilities upon the Premises shall be open to the public during a regular schedule of days and hours which shall be subject to approval of the City Manager Provided, however, LESSEE may close the Premises certain days of the week during the off-season upon prior approval of City Manager.

ARTICLE XXXI

CITY APPROVAL AND CONSENT

The approval or consent of the CITY, wherever required in this Agreement, shall mean the approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

ARTICLE XXXII

GENERAL DEVELOPMENT PLAN

The development of parcels "A" and "C" of the Premises shall be in accordance with the Development Plan (sometimes herein referred to as the Master Plan and as the Precise Plan of development) for the Premises approved by the City Manager, which plan is filed in the Office of the City Clerk and identified as Document No. 762202. The development of parcel "B" of the Premises shall be in compliance with the study entitled Mission Bay Park Master Plan for Land and Water use, 1976. Changes to said plans shall be made only after written approval thereof by the City Manager.

ARTICLE XXXIII

TIME IS OF THE ESSENCE

Time is of the essence of each and all of the terms and provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this Lease shall extend to and bind any assigns or sub-lessees of LESSEE.

ARTICLE XXXIV

EMINENT DOMAIN – CONDEMNATION

In the event the Premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of CITY and LESSEE in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease Agreement shall be as follows:

- A. In the event of such taking or transfer of only a part of the Premises, leaving the remainder of the Premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this Lease shall terminate and end as to the portion of the Premises so taken or transferred as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Premises not so taken or transferred and from and after such date the minimum rental required to be paid by LESSEE to CITY in and by ARTICLE IV, Subparagraph B. of this Lease shall be reduced in the proportion to which the area so taken or transferred bears to the total area of the Premises, provided, however, CITY shall have the right to substitute like property and maintain the rental schedule without diminution.

-
- B. In the event of the taking or transfer of only a part of the Premises, leaving the remainder of the Premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to the Premises or the portion thereof so taken or transferred vests in the condemning authority.
 - C. In the event the entire Leased Premises are taken or so transferred, this Lease and all of the right, title and interest thereunder shall cease on the date title to the Premises so taken or transferred vests in the condemning authority.
 - D. In the event of any taking or transfer under Sections A, B or C hereof, LESSEE shall not be entitled to any award of compensation except for the taking of buildings, fixtures, equipment and improvements owned by LESSEE or by reason of the relocation of the same.

ARTICLE XXXV

ORAL REPRESENTATIONS

It is specifically understood and agreed hereby that this Lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties, or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein and, further, that this Lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.

ARTICLE XXXVI

RESERVATION FOR CITY USE

CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water, upon or beneath the Premises. Reservation of aforementioned rights, title, and interest does not confer upon the CITY any right to enter upon the surface of the Premises to exercise right of extraction of aforementioned rights without the written consent of beneficiary or mortgagee. CITY shall have the right to enter the Premises for the purpose of making repairs to or developing the municipal services of the CITY, CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across the Premises for utilities. The Premises shall also be subject to the rights of the United States Government as they now or may hereafter appear to exert dominion over the water area of Mission Bay, such as dredging and other governmental purposes. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages done to the permanent improvements located on the Premises resulting from CITY'S exercising the rights retained in this paragraph.

ARTICLE XXXVII

NONDISCRIMINATION

LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in LESSEE's use of the Premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

ARTICLE XXXVIII

EDUCATIONAL PROGRAM

LESSEE shall provide during the entire Term of this Lease an educational program which shall be suitable for and available to all elementary school children with supervision to be provided by the schools. The program may be developed and administered by LESSEE'S staff. The fee for each student for participation in the program shall in no event exceed LESSEE'S documented cost of providing the educational program. Furthermore, the fee shall not exceed, except as hereinbelow provided, an amount of \$1.25 per student. The \$1.25 maximum may be adjusted upward or downward annually on May 1 by an amount equal to the percentage increase or decrease in the CPI during the preceding calendar year. LESSEE shall prepare and submit annually to the City Manager on or before March 1 an audit report showing the number of students participating in the educational program during the preceding calendar year, together with the total cost of the program to LESSEE and a statement of total income received from program admission fees. It is the understanding and intent of CITY and LESSEE that in no event during the entire Term of this Lease shall the cost per student for the educational program exceed the lesser of (1) LESSEE'S actual cost per student or (2) the \$1.25 figure specified above as adjusted.

ARTICLE XXXIX

INSTITUTIONAL ADVERTISING

Institutional advertising, as authorized herein, shall mean corporate sponsorship of certain exhibits and attractions on the Premises whereby the sponsors may promote, or cause to be promoted or advertised, their products and/or services on said Premises. LESSEE agrees to control said institutional advertising to whatever extent necessary to maintain compatibility thereof with the primary purpose of a Marine Life Exhibit on the Premises and with CITY standards for the general development and uses of Mission Bay Park. CITY agrees to accept such institutional advertising as exists on the Premises as of the effective date of this Amendment to Lease Agreement; thereafter, however, all new contracts for institutional advertising on the Premises shall require the prior written approval of the City Manager.

ARTICLE XL

AFFIRMATIVE ACTION

LESSEE shall take affirmative action to improve employment opportunities of minorities and women by implementing the Affirmative Action Program for Lessees”, a copy of which is on file in the Office of the City Clerk as Document No. 746205 and by this reference incorporated herein. Minorities are defined as Mexican-America, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by CITY for its Affirmative Action Program each year.

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through the City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

Date December 14, 1977

THE CITY OF SAN DIEGO

By /s/ _____
Assistant to the City Manager

Date November 15, 1977

LESSEE

By /s/ _____
President

By /s/ _____
Secretary

APPROVED as to form and legality this 3 day of January, 1978

JOHN W. WITT, City Attorney

By /s/ _____
Deputy

219894

Passed and adopted by the Council of The City of San Diego on
December 14, 1977, by the following votes:

YEAS: Mitchell, O'Connor, Lowery, Williams, Schnaubelt, Gade, Stirling, Haro, Wilson.

NAYS: None.

ABSENT: None.

AUTHENTICATED BY:

PETE WILSON
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

By ALLYN D. NEVITT, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 219894 passed and adopted by the Council of The City of San Diego, California, on December 14, 1977.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By /s/ ALLYN D. DEWITT, Deputy

Adopted on December 14, 1977

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the City Manager is hereby authorized and empowered to execute an Assignment and Assumption of Lease and Consent to Assignment Agreement, pursuant to which B.R.P., Inc., a California corporation, assigns its leasehold interest in the Perez Cove Marina to Sea World, Inc., a Delaware corporation, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 762180.

APPROVED: JOHN W. WITT, City Attorney

By /s/ Harold O. Valderhaug
Harold O. Valderhaug
Deputy City Attorney

HOV:dm
12-14-77
Or. Dept.: Property
Job:12553
CC 1265 B (REV . 12-76)

Adopted on December 14, 1977

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the City Manager is hereby authorized and empowered to execute a Lease Amendment, which amendment provides for the consolidation of the City's leases of the property in Mission Bay Park, generally known as the Atlantis Restaurant, the Perez Cove Marina and Sea World, under the terms and conditions set forth in the form of Lease Amendment on file in the office of the City Clerk as Document No. 762190.

APPROVED: JOHN W. WITT, City Attorney

By /s/ Harold O. Valderhaug
Harold O. Valderhaug
Deputy City Attorney

HOV:dm
12-14-77
Or. Dept.: Property
Job:12553
CC 1205 S (REV . 12-76)

DESCRIPTION OF
(SEA WORLD LEASE)

REPLACED IN ITS ENTIRETY; AMENDED 1/29/79

PARCEL. A. 83.985 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14,1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7,8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27,1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°51'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK CO-ORDINATE SYSTEM; THENCE NORTH 5,000.00 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,000.00 AND WEST 13,500.00; THENCE NORTH 858.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", SAID POINT BEING ON THE ARC OF AN 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27° 25'39" EAST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°43'53" A DISTANCE OF 135.88 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF AN 1,198.09 FOOT-RADIUS-CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 37°09'32" WEST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°36'42", A DISTANCE OF 619.20 FEET TO A POINT OF COMPOUND CURVATURE WITH A

514.76-FOOT-RADIUS-CURVE CONCAVE SOUTHERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 7°32'50" WEST TO SAID POINT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°57'10" A DISTANCE OF 233.17 FEET; THENCE TANGENT TO SAID CURVE SOUTH 71°35'40" EAST 766.29 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE CONTINUING SOUTH 71°35'40" EAST 207.08 FEET TO MISSION BAY PARK COORDINATES NORTH 5,834.18 AND WEST 11,665.24; THENCE SOUTH 18°24'20" WEST 923.69 FEET; THENCE SOUTH 300.74 FEET TO MISSION BAY PARK COORDINATES NORTH 4,657.00 AND WEST 11,956.89, BEING A POINT THAT IS 30.00 FEET NORTH OF ENGINEER'S STATION 10+54.95 ON THE CENTERLINE OF SEA WORLD WAY AS SHOWN ON CITY OF SAN DIEGO ENGINEERS DRAWING NO. 14,985-2-D; THENCE EAST PARALLEL WITH SAID CENTERLINE 150.01 FEET TO THE BEGINNING OF A TANGENT 180.00-FOOT-RADIUS-CURVE CONCAVE SOUTHWESTERLY; THENCE EASTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE AND CONCENTRIC WITH SAID CENTERLINE OF SEA WORLD WAY THROUGH A CENTRAL ANGLE OF 90°00'00" A DISTANCE OF 282.74 FEET; THENCE TANGENT TO SAID CURVE SOUTH 613.54 FEET TO A POINT ON A LINE THAT IS 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM ENGINEER'S STATION 33+04.72 ON THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D; THENCE NORTH 78°55'43" WEST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 304.72 FEET TO THE BEGINNING OF A TANGENT 828.855 FOOT-RADIUS-CURVE CONCAVE NORTHEASTERLY, SAID CURVE BEING CONCENTRIC WITH AND 10.00 FEET NORTHEASTERLY RADIALLY FROM THE FACE OF THE NORTHEASTERLY BERM ON THE ACCESS ROAD SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14577-22-D; THENCE NORTHWESTERLY ALONG SAID LINE THROUGH A CENTRAL ANGLE OF 21°06'.00" A DISTANCE OF 305.24 FEET; THENCE NORTHWESTERLY, WESTERLY AND NORTHERLY CONTINUING ALONG A LINE THAT IS PARALLEL AND/OR CONCENTRIC WITH AND 10.00 FEET AT RIGHT ANGLES OR RADIALLY, RESPECTIVELY, FROM THE FACE OF SAID NORTHEASTERLY BERM WHICH BERM IS ALSO SHOWN ON SAID ENGINEER'S DRAWINGS NOS. 14577-21, 23, 24, 32, 33, 34 AND 36-D THE FOLLOWING COURSES AND DISTANCES: NORTH 57°49'43" WEST 53.69 FEET TO THE BEGINNING OF A TANGENT 1,032.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°52'29" A DISTANCE OF 664.18 FEET; THENCE TANGENT TO SAID CURVE SOUTH 85°17'48" WEST 515.45 FEET TO THE BEGINNING OF A TANGENT 568.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE WESTERLY AND NORTH-WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 65°57'16" A DISTANCE OF 653.84 FEET TO A POINT OF COMPOUND CURVATURE IN THE ARC OF A 268.00-FOOT-RADIUS-CURVE CONCAVE EASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 61°15'04" WEST TO SAID POINT; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 73°56'28" A DISTANCE OF 345.86 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF A 332.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 44°48'28" EAST TO SAID POINT; THENCE NORTH-EASTERLY AND

NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 46°43'28" A DISTANCE OF 270.74 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF A 20.00-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVES BEARS SOUTH 88°28'04". WEST TO SAID POINT; THENCE LEAVING SAID PARALLEL AND/OR CONCENTRIC LINE NORTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°29'11" A DISTANCE OF 31.93 FEET; THENCE RADIAL TO SAID CURVE. NORTH 0°02'45" WEST 12.99 FEET THENCE EAST 81.94 FEET; THENCE SOUTH 75°37'07" EAST 80.52 FEET; THENCE SOUTH 69°45'18" EAST 130.04 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit 1
Page 3 of 12

PARCEL A—WATER 2,221 ACRES

BEGINNING AT POINT "A" AS SET OUT AND ESTABLISHED IN THE HEREIN-ABOVE DESCRIBED PARCEL "A", SAID POINT BEING IN THE ARC OF AN 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27°25'39" EAST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°43'53" A DISTANCE OF 135.88 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF AN 1,198.09-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°40'51" A DISTANCE OF 537.00 FEET; THENCE NORTH 147.18 FEET TO A POINT ON THE ARC OF A 1,342.65-FOOT-RADIUS CURVE THAT IS CONCENTRIC WITH AND 144.56 FEET NORTHWESTERLY RADIALLY FROM THE HEREINBEFORE MENTIONED 1,198.09-FOOT-RADIUS CURVE, A RADIAL LINE OF SAID 1,542.65-FOOT-RADIUS CURVE BEARS NORTH 10°13'44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°55'51" A DISTANCE OF 631.09 FEET; THENCE TANGENT .TO SAID CURVE SOUTH 52°50'28" WEST 34.39 FEET TO A POINT THAT BEARS NORTH 166.93 FEET FROM SAID POINT "A"; THENCE SOUTH 166.93 FEET TO SAID POINT "A" AND THE POINT OF BEGINNING.

PARCEL A—WATER 0.082 ACRES

BEGINNING AT POINT "B" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL "A"; THENCE SOUTH 71°35'40" EAST ALONG THE NORTHEASTERLY LINE OF SAID PARCEL "A" A DISTANCE OF 50.00 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE NORTH 18°24'20" EAST 71.00 FEET; THENCE NORTH 71°35'40" WEST 50.00 FEET; THENCE SOUTH 18°24'20" WEST 71.00 FEET TO SAID POINT "B" AND THE POINT OF BEGINNING.

Exhibit 1
Page 5 of 12

SEA WORLD, INC. LEASE
FORMERLY
PEREZ COVE LEASE
LEASE DESCRIPTION

PARCEL B:

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCK 5, 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27,1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST,(RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK CO-ORDINATE SYSTEM; THENCE NORTH 5,858.00 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,858.00 AND WEST 13,500.00; THENCE SOUTH 858.00 FEET; THENCE NORTH 69°45'18" WEST 130.04 FEET; THENCE NORTH 75°37'07" WEST 80.52 FEET; THENCE WEST 81.94 FEET; THENCE SOUTH 0°02'45" EAST 12.99 FEET TO THE EASTERLY TERMINUS OF A 20.00-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 0°02'45" WEST TO SAID TERMINUS; THENCE WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°29'11" A DISTANCE OF 31.93 FEET TO A POINT ON THE ARC OF A 332.00-FOOT-RADIUS CURVE CONCAVE WESTERLY, A RADIAL LINE OF SAID 332,00-FOOT-RADIUS CURVE BEARS NORTH 88°28'04" EAST TO SAID POINT; THENCE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID

CURVE THROUGH A CENTRAL ANGLE OF 69°21'58" A DISTANCE OF 401.94 FEET; THENCE TANGENT TO SAID CURVE NORTH 70°53'54" WEST 121.23 FEET TO THE BEGINNING OF A TANGENT 270.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13° 02'07" A DISTANCE OF 61.43 FEET TO INTERSECTION WITH A LINE THAT BEARS SOUTH 26°24'59" WEST 438.27 FEET FROM MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000,00; THENCE NORTH 26°24'59" EAST ALONG SAID LINE 438.27 FEET TO SAID MISSION BAY COORDINATES BEING A POINT ON THE ARC OF A 240.00-FOOT-RADIUS, CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27°10'45" WEST TO SAID POINT; SAID POINT ALSO BEING HEREINAFTER REFERRED TO AS POINT "A"; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°56'26" A DISTANCE OF 104.47 FEET TO A POINT OF COMPOUND CURVATURE WITH A 800.00-FOOT- RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE EASTERLY AND NORTH EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°39'58" A DISTANCE OF 414.22 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit 1
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SEA WORLD, INC.
WATER LEASE DESCRIPTION

PARCEL B WATER 4.131 acres

BEGINNING AT POINT "A" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL "B", BEING ALSO DESCRIBED AS MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE NORTH 26°24'59" EAST ALONG THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID PARCEL "B" 516.98 FEET TO MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,770.00 BEING A POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE EAST 270.00 FEET TO MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,500.00. BEING ON THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID PARCEL "B"; THENCE SOUTH ALONG SAID NORTHERLY PROLONGED EASTERLY LINE 400.00 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL "B" BEING A POINT ON THE ARC OF A 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY TO WHICH A RADIAL LINE BEARS SOUTH 27°25'39" EAST; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL "B" AND THE ARC OF SAID 800.00-FOOT-RADIUS CURVE THROUGH- A CENTRAL ANGLE OF 29°39'58" A DISTANCE OF 414.22 FEET TO A POINT OF COMPOUND CURVATURE WITH A 240.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE CONTINUING WESTERLY ALONG THE ARC OF SAID 240.00-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 24°56'26" A DISTANCE OF 104.47 FEET TO THE POINT OF BEGINNING.

SEA WORLD, INC.
WATER LEASE DESCRIPTION

PARCEL B WATER . . 726 acres

BEGINNING AT POINT "B" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL I, BEING ALSO DESCRIBED AS MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,770.00; THENCE NORTH 12.00 FEET; THENCE NORTH 63°35'01" WEST 73.50 FEET; THENCE SOUTH 26°24'59" WEST PARALLEL WITH THE NORTHWESTERLY LINE OF SAID PARCEL I 396.25 FEET TO A POINT ON THE ARC OF A 222.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 40°17'03" WEST TO SAID POINT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°52'04" A DISTANCE OF 53.75 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO A POINT ON SAID NORTHWESTERLY LINE OF SAID PARCEL I THAT IS 125.00 FEET NORTHEASTERLY FROM THE SOUTHWESTERLY CORNER THEREOF; THENCE NORTH 26°24'59" EAST ALONG SAID NORTHWESTERLY LINE 391.98 FEET TO THE POINT OF BEGINNING.

Exhibit 1
Page 9 of 12

ATLANTIS RESTAURANT LEASE

PARCEL C: LAND 6.709 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RE- SUBDIVISION OF BLOCKS 7,8 AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24; SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5,795.00 FEET AND WEST 14,000.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,795.00 AND WEST 14,000.00; THENCE SOUTH 26°24'59" WEST 438.27 FEET TO A POINT ON THE ARC OF A .270.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 32°08'33" WEST TO SAID POINT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°05'58" A DISTANCE OF 61.73 FEET TO A POINT ON THE WESTERLY LINE OF THAT PORTION OF LAND SHOWN ON THE CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 10966-I-B OF THE PROPOSED LEASE OF WEST PEREZ COVE MISSION BAY PARK; THENCE NORTHWESTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE BOUNDARY OF SAID LAND THE FOLLOWING COURSES AND DISTANCES; NORTH 13°45'54" WEST 575.54 FEET; NORTH 175.00 FEET; NORTH 23°11'55" WEST 130.00 FEET; NORTH 39° 19'34" WEST 90.00 FEET; NORTH 14°33'01" WEST 166.22 FEET; NORTH 9°04'02" WEST 267.46 FEET TO MISSION BAY COORDINATES NORTH 6,789.12 AND WEST 14,572.15; THENCE SOUTH 69°30'00" EAST 172.53

FEET TO THE BEGINNING OF A TANGENT 300,00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°30'00" A DISTANCE OF 363.90 FEET; THENCE TANGENT TO SAID CURVE SOUTH 330.46 FEET TO THE BEGINNING OF A TANGENT 347.08 FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 385.17 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63° 35'01" EAST 25.61 FEET TO THE TRUE POINT OF BEGINNING.

ATLANTIS RESTAURANT LEASE, CONTINUED

PARCEL C

WATER 2.638 ACRES.

BEGINNING AT THE TRUE POINT OF BEGINNING OF THE LAND PARCEL FIRST HEREINABOVE DESCRIBED BEING MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE ALONG THE NORTHEASTERLY AND EASTERLY BOUNDARY LINE OF SAID LAND PARCEL THE FOLLOWING DESCRIBED COURSES AND DISTANCES; NORTH 63°35'01" WEST 25.61 FEET TO THE BEGINNING OF A TANGENT 347.08—FOOT—RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 385.17 FEET; THENCE TANGENT TO SAID CURVE NORTH 330.46 FEET TO THE BEGINNING OF A TANGENT 300.00 FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°30'00" A DISTANCE OF 363.90 FEET TO A POINT OF TANGENCY WITH THE NORTHEASTERLY LINE OF SAID LAND PARCEL; THENCE LEAVING SAID NORTHEASTERLY BOUNDARY LINE OF LAND PARCEL SOUTH 69°30'00" EAST ALONG THE SOUTHEASTERLY PROLONGATION OF SAID NORTH-EASTERLY LINE 341.57 FEET TO INTERSECTION WITH A LINE THAT IS PARALLEL WITH AND 125.00 FEET EAST AT RIGHT ANGLES FROM THAT COURSE IN SAID EASTERLY BOUNDARY OF SAID LAND PARCEL DESCRIBED AS "SOUTH 330.46 FEET"; THENCE SOUTH ALONG SAID PARALLEL LINE 491.84 FEET TO THE BEGINNING OF A TANGENT 222.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, WHICH CURVE IS ALSO CONCENTRIC WITH THE 347.08-FOOT-RADIUS CURVE DESCRIBED IN THE NORTHEASTERLY BOUNDARY OF SAID LAND PARCEL; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID 222.08-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 246.45 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO INTERSECTION WITH THE NORTHEASTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LAND PARCEL BEARING NORTH 26°24'59" EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 26°24'59" WEST 125.00 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIPTION OF (SEA WORLD LEASE).

PARCEL A. PROPERTY 1 83.985 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7,8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27,1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'-04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY. TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK CO-ORDINATE SYSTEM; THENCE NORTH 5,000.00 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,000.00 AND WEST 13,500.00; THENCE NORTH 858.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", SAID POINT BEING ON THE ARC OF AN 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27° 25'39" EAST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°43'53" A DISTANCE OF 135.88 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF AN 1,198.09 FOOT-RADIUS-CURVE-CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 37°09'32" WEST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°36'42", A DISTANCE OF 619.20 FEET TO A POINT OF COMPOUND CURVATURE WITH A 514.76-FOOT-RADIUS-CURVE CONCAVE SOUTHERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH

7°32'50" WEST TO SAID POINT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25° 57'10" A DISTANCE OF 233.17 FEET; THENCE TANGENT TO SAID CURVE SOUTH 71°35'40" EAST 766.29 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE CONTINUING SOUTH 71°35'40" EAST 207.08 FEET TO MISSION BAY PARK COORDINATES NORTH 5,834.18 AND WEST 11,665.24; THENCE SOUTH 18°24'20" WEST 923.69 FEET; THENCE SOUTH 300.74 FEET TO MISSION BAY PARK COORDINATES NORTH 4,657.00 AND WEST 11,956.89, BEING A POINT THAT IS 30.00 FEET NORTH OF ENGINEER'S STATION 10+54.95 ON THE CENTERLINE OF SEA WORLD WAY AS SHOWN ON CITY OF SAN DIEGO ENGINEERS DRAWING NO. 14,985-2-D; THENCE EAST PARALLEL WITH SAID CENTERLINE 150.01 FEET TO THE BEGINNING OF A TANGENT 180.00-FOOT-RADIUS-CURVE CONCAVE SOUTH-WESTERLY; THENCE EASTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE AND CONCENTRIC WITH SAID CENTERLINE OF SEA WORLD WAY THROUGH A CENTRAL ANGLE OF 90°00'00" A DISTANCE OF 282.74 FEET; THENCE TANGENT TO SAID CURVE. SOUTH 613.54 FEET TO A POINT ON A LINE THAT IS 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM ENGINEER'S STATION 33+04.72 ON THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D; THENCE NORTH 78°55'43" WEST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 304.72 FEET TO THE BEGINNING OF A TANGENT 828.855 FOOT-RADIUS-CURVE CONCAVE NORTHEASTERLY, SAID CURVE BEING CONCENTRIC WITH AND 10.00 FEET NORTHEASTERLY RADially FROM THE FACE OF THE NORTHEASTERLY BERM ON THE ACCESS ROAD SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING, = NO. 14577-22-D; THENCE NORTHWESTERLY ALONG SAID LINE THROUGH A CENTRAL ANGLE OF 21°06'.00" A DISTANCE OF 305.24 FEET; THENCE NORTHWESTERLY, WESTERLY AND NORTHERLY CONTINUING ALONG A LINE THAT IS PARALLEL AND/OR CONCENTRIC WITH AND 10.00 FEET AT RIGHT ANGLES OR RADially, RESPECTIVELY, FROM THE FACE OF SAID NORTHEASTERLY BERM WHICH BERM IS ALSO SHOWN ON SAID ENGINEER'S DRAWINGS NOS. 14577-21, 23, 24, 32, 33, 34 AND 36—D THE FOLLOWING COURSES AND DISTANCES: NORTH 57°49'43" WEST 53.69 FEET TO THE BEGINNING OF A TANGENT 1,032.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°5.2'29" A DISTANCE OF 664.18 FEET; THENCE TANGENT TO SAID CURVE SOUTH 85°17'48" WEST 515.45 FEET TO THE BEGINNING OF A TANGENT 568.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE WESTERLY AND NORTH-WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 65°57'16" A DISTANCE OF 653.84 FEET TO A POINT OF COMPOUND CURVATURE IN THE ARC OF A 268.00-FOOT-RADIUS-CURVE CONCAVE EASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 61°15'04" WEST TO SAID POINT; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID) CURVE THROUGH A CENTRAL ANGLE OF 73°56'23" A DISTANCE OF 345.86 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF A 332.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 44°48'28" EAST TO SAID POINT; THENCE NORTHEASTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 46°43'28" A DISTANCE OF 270.74 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF A 20.00-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY, A

RADIAL LINE OF SAID CURVE REARS SOUTH 88°28'04" WEST TO SAID POINT; THENCE LEAVING SAID PARALLEL AND/OR CONCENTRIC LINE NORTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°29'11" A DISTANCE OF 31.93 FEET; THENCE RADIAL TO SAID CURVE NORTH 0°02'45" WEST 12.99 FEET; THENCE EAST 81.94 FEET; THENCE SOUTH 75°37'07" EAST 80.52 FEET; THENCE SOUTH 69°45'18" EAST 130.04 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit 1
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PARCEL A—WATER 2,221 ACRES

BEGINNING AT POINT "A" AS SET OUT AND ESTABLISHED IN THE HEREIN- ABOVE DESCRIBED PARCEL "A", SAID POINT BEING IN THE ARC OF AN 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27°25'39" EAST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°43'53" A DISTANCE OF 135.88 FEET TO A POINT OF REVERSE. CURVATURE IN THE ARC OF AN 1,198.09-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°40'51" A DISTANCE OF 537.00 FEET; THENCE NORTH 147.18 FEET TO A POINT ON THE ARC OF A 1,342.65-FOOT-RADIUS CURVE THAT IS CONCENTRIC WITH AND 144.56 FEET NORTHWESTERLY RADIALLY FROM THE HEREINBEFORE MENTIONED 1,198.09-FOOT-RADIUS CURVE, A RADIAL LINE OF SAID - 1,342.65-FOOT-RADIUS CURVE BEARS NORTH 10°13'44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°55'51" A DISTANCE OF 631.09 FEET; THENCE TANGENT TO SAID CURVE SOUTH 52°50'28" WEST 34.39 FEET TO A POINT THAT BEARS NORTH 165.93 FEET FROM SAID POINT "A"; THENCE SOUTH 166.93 FEET TO SAID POINT "A" AND THE POINT OF BEGINNING.

PARCEL A—WATER 0.082 ACRES

BEGINNING AT POINT "B" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL "A"; THENCE SOUTH 71°35'40" EAST ALONG THE NORTHEASTERLY LINE OF SAID PARCEL "A" A DISTANCE OF 50.00 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE NORTH 18°24'20" EAST 71.00 FEET; THENCE NORTH 71°35'40" WEST 50.00 FEET; THENCE SOUTH 18°24'20" WEST 71.00 FEET TO SAID POINT "B" AND THE POINT OF BEGINNING.

Exhibit 1
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DESCRIPTION OF
SEA WORLD, INC.
24.142 ACRES LEASE AREA

PARCEL "A", PROPERTY 2

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF' MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14,1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7,8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST)) 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04' 04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X =1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 4,657.00 FEET AND WEST 11,956.89 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT. OF BEGINNING BEING NORTH 4,657.00 AND WEST 11,956.89, SAID TRUE POINT OF BEGINNING BEING A POINT THAT IS 30.00 FEET NORTH OF ENGINEER'S STATION 10 + 54.95 ON THE CENTERLINE OF SEA WORLD WAY AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-2-D; THENCE NORTH 300.74 FEET; THENCE NORTH 18°24'20" EAST 873.69 FEET TO MISSION BAY PARK COORDINATES NORTH 5,786.74 AND WEST 11,681.03; THENCE SOUTH 71°35'40" EAST 598.11 FEET; THENCE SOUTH 5°59'55" WEST 1807.81 FEET TO A POINT ON A LINE THAT IS 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM ENGINEER'S STATION 36+ 35.31 ON THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN. ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D, SAID POINT BEING AT MISSION BAY PARK COORDINATES NORTH 3,799.97 AND WEST 11,302.44; THENCE NORTH 78°55'43" WEST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 330.59 FEET TO MISSION BAY PARK COORDINATES NORTH 3,863.46 AND WEST 11,626.88, BEING A POINT OF INTERSECTION WITH A LINE

THAT IS PARALLEL WITH AND 30.00 FEET EAST AT RIGHT. ANGLES FROM THE HEREINBEFORE MENTIONED CENTERLINE OF SEA WORLD WAY; THENCE NORTH ALONG SAID PARALLEL LINE 613.54 FEET TO THE BEGINNING OF A TANGENT 180.00-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, WHICH CURVE IS ALSO TANGENT TO A LINE THAT BEARS EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTHERLY, NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" A DISTANCE OF 282.74 FEET TO SAID POINT OF TANGENCY; THENCE WEST 150.01 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit 1
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SEA WORLD, INC.
FORMERLY
PEREZ COVE LEASE
LEASE DESCRIPTION

PARCEL B:

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8 AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27,1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5,858.00 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,858.00 AND WEST 13,500.00; THENCE SOUTH 858.00 FEET; THENCE NORTH 69°45'18". WEST 130.04 FEET; THENCE NORTH 75°37'07" WEST 80.52 FEET; THENCE WEST 81.94 FEET; THENCE SOUTH 0°02'45" EAST 12.99 FEET TO THE EASTERLY TERMINUS OF A 20.00-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 0°02'45" WEST TO SAID TERMINUS; THENCE WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°29'11" A DISTANCE OF 31.93 FEET TO A POINT ON THE ARC OF A 332.00-FOOT-RADIUS CURVE CONCAVE WESTERLY, A RADIAL LINE OF SAID 332.00-FOOT-RADIUS CURVE BEARS NORTH 88°28'04" EAST TO SAID POINT;

THENCE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69° 21'58" A DISTANCE OF 401.94 FEET; THENCE TANGENT TO SAID CURVE NORTH 70°53'54" WEST 121.23 FEET TO THE BEGINNING OF A TANGENT 270.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°02'07" A DISTANCE OF 61.43 FEET TO INTERSECTION WITH A LINE THAT BEARS SOUTH 26°24'59" WEST 438.27 FEET FROM MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE NORTH 26°24'59" EAST ALONG SAID LINE 438.27 FEET TO SAID MISSION BAY COORDINATES BEING A POINT ON THE ARC OF A 240.00-FOOT-RADIUS-CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27°10'45" WEST TO SAID POINT; SAID POINT ALSO BEING HEREINAFTER REFERRED TO AS POINT "A"; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°56'26" A DISTANCE OF 104.47 FEET TO A POINT OF COMPOUND CURVATURE WITH A 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE EASTERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°39'58" A DISTANCE OF 414.22 FEET TO THE TRUE POINT OF BEGINNING.

SEA WORLD, INC.
WATER LEASE DESCRIPTION ' '

PARCEL B WATER 4.131 acres

BEGINNING AT POINT "A" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL "B", BEING ALSO DESCRIBED AS MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE NORTH 26°24'59" EAST ALONG THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID PARCEL "B" 516.98 FEET. TO MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,770.00 BEING A POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE EAST 270.00 FEET TO MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,500.00, BEING ON THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID PARCEL "B"; THENCE SOUTH ALONG SAID NORTHERLY PROLONGED EASTERLY LINE 400.00 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL "B", BEING A POINT ON THE ARC OF A 800.00-FOOT-RADIUS CURVE CONCAVE ' NORTHWESTERLY TO WHICH A RADIAL LINE BEARS SOUTH 27°25.'39" EAST; THENCE; WESTERLY ALONG THE .NORTHERLY LINE OF SAID PARCEL "B" AND THE ARC OF SAID 800.00-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 29°39'58" A DISTANCE OF 414.22 FEET TO A POINT OF COMPOUND CURVATURE WITH A 240.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE CONTINUING WESTERLY ALONG THE ARC OF SAID 240.00-FOOT-RADIUS CURVE THROUGH .CENTRAL ANGLE OF 24°56'26" A DISTANCE OF 104.47 FEET TO THE POINT OF. BEGINNING.

SEA WORLD, INC.
WATER LEASE DESCRIPTION

PARCEL B WATER 0.726 acres

BEGINNING AT PO/NT "B". AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL I, BEING ALSO DESCRIBED AS MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,770.00; THENCE NORTH 12.00 FEET; THENCE NORTH 63°35'01" WEST 73.50 FEET; THENCE SOUTH 26°24'59" WEST PARALLEL WITH THE NORTHWESTERLY LINE OF SAID PARCEL I. 396.25 FEET TO A POINT ON THE ARC OF A 222.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 40°17'03" WEST TO SAID POINT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°52'04" A DISTANCE OF 53.75 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO A POINT ON SAID NORTHWESTERLY LINE OF SAID PARCEL I THAT IS 125.00 FEET NORTHEASTERLY FROM THE SOUTHWESTERLY CORNER THEREOF; THENCE NORTH 26°24'59" EAST ALONG SAID NORTHWESTERLY LINE 391.98 FEET TO THE POINT OF BEGINNING.

Exhibit 1
Page 11 of 14

ATLANTIS RESTAURANT LEASE

PARCEL C: LAND 6.709 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RE-SUBDIVISION OF BLOCKS 7,8 AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", 'INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24; SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE

NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,435.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5,795.00 FEET AND WEST 14,000.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,795.00 AND WEST 14,000.00; THENCE SOUTH 26°24'59" WEST 438.27 FEET TO A POINT ON THE ARC OF A 270.00-FOOT-RADIUS CURVE CONCAVE. NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 32°08'13" WEST TO SAID POINT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°05'58" A DISTANCE OF 61.73 FEET TO A POINT ON THE WESTERLY LINE OF THAT PORTION OF LAND SHOWN ON THE CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 10966-1-B OF THE PROPOSED LEASE OF WEST PEREZ COVE MISSION BAY PARK; THENCE NORTHWESTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE 'BOUNDARY OF SAID LAND THE FOLLOWING COURSES. AND DISTANCES; NORTH 13°45'54" WEST 575.54 FEET; NORTH 175.00 FEET; NORTH 23°11'55" WEST 130.00 FEET; NORTH. 39° 19'34" WEST 90.00 FEET; NORTH 14°33'01" WEST 166.22

FEET; NORTH 9°04'02" WEST 267.46 FEET TO MISSION BAY COORDINATES NORTH 6,789.12 AND WEST 14,572.15; THENCE SOUTH 69°30'00" EAST 172.53 FEET TO THE BEGINNING OF A TANGENT 300.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69° 30'00" A DISTANCE OF 363.90 FEET; THENCE TANGENT TO SAID CURVE SOUTH 330.46 FEET TO THE BEGINNING OF A TANGENT 347.08 FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 385.17 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63° 35'01" EAST 25.61 FEET TO THE TRUE POINT OF BEGINNING.

ATLANTIS RESTAURANT LEASE, CONTINUED

PARCEL C

WATER: 2.638 ACRES.

BEGINNING AT THE TRUE POINT OF BEGINNING OF THE LAND PARCEL FIRST HEREINABOVE DESCRIBED BEING MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE ALONG THE NORTHEASTERLY AND EASTERLY BOUNDARY LINE OF SAID LAND PARCEL THE FOLLOWING DESCRIBED COURSES AND DISTANCES; NORTH $63^{\circ}35'01''$ WEST 25.61 FEET TO THE BEGINNING OF A TANGENT 347.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $63^{\circ}35'01''$ A DISTANCE OF 385.17 FEET; THENCE TANGENT TO SAID CURVE NORTH 330.46 FEET TO THE BEGINNING OF TANGENT 300.00 FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $69^{\circ}30'00''$ A DISTANCE OF 363.90 FEET TO A POINT OF TANGENCY WITH THE NORTHEASTERLY LINE OF SAID LAND PARCEL; THENCE LEAVING SAID NORTHEASTERLY BOUNDARY LINE OF LAND PARCEL SOUTH $69^{\circ}30'00''$ EAST ALONG THE SOUTHEASTERLY PROLONGATION OF SAID NORTHEASTERLY LINE 341.57 FEET TO INTERSECTION WITH A LINE THAT IS PARALLEL WITH AND 125.00 FEET EAST AT RIGHT ANGLES FROM THAT COURSE IN SAID EASTERLY BOUNDARY OF SAID LAND PARCEL DESCRIBED AS "SOUTH 330.46 FEET"; THENCE SOUTH ALONG SAID PARALLEL LINE 491.84 FEET TO THE BEGINNING OF A TANGENT 222.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, . WHICH CURVE IS ALSO CONCENTRIC WITH THE 347.08-FOOT-RADIUS CURVE DESCRIBED IN THE NORTHEASTERLY BOUNDARY OF SAID LAND PARCEL; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID 222.08-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF $63^{\circ}35'01''$ A DISTANCE OF 246.45 FEET; THENCE TANGENT TO SAID CURVE SOUTH $63^{\circ}35'01''$ EAST 25.61 FEET TO INTERSECTION WITH THE NORTHEASTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LAND PARCEL BEARING NORTH $26^{\circ}24'59''$ EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH $26^{\circ}24'59''$ WEST 125.00 FEET TO THE TRUE POINT OF BEGINNING.

**SEA WORLD
DOCUMENTS**

**Lease Amendment
Document No. 765767
March 6, 1979**

- Revision/addition to premises. Parcel "A" - Property 2: approximately 24.1 acres.
- Minimum rent revised.
- Hubbs-Sea World Research Institute occupancy.
- General Development Plan.

Lease Agreement

(To Document Number 762304)

THIS LEASE AMENDMENT, executed in duplicate this 29th day of January of 1979 at San Diego, California by and between the City of San Diego, a municipal corporation in the County of San Diego, State of California ("City") and Sea World, Inc. a Delaware corporation, 1720 South Shores Road, San Diego, California 92109 ("LESSEE"): LESSEE presently leases from City certain property in Mission Bay Park, which is more particularly described in that Lease Amendment dated December 14, 1977 (the "Lease") which is on file in the office of the City Clerk as Document No. 762304. LESSEE now desires to lease additional property in Mission Bay Park on the same terms and conditions of the Lease as are applicable to Parcel "A" of the Lease. The additional property is identified in Exhibit 1 as Parcel "A", Property 2, encompasses approximately 24.1 acres and is more particularly described in Exhibit 1 and delineated in Exhibit 2 which exhibits are attached hereto and by this reference incorporated herein and made a part of this Lease Amendment.

City and LESSEE further desire to amend their existing lease to clarify the status of revenue received by Hubbs-Sea World Research Institute, a non-profit foundation. The Hubbs-Sea World Research Institute is described and its activities defined in Exhibit 3 to this Lease Amendment.

Therefore, the Lease is amended to read as follows: 1. Article I of the Lease is amended to read in its entirety as follows, and Exhibits 1 and 2 to the Lease are also hereby amended to provide in their entirety the same as Exhibits 1 and 2 to this Lease Amendment.

1. Article I of the Lease is amended to read in its entirety as follows, and Exhibits 1 and 2 to the Lease are also hereby amended to provide in their entirety the same as Exhibits 1 and 2 to this Lease Amendment.

"ARTICLE 1"

DEMISE

The CITY hereby leases to LESSEE and LESSEE hereby leases and hires from CITY those parcels of real property and water area, together with appurtenances thereto situated in the COUNTY OF SAN DIEGO, STATE OF CALIFORNIA which are set forth in Exhibit "1" consisting of 13 pages attached hereto and made a part hereof. Said parcels are herein collectively referred to as the Premises and are individually referred to as Parcel "A" which consists of Parcel "A" Property 1 and Parcel "A" Property 2 (described on pages 1 through 6 inclusive of Exhibit "1"); Parcel "B" (described on pages 7 through 10 inclusive of Exhibit "1"); and Parcel C (described on pages 11 through 13 inclusive of Exhibit "1") Each said Parcel is delineated on the plat consisting of sheets 1 through 4 inclusive attached hereto and marked Exhibit "2".

REPLACED

AMENDED 12/12/83

AMENDED 6/24/85

2. Article IV, Paragraph A.2, of the Lease is amended to read in its entirety as follows:

“The minimum annual rental for the Premises shall be the sum of Three Hundred Thirty Thousand Dollars (\$330,000). Provided that for the second five years of this Lease Agreement, commencing with the sixth year of this Lease Agreement, and for each subsequent five-year period during the term of this Lease Agreement, the annual minimum rent, at CITY’S option, may be adjusted to a figure of not more than sixty-six and two-thirds percent (66-2/3%) of the average actual rent paid during the previous five-year period, but in no event shall said annual minimum rent be less than \$330,000.”

Amended 12/12/83

Amended 6/29/99

3. Article IV of the Lease is amended by adding thereto Paragraph D providing as follows:

“D. Hubbs-Sea World Research Institute, a non-profit foundation, may occupy a portion of Parcel “B” not to exceed 80,000 square feet in ground area during the entire term of this lease without payment of any rent so long as the following terms and conditions are met:

1. Hubbs-Sea World Research Institute; herein “Hubbs,” shall operate solely and exclusively as a California non-profit foundation and shall be involved solely and exclusively in oceanographic research and development activities for the public good and as an auxiliary service for LESSEE’S aquatic exhibits.

2. No rental charge shall be made to LESSEE for any space, service or activity inducted by Hubbs, nor shall LESSEE receive any income from said Hubbs.

3. So long as Hubbs conducts its operations in accordance with the above conditions, no rent shall be payable for the premises occupied by Hubbs. However, in the event Hubbs does not comply with any or all of the above conditions, Hubbs shall pay a rental in the amount of seven percent of all revenue received by Hubbs from any source in connection with conducting its activities on the leased premises.

Amended 6/24/85

4. Article XXXII is amended to read in its entirety as follows:

ARTICLE XXXII

GENERAL DEVELOPMENT PLAN

ADDED A.; B.; C.; D.; E.

AMENDED 12/12/83

AMENDED 6/24/83 [REPLACED]

AMENDED 6/29/98

“The development of Parcels “A” and “C” of the Premises shall be in accordance with the Development Plan (sometimes herein referred to as the Master Plan and as the Precise Plan of development) for the Premises approved by the City Manager, which plan is filed in the Office of the City Clerk and identified as Document No. 762202. The development of Parcel “B” of the Premises shall be in compliance with the adopted Mission Bay Park Master Plan for Land and Water Use, 1976. Changes to the Development Plan shall be made only after written approval thereof by the City Manager.

Parcel “A” Property 2 shall be developed in two phases. Phase 1 shall be developed according to the Development Plan for Parcel “A” Property 2 on file in the office of the City Clerk.

Construction of Phase 1 shall commence on or before April 1, 1979 and shall proceed diligently to completion subject to the issuance of various authorizations and permits necessary for such development and delays beyond LESSEE’S control.

Phase 2 development will be the subject of several reviews including the review and approval of the State of California Coastal Commission, the specific elements of Phase 2 have not, therefore, been determined at this time. On or prior to January 1, 1980, a Phase 2 Development Plan will be submitted to the City Manager for the City Manager’s approval, which approval will not be unreasonably withheld. In the event the Phase 2 Development Plan as initially submitted is not approved by the City Manager, such Plan will be modified and resubmitted until the City Manager’s approval is obtained.

Construction of Phase 2 shall commence within two years after obtaining the City Manager’s approval and shall proceed diligently and without undue delay to completion, but subject to delay resulting from causes beyond LESSEE’S control.

5. The effective date of this Lease Amendment shall be the date of execution by the City as hereinafter provided. The increase in minimum rent shall be prorated from the effective date for the remainder of the current lease year.

IN WITNESS WHEREOF, this Lease Amendment is executed by CITY, acting by and through the City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 29 January 1979

By: /s/ _____

LESSEE

By: /s/ _____

By: /s/ _____

Approved as to form and legality this 12 DAY of February, 1979.

JOHN W. WITT City Attorney

BY /s/ Harold O. Valderhaug _____

DESCRIPTION OF
(SEA WORLD LEASE)

PARCEL A., PROPERTY 1 83.985 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'100" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'-04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X =: 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK CO-ORDINATE SYSTEM; THENCE NORTH 5,000.00 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,000.00 AND WEST 13,500.00; THENCE NORTH 858.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", SAID POINT BEING ON THE ARC OF AN 800.00 - FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27° 25'39" EAST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°43'53" A DISTANCE OF 135.88 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF AN 1,198.09 FOOT RADIUS-CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 37°09'32" WEST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°36'42", A DISTANCE OF 619.20 FEET TO A

POINT OF COMPOUND CURVATURE WITH A 514.76-FOOT-RADIUS-CURVE CONCAVE SOUTHERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 7°32'50" WEST TO SAID POINT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°57'10" A DISTANCE OF 233.17 FEET; THENCE TANGENT TO SAID CURVE SOUTH 71°35'40" EAST 766.29 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE CONTINUING SOUTH 71°35'40" EAST 207.08" FEET TO MISSION BAY PARK COORDINATES NORTH 5,834.18 AND WEST 11,665.24; THENCE SOUTH 18°24'20" WEST 923.69 FEET; THENCE SOUTH 300.74 FEET TO MISSION BAY PARK COORDINATES NORTH 4,657.00 AND WEST 11,956.89, BEING A POINT THAT IS 30.00 FEET NORTH OF ENGINEER'S STATION 10+54.95 ON THE CENTERLINE OF SEA WORLD WAY AS SHOWN ON CITY OF SAN DIEGO ENGINEERS DRAWING NO. 14,985-2-D; THENCE EAST PARALLEL WITH SAID CENTERLINE 150.01 FEET TO THE BEGINNING OF A TANGENT 180.00-FOOT-RADIUS-CURVE CONCAVE SOUTHWESTERLY; THENCE EASTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE AND CONCENTRIC WITH SAID CENTERLINE OF SEA WORLD WAY THROUGH A CENTRAL ANGLE OF 90°00'00" A DISTANCE OF 282.74 FEET; THENCE TANGENT TO SAID CURVE SOUTH 613.54 FEET TO A POINT ON A LINE THAT IS 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM ENGINEER'S STATION 33+04.72 ON THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D; THENCE NORTH 78°55'43" WEST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 304.72 FEET TO THE BEGINNING OF A TANGENT 828.855 FOOT-RADIUS-CURVE CONCAVE NORTHEASTERLY, SAID CURVE BEING CONCENTRIC WITH AND 10.00 FEET NORTHEASTERLY RADIALLY FROM THE FACE OF THE NORTHEASTERLY BERM ON THE ACCESS ROAD SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14577-22-D; THENCE NORTHWESTERLY ALONG SAID LINE THROUGH A CENTRAL ANGLE OF 21°06'.00" A DISTANCE OF 305.24 FEET; THENCE NORTHWESTERLY, WESTERLY AND NORTHERLY CONTINUING ALONG A LINE THAT IS PARALLEL AND/OR CONCENTRIC WITH AND 10.00 FEET AT RIGHT ANGLES OR RADIALLY, RESPECTIVELY, FROM THE FACE OF SAID NORTHEASTERLY BERM WHICH BERM IS ALSO SHOWN ON SAID ENGINEER'S DRAWINGS NOS. 14577-21, 23, 24, 32, 33, 34 AND 36-D THE FOLLOWING COURSES AND DISTANCES: NORTH 57°49'43" WEST 53.69 FEET TO THE BEGINNING OF A TANGENT 1,032.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY AND WESTERLY . ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°5.2'29" A DISTANCE OF 664.18 FEET; THENCE TANGENT TO SAID CURVE SOUTH 85°17'48" WEST 515.45 FEET TO THE BEGINNING OF A TANGENT 568.00- FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE WESTERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 65°57'16" A DISTANCE OF 653.84 FEET TO A POINT OF COMPOUND CURVATURE IN THE ARC OF A 268.00-FOOT-RADIUS-CURVE CONCAVE EASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 61°15'04" WEST TO SAID POINT; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 73°56'28" A DISTANCE OF 345.86 FEET TO A POINT OF

REVERSE CURVATURE IN THE ARC OF A 332.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 44°48'28" EAST TO SAID POINT; THENCE NORTHEASTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 46°43'28" A DISTANCE OF 270.74 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF A 20.00-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 88°28'04" WEST TO SAID POINT; THENCE LEAVING SAID PARALLEL AND/OR CONCENTRIC LINE NORTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°29'11" A DISTANCE OF 31.93 FEET; THENCE RADIAL TO SAID CURVE NORTH 0°02'45" WEST 12.99 FEET; THENCE EAST 81.94 FEET; THENCE SOUTH 75°37'07" EAST 80.52 FEET; THENCE SOUTH 69°45'18" EAST 130.04 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit 1
Page 3 of 14

PARCEL A – WATER 2,221 ACRES

BEGINNING AT POINT “A” AS SET OUT AND ESTABLISHED IN THE HEREIN ABOVE DESCRIBED PARCEL “A”, SAID POINT BEING IN THE ARC OF AN 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27°25’39” EAST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°43’53” A DISTANCE OF 135.86 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF AN 1,198.09-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°40’51” A DISTANCE OF 537.00 FEET; THENCE NORTH 147.18 FEET TO A POINT ON THE ARC OF A 1,342.65-FOOT-RADIUS CURVE THAT IS CONCENTRIC WITH AND 144.56 FEET NORTHWESTERLY RADIALLY FROM THE HEREINBEFORE MENTIONED 1,198.09-FOOT-RADIUS CURVE, A RADIAL LINE OF SAID 1,342.65-FOOT-RADIUS CURVE BEARS NORTH 10°13’41” WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°55’51” A DISTANCE OF 631.09 FEET; THENCE TANGENT TO SAID CURVE SOUTH 52°50’28” WEST 34.39 FEET TO A POINT THAT BEARS NORTH 166.93 FEET FROM SAID POINT “A”; THENCE SOUTH 166.93 FEET TO SAID POINT “A” AND THE POINT OF BEGINNING.

PARCEL A - WATER 0.082 ACRES

BEGINNING AT POINT "B" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL "A"; THENCE SOUTH $71^{\circ}35'40''$ EAST ALONG THE NORTHEASTERLY LINE OF SAID PARCEL "A" DISTANCE OF 50.00 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE NORTH $18^{\circ}24'20''$ EAST 71.00 FEET; THENCE NORTH $71^{\circ}35'40''$ WEST 50.00 FEET; THENCE SOUTH $18^{\circ}24'20''$ WEST 71.00 FEET TO SAID POINT "B" AND THE POINT OF BEGINNING.

Exhibit 1
Page 5 of 14

DESCRIPTION OF
SEA WORLD, INC
24.142 ACRES LEASE AREA

PARCEL "A", PROPERTY 2

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04' 04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55' 56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 4,657.00 FEET AND WEST 11,956.89 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 4,657.00 AND WEST 11,956.89, SAID TRUE POINT OF BEGINNING BEING A POINT THAT IS 30.00 FEET NORTH OF ENGINEER'S STATION 10 + 54.95 ON THE CENTERLINE OF SEA WORLD WAY AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-2-D; THENCE NORTH 300.74 FEET; THENCE NORTH 18°24'20" EAST 873.69 FEET TO MISSION BAY PARK COORDINATES NORTH 5,786.74 AND WEST 11,681.03; THENCE SOUTH 71°35'40" EAST 598.11 FEET; THENCE SOUTH 5°59'55" WEST 1807.81 FEET TO A POINT ON A LINE THAT IS 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM ENGINEER'S STATION 36 + 35.31 ON THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D, SAID POINT BEING AT MISSION BAY PARK COORDINATES NORTH 3,799.97 AND WEST 11,302.44; THENCE NORTH 78°55'43"

WEST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 330.59 FEET TO MISSION BAY PARK COORDINATES NORTH 3,863.46 AND WEST 11,626.88, BEING A POINT OF INTERSECTION WITH A LINE THAT IS PARALLEL WITH AND 30.00 FEET EAST AT RIGHT ANGLES FROM THE HEREINBEFORE MENTIONED CENTERLINE OF SEA WORLD WAY; THENCE NORTH ALONG SAID PARALLEL LINE 613.54 FEET TO THE BEGINNING OF A TANGENT 180.00- FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, WHICH CURVE IS ALSO TANGENT TO A LINE THAT BEARS EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTHERLY, NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" A DISTANCE OF 282.74 FEET TO SAID POINT OF TANGENCY; THENCE WEST 150.01 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit 1
Page 7 of 14

SEA WORLD, INC. LEASE
FORMERLY
PEREZ COVE LEASE
LEASE DESCRIPTION

PARCEL B:

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5,858.00 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,858.00 AND WEST 13,500.00; THENCE SOUTH 858.00 FEET; THENCE NORTH 69°45'18" WEST 130.04 FEET; THENCE NORTH 75°37'07" WEST 80.52 FEET; THENCE WEST 81.94 FEET; THENCE SOUTH 0°02'4'5" EAST 12.99 FEET TO THE EASTERLY TERMINUS OF A 20.00-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 0°02'45" WEST TO SAID TERMINUS; THENCE WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°29'11" A DISTANCE OF 31.93 FEET TO A POINT ON THE ARC OF A 332.00-FOOT-RADIUS CURVE CONCAVE WESTERLY, A RADIAL LINE OF SAID 332.00-FOOT-RADIUS CURVE BEARS NORTH

88°28'04" EAST TO SAID POINT; THENCE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°21'58" A DISTANCE OF 401.94 FEET; THENCE TANGENT TO SAID CURVE NORTH 70°53'54" WEST 121.23 FEET TO THE BEGINNING OF A TANGENT 270,00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°02'07" A DISTANCE OF 61.43 FEET TO INTERSECTION WITH A LINE THAT BEARS SOUTH 26°24'59" WEST 438.27 FEET FROM MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE NORTH 26°24'59" EAST ALONG SAID LINE 438.27 FEET TO SAID MISSION BAY COORDINATES BEING A POINT ON THE ARC OF A 240.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27°10'45" WEST TO SAID POINT; SAID POINT ALSO BEING HEREINAFTER REFERRED TO AS POINT "A"; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°56' 26" A DISTANCE OF 104.47 FEET TO A POINT OF COMPOUND CURVATURE WITH A 800.00-FOOT RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE EASTERLY AND NORTH- EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°39'58" A DISTANCE OF 414.22 FEET TO THE TRUE POINT OF BEGINNING.

SEA WORLD, INC.
WATER LEASE DESCRIPTION

PARCEL B WATER 4.131 acres

BEGINNING AT POINT "A" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL "B", BEING ALSO DESCRIBED AS MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE NORTH 26°24'59" EAST ALONG THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID PARCEL "B" 516.98 FEET TO MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,770.00 BEING A POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE EAST 270.00 FEET TO MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,500.00 BEING ON THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID PARCEL "B"; THENCE SOUTH ALONG SAID NORTHERLY PROLONGED EASTERLY LINE 400.00 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL "B", BEING A POINT ON THE ARC OF A 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY TO WHICH A RADIAL LINE BEARS SOUTH 27°25.'39" EAST; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL "B" AND THE ARC OF SAID 800.00-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 29°39' 58" A DISTANCE OF 414.22 FEET TO A POINT OF COMPOUND CURVATURE WITH A 240,00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE CONTINUING WESTERLY ALONG THE ARC OF SAID 240.00-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 24°56' 26" A DISTANCE OF 104.47 FEET TO THE POINT OF BEGINNING.

SEA WORLD, INC.
WATER LEASE DESCRIPTION

PARCEL 8 WATER 0.726 acres

BEGINNING AT POINT "B" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL I, BEING ALSO DESCRIBED AS MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,770.00; THENCE NORTH 12.00 FEET; THENCE NORTH 63°35'01" WEST 73.50 FEET; THENCE SOUTH 26°24'59" WEST PARALLEL WITH THE NORTHWESTERLY LINE OF SAID PARCEL I 396.25 FEET TO A POINT ON THE ARC OF A 222.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 40°17 '03" WEST TO SAID POINT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°52'04" A DISTANCE OF 53.75 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO A POINT ON SAID NORTHWESTERLY LINE OF SAID PARCEL I THAT IS 125.00 FEET NORTHEASTERLY FROM THE SOUTHWESTERLY CORNER THEREOF; THENCE NORTH 26°24'59" EAST ALONG SAID NORTHWESTERLY LINE 391.98 FEET TO THE POINT OF-BEGINNING.

Exhibit 1
Page 11 of 14

ATLANTIS RESTAURANT LEASE

PARCEL C: LAND 6.709 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RE- SUBDIVISION OF BLOCKS 7, 8 AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24; SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,435.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5,795.00 FEET AND WEST 14,000.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,795.00 AND WEST 14,000.00; THENCE SOUTH 26°24'59" WEST 438.27 FEET TO A POINT ON THE ARC OF A 270.00-FOOT-RADIUS CURVE CONCAVE. NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 32°08'13" WEST TO SAID POINT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°05'58" A DISTANCE OF 61.73 FEET TO A POINT ON THE WESTERLY LINE OF THAT PORTION OF LAND SHOWN ON THE CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 40966-1-B OF THE PROPOSED LEASE OF WEST PEREZ COVE MISSION BAY PARK; THENCE NORTHWESTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE 'BOUNDARY OF SAID LAND THE FOLLOWING COURSES AND DISTANCES; NORTH 13°45'54" WEST 575.54 FEET; NORTH 175.00 FEET; NORTH 23°11'55" WEST 130.00 FEET; NORTH 39° 19'34" WEST 90.00 FEET; NORTH 14°33'01" WEST 166.22 FEET; NORTH 9°04'02" WEST 267.46 FEET

TO MISSION BAY COORDINATES NORTH 6,789.12 AND WEST 14,572.15; THENCE SOUTH 69°30' 00" EAST 172.53 FEET TO THE BEGINNING OF A TANGENT 300.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°30' 00" A DISTANCE OF 363.90 FEET; THENCE TANGENT TO SAID CURVE SOUTH 330.46 FEET TO THE BEGINNING OF A TANGENT 347.08 FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63° 35'01" A DISTANCE OF 385.17 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO THE TRUE POINT OF BEGINNING.

ATLANTIS RESTAURANT LEASE, CONTINUED

PARCEL C

WATER: 2.638 ACRES.

BEGINNING AT THE TRUE POINT OF BEGINNING OF THE LAND PARCEL FIRST HEREINABOVE DESCRIBED BEING MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE ALONG THE NORTHEASTERLY AND EASTERLY BOUNDARY LINE OF SAID LAND PARCEL THE FOLLOWING DESCRIBED COURSES AND DISTANCES; NORTH 63°35'01" WEST 25.61 FEET TO THE BEGINNING OF A TANGENT 347.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 385.17 FEET; THENCE TANGENT TO SAID CURVE NORTH 330.46 FEET TO THE BEGINNING OF A TANGENT 300.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°30'00" A DISTANCE OF 363.90 FEET TO A POINT OF TANGENCY WITH THE NORTHEASTERLY LINE OF SAID LAND PARCEL; THENCE LEAVING SAID NORTHEASTERLY BOUNDARY LINE OF LAND PARCEL SOUTH 69°30'00" EAST ALONG THE SOUTHEASTERLY PROLONGATION OF SAID NORTHEASTERLY LINE 341.57 FEET TO INTERSECTION WITH A LINE THAT IS PARALLEL WITH AND 125.00 FEET EAST AT RIGHT ANGLES FROM THAT COURSE IN SAID EASTERLY BOUNDARY OF SAID LAND PARCEL DESCRIBED AS "SOUTH 330.46 FEET"; THENCE SOUTH ALONG SAID PARALLEL LINE 491.84 FEET TO THE BEGINNING OF A TANGENT 222.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, WHICH CURVE IS ALSO CONCENTRIC WITH THE 347.08-FOOT-RADIUS CURVE DESCRIBED IN THE NORTHEASTERLY BOUNDARY OF SAID LAND PARCEL; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID 222-08-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 246.45 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO INTERSECTION WITH THE NORTHEASTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LAND PARCEL BEARING NORTH 26°24'59" EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 26°24'59" WEST 125.00 FEET TO THE TRUE POINT OF BEGINNING.

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That it be and it is hereby certified that the information contained in Environmental Negative Declaration No. 78-12-31P, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 and the State guidelines thereto, and that said Declaration has been reviewed and considered by this Council.

APPROVED: JOHN W. WITT, City Attorney

By /s/ Harold O. Valderhaug
Harold O. Valderhaug, Deputy

HOV:dm
1/10/79
Or. Dept. Property
Job: 13782

REPORT

RECEIVED JAN 05 1979
PROPERTY DEPT.
Action

The City of San Diego
To The Honorable Mayor and City Council
From the City Manager

DATE ISSUED: January 3, 1979

REPORT NO. 79-4

ATTENTION: Public Facilities and Recreation Committee, Agenda of January 4, 1979

SUBJECT: Lease Amendment - Sea World, Inc.

SUMMARY

Issues - (1) Should the City enter into a Lease Amendment with Sea World, Inc., expanding the leasehold an additional 24.1 acres?
(2) Should the City accept Environmental Report No. 76-07-34C as amended, which approves the addition, but will require a further assessment when the development plans are finalized?

Manager's Recommendation - (1) Authorize the City Manager to execute the amendment; (2) Approve the Environmental Report No. 76-07-34C as amended.

Other Recommendations - None

Fiscal Impact —\$50,000 additional rent per annum, minimum, deposited into the 100 Fund, Account No. 7549

BACKGROUND

In 1976, Sea World, Inc. prepared a revised Master Plan of Development encompassing an additional area of 22 to 25 acres on the land immediately east of and adjacent to their present leasehold. The conceptual plan was reviewed by City Park and Recreation and Planning Staffs; presented to the Mission Bay Committee, Facilities Committee, Park and Recreation Board and on April 7, 1977, the Planning Commission. With certain conditions accepted by Sea World, the plan was accepted by all. The expansion was then made a part of the Adopted Mission Bay Park Master Plan for Land and Water Use, 1978.

Further negotiations were suspended until the Public Facilities and Recreation Committee and the full Council had adopted the Mission Bay Park Master Plan for Land and Water Use. The expansion of Sea World is recommended in that Plan on page 95.

The lease amendment provides for an additional 24.1 acres, to be located adjacent to the existing leasehold and increases the minimum rent of the entire leasehold by \$50,000 to \$330,000 per annum. An undetermined increase in percentage rents is also anticipated. The northerly boundary is located 50' south of the shoreline to accommodate the future pedestrian/biking path. The amendment also provides that the existing non-profit activities of the Hubbs-Sea World Research Institute (not to exceed 80,000 square feet, 1.83 acres) shall not be subject to percentage rentals. Hubbs-Sea World Research Institute functions as a Sea World support facility providing research on fish and sea mammal care, feeding and survival. The results of all of their research is published internationally at no charge.

A Development Plan is to be submitted for City Manager approval within 120 days of the effective date of the amendment and within 180 days thereafter, a specific program for implementing the plan is to be submitted. To comply with the first of these requirements, Sea World is scheduled to appear before the various Park and Recreation Board hearings commencing December 12, 1978. Sea World will be required to provide specific Environmental Assessments and obtain the necessary Coastal Commission Permits.

ALTERNATIVE

Deny the request and study Master Plan revision for alternative use designations for the area.

Respectfully submitted,

/s/ John P. Fowler

John P. Fowler

Deputy City Manager

SPOTTS/GRR

**SEA WORLD
DOCUMENTS****Lease Amendment
Document No RR-259814
December 12, 1983**

- Revision/addition to premises. Parcel "A" - Property 3. Parcel "B" Water - approximately 7.216 acres.
- Term revised to commence January 2, 1984 and expire December 31, 2033.
- Minimum rent revised to \$1,000,000. Adjustments to 80% of average rents paid every 3 years.
- \$75,000 per year payment with last payment being due on January 2, 1993. CPI adjusted 10% cap. City agrees to use said rent for maintenance of public park and recreation facilities in the South Shores area adjacent to the easterly boundary of the premises.
- Revision to Paragraph 5 to include a percentage treated adjustment at the end of the 10th year of the term (January 1994) and every 10 years thereafter. Percentage rates may be adjusted to reflect fair market rates. Rate on tickets may never exceed 4% and no one adjustment shall exceed 1%.
- Accounting year defined.
- Unauthorized use charge of 20% added.
- Delinquency charge provision added.
- Guidelines for Lessee submittal of comprehensive development plan added.
- Provision for a 50% rent credit for mitigation costs added.
- Equal Opportunity Policy added.
- Live aboard regulation added.
- General statements about possible negotiations for a hotel.

**SEA WORLD
DOCUMENTS**

**Shoreline Repair Agreement
Document No RR-262370
January 22, 1985**

- Letter outlining shoreline repair work and a rent credit not to exceed \$150,000.

LEASE AMENDMENT

THIS LEASE AMENDMENT, executed in duplicate as of this 12th day of December, 1983, at San Diego, California, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California ("CITY") and SEA WORLD, INC., a Delaware corporation, 1720 South Shores Road, San Diego, California 92109 ("LESSEE"), is made with reference to the following facts:

A. CITY leases to LESSEE and LESSEE leases from CITY certain property in Mission Bay Park ("Premises"), described in lease amendments dated December 14, 1977, and January 29, 1979, and filed in the office of the City Clerk of CITY as Document Nos. 762304 and 765767, respectively. (The foregoing lease amendments are collectively referred to in this Lease Amendment as the "Lease.")

B. The parties hereto desire to amend the Lease as hereinafter provided.

THEREFORE, in consideration of the mutual covenants contained herein, the Lease is hereby amended to provide, and LESSEE and CITY hereby agree, as follows:

1. Article I is hereby amended by adding to the Premises Parcel "A" Property 3 and Parcel "B" WATER 7.216 ACRES as described on Exhibit "1" and delineated on Exhibit "2" attached hereto. For convenience of reference the parties hereby agree that Article I of the Lease shall hereby be amended to read as follows, and Exhibits "1" and "2" to the Lease shall also be hereby amended to provide the same as Exhibits "1" and "2" to this Lease Amendment:

" DEMISE

CITY hereby leases to LESSEE and LESSEE hereby leases and hires from CITY those parcels of real property and water area, together with appurtenances thereto, situated in the County of San Diego, State of California, which are set forth in Exhibit "1" consisting of 15 pages attached hereto and made a part hereof. Said parcels are herein collectively referred to as the "Premises" and are individually referred to as Parcel "A," which consists of certain water parcels and certain land parcels referred to as Parcel "A" Property 1, Parcel "A" Property 2, and Parcel "A" Property 3 (described on pages 1 through 7 inclusive of Exhibit "1"); Parcel "B," which consists of certain land and water parcels (described on pages 8 through 12 inclusive of Exhibit "1" and Parcel "C," which consists of certain land and water parcels (described on pages 13 through 15 inclusive of Exhibit "1"). Each of said parcels is also delineated on the plat consisting of one (1) sheet attached hereto marked Exhibit "2" and made a part hereof."

2. Article II is hereby amended to read as follows:

“TERM

The term, hereafter referred to as the “Term,” of this lease shall be the period beginning January 2, 1984, and ending December 31, 2033. In no event shall the Term exceed the period allowed by law, and the Term shall be deemed to be the lesser of the period referred to herein or the maximum period allowed by law.”

3. Subparagraph A.1.r of Article IV is hereby amended to read as follows:

“r. The following income received by LESSEE shall be excluded from the computation of gross income for purposes of applying the foregoing percentages: (i) any income from the sale of licenses or permits for a governmental agency; (ii) any income from activities of LESSEE, its affiliates and subsidiaries, conducted off of the premises; (iii) any income from the sale of merchandise to other dealers, at actual cost, with no mark-ups, as a method of changing inventories and resulting in no profit to LESSEE; galley sales of food and beverages made from boats operating from the Premises outside of Mission Bay; and (iv) allowances made by LESSEE for traded-in merchandise; provided that LESSEE keeps adequate records for all of the foregoing from which CITY can accurately determine what allowance were made.”

4. Subparagraph A.2 of Article IV is hereby amended to read as follows:

“2. The minimum rent for the Premises shall be the sum of \$1,000,000 for each accounting year commencing with the accounting year beginning January 2, 1984; provided that for the period of three accounting years commencing at the end of the three accounting years commencing January 2, 1984, and for each subsequent period of three accounting years during the term of this Lease, the minimum rent shall be adjusted to an amount equal to eighty percent (80%) of the “average accounting year rent” (determined as provided below) actually paid for the three previous accounting years, but no such adjustment shall result in a decrease in the minimum rent in effect immediately prior to the adjustment date. For purposes of adjusting the minimum rent as provided above, the “average accounting year rent” shall be the average of the rent for the three accounting years immediately preceding an adjustment date unless the highest rent of said three year differs from the middle rent of said three years by more than ten percent (10%) of the middle rent, in which case the “average accounting year rent,” shall be the average of the middle rent and the lowest rent of said three years.”

5. Paragraph A of Article IV is hereby amended by adding Subparagraph 3 thereto, to read as follows:

“3. In addition to any other rent provided for in this Lease, LESSEE shall, during the term of this Lease, also pay to CITY rent for the use of the Premises in the following amounts: (i) \$50,000 per year, payable in advance, for a period of five (5) years, with the first such payment being due on January 2, 1984, and thereafter on each anniversary thereof, with the last such payment being due on January 2, 1988; plus (ii) \$75,000 per year, payable in advance, for a period of ten (10) years, with the first such payment being due on January 2, 1984, and thereafter on each anniversary thereof, with the last such payment being due on January 2, 1993; provided, that the payments payable on January 2, 1984, as provided in subparagraphs (i) and (ii) above, shall not be due until ten (10) days after the amendment adding these provisions to the Lease becomes effective. The rental payable pursuant to subparagraph (ii) above on January 2, 1985, and each anniversary thereof through January 2, 1993, shall be subject to adjustment in accordance with the following: “Index,” as used herein, means the Consumer Price Index for All Urban Consumers for Los Angeles/Long Beach/Anaheim CA/All Items (1967=100) published monthly by the United States Bureau of Labor Statistics. If the Index is no longer published, the determination of the adjustment as hereinafter provided shall be made by reference to conversion tables, if any, included in any new index published by the United States Government in replacement of the Index; and if no such conversion tables exist, then the parties shall agree upon another source of authoritative information to determine changes in purchasing power, and if they are unable to agree, then such source of information shall be determined by arbitration conducted in accordance with the rules of The American Arbitration Association. “Adjustment Date,” as used herein, means January 2, 1985, and each anniversary thereof through January 2, 1993; and “Base Date” means the January 2 immediately preceding each applicable Adjustment Date. The rental payable on each Adjustment Date shall be the amount that bears the same relationship to the amount of rental payable on the immediately preceding Base Date as the average monthly Index for the months of July, August, and September immediately preceding the Adjustment Date bears to the average monthly Index for the months of July, August, and September immediately preceding the Base Date for such Adjustment Date; provided that said adjusted rental shall not exceed 110% of the rental payable on the immediately preceding Base Date. [For example, assuming the average month’s Index for July-September 1983 is 300, and that for July-September 1984 is 340, then the rental payable pursuant to

Subparagraph (ii) above on January 2, 1985, shall be \$82,500 (340/300=113.33%, which exceeds 110%; thus, 110% of \$75,000=\$82,500).] CITY agrees to use the rental payments provided for in subparagraph (ii) above solely for the purpose of constructing, operating, and/or maintaining public park and recreation facilities adjacent to the easterly boundary of the Premises in the general area known as the 'South Shores' of Mission Bay."

6. Paragraph A of Article IV is hereby amended by adding Subparagraph 4 thereto, to read as follows:

"4. If this Lease terminates prior to January 2, 1994, on a date other than January 1, then LESSEE shall receive a credit in an amount equal to the aggregate of any unearned advance-paid rent pursuant to Subparagraph 3 above, prorated on the basis of a 360-day year, against any final percentage or minimum rent due upon such termination; and if such credit exceeds any such final percentage or minimum rent payment, then CITY shall promptly pay LESSEE the amount of such excess."

7. Paragraph A of Article IV is hereby amended by adding Subparagraph 5 thereto, to read as follows:

"5 (a) At the end of the tenth (10th) full accounting year of the Term, and at the end of every tenth (10th) accounting year thereafter (the "adjustment dates"), the percentage rates used to compute the percentage rent for the succeeding period of ten (10) accounting years may be adjusted to reflect fair market rental rates then generally in effect. At least four (4) months prior to each such adjustment date, the parties shall negotiate in good faith to determine whether one or more or none of the rates then in effect should be adjusted and, if so, the extent of any such adjustment or adjustments. In the event that such determination is not made by mutual consent of the parties prior to sixty (60) days before each adjustment date, either party may refer the matter to arbitration pursuant to Subparagraph (b) below, by giving the other party a written demand therefor prior to fifty (50) days before the applicable adjustment date. Notwithstanding the foregoing, no adjustment or adjustments, if any, of the percentage rate applicable to gross income derived from the sale of general admission tickets, as provided in Subparagraph A.1.c of Article IV of this Lease, shall cause said rate ever to exceed four percent (4%) during the Term, and, further, no one adjustment of said rate may exceed one (1) percentage point; provided, that said four percent (4%) limitation shall not apply to gross income, if any, received by LESSEE from the sale of general admission tickets that is

attributable to the furnishing of goods or services for which other particular percentage rental rates are specified in this Lease and for which a separate charge is normally made. The imposition of the foregoing limitations does not suggest or imply that the rate applicable to charges for general admission tickets should ever be adjusted at all or in any particular amount, and the arbitrators shall be instructed not to consider the existence of such limitations in any arbitration.

(b) (1) In the event the parties cannot agree upon the percentage rates, at the time of any permitted adjustment as provided for in Subparagraph (a) above, and a written demand for arbitration is timely given as provided above, the issue whether one or more or none of the percentage rates then in effect should be adjusted, and, if so, the extent thereof, for the succeeding period of ten (10) accounting years shall be determined by arbitration in accordance with the following provisions.

(2) If the parties cannot agree on a mutually acceptable appraiser prior to forty (40) days before the applicable adjustment date, each party, within ten (10) days thereafter, shall appoint an arbitrator and give written notice of such appointment to the other party. The two arbitrators shall immediately choose a third arbitrator to work with them. If the two arbitrators fail to select a third arbitrator within ten (10) days following the date of their appointment, on written application by either party the third arbitrator shall be promptly appointed by the then presiding judge of the Superior Court of the State of California, County of San Diego, acting in his individual capacity. The party making the application shall give the other party written notice of its application.

(3) Unless the parties otherwise agree, all of the arbitrators shall be members in good standing of the American Institute of Real Estate Appraisers with an M.A.I. designation and shall have at least five (5) years experience in appraising commercial and other properties. Each party shall bear the expenses of its own appointed arbitrator and shall bear other expenses pursuant to Section 1284.2 of the Code of Civil Procedures of California. Hearings shall be held in the City of San Diego, California. If there are three arbitrators, the entire award and each element thereof shall be the decision of not less than two of the arbitrators. In the event two arbitrators cannot agree, then the arbitrators shall be discharged and new arbitrators selected; and this process shall be repeated until a decision of not less than two arbitrators is obtained. The percentage rates to be determined shall be those which would be appropriate if the Premises were vacant

and made available on the open market for new leasing purposes, pursuant to a lease substantially similar to this Lease, at the commencement of the period under arbitration. For the purpose of this arbitration procedure, the arbitrators shall assume that the CITY has a fee simple absolute estate. In determining what percentage rates would be appropriate the arbitrators shall consider the Premises as if they were available to be leased only for the actual uses and purposes then expressly authorized by CITY. In determining the percentage rates for said uses and purposes, the arbitrators shall use and analyze only that rental data that is found in the open marketplace, such as is demanded and received by other Landlords for the same or similar uses. In all cases the arbitrators shall be instructed that the rent determination shall be based upon recognized real estate appraisal principles and methods. The award determined by the arbitrators shall be effective and retroactive to the first day of the period under arbitration, and any amounts found to be owing shall be paid promptly together with interest thereon from the date it should have been paid until it is paid, at the greater of ten percent (10%) per annum or the prime rate of the Bank of America from time to time in effect. The award shall be in writing in the form of a report that is in accordance with the powers of the arbitrators herein, supported by facts and analysis and in accordance with law. The arbitrators shall make copies of their report available to any ethical practice committee of any recognized professional real estate organization. The arbitration shall be conducted under and subject to the California Arbitration Statute."

8. Paragraph C of Article IV is hereby amended to read as follows:

"C. For purposes of this Paragraph C, the term of this Lease shall be divided into "accounting years" and each accounting year into "accounting periods." The first accounting year shall commence on January 2, 1984; and each subsequent accounting year shall commence on the day immediately following the end of immediately preceding accounting year. Each accounting year shall contain 52 weeks (Monday through Sunday), except that the accounting year commencing December 28, 1987 ("1988 Accounting Year") and each seventh accounting year thereafter shall contain 53 weeks. Each accounting year shall be divided into 12 accounting periods. Each accounting period shall contain four weeks, except that the third, fifth, eighth and tenth accounting periods of each accounting year, and the twelfth accounting period in the 1988 Accounting Year and each seventh accounting year thereafter, shall contain five weeks. On or before the last day of each accounting period LESSEE shall render to CITY, in a form prescribed by CITY, a detailed report of gross

income for that portion of the accounting year which ends with and includes the last day of the immediately preceding accounting period. Each report shall be signed by LESSEE or its responsible agent under penalty of perjury, attesting to the accuracy thereof, shall be legally binding upon LESSEE, and shall include the following: (1) the total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rate is established; (2) the related itemized amounts of percentage rent computed as herein provided and the total thereof; and (3) the total rent previously paid by LESSEE for the accounting year within which the immediately preceding accounting period falls. Concurrently with the rendering of each statement LESSEE shall pay to CITY, in payment of the percentage or minimum rent required by Paragraph A of this Article IV, the greater of the following two amounts;

1. The total percentage rent computed for that portion of the accounting year ending with and including the last day of the immediately preceding accounting period (Item (2) above), less total rent previously paid for the accounting year (Item (3) above); or

2. One twelfth (1/12th) of the minimum rent, multiplied by the number of accounting periods from the beginning of the accounting year to and including the immediately preceding accounting period, less total rent previously paid for the accounting year (Item (3) above). Notwithstanding the foregoing the final accounting year and accounting period shall end on the last day of the term of this Lease, as the same may be extended, and the accounting and reporting therefor shall be furnished to City within (30) days thereafter.”

9. Article IV is hereby amended by adding thereto Paragraph E, to read as follows:

“E. In connection with giving written approval of a use of the Premises other than those permitted or previously approved by CITY as provided in Article III of this Lease, and for which a particular rental is not provided in this Article IV, the City Manager may agree with LESSEE upon a rental for such use, and such agreement shall be deemed a part of and incorporated by reference in this Article IV; provided, that any use of the Premises not permitted by this Lease or not so approved by the City Manager shall be subject to the provisions of Subparagraph F of this Article IV below.”

10. Article IV is hereby amended by adding thereto Paragraph F, to read as follows:

“F. LESSEE shall pay to CITY, upon demand, twenty (20%) percent of the gross receipts derived from any service or use made by LESSEE of the Premises that is not permitted by this Lease. Such payment shall be due on the date other percentage rents are due as provided in this Lease and shall be subject to the provisions of this Lease for delinquent rent. The existence of this twenty (20%) percent charge and the payment of this charge or any part of it does not constitute an authorization for a particular service or use, and does not waive any of CITY’s rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Premises.”

11. Article IV is hereby amended by adding thereto Paragraph G, to read as follows:

“G. If LESSEE fails to pay the rent as provided in this Lease when due, LESSEE shall pay in addition to the unpaid rents an amount equal to five (5%) percent of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days following the date it is due, then LESSEE shall pay an additional amount equal to five (5%) percent (making a total of ten (10%) percent) which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rent delinquency including lost interest, opportunities, legal costs and the cost of servicing the delinquent account. In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five (5%) percent of the total required rent, then LESSEE shall pay CITY for the cost of the audit plus interest at the greater of ten (10%) percent per annum or the prime rate of the Bank of America from time to time in effect on the amount by which said rent was underpaid, from the date said amount should have been paid until it is paid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as referred to above. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE’s late payment. Acceptance of late charges and any portion of the late payment by the CITY shall in no event constitute a waiver by CITY of LESSEE’s default with respect to late payment, nor shall it prevent CITY from exercising any of the other rights and remedies granted in this Lease. The City Manager of CITY may, for good cause shown, waive any delinquent rent charge upon written application of LESSEE.”

12. Article IV is hereby amended by adding thereto Paragraph H, to read as follows:

“H. Payments of rent shall be made by check payable to the City Treasurer and mailed or delivered to the office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California 92112-4165. The place and time of payment may be changed at any time by CITY upon thirty (30) days prior written notice to LESSEE. Mailed rent payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.”

13. Article ‘XXXII is hereby amended by adding thereto the following provisions:

“A. Within two (2) years following the effective date of the amendment adding the following provisions to this Lease, LESSEE shall submit a comprehensive conceptual plan for the development and/or redevelopment of the entire Premises to the City Manager for his approval. It is understood that this approval shall be in addition to any other proceedings, approvals or permits required by law, including without limitation the California Environmental Quality Act and the Charter and ordinances of the City of San Diego. LESSEE shall not use Parcel “A” Property 3 or Parcel “B” WATER 7.216 Acres until said conceptual plan is approved and said other required approvals and permits are obtained. In the event such plan as initially submitted is not approved by the City Manager, then such plan shall be modified and resubmitted until the City Manager’s approval is obtained. The City Manager shall act promptly on LESSEE’s submittals, and shall set forth with particularity his reasons for any disapprovals. Said plan may be amended from time to time by LESSEE with the prior written approval of the City Manager. (References herein to the approved development plan shall mean said plan as so amended.) Upon receipt of all required approvals of said plan, the same shall be assigned a City Document Number, shall be denominated the “Master Plan” for the Premises, and shall be substituted for the “Master Plan” referred to in Paragraph A of Article III of this Lease.

B. Subject to delays resulting from causes beyond LESSEE’S reasonable control, LESSEE shall implement the First Phase (as defined below) of said approved plan as soon as practicable after LESSEE obtains the City Manager’s approval and

all other required permits and approvals for the First Phase of the approved plan (provided that commencement of construction of the First Phase of said plan shall not be required before three (3) years following the City Manager's approval thereof), and shall proceed diligently and without undue delay to completion thereof. "First Phase" shall mean the development and construction of a project or projects included within the approved development plan involving an aggregate investment (including direct and indirect construction costs and costs for architects, engineers, consultants fees and permitting and related expenses) of at least \$2,500,000, and shall include (but not necessarily be limited to) improvements to Parcel "A" Property 3 and Parcel "B" WATER 7.216 ACRES.

C. Should LESSEE be required by any public entity, including CITY (such as, for example, the California Coastal Commission) to make any expenditures or payments in lieu of expenditures (other than the rental expressly provided for in this Lease) for permanent capital improvements on, to, or in Mission Bay Park which would normally be the responsibility of CITY ("Mitigation Expenditures") as a condition to obtaining permission to develop, construct, install, or operate improvements, facilities, or equipment in, to, or on the Premises in excess of expenditures directly required to develop, construct, install, or operate said improvements, facilities, or equipment (such as, for example, the contribution of funds for an off-site improvement in alleged mitigation of alleged adverse environmental impacts of said development and/or activities), then LESSEE shall be given a credit in the amount of fifty percent (50%) of such Mitigation Expenditures against the rental payable under this Lease, as follows: (i) the amount of such credit shall not exceed the total rental payable pursuant to subparagraph IV.A.3 of this Lease; and (ii) said credit shall be allowed only to the extent of rental payments under subparagraph IV.A.3 previously made and as any such payments subsequently become due.

D. Should LESSEE fail to commence construction of the First Phase of the improvements in said approved development plan as provided above, subject to delays beyond LESSEE's reasonable control, then Parcel "A" Property 3 and Parcel "B" WATER 7.216 ACRES shall revert to CITY, at CITY's option, free and clear of this Lease or any other, interest of LESSEE, unless LESSEE commences construction within thirty (30) days following receipt of written notice from CITY of its intention to cause such reversion, given on or after the date LESSEE shall have commenced construction, subject to delays beyond its reasonable control. If requested by CITY, and if CITY's notice of election is valid and LESSEE fails to commence construction within said

thirty (30) day period, LESSEE shall execute, acknowledge, and deliver to CITY a quitclaim deed whereby LESSEE shall quitclaim all of its right, title, and interest in said parcel to CITY. Such reversion of Parcel "A" Property 3 and Parcel "B" WATER 7.216 ACRES shall be CITY's sole remedy for LESSEE's failure to timely commence construction of the First Phase of the improvements referred to in the approved development plan. In the event Parcel "A". Property 3 and/or Parcel "B" WATER 7.216 ACRES revert to CITY as provided above, then LESSEE'S obligation for the rent payable as provided in Paragraph A.3 of Article IV of this Lease shall cease and terminate as of the date of such reversion; such rent shall be prorated to the date of such termination on the basis of a 360 day year, and LESSEE shall receive a credit in an amount equal to any unearned advance-paid rent pursuant to said Paragraph A.3 against the next payment or payments of percentage or minimum rent due hereunder.

E. Should LESSEE timely commence construction of the First Phase of the improvements referred to in said approved development plan but fail to diligently complete such improvements (subject to causes beyond LESSEE's reasonable control), then LESSEE shall pay to CITY an amount equal to ten percent (10%) of the then applicable minimum rent, prorated for fractions of years, during the periods of such unexcused delays, in addition to any other rent payable hereunder."

14. Article XL is hereby amended to read as follows:

"LESSEE agrees to abide by CITY's Equal Opportunity Policy in accordance with the terms and conditions set forth in Council Policy 300-10, a copy of which is attached to this Lease and by this reference incorporated herein."

15. The Lease is hereby amended by adding Article XLI thereto, to read as follows:

"ARTICLE XLI
GENERAL

A. If any term, covenant or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, then the remaining provisions will remain in full force and effect.

B. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorneys' fees.

C. Words in any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the sense requires.

D. LESSEE shall be responsible for the enforcement, both within and in connection with the Premises, of the following liveaboard regulation:

‘No person shall remain overnight on board any watercraft or houseboat in Mission Bay Park unless the watercraft or houseboat has a self-contained toilet on board that does not discharge into the waters of the bay. No owner of any watercraft or houseboat shall allow it to be occupied overnight in Mission Bay Park for a period of more than ninety (90) days, whether successive or cumulative, during any one (1) calendar year. A watercraft or houseboat is presumed to be occupied overnight when there are one or more persons on board after midnight. The lessees of Mission Bay Park land are primarily responsible for the enforcement of this subsection on the water abutting their leased lands.’

The above liveaboard regulation is presently set forth in the City Municipal Code Section 63.25.71, and is subject to amendment or modification by the City Council. LESSEE also agrees to comply or secure compliance with any such amendment or modification. LESSEE’s enforcement obligations shall consist of the following: (i) taking reasonable steps to monitor the activities at its marina; (ii) reporting violators to the appropriate officials of CITY, and (iii) providing in its slip rental agreements that owners of watercraft and houseboats shall abide by the foregoing regulation, and enforcing said provision.”

16. It is understood that LESSEE contemplates the future development of a hotel and related facilities (which would probably incorporate the Atlantis Restaurant) on the Premises, and that such development would require an amendment to the Lease and possibly a sublease to a separate entity. Should LESSEE elect to develop the hotel, the parties agree to negotiate in good faith the terms and conditions of such amendment and, if required, such sublease; provided, that the percentage rentals attributable to the various hotel uses shall be substantially similar to those contained in the newest CITY leases for hotels which are then open or at least under construction, and that the other terms of the Lease, as amended by this Lease Amendment, shall not be renegotiated except as necessary to accommodate such hotel development; provided further, that the parties understand that the final decision whether to approve such amendment and/or sublease shall be vested in the sole discretion of the City Council of CITY.

17. Except as provided above, the Lease shall remain in full force and effect.

18. The effective date of this Lease Amendment shall be January 2, 1984.

IN WITNESS WHEREOF, this Lease Amendment is executed by CITY, acting by and through the City Manager under and pursuant to Resolution No. R-259814 of the City Council authorizing such execution, and by LESSEE, acting by and through its duly authorized officers, as of the date first above written.

I HEREBY APPROVE the form
and legality of the foregoing
Agreement this 7 day of February, 1984.

THE CITY OF SAN DIEGO

By: /s/
ASSISTANT TO THE CITY MANAGER

John W. Witt,
City Attorney

SEA WORLD, INC.

By: /s/
Deputy

By: /s/

By: _____

R-259814

DESCRIPTION OF
SEA WORLD LEASE

PARCEL A. PROPERTY 1 83.985 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07:200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5,000.00 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,000.00 AND WEST 13,500.00; THENCE NORTH 858.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", SAID POINT BEING ON THE ARC OF AN 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27° 25' 39" EAST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°43'53" A DISTANCE OF 135.88 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF AN 1,198.09 FOOT RADIUS-CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 37°09'32" WEST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°36'42", A DISTANCE OF 619.20 FEET TO A POINT OF COMPOUND CURVATURE WITH A 514.76-FOOT-RADIUS-CURVE CONCAVE SOUTHERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 7°32'50" WEST TO SAID POINT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°57'10" A DISTANCE OF 233.17 FEET; THENCE

TANGENT TO SAID CURVE SOUTH 71°35'40" EAST 766.29 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "P"; THENCE CONTINUING SOUTH 71°35'40" EAST 207.08 FEET TO MISSION BAY PARK COORDINATES NORTH 5,834.18 AND WEST 11,665.24; THENCE SOUTH 18°24'20" WEST 923.69 FEET; THENCE SOUTH 300.74 FEET TO MISSION BAY PARK COORDINATES NORTH 4,657.00 AND WEST 11,956.89, BEING A POINT THAT IS 30.00 FEET NORTH OF ENGINEER'S STATION 10+54.95 ON THE CENTERLINE OF SEA WORLD WAY AS SHOWN ON CITY OF SAN DIEGO ENGINEERS DRAWING NO.14,985-2-D; THENCE EAST PARALLEL WITH SAID CENTERLINE 150.01 FEET TO THE BEGINNING OF A TANGENT 180.00-FOOT-RADIUS-CURVE CONCAVE SOUTHWESTERLY; THENCE EASTERLY; SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE AND CONCENTRIC WITH SAID CENTERLINE OF SEA WORLD WAY THROUGH A CENTRAL ANGLE OF 90° 00'00" A DISTANCE OF 282.74 FEET; THENCE TANGENT TO SAID CURVE SOUTH 613.54 FEET TO A POINT ON A LINE THAT IS 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM ENGINEER'S STATION 33+04.72 ON THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D; THENCE NORTH 78°55'43" WEST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 304.72 FEET TO THE BEGINNING OF A TANGENT 828.855 FOOT-RADIUS-CURVE CONCAVE NORTHEASTERLY, SAID CURVE BEING CONCENTRIC WITH AND 10.00 FEET NORTHEASTERLY RADIALLY FROM THE FACE OF THE NORTHEASTERLY BERM ON THE ACCESS ROAD SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14577-22-D; THENCE NORTHWESTERLY ALONG SAID LINE THROUGH A CENTRAL ANGLE OF 21°06'00" A DISTANCE OF 305.24 FEET; THENCE NORTHWESTERLY, WESTERLY AND NORTHERLY CONTINUING ALONG A LINE THAT IS PARALLEL AND/OR CONCENTRIC WITH AND 10.00 FEET AT RIGHT ANGLES OR RADIALLY, RESPECTIVELY, FROM THE FACE OF SAID NORTHEASTERLY BERM WHICH BERM IS ALSO SHOWN ON SAID ENGINEER'S DRAWINGS NOS. 14577-21, 23, 24, 32, 33, 34 AND 36-D THE FOLLOWING COURSES AND DISTANCES: NORTH 57°49'43" WEST 53.69 FEET TO THE BEGINNING OF A TANGENT 1,032.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°52'29" A DISTANCE OF 664.18 FEET; THENCE TANGENT TO SAID CURVE SOUTH 85°17'48" WEST 515.45 FEET TO THE BEGINNING OF A TANGENT 568.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE WESTERLY AND NORTH WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 65°57'16" A DISTANCE OF 653.84 FEET TO A POINT OF COMPOUND CURVATURE IN THE ARC OF A 268.00-FOOT-RADIUS-CURVE CONCAVE EASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 61° 15'04" WEST TO SAID POINT; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 73°56'28" A DISTANCE OF 345.86 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF A 332.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 44°48'28" EAST TO SAID POINT; THENCE NORTH-EASTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 46°4'28" A DISTANCE OF 270.7 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF A 20.00-FOOT-RADIUS

CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 88°28'04" WEST TO SAID POINT; THENCE LEAVING SAID PARALLEL AND/OR CONCENTRIC LINE NORTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°29'11" A DISTANCE OF 31.93 FEET; THENCE RADIAL TO SAID CURVE NORTH 0°02'45" WEST 12.99 FEET; THENCE EAST 81.94 FEET; THENCE SOUTH 75°37'07" EAST 80.52 FEET; THENCE SOUTH 69° 45'18" EAST 130.04 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit 1
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PARCEL A - WATER 2,221 ACRES

BEGINNING AT POINT "A" AS SET OUT AND ESTABLISHED IN THE HEREIN- ABOVE DESCRIBED PARCEL "A", SAID POINT BEING IN THE ARC OF AN 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27°25'39" EAST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°43'53" A DISTANCE OF 135.88 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF AN 1,198.09-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY- ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°40'51" A DISTANCE OF 537.00 FEET; THENCE NORTH 147.18 FEET TO A POINT ON THE ARC OF A 1,342.65-FOOT-RADIUS CURVE THAT IS CONCENTRIC WITH AND 144.56 FEET NORTHWESTERLY RADIALLY FROM THE HEREINBEFORE MENTIONED 1,198.09-FOOT-RADIUS CURVE, A RADIAL LINE OF SAID 1,342.65-FOOT-RADIUS CURVE BEARS NORTH 10°13'41" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°55'51" A DISTANCE OF 631.09 FEET; THENCE TANGENT TO SAID CURVE SOUTH 52°50'28" WEST 34.39 FEET TO A POINT THAT BEARS NORTH 165.93 FEET FROM SAID POINT "A"; THENCE SOUTH 166.93 FEET TO SAID POINT "A" AND THE POINT OF BEGINNING.

Exhibit 1
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PARCEL A — WATER 0.082 ACRES

BEGINNING AT POINT "B" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL "A"; THENCE SOUTH $71^{\circ}35'40''$ EAST ALONG THE NORTHEASTERLY LINE OF SAID PARCEL "A" A DISTANCE OF 50.00 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE NORTH $18^{\circ}24'20''$ EAST 71.00 FEET; THENCE NORTH $71^{\circ}35'40''$ WEST 50.00 FEET; THENCE SOUTH $18^{\circ}24'20''$ WEST 71.00 FEET TO SAID POINT "B" AND THE POINT OF BEGINNING.

Exhibit 1
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DESCRIPTION OF
SEA WORLD LEASE AREA

PARCEL "A", PROPERTY 2 (24.142 acres)

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 4,657.00 FEET AND WEST 11,956.89 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 4,657.00 AND WEST 11,956.89, SAID TRUE POINT OF BEGINNING BEING A POINT THAT IS 30.00 FEET NORTH OF ENGINEER'S STATION 10 + 54.95 ON THE CENTERLINE OF SEA WORLD WAY AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 4,985-2-D; THENCE NORTH 300.74 FEET; THENCE NORTH 18°24'20" EAST 873.69 FEET TO MISSION BAY PARK COORDINATES NORTH 5,786.74 AND WEST 11,681.03; THENCE SOUTH 71°35'40" EAST 598.11 FEET; THENCE SOUTH 5°59'55" WEST 1807.81 FEET TO A POINT ON A LINE THAT IS 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM ENGINEER'S STATION 36+ 35.31 ON THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D, SAID POINT BEING AT MISSION BAY PARK COORDINATE NORTH 3,799.97 AND WEST 11,302.44; THENCE NORTH 78°55'43" WEST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 330.59 FEET TO MISSION BAY PARK COORDINATES NORTH 3,863.46 AND WEST 11,626.88, BEING A POINT OF INTERSECTION WITH A LINE THAT IS PARALLEL WITH AND 30.00 FEET EAST AT RIGHT ANGLES FROM THE HEREINBEFORE MENTIONED CENTERLINE OF

SEA WORLD WAY; THENCE NORTH ALONG SAID PARALLEL LINE 613.54 FEET TO THE BEGINNING OF A TANGENT 180.00-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, WHICH CURVE IS ALSO TANGENT TO A LINE THAT BEARS EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTHERLY, NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" A DISTANCE OF 282.74 FEET TO SAID POINT OF TANGENCY; THENCE WEST 150.01 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit 1
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DESCRIPTION OF SEA WORLD

LEASE AREA

PARCEL A, PROPERTY 3; 25.002 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED. AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'64" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 3,799.97 FEET AND WEST 11,302.44 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 3,799.97 AND WEST 11,302.44, SAID TRUE POINT OF BEGINNING BEING A POINT ON A LINE THAT IS PARALLEL WITH AND 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985- 1-D, SAID POINT BEING OPPOSITE AT RIGHT ANGLES FROM ENGINEER'S STATION 36 -1- 35.31 ON SAID CENTERLINE; THENCE NORTH 5°59'55" EAST 1,807.81 FEET TO MISSION BAY PARK COORDINATES NORTH 5,597.88 AND WEST 11,113.51; THENCE SOUTH 67°17'40" EAST 900.00 FEET; THENCE SOUTH 22°50'20" WEST 1,637.89 FEET TO A POINT THAT BEARS NORTH 3°45'37" EAST 60.50 FEET FROM ENGINEER'S STATION 40 + 31.33 ON THE HEREINBEFORE MENTIONED CENTERLINE OF SEA WORLD DRIVE, SAID POINT BEING ON THE ARC OF A 1,939.50 FOOT RADIUS CURVE CONCAVE NORTHERLY; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 7°18'40" A DISTANCE OF 247.48 FEET; THENCE TANGENT TO SAID CURVE NORTH 78°55'43" WEST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 140.82 FEET TO THE TRUE POINT OF BEGINNING.

SEA WORLD LEASE
FORMERLY
PEREZ COVE LEASE
LEASE DESCRIPTION

PARCEL B - LAND 8.742 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO.36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5,858.00 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,858.00 AND WEST 13,500.00; THENCE SOUTH 858.00 FEET; THENCE NORTH 69°45'18". WEST 130.04 FEET; THENCE NORTH 75°37'07" WEST 80.52 FEET; THENCE WEST 81.94 FEET; THENCE SOUTH 0°02'45" EAST 12.99 FEET TO THE EASTERLY TERMINUS OF A 20.00-FOOT-RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 0°02'45" WEST TO SAID TERMINUS; THENCE WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°29'11" A DISTANCE OF 31.93 FEET TO A POINT ON THE ARC OF A 332.00-FOOT-RADIUS CURVE CONCAVE WESTERLY, A RADIAL LINE OF SAID 332.00-FOOT-RADIUS CURVE BEARS NORTH 88°28'04" EAST TO SAID POINT; THENCE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69° 21'58" A DISTANCE OF 401.94 FEET; THENCE TANGENT TO SAID CURVE NORTH 70°53'54"

WEST 121.23 FEET TO THE BEGINNING OF A TANGENT 270.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°02'07" A DISTANCE OF 61.43 FEET TO INTERSECTION WITH A LINE THAT BEARS SOUTH 26°24'59" WEST 438.27 FEET FROM MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE NORTH 26°24'59" EAST ALONG SAID LINE 438.27 FEET TO SAID-MISSION BAY COORDINATES BEING A POINT ON THE ARC OF A 240.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 27°10'45" WEST TO SAID POINT; SAID POINT ALSO BEING HEREIN AFTER REFERRED TO AS POINT "A"; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°56'26" A DISTANCE OF 104.47 FEET TO A POINT OF COMPOUND CURVATURE WITH A 800.00-FOOT RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE EASTERLY AND NORTH EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°39'58" A DISTANCE OF 414.22 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIPTION OF
SEA WORLD LEASE

PARCEL B WATER 4.131 acres

BEGINNING AT POINT "A" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL "B", BEING ALSO DESCRIBED AS MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE NORTH 26°24'59" EAST ALONG THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID PARCEL "B" 516.98 FEET TO MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,770.00 BEING A POINT HEREINAFTER REFERRED TO AS POINT "B"; THENCE EAST 270.00 FEET TO MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,500.00, BEING ON THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID PARCEL "B"; THENCE SOUTH ALONG SAID NORTHERLY PROLONGED EASTERLY LINE 400.00 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL "B", BEING A POINT ON THE ARC OF A 800.00-FOOT-RADIUS CURVE CONCAVE NORTHWESTERLY TO WHICH A RADIAL LINE BEARS SOUTH 27°25'39" EAST; THEN WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL "B". AND THE ARC OF SAID 800.00-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 29°39'58" A DISTANCE OF 414.22 FEET TO A POINT OF COMPOUND CURVATURE WITH A 240.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE CONTINUING WESTERLY ALONG THE ARC OF SAID 240.00-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 24°56'26" A DISTANCE OF 104.47 FEET TO THE POINT OF BEGINNING.

Exhibit 1
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DESCRIPTION OF
SEA WORLD LEASE

PARCEL B WATER 0.726 acres

BEGINNING AT POINT "B" AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL I, BEING ALSO DESCRIBED AS MISSION BAY COORDINATES NORTH 6,258.00 AND WEST 13,770.00; THENCE NORTH 12.00 FEET; THENCE NORTH 63°35'01" WEST 73.50 FEET; THENCE SOUTH 26°24'59" WEST PARALLEL WITH THE NORTHWESTERLY LINE OF SAID PARCEL I 396.25 FEET TO A POINT ON THE ARC OF A 222.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS. SOUTH 40°17'03" WEST TO SAID POINT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°52'04" A DISTANCE OF 53.75 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO A POINT ON SAID NORTHWESTERLY LINE OF SAID PARCEL I THAT IS 125.00 FEET NORTHEASTERLY FROM THE SOUTHWESTERLY CORNER THEREOF, THENCE NORTH 26°24'59" EAST ALONG S NORTHWESTERLY LINE 391.98 FEET TO THE POINT OF BEGINNING.

Exhibit 1
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DESCRIPTION OF
SEA WORLD LEASE

PARCEL B - WATER 7.216 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 6,024.93 FEET AND WEST 13,500.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 6,024.93 AND WEST 13,500.00; THENCE NORTH 233.07 FEET; THENCE WEST 270.00 FEET; THENCE NORTH 12.00 FEET; THENCE NORTH 63°35'01" WEST, 73.50 FEET; THENCE SOUTH 26°24'59" WEST 396.25 FEET TO A POINT ON THE ARC OF A 222.08 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, TO WHICH POINT A RADIAL LINE OF SAID CURVE BEARS SOUTH 40°17'03" WEST; THENCE NORTHWESTERLY AND NORTHERLY ALONG THE ARC OF SAID 222.08 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 49°42'57" A DISTANCE OF 192.70 FEET; THENCE NORTH 491.84 FEET; THENCE SOUTH 75°18'39" EAST 1230.83 FEET TO A POINT ON THE ARC OF A 1,342.65 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, TO WHICH POINT A RADIAL LINE OF SAID CURVE BEARS NORTH 10°13'41" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID 1,342.65 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 26°55'51" A DISTANCE OF 631.09 FEET TO A POINT OF TANGENCY WITH A LINE THAT BEARS NORTH 52°50'28" EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 52°50'28" WEST 34.39 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIPTION OF
SEA WORLD -
ATLANTIS RESTAURANT LEASE

PARCEL C: LAND 6.709 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

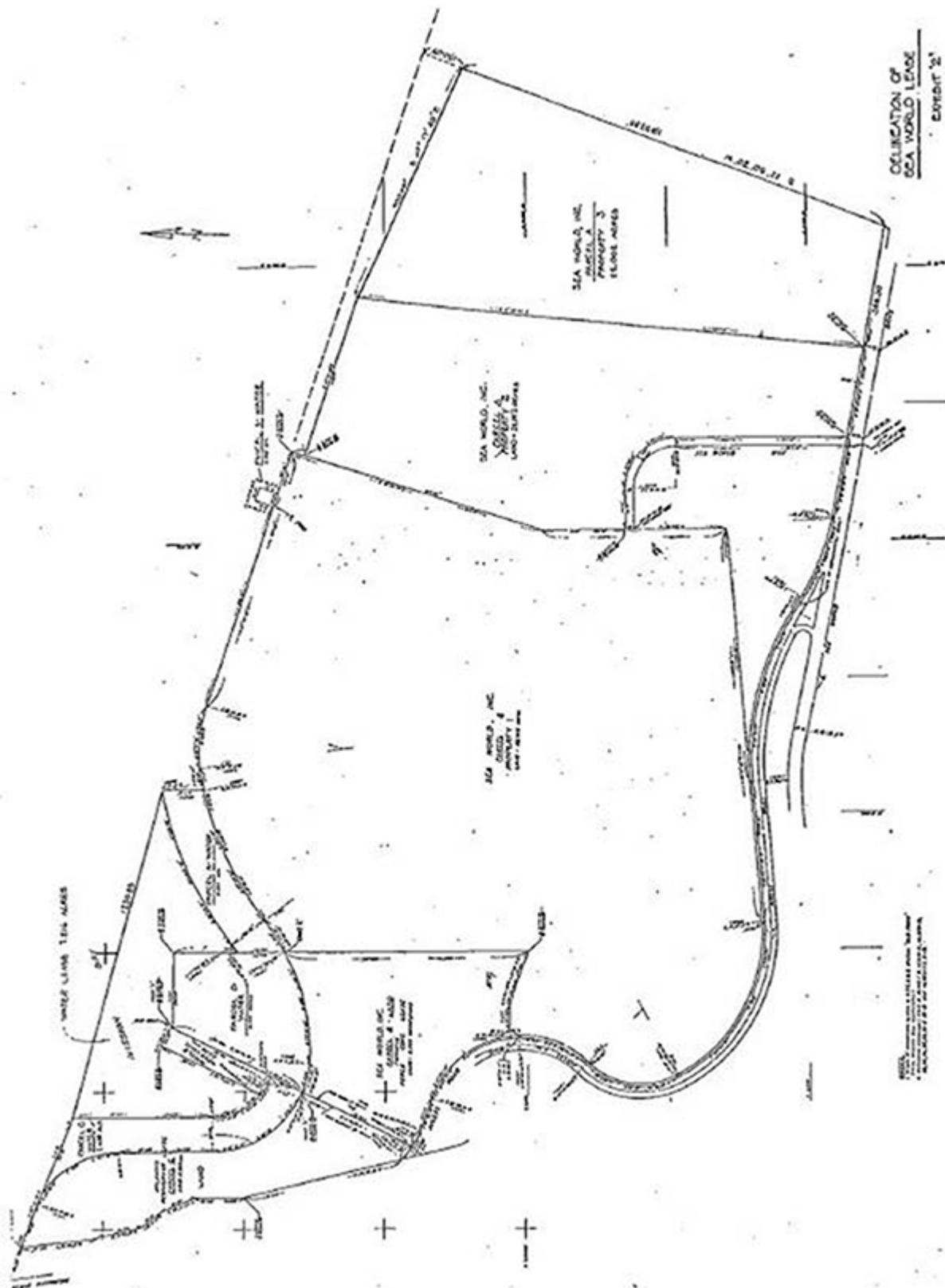
COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8 AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24; SOUTH 89°55'50" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 0.5°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,435.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5,795.00 FEET AND WEST 14,000.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 5,795.00 AND WEST 14,000.00; THENCE SOUTH 26°24' 59" WEST 438.27 FEET TO A POINT ON THE ARC OF A 270.00-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 32°08' 13" WEST TO SAID POINT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°05'58" A DISTANCE OF 61.73 FEET TO A POINT ON THE WESTERLY LINE OF THAT PORTION OF LAND SHOWN ON THE CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 10966-1-B OF THE PROPOSED LEASE OF WEST PEREZ COVE MISSION BAY PARK; THENCE NORTHWESTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE BOUNDARY OF SAID LAND THE FOLLOWING COURSES AND DISTANCES; NORTH 13°45'54" WEST 575.54 FEET; NORTH 175.00 FEET; NORTH 23°11'55" WEST 130.00 FEET; NORTH 39°19'34" WEST 90.00 FEET; NORTH 14°33'01" WEST 166.22 FEET; NORTH 9°04'02" WEST 267.46 FEET

TO MISSION BAY COORDINATES NORTH 6,789.12 AND WEST 14,572.15; THENCE SOUTH 69°30'00" EAST 172.53 FEET TO THE BEGINNING OF A TANGENT 300.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°30'00" A DISTANCE OF 363.90 FEET; THENCE TANGENT TO SAID CURVE SOUTH 330.46 FEET TO THE BEGINNING OF A TANGENT 347.03 FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63° 35'01" A DISTANCE OF 385.17 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL C

WATER: 2.638 ACRES.

BEGINNING AT THE TRUE POINT OF BEGINNING OF THE LAND PARCEL FIRST HEREINABOVE DESCRIBED BEING MISSION BAY COORDINATES NORTH 5,795.00 AND WEST 14,000.00; THENCE ALONG THE NORTHEASTERLY AND EASTERLY BOUNDARY LINE OF SAID LAND PARCEL THE FOLLOWING DESCRIBED COURSES AND DISTANCES; NORTH 63°35'01" WEST 25.61 FEET TO THE BEGINNING OF A TANGENT 347.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 385.17 FEET; THENCE TANGENT TO SAID CURVE NORTH 330.46 FEET TO THE BEGINNING OF A TANGENT 300.00-FOOT-RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°30'00" A DISTANCE OF 363.90 FEET TO A POINT OF TANGENCY WITH THE NORTHEASTERLY LINE OF SAID LAND PARCEL; THENCE LEAVING SAID NORTHEASTERLY BOUNDARY LINE OF LAND PARCEL SOUTH 69°30'00" EAST ALONG THE SOUTHEASTERLY PROLONGATION OF SAID NORTHEASTERLY LINE 341.57 FEET TO INTERSECTION WITH A LINE THAT IS PARALLEL WITH AND 125.00 FEET EAST AT RIGHT ANGLES FROM THAT COURSE IN SAID EASTERLY BOUNDARY OF SAID LAND PARCEL DESCRIBED AS "SOUTH 330.1 FEET"; THENCE SOUTH ALONG SAID PARALLEL LINE 491.84 FEET TO THE BEGINNING OF A TANGENT 222.08-FOOT-RADIUS CURVE CONCAVE NORTHEASTELY WHICH CURVE IS ALSO CONCENTRIC WITH THE 347.08-FOOT-RADIUS CURVE DESCRIBED IN THE NORTHEASTERLY BOUNDARY OF SAID LAND PARCEL; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID 222.08-FOOT-RADIUS CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 246.45 FEET; THENCE TANGENT TO SAID CURVE SOUTH 63°35'01" EAST 25.61 FEET TO INTERSECTION WITH THE NORTHEASTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LAND PARCEL BEARING NORTH 26°24'59" EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 26°24'59" WEST 125.00 FEET TO THE TRUE POINT OF BEGINNING.



DEVELOPMENT OF
SEA WORLD LEASE
COPYRIGHT '21

THIS DRAWING IS THE PROPERTY OF SEA WORLD, INC.
 AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER
 WITHOUT THE WRITTEN PERMISSION OF SEA WORLD, INC.

The City of San Diego
MANAGER'S REPORT

DATE ISSUED: November 15, 1983

REPORT NO. 83-480

ATTENTION: PS&S Committee, Agenda of November 23, 1983

SUBJECT: Sea World Expansion

REFERENCE: City Manager Report 82-386, issued September 20, 1982

SUMMARY

Issue - Should the City amend the lease with Sea World to add an additional 25 acres of land and 7 acres of water area, and extend the lease 15 years for a total term of 50 years?

Manager's Recommendation - Approve the amendment.

Other Recommendations - None.

Fiscal Impact - The fiscal impact of this action will be as follows:

1. Sea World will pay \$75,000 per year for 10 years for development of the South Shores area.
2. Sea World will pay \$50,000 per year for 5 years which will go into the City's General Fund.
3. The City should benefit from increased usage of Sea World facilities due to expansion of the park. This will be in proportion to the applicable percentage rates.
4. If a hotel is built on Sea World's property, the City will also benefit by the application of appropriate percentage rental rates.
5. Provisions have been included for periodic review of percentage rental rates with the result that the City might additionally benefit from this activity.
6. The rents to be gained by Items 1 and 2 above may be offset by credit for mitigation expenses required of Sea World.

BACKGROUND

Sea World opened its ocean aquarium park on 18 acres of Mission Bay in March 1964. Over the years, it has expanded until it has reached its current size of 124 acres of land and 9.8 acres of water area. Besides the well-known park exhibits, Sea World also includes the Atlantis Restaurant and a boat marina. The Sea World lease requires a minimum annual rent versus an applicable percentage of gross income, as listed in Attachment 1. In Fiscal Year 1983, the City received \$1,683,561 from Sea World.

Sea World asked the City to amend its lease by adding 25 acres of land and 7 acres of water area, as shown in Attachment 2, to accommodate projected future growth of the park. The proposed South Shores Master Plan, which has been processed through the Park and Recreation and Planning Departments, but not yet approved by the City Council, designates the land at the eastern boundary of Sea World for "Sea World lease expansion." On September 22, 1982, the PF&R Committee considered Sea World's request and directed the City Manager to negotiate exclusively with Sea World to accomplish their proposed expansion.

The lease amendment which has been negotiated, provides for the following:

1. Expansion Area. Approximately 25 acres of land and 7 acres of water will be added to the leasehold.
2. Extension of Lease Term. The lease will be extended by approximately 15 years to December 31, 2033, thus giving the lease a 50-year term.
3. Development. Sea World will, within two years, submit a conceptual development plan to the City Manager for approval, and construction of the first phase improvements will start within three years after approval of the development plan.
4. South Shores Payment. Sea World will pay \$75,000 per year, as annually adjusted by the Consumer Price Index, for the next 10 years. These proceeds are to be used for development of the South Shores area of Mission Bay.
5. Rent Payment. Sea World will pay \$50,000 per year (no CPI) for five years. These proceeds will be credited to the City's General Fund.
6. Mitigation Credit. Sea World will be given credit for mitigation expenses required by such entities as the Coastal Commission. This would be limited to fifty percent of any funds which Sea World is required to expend for permanent capital improvements to Mission Bay Park which the City would otherwise normally budget in its capital improvement program. Credits under this provision will not exceed \$1 million.

By way of illustration, if Sea World were required to expend \$1 million for mitigation expenses and \$500,000 of that amount was for permanent public park improvements, then the City would grant rent credits for

\$250,000, the last amount being 50 percent of Sea World's expenditure for permanent park improvements. In order for the maximum mitigation rent credit of \$1 million to be applied, Sea World would have to expend \$2 million for public park capital improvements.

7. Minimum Rent Adjustment. The current lease provides that the minimum rent be set at 66-2/3 percent of the average actual rent paid for the preceding five years, and it is adjusted at five-year intervals. A new provision has been negotiated whereby the minimum rent will be set at 80 percent of the actual rent paid during the preceding three years, and it will be adjusted every three years. This provision is in accordance with Council Policy 700-10. However, an unusually high year will be excluded from the calculations in recognition that an exceptionally high attendance level could be due to some external cause, such as the 1984 Olympics. In no event can the minimum rent be decreased.
8. Rent Review. The existing lease has no provision for a periodic review of rental percentages, but current Council policy requires that such a provision be included. Accordingly, a provision has been included whereby the percentage rent rates will be reviewed and appropriate revisions made. This will first apply on January 1, 1994, and then every 10 years thereafter. In the application of these rental reviews, it has been further agreed that the admission ticket percentage (which is now 2-1/2 percent) cannot be increased by more than one percentage point on the occasion of a rental review, and in no event can the admission ticket percent rate be increased beyond four percent for the duration of the lease,
9. Hotel Percentage Rates. It has been agreed that when, and if, Sea World desires to sublease a portion of its property for development of a hotel, the City will apply percentage rental rates which are then being applied to hotel leases. For example, if the hotel is leased where proposed today, the percentage would be seven percent of the room rate, three percent of the food, six percent of alcoholic beverages, and seven-to-ten percent of other activities.

ALTERNATIVES

1. Revise specific provisions of the proposed amendment.
2. Do not approve the proposed amendment and solicit proposals for development of alternate uses for the 25-acre area.

Respectfully submitted,

/s/ John P. Fowler

John P. Fowler

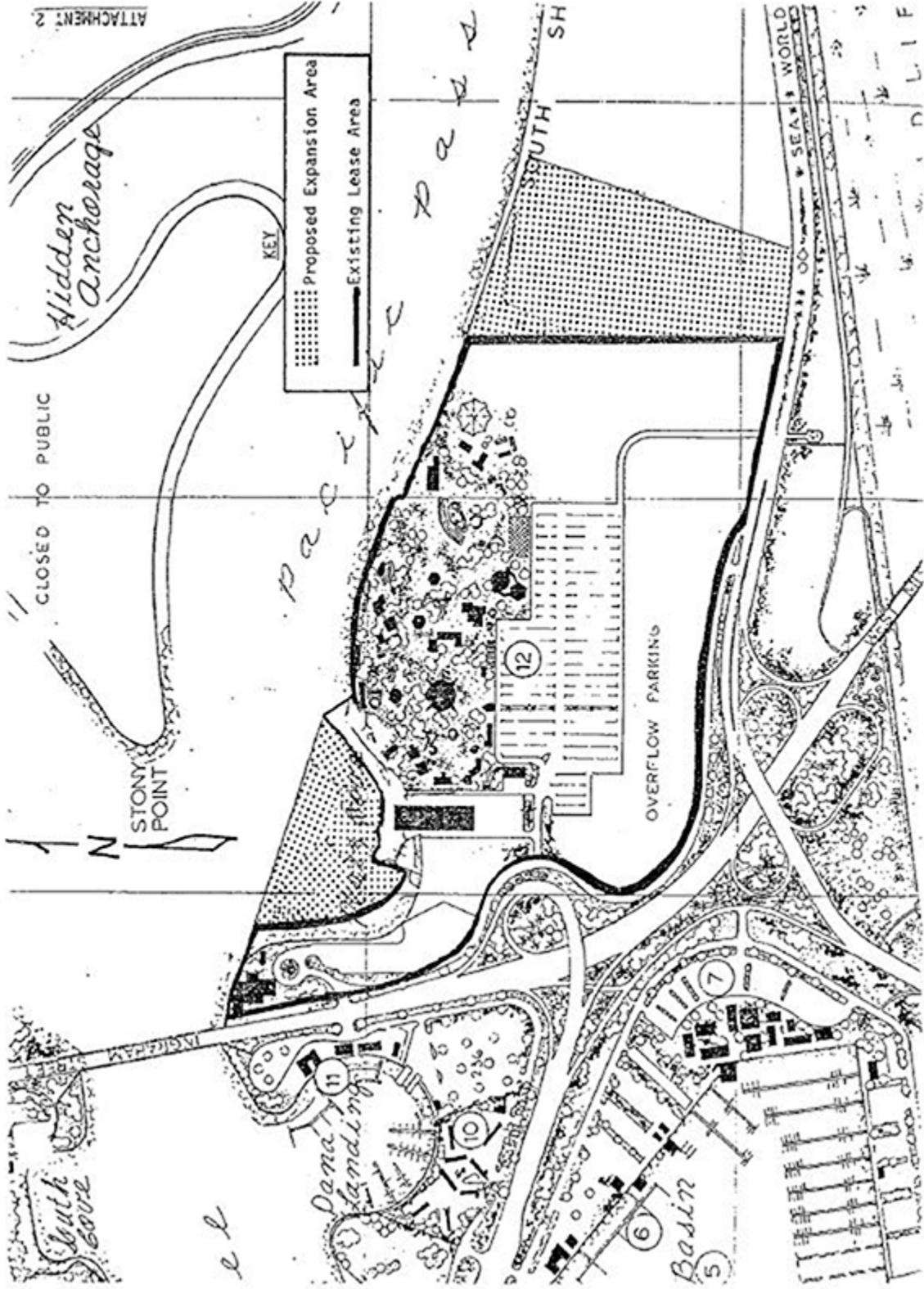
Deputy City Manager

SPOTTS/lmm
Attachments

(11/15/83)

SEA WORLD PERCENTAGE RENTS

<u>Percentage</u>	<u>Applied to all Gross Income Attributable to:</u>
2-1/2 percent	Admission tickets
2-1/2 percent of first \$600,000	Food and nonalcoholic beverages
3 percent of all gross income over \$600,000	Food and nonalcoholic beverages
5 percent	All alcoholic beverages
7 percent	Parking lot income
3 percent	Boat rides, sky ride, Shamu ride Concession and sky tower ride
3 percent	From sale of animal food to spectators
5 percent	From any game or amusement device
2-1/2 percent	Institutional advertising
3 percent	Sale of petroleum products except diesel fuel
1-1/2 percent	Sale of diesel fuel
2 percent	Sale of boats, motors and accessories
4 percent	Service on boats, motors, sale of boat and motor parts, accessories and marina hardware
7 percent	Boat storage rental and related boating operations
20 percent	Boat slip rentals
7 percent	All other sale, service or operation



The City of San Diego

MANAGER'S
REPORT

DATE ISSUED: September 20, 1982

REPORT NO. 82-386

ATTENTION: PF&R Committee, Agenda of September 22, 1982

SUBJECT: Sea World, Inc., Proposal to Amend Its Lease to Add an Additional 25 Acres of Land and 7 Acres of Water

SUMMARY

Issue - Should the City enter into exclusive negotiations with Sea World, Inc, for the purpose of expanding the existing lease area?

Manager's Recommendation - Authorize the City Manager to enter into exclusive negotiations with Sea World, Inc., for the expanded leasehold with the stipulation that Sea World provide a substantial contribution to the future development and maintenance of the public park area of South Shores if the lease is to be amended.

Other Recommendations - None.

Fiscal Impact - None with this action.

BACKGROUND

Sea World, Inc., currently leases approximately 124 acres of land and 9.8 acres of water in the South Shores area of Mission Bay Park for the purpose of the ocean aquarium exhibit known as "Sea World." The land and water area immediately east of its leasehold is undeveloped. It is designated for semi-public or public facilities' use in the draft South Shores Master Plan. This is the same master plan designation as the existing Sea World lease area. Development of this area for public park use is estimated to exceed \$8 million. Currently, there is no timetable for City improvement of this area.

PROPOSAL

Sea World is proposing to amend its lease to add 25 acres of land east of its present boundary, and seven acres of water located between the Atlantis Restaurant and the Sea World Marina. As consideration for a lease amendment incorporating the new area, Sea World is offering to pay an additional annual rental of \$75,000 for 10 years. Under Sea World's proposal, this revenue would be designated for the development and maintenance of the public portion of the South Shores area. Sea World feels that the additional area is essential for its continued growth for successful business operations in the future.

DISCUSSION

The City Manager has considered Sea World's proposal and feels that it offers certain unique advantages to the City. The City would receive revenues to develop and maintain the public area adjacent to the proposed leasehold addition. When the additional lease area is developed, it is anticipated that the rent proceeds to the City would be in line with Sea World's current substantial rent-paying ability. Also, it would generate a considerable tourist revenue for other local business and provide for the type of development that would enhance the area and existing Sea World Park.

However, under the 25-to-75 percent development provision of Council Policy 700-8, if the subject area is added to the Sea World leasehold, only 10 acres of land, more or less, will remain for other commercial development in Mission Bay.

The proposal, in concept, is an approach the Manager believes can be brought forward to Council. However, the Manager feels that the proposal in its present form is, at best, a minimum offer to be reviewed and negotiated along with other lease considerations should the Council authorize this action.

The final agreement would be presented in the form of a lease amendment for Council approval, if this action is approved.

ALTERNATIVES

1. Solicit proposals for other use of the property.
2. Take no action at this time to lease the additional commercial acreage in the South Shores area.

Respectfully submitted,

/s/ Sue Williams

Sue Williams

Deputy City Manager

SPOTTTS:BP:Imm Disk 4
9/20/82

May 14, 1985

File: Leases - Sea World, Inc.

Mr. Farris Wankier, Vice President,
Administration
Sea World, Inc.
1720 South Shores Road
San Diego, CA 92109

Dear Mr. Wanker:

Re: Shoreline Repair Agreement, City Clerk Document RR-262370

In accordance with the terms of the above-referenced agreement, your Cost Summary, dated April 10, 1985, prepared by John Redlinger, AIA of your staff, has been reviewed and approved by the appropriate Park Development and Open Space staff as of May 1, 1985, copy attached.

Therefore, in accordance with the terms of said Shoreline Repair Agreement, Sea World, Inc., may deduct \$51,867,38 from the rental payment due the City for the month of May 1985. Please request your accounting personnel to make reference of this deduction by special note or attaching a copy of this letter to the invoice due after June 1, 1985.

We appreciate the timely, efficient and economical manner in which this work was accomplished.

Very truly yours,
/s/John P. Fowler
John P. Fowler
Deputy City Manager

JLS:GRR:sn(1)N1

cc: Roy Quon - Auditors
Lease Billing Supervisor

THE CITY OF
SAN DIEGO
CITY OPERATIONS BUILDING • 1222 FIRST AVENUE, M.S.
503 SAN DIEGO, CALIFORNIA 92101-4155

PROPERTY DEPARTMENT

(619) 236-6020

Sea World, Inc.
1720 South Shores Road
San Diego, CA 92109

Attention Frank A. Powell, Jr., Executive Vice-President

Gentlemen:

Re: Shoreline Repair

We have agreed that the shoreline rock revetment (riprap) in City-owned Mission Bay Park adjacent to Sea World is in need of repair to avoid further erosion and loss of property.

Inasmuch as a portion of the shoreline lies inside a Sea World water lease area wherein maintenance is the responsibility of the lessee, and a portion of the shoreline lies adjacent to Sea World's leasehold where the legal description is to the top of the rock, it is agreed that Sea World and the City, subject to the prior approval of the City Council, jointly undertake to effect the required repair of approximately 3,000 lineal feet of shoreline, as generally shown on Exhibit A hereto as follows:

A. Sea World will:

- 1 Describe the work and obtain proposals from competent engineers to conduct the investigation required, complete the engineering design, cost estimate, contract documents for bidding and conduct inspections during construction.
- 2 Review the design with a designated City staff member for approval prior to bidding.
- 3 Submit plans and obtain permits for the work from all governmental councils and agencies having jurisdiction.
- 4 Obtain competitive bids from contractors having experience in this type of construction. Review bids with City staff member.
- 5 Award construction contracts and monitor construction in conjunction with design engineers.

6 Pay all costs involved for the engineering design and construction along with associated costs for permits, processing and insurance.

B. The City of San Diego will:

1. Assign a staff member to work closely with Sea World on all phases of the work.
2. Provide staff assistance in obtaining permits from governmental agencies.
3. Grant a rent credit to Sea World for:
 - a. 50 percent of the paid engineering design fee as approved by the City Manager.
 - b. 50 percent of paid cost for permits, insurance and other incidental costs as approved by the City Manager.
 - c. The portion of City-approved construction cost for the work outside Sea World's leasehold.

The total rent credit shall not exceed \$150,000. Any costs in excess of said amount shall be borne and paid by Sea World.

C. Assignment of Construction Costs:

The engineering design will depict the extent of repair required in each area of responsibility so that assignment of costs can be accurately determined from the contractor's bids.

D. Documentation:

All agreements, contracts, change orders, approvals, payments and other documentation will conform to standards of the construction industry.

E. Rent Credit:

Payment of the rent credit will be accomplished through deductions from or omission of Sea World's regular rental payments until the entire amount of the credit has been exhausted. Payment credit would commence upon the first payment due the City after final completion of the shoreline repair and after full payment of all costs therefor.

F. It is the City's position that Mission Bay lessees be responsible for the riprap and/or shore condition at its premises. Therefore, with the City's participation in this project, it is understood that maintenance of the riprap adjoining all the Sea World premises shall become the responsibility of Sea World upon completion of the project. The parties agree to so amend the lease in this regard at the first opportunity whenever it again goes before the City Council for any reason.

If the foregoing accurately sets forth the proposed understanding between the City of San Diego and Sea World, Inc., please have both copies executed on behalf of Sea World, and return them to this office We will process the document for proposed approval by the City Council. You may retain the extra copy for your records.

Very truly yours,

/s/ John P. Fowler
John P. Fowler
Deputy City Manager

JLS:GRR:jw-n(6)D6

Enclosures

ACCEPTED per City Council
Resolution R- 262370

ACCEPTED:

THE CITY OF SAN DIEGO

SEA WORLD, INC.

By /s/
ASSISTANT TO THE CITY MANAGER

By /s/

Date Jan 22, 1985

Date 11-27-84

Approved as to form and legality

this 30 day of January, 1985

JOHN W. WITT, City Attorney

By /s/
Deputy City Attorney

RESOLUTION NUMBER R-262370

ADOPTED ON JAN 22 1985

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, an agreement with SEA WORLD, INC. for the repair of the shoreline on certain City-owned property adjacent to the Sea World leasehold, and provide Sea World, Inc. a one-time rent credit not to exceed \$150,000, representing the City's share of the total cost, under the terms and conditions set forth in that agreement on file in the office of the City Clerk as Document No. RR-262370.

APPROVED: John W. Witt, City Attorney

By /s/ Harold O. Valderhaug
for Harold O. Valderhaug
Deputy City Attorney

HOV:ps
01/08/84
Or.Dept:Prop.
R-85-1236
Form=r.none

Passed and adopted by the Council of The City of San Diego on
January 22, 1985 by the following votes:

YEAS: Mitchell, Cleator, McColl, Jones, Gotch, Murphy, Martinez

NAYS: None.

NOT PRESENT: Struiksma, Hedgecock.

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

By BARBARA BAXTER
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO . R- 262370 passed and adopted
by the Council of The City of San Diego, California, on January 22, 1985 .

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By /s/ BARBARA BAXTER
Deputy

CRES

230.85

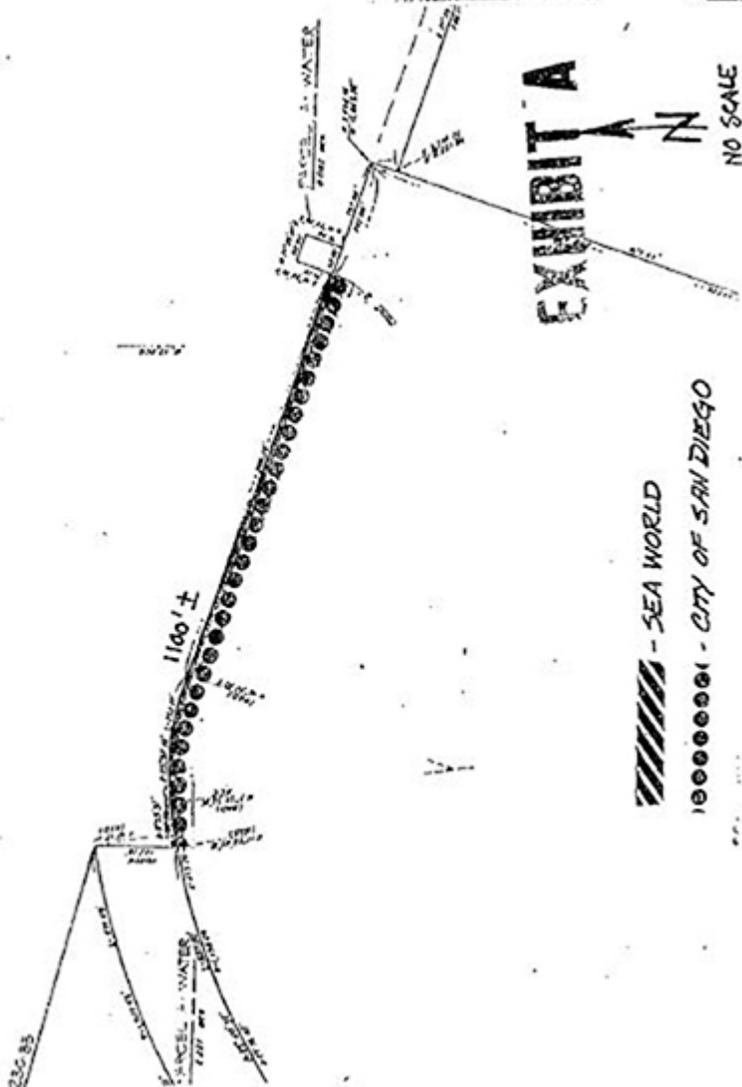


EXHIBIT A

/// - SEA WORLD

●●●●●● - CITY OF SAN DIEGO

NO SCALE

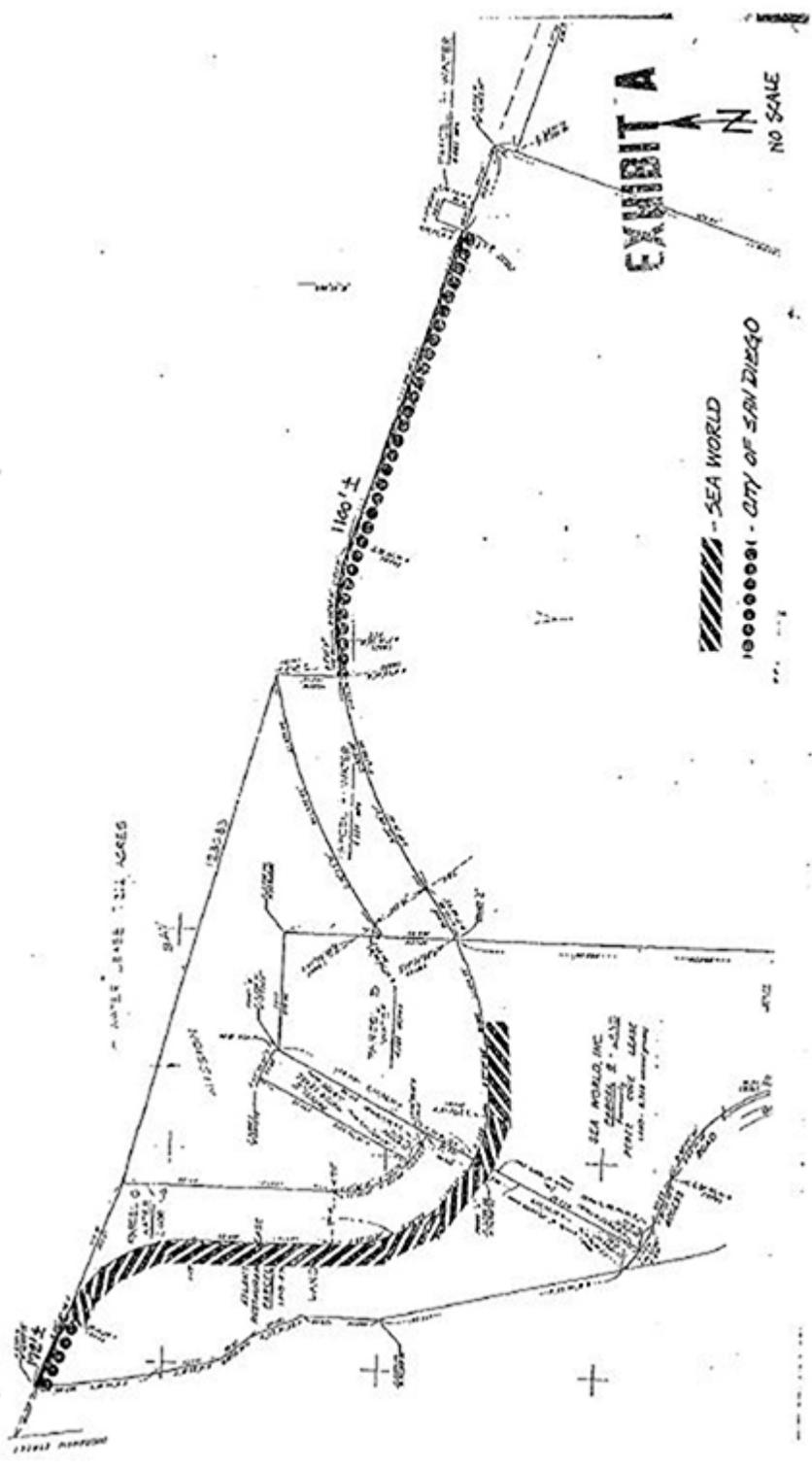


EXHIBIT A

NO SCALE

SEA WORLD

CITY OF SAN DIEGO

APPROX. BASE 124 ACRES

SEA WORLD INC.
OFFICE & WALKWAY

1100' ±

SEASIDE BLVD

100'

100'

100'

100'

100'

100'

100'

100'

100'

**SEA WORLD
DOCUMENTS****Lease Amendment****Document No RR-263507****June 24, 1985**

- Revision/addition to premises.
- Atlantis Restaurant added.
- Revision to include the entire premises in the percentage rent calculation of the 2.5% of first \$600,000 from dispensing of food and nonalcoholic beverages.
- Percentage rent criteria defined.
- Non-profit status of Hubbs Marine Research Institute acknowledged. No consideration unless they violate provisions, then a percentage rent of 7% applies.
- Record maintenance provision added.
- Shoreline maintenance provision added.
- Approval of Conceptual Development plan Document No. RR-263507.
- 50% rent credit for mitigation measures required by an agency as condition for further development if City ordinarily would be responsible, with some limitations, Reversion if construction doesn't begin.
- Annual submittal of implementation plan for the Development Plan/Capital Projects.

**SEA WORLD
DOCUMENTS**

**Lease Amendment
Document No.769275-2
December 10, 1985**

- Legal description revised.
- 4 acre and 25 acre parcels added.

LEASE AMENDMENT

(Sea World)

THIS LEASE AMENDMENT, executed in duplicate as of this 24 day of June, 1985, at San Diego, California, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California ("CITY"), and SEA WORLD, INC., a Delaware corporation, 1720 South Shores Road, San Diego, California 92109 ("LESSEE"), is made with reference to the following facts:

A. CITY leases to LESSEE and LESSEE leases from CITY certain property in Mission Bay Park ("Premises"), described in lease amendments dated December 14, 1977, January 29, 1979, and December 12, 1983, and filed in the office of the City Clerk of CITY as Document Nos. 762304, 765767, and RR-259814, respectively. (The foregoing lease amendments are collectively referred to in this Lease Amendment as the "Lease.")

B. The parties hereto desire to amend the Lease as hereinafter provided.

THEREFORE, in consideration of the mutual covenants contained herein, the Lease is hereby amended to provide, and LESSEE and CITY hereby agree, as follows:

1. Article I is hereby amended by (i) changing the identification of the various parcels of the Premises so that all land areas shall be a part of and identified as Parcel "A" and all water areas shall be a part of and identified as Parcel "B," (ii) adding to the Premises a parcel identified as Parcel "A" Property 3, which parcel has previously been used by LESSEE with the permission of CITY, and (iii) providing for the possible adjustment of the easterly boundary of new Parcel "A" Property 2. For convenience of reference, the parties hereby agree that ARTICLE I— DEMISE of the Lease shall be amended to read as follows, and Exhibits "1" and "2" to the Lease shall be amended to provide the same as Exhibits "1" and "2" to this Lease Agreement:

"I

DEMISE

CITY hereby leases to LESSEE, and LESSEE hereby leases from CITY, that certain real property, consisting of land and water area and all appurtenances thereto, situated in the City of San Diego, County of San Diego, State of California, which is described on Exhibit '1,' consisting of seven (7) pages, attached hereto and made a part hereof, and delineated on the plat, consisting of one (1) sheet, attached hereto, marked Exhibit '2' and made a part hereof. Said real property is herein collectively referred to as the "Premises" and is individually referred to as (i) Parcel 'A,' consisting of 149.473 acres (more or less) of land area (including Parcel 'A' Property 1, Parcel 'A' Property 2, and Parcel

'A' Property 3) described on pages 1 through 5 inclusive of Exhibit '1,' and (ii) Parcel 'B' consisting of 17.014 acres (more or less) of water area (including Parcel 'B' Property 1 and Parcel 'B' Property 2) described on pages 6 through 7 inclusive of Exhibit '1.' When CITY is prepared to adopt the final map establishing the exact westerly boundary of that portion of the Mission Bay Park area known as the 'South Shores Area Master Plan,' LESSEE agrees that the legal description of the easterly boundary line of Parcel 'A' Property 2, as described and delineated on Exhibits '1' and '2' attached to this Lease, shall be automatically adjusted to accommodate the westerly boundary line of said 'South Shores Area Master Plan'; provided, that (i) such adjustment shall be subject to LESSEE'S approval, which LESSEE shall not unreasonably withhold so long as it does not adversely affect its proposed uses of the Premises as generally shown and described in the Development Plan (referred to in Paragraph 'A' of Article III); (ii) the resulting Parcel 'A' Property 2 shall contain at least 25.002 acres; and (iii) parties shall prepare, date, and initial new legal descriptions and delineations of 'A' Property 2 reflecting such adjustment and attach the same to this Lease in lieu of the existing legal description and delineation thereof."

2. ARTICLE III – USE OF THE PREMISES is hereby amended to read as follows:

“III

USE OF THE PREMISES

A. The Premises shall be used for the purpose of constructing, operating, and maintaining thereon the activities and uses as generally shown and described in LESSEE'S Development Plan referred to in ARTICLE XXXII below, as the same may be mutually revised in writing from time to time by CITY and LESSEE as provided in ARTICLE XXXII, and for such other incidental uses as are specifically approved in writing by the City Manager of CITY, and for no other purposes. Notwithstanding the foregoing, the approved uses existing as of the date the Development Plan was approved by the City Council of CITY shall continue to be permitted to the extent they are not changed by the implementation of the Development Plan or otherwise by agreement in writing by and between CITY and LESSEE.

B. All offices, service facilities, laboratories, and related facilities shall be utilized in the furtherance of the park and recreation activities authorized in and by this Lease.

C. LESSEE'S rights to use Parcel 'A' Property 3 of the Premises shall extend only to those portions thereof that are not being, or not to be, used by CITY for the construction, installation, and maintenance of a bridge, related storage, and for roadway and supporting structures therefor.

D. In connection with the maintenance and operation and selling of rides on watercraft from or upon the Premises, LESSEE shall have, and CITY hereby grants and extends to LESSEE, the right and privilege to operate watercraft in the public waterways of Mission Bay. LESSEE shall also have the right to embark and disembark passengers from and at the Premises and the right to construct and maintain into the Premises from the waterways fronting on the Premises a channel at the location and of the dimension indicated on the Development Plan.

The granting of this right and privilege in connection with the use and operation of watercraft on the waters of Mission Bay may be suspended by CITY at any time when, in the opinion of the City Manager, such use becomes detrimental or hazardous to the other uses of Mission Bay. In any event, CITY shall have the right, upon ten (10) days written notice, to require LESSEE to suspend the use and operation of watercraft for limited predetermined periods when, in the opinion of the City Manager, such use and operation would unduly interfere with the use of Mission Bay for major public events.

Such suspension shall be without liability to CITY for damages of any kind suffered by LESSEE as a result of such suspension. The rights and privileges hereby granted shall be subject to the availability of operating area at approved speeds, and under such other municipal, state, and federal rules and regulations as are applicable to the operation of watercraft.

E. LESSEE shall have the right to operate an aerial sky ride over the waters of Mission Bay Park between the points Mission Bay Coordinates North 6,121.00 feet and West 12,864.36 feet, and North 6,460.00 feet and West 14,229.00 feet of the San Diego City Engineer's Mission Bay Coordinates System. Further, LESSEE shall have the right to construct and maintain two supporting towers for the sky ride in a 20-foot square area, the center of which is located at the following points:

- (a) Mission Bay Coordinates North 6,206.59 feet and West 13,205.92 feet.

(b) Mission Bay Coordinates North 6,368.30 feet and West 13,919.36 feet.

F. LESSEE shall use the Premises only for the purpose of conducting thereon the businesses for which they are demised, and shall diligently conduct such businesses to produce a reasonable and substantial gross income.”

3. Subparagraph “a” of Paragraph A.1 of ARTICLE IV – RENT is hereby amended to read as follows:

“a. TWO AND ONE-HALF PERCENT (2-1/2%) of the first \$600,000.00 of gross income derived from the dispensing of food and non-alcoholic beverages upon the Premises, including gross income derived from the operation of any restaurant, snack bar, cocktail lounge, bar, delicatessen, and from the sale of groceries during each year.”

4. Subparagraph “r” of Paragraph A.1 of ARTICLE IV – RENT is hereby deleted.

5. Paragraph B of ARTICLE IV – RENT is hereby amended to read as follows:

“B. For purposes of computing percentage rent pursuant to this ARTICLE IV, ‘gross income’ shall mean all income resulting from occupancy of the Premises, including gross income of sublessees or concessionaires or their agents or any other party as a result of occupancy of the Premises (including the amount of any manufacturer’s or importer’s excise tax included in the prices of property sold, even though the manufacturer or importer is also the retailer thereof and it is immaterial whether the amount of such excise tax is separately stated); provided, however, that gross income shall exclude the following:

1. Rent paid to LESSEE from sublessees, concessionaires or other occupants of the Premises in those situations where CITY receives a percentage of gross revenues from the operations of such sublessees, concessionaires, or other occupants of the Premises (provided, CITY shall not receive less rent under a sublease or concession operation than it would if that operation were conducted by LESSEE);

2. Federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statements required by law. Possessory interest taxes and other taxes not collected from the consumer may not be deducted from the gross income;

3. Uncollected credit and installment balances determined and shown on LESSEE'S books to be bad debts, which are properly documented and detailed in the various rent categories;

4. Any income from the sale of licenses or permits for a governmental agency;

5. Any income from the sale of merchandise to other dealers, at actual cost, with no mark-ups, as a method of changing inventories and resulting in no profit to LESSEE;

6. Galley sales of food and beverages made from boats operating from the Premises when such sales occur outside of Mission Bay;

7. Allowances made by LESSEE for traded-in merchandise, provided that LESSEE keeps adequate records for all of the foregoing from which CITY can accurately determine what allowances were made; and

8. Any income from the sale or other disposition of used furniture, furnishings, fixtures and equipment used in connection with the operation of a business on the Premises and not held for sale in the ordinary course of business.

6. Paragraph "D" of ARTICLE IV – RENT is hereby amended to read as follows:

"D. Hubbs Marine Research Institute ("Hubbs"), a non-profit foundation, may occupy a portion of the Premises not to exceed 80,000 square feet in ground area as generally shown on the Development Plan, during the entire term of this Lease without payment of any rent so long as the following terms and conditions are met:

1. Hubbs shall operate solely and exclusively as a California non-profit foundation and shall be involved solely and exclusively in oceanographic research and development activities for the public good, including the benefit of Mission Bay Park and CITY'S tidelands.

2. No rental charge shall be made to LESSEE for any space, service, or activity conducted by Hubbs, nor shall LESSEE receive any income from HUBBS.

3. So long as Hubbs conducts its operations in accordance with the above conditions, no rent shall be payable for the premises occupied by Hubbs. However, in the event Hubbs does not comply with any or all of the above conditions, Hubbs shall pay a rental in the amount of seven percent (7%) of all revenue received by Hubbs from any source in connection with conducting its activities on the Premises.”

7. ARTICLE V – MAINTENANCE OF RECORDS is hereby amended to read as follows:

“Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to LESSEE or its sublessees, concessionaries, or any other party, LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books from which the CITY can at all times determine the nature and amounts of income subject to rental percentage from the operation of the Premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices and tickets issued. In the event of admission charges, LESSEE shall either (i) issue serially-numbered tickets for each paid admission and shall keep adequate records of said serial numbers issued and of those unused or (ii) record admission charges by means of a cash register system which automatically issues a customer’s receipt. All sales or rentals of merchandise and services rendered shall be recorded by means of a cash register system which automatically issues a customer’s receipt or certifies the amount recorded on a sales slip. All said cash register systems shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. Said books of account and records shall be kept or made available at one location within the limits of the City of San Diego. CITY have the right at any time and all reasonable times to examine and audit said records for the purpose of determining the accuracy thereof, and of the statements of moneys accrued and sales made on said Premises submitted by LESSEE pursuant to Paragraph C of ARTICLE IV of this Lease.”

8. The following provision shall be added to ARTICLE XXI – IMPROVEMENTS, REPAIRS, ALTERATIONS of the Lease:

“It is agreed that as of the effective date of the Lease Amendment adding this provision to the Lease, or when the shoreline repair work is completed pursuant to the terms of that certain agreement between the CITY and LESSEE, dated October 1, 1984, whichever date first occurs, for the entire remaining Term of this Lease LESSEE shall be responsible for all shoreline maintenance on all portions of the Premises, including those riprap areas immediately adjacent to the Premises from the top of the riprap to the toe of the riprap whether or not such riprap is within the boundary line of the Premises, to the reasonable satisfaction of CITY’s City Manager, at LESSEE’S sole expense.”

9. ARTICLE XXXII – GENERAL DEVELOPMENT PLAN is hereby amended to read as follows:

“XXXII

GENERAL DEVELOPMENT PLAN

A. From and after the effective date of the Lease Amendment amending this Article XXXII as provided below, the further development of the Premises shall be generally in accordance with the Development Plan for the Premises approved by the City Council and on file in the office of the City Clerk as Document No. RR-253507, as the same may from time to time be amended in writing by and between CITY and LESSEE (“Development Plan”), and, to the extent applicable, CITY’s Plan entitled Mission Bay Park Master Plan for Land and Water Use, 1978. It is understood that the Development Plan is a conceptual plan only, and that the depictions of the approved uses and improvements are illustrative only and are not binding as to the exact configuration and location of the uses and improvements authorized.

B. LESSEE shall implement the First Phase (as defined below) of the Development Plan as soon as practicable after LESSEE obtains the City Manager’s approval and all other required permits and approvals for the First Phase of said plan (provided that commencement of construction of the First Phase of said plan shall not be required prior to July 1, 1988), and shall proceed diligently and without undue delay to completion thereof. “First Phase” shall mean the development and construction of any project or projects included within the Development Plan involving an aggregate investment (including direct and indirect construction costs and costs for architects, engineers, consultants fees and permitting and related expenses) of at least \$2,500,000, and shall include (but not necessarily be limited to) improvements to Parcel ‘A’ Property 2.

C. Should LESSEE be required by any public entity, including CITY (such as, for example, the California Coastal Commission) to make any expenditures or payments in lieu of expenditures (other than the rental expressly provided for in this Lease) for permanent capital improvements on, to, or in Mission Bay Park which would normally be the responsibility of CITY ("Mitigation Expenditures") as a condition to obtaining permission to develop, construct, install, or operate improvements, facilities, or equipment in, to, or on the Premises in excess of expenditures directly required to develop, construct, install, or operate said improvements, facilities, or equipment (such as, for example, the contribution of funds for an off-site improvement in alleged mitigation of alleged adverse environmental impacts of said development and/or activities), then LESSEE shall be given a credit in the amount of fifty percent (50%) of such Mitigation Expenditures against the rental payable under this Lease, as follows: (i) the amount of such credit shall not exceed the total rental payable pursuant to subparagraph IV.A.3 of this Lease; and (ii) said credit shall be allowed only to the extent of rental payments under subparagraph IV.A.3 previously made and as any such payments subsequently become due.

D. Should LESSEE fail to commence construction of the First Phase as provided above, subject to delays beyond LESSEE's reasonable control, then Parcel 'A' Property 2 and a portion of Parcel 'B' Property 1 identified as Parcel 'B' WATER 7.216 ACRES in the Lease Amendment dated December 12, 1983, on file in the office of the City Clerk as Document No. RR-59814 ("Water Parcel") shall revert to CITY, at CITY's option, free and clear of this Lease or any other interest of LESSEE, unless LESSEE commences construction within thirty (30) days following receipt of written notice from CITY of its intention to cause such reversion, given on or after the date LESSEE should have commenced construction, subject to delays beyond its reasonable control. If requested by CITY, and if CITY'S notice of election is valid and LESSEE fails to commence construction within said thirty (30) day period, LESSEE shall execute, acknowledge, and deliver to CITY a quitclaim deed whereby LESSEE shall quitclaim all of its right, title and interest in Parcel 'A' Property 2 and the Water Parcel to CITY. Such reversion of Parcel 'A' Property 2 and the Water Parcel shall be CITY's sole remedy for LESSEE's failure to timely commence construction of the First Phase of the improvements referred to in the Development Plan. In the event Parcel 'A' Property 2 and the Water Parcel

revert to CITY as provided above, then LESSEE'S obligation for the rent payable as provide in Paragraph A.3 of Article IV of this Lease shall cease and terminate as of the date of such reversion; such rent shall be prorated to the date of such termination on the basis of a 360-day year, and LESSEE shall receive a credit in an amount equal to any unearned advance-paid rent pursuant to said Paragraph A.3 against the next payment or payments of percentage or minimum rent due hereunder.

E. Should LESSEE timely commence construction of the First Phase of the improvements referred to in the Development Plan but fail to diligently complete such improvements (subject to causes beyond LESSEE's reasonable control), then LESSEE shall pay to CITY an amount equal to ten percent (10%) of the then applicable minimum rent, prorated for fractions of years, during the periods of such unexcused delays, in addition to any other rent payable hereunder.

F. In addition to any other procedure specifically mandated by law or this Lease, the following procedures for implementing the Development Plan shall be in effect, until changed by written agreement between LESSEE and CITY: Each year prior to October 31, LESSEE shall submit an implementation plan to the Planning Director via the City Manager of CITY, showing all improvements proposed by LESSEE for the ensuing accounting year. The proposed improvements shall include, but not be limited to, the following: any proposed new buildings, building improvements or additions, modifications, changes, and additions, redesigns or removal of parking lots, roadways, bicycle ways, pedestrian paths, landscaped areas and entry way areas. The Planning Director's approval shall be required prior to the City Manager's approval. The Planning Director shall identify projects with particular concern for more detailed environmental and planning review. Building permits for these identified projects shall not be issued until the Planning Director has determined that the proposed project is in conformance with all adopted Mission Bay Park Master Plan Documents and Environmental Impact Reports. The Deputy Director of the Environmental Quality Division shall review such projects to ensure that any mitigation required by the Development Plan is implemented. LESSEE shall have the option of submitting additional proposals or modifications to previously submitted projects at any time. No such improvements, or the construction thereof, shall require City Council approval so long as the foregoing process is followed; provided that the basic concepts of the Development Plan may not be changed without the prior approval of the City Council of CITY. A document evidencing any approved changes shall be signed by the parties and filed in the office of the City Clerk of CITY."

10. Paragraph F shall be added to ARTICLE XLI – GENERAL to read as follows:

“F. If either party, except as otherwise herein specifically provided, shall be delayed or hindered in or prevented from performing any act required hereunder, by reason of strikes, lock-outs, labor problems, inability to procure materials, failure of power or other utilities, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature, not the fault of the party so delayed, then performance of such act shall be excused for a period equivalent to the period of such delay, unless such delay shall cause the other party to be in default in its obligations to a party not a party to this lease.”

11. Paragraph G shall be added to ARTICLE XLI – GENERAL to read as follows:

“G. The control and administration of CITY’s interest in this Lease are under the jurisdiction of the City Manager. The approval or consent of CITY, wherever required by the terms of this Lease, shall mean the approval or consent of the City Manager, unless otherwise specified, without the need for any consent or resolution by the City Council of CITY. The City Manager may, however, in his discretion refer any such matter involving approval or consent to the City Council.”

12. Except as provided above, the Lease shall remain in full force and effect,

IN WITNESS WHEREOF, this Lease Amendment is executed by CITY, acting by and through the City Manager under and pursuant to Resolution No. R-263507 of the City Council authorizing such execution, and by LESSEE, acting by and through its duly authorized officers, as of the date first above written.

I HEREBY APPROVE the form
and legality of the foregoing
Agreement this 26 day of July, 1985.

THE CITY OF SAN DIEGO

By: /s/
ASSISTANT TO THE CITY MANAGER

DESCRIPTION OF
SEA WORLD LEASE

PARCEL A — LAND — PROPERTY 1 123.577 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8 AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10, THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X = 1,712,415.17 AND Y = 213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 6,789.12 FEET AND WEST 14,572.15 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 6,789.12 AND WEST 14,572.15; THENCE SOUTH 69°30'00" EAST 172.53 FEET TO THE BEGINNING OF A TANGENT 300.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°30'00" A DISTANCE OF 363.90 FEET; THENCE SOUTH 330.46 FEET TO THE BEGINNING OF A TANGENT 347.08 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE SOUTHERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 385.17 FEET; THENCE SOUTH 63°35'01" EAST 25.61 FEET TO THE POINT OF BEGINNING OF A 240.00 FOOT RADIUS CURVE CONCAVE NORTHERLY, THE RADIAL LINES OF SAID CURVE BEARS SOUTH 27°10'45" WEST TO SAID POINT OF BEGINNING; THENCE EASTERLY ALONG THE

ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°56'26" A DISTANCE OF 104.47 FEET TO A POINT OF COMPOUND CURVATURE WITH AN 800.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, THENCE EASTERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 39°23'51" A DISTANCE OF 550.09 FEET TO A POINT OF REVERSE CURVATURE WITH A 1,198.09 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 37°09'32" WEST TO SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°36'42" A DISTANCE OF 619.20 FEET TO A POINT OF COMPOUND CURVATURE WITH A 514.76 FOOT RADIUS CURVE CONCAVE SOUTHERLY, A RADIAL LINE OF SAID CURVE BEARS NORTH 7°32'50" WEST TO SAID POINT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°57'10" A DISTANCE OF 233.17 FEET; THENCE SOUTH 71°35'40" EAST 973.37 FEET; THENCE SOUTH 18°24'20" WEST 50.00 FEET; THENCE SOUTH 71°35'40" EAST 598.11 FEET TO MISSION BAY PARK COORDINATES NORTH 5,597.88 AND WEST 11,113.51; THENCE SOUTH 5°59'55" WEST 1,807.81 FEET TO A POINT ON A LINE THAT IS 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM ENGINEER'S STATION 36 + 35.31 ON THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON THE CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14985-1-D; THENCE NORTH 78°55'43" WEST, PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 635.31 FEET TO THE BEGINNING OF A TANGENT 828.855 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, SAID CURVE BEING CONCENTRIC WITH AND 10.00 FEET NORTHEASTERLY RADially FROM THE FACE OF THE NORTHEASTERLY BERM ON THE ACCESS ROAD SHOWN ON THE CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14577-22-D; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°06'00" A DISTANCE OF 305.24 FEET; THENCE NORTHWESTERLY, WESTERLY AND NORTHERLY CONTINUING ALONG A LINE THAT IS PARALLEL AND/OR CONCENTRIC WITH AND 10.00 FEET AT RIGHT ANGLES OR RADially; RESPECTIVELY, FROM THE FACE OF SAID NORTHEASTERLY BERM, WHICH BERM IS ALSO SHOWN ON SAID ENGINEER'S DRAWINGS NO. 14577-21, 23, 24, 32, 33, 34 AND 36-D THE FOLLOWING COURSES AND DISTANCES: NORTH 57°49'43" WEST 53.69 FEET TO THE BEGINNING OF A TANGENT 1,032.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°52'29" A DISTANCE OF 664.18 FEET; THENCE TANGENT TO SAID CURVE SOUTH 85°17'48" WEST 515.45 FEET TO THE BEGINNING OF A TANGENT 568.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE WESTERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 65°57'16" A DISTANCE OF 653.84 FEET TO A POINT OF COMPOUND CURVATURE IN THE ARC OF A 268.00 FOOT RADIUS CURVE CONCAVE EASTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 61°15'04" WEST TO SAID POINT; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 73°56'28" A DISTANCE OF 345.86 FEET TO A POINT OF REVERSE CURVATURE IN THE ARC OF A 332.00 FOOT RADIUS CURVE CONCAVE

NORTHWESTERLY, A RADIAL LINE OF SAID CURVE BEARS SOUTH 44°48'28" EAST TO SAID POINT; THENCE NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 116°05'26" A DISTANCE OF 672.68 FEET; THENCE DISREGARDING THE FACE OF BERM BUT TANGENT TO SAID CURVE NORTH 70°53'54" WEST 121.23 FEET TO THE BEGINNING OF A TANGENT 270.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°08'05" A DISTANCE OF 123.16 FEET TO A POINT ON THE WESTERLY LINE OF THAT PORTION OF LAND SHOWN ON THE CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 10966-1—B OF THE PROPOSED LEASE OF WEST PEREZ COVE MISSION BAY PARK; THENCE NORTHWESTERLY ALONG THE BOUNDARY OF SAID LAND THE FOLLOWING COURSES AND DISTANCES: NORTH 13°45'54" WEST 575.54 FEET; THENCE NORTH 175.00 FEET; THENCE NORTH 23°11'55" WEST 130.00 FEET; THENCE NORTH 39°19'34" WEST 90.00 FEET; THENCE NORTH 14°33'01" WEST 166.22 FEET; THENCE NORTH 9°04'02" WEST 267.46 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT 1
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PARCEL "A" LAND PROPERTY 2: 25± ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY) AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2,000 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X=1,712,415.17 AND Y=213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 3,799.97 FEET AND WEST 11,302.44 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 3,799.97 AND WEST 11,302.44, SAID TRUE POINT OF BEGINNING BEING A POINT ON A LINE THAT IS PARALLEL WITH AND 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D, SAID POINT BEING OPPOSITE AT RIGHT ANGLES FROM ENGINEER'S STATION 36+35.31 ON SAID CENTERLINE; THENCE NORTH 5°59'55" EAST 1807.82 FEET; THENCE SOUTH 55°43'04" EAST 660.41 FEET; THENCE SOUTH 0°17'19" EAST 1475.24 FEET TO A POINT ON A 1939.50 FOOT RADIUS CURVE, CONCAVE NORTHERLY, SAID POINT BEING 60.50 FEET NORTHERLY FROM ENGINEER'S STATION 44+01.77 ON THE HEREINABOVE MENTIONED CENTERLINE OF SEA WORLD DRIVE, A RADIAL LINE TO SAID POINT BEING SOUTH 6°51'07" EAST; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°55'24" AN ARC LENGTH OF 606.71 FEET; THENCE TANGENT TO SAID CURVE NORTH 78°55'43" WEST 140.82 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL A, LAND PROPERTY 2; 25.002 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

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PARCEL A, LAND PROPERTY 3; 0.894 ACRES

THOSE PORTIONS OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND PORTIONS OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

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TANGENT 100.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 20°24'39" A DISTANCE OF 35.62 FEET; THENCE NORTH 10°12'42" WEST 37.69 FEET TO THE BEGINNING OF A TANGENT 2,963.50 FOOT RADIUS CURVE CONCAVE EASTERLY; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 3°00'00" A DISTANCE OF 155.17 FEET; THENCE NORTH 7°12'42" WEST, 36.67 FEET TO THE BEGINNING OF A TANGENT 8,036.50 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°14'28" A DISTANCE OF 33.82 FEET TO A POINT OF COMPOUND CURVATURE WITH A 5.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 92°45'32" A DISTANCE OF 8.09 FEET; THENCE SOUTH 79°47'18" WEST, 27.86 FEET; THENCE NORTH 14°53'58" WEST, 120.00 FEET; THENCE NORTH 75°06'02" EAST, 20.00 FEET; THENCE NORTH 47°26'50" EAST, 12.66 FEET; THENCE NORTH 21°13'51" EAST ALONG SAID WESTERLY LINE OF THE AREA DESIGNATED "PARKING LOT" AND THE PROLONGATION THEREOF 47.88 FEET TO INTERSECTION WITH A LINE THAT BEARS NORTH 69°30'00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 69°30'00" EAST, 45.71 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT 1
Page 7 of 10

DESCRIPTION OF
SEA WORLD LEASE

PARCEL B – WATER – PROPERTY 1 16.932 ACRES

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

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NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°56'26" A DISTANCE OF 104.47 FEET; THENCE NORTH 63°35'01" WEST 25.61 FEET TO THE BEGINNING OF A TANGENT 347.08 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63°35'01" A DISTANCE OF 385.17 FEET; THENCE NORTH 330.46 FEET TO THE BEGINNING OF A TANGENT 300.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY WHICH CURVE IS ALSO TANGENT TO THE HEREIN BEFORE MENTIONED COURSE BEARING SOUTH 69°30'00" EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°30'00" A DISTANCE OF 363.90 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT 1
Page 9 of 10

PARCEL B – WATER PROPERTY 2; 0.082 ACRES

BEGINNING AT POINT “B” AS SET OUT AND ESTABLISHED IN THE HEREINABOVE DESCRIBED PARCEL “A”; THENCE SOUTH 71°35’40” EAST ALONG THE NORTHEASTERLY LINE OF SAID PARCEL “A” A DISTANCE OF 50.00 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE NORTH 18°24’20” EAST 71.00 FEET; THENCE NORTH 71°35’ 40” WEST 50.00 FEET; THENCE SOUTH 18°24’20” WEST 71.00 FEET TO SAID POINT “B” AND THE POINT OF BEGINNING.

EXHIBIT 1
Page 10 of 10

LEGAL DESCRIPTION: PARCEL "B"

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

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WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D, SAID POINT BEING OPPOSITE AT RIGHT ANGLES FROM ENGINEER'S STATION 36+35.31 ON SAID CENTERLINE, THENCE SOUTH 78°55'43" EAST PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE 140.82 FEET TO THE BEGINNING OF A TANGENT 1939.50 FOOT RADIUS CURVE CONCAVE NORTHERLY, THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°48'34", AN ARC LENGTH OF 636.71 FEET; THENCE TANGENT TO SAID CURVE NORTH 82°15'43" EAST 70.00 FEET TO A POINT BEING 60.50 FEET NORTHERLY AND OPPOSITE AT RIGHT ANGLES FROM ENGINEER'S STATION 45+02.70 ON THE HEREINBEFORE MENTIONED CENTERLINE OF SEA WORLD DRIVE; THENCE NORTH 7°44'17" WEST 1000.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY PARK COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 4754.812 AND WEST 10,595.934; THENCE NORTH 7°44'17" WEST 531.96 FEET; THENCE SOUTH 83°03'30" EAST 440.00 FEET; THENCE SOUTH 29°53'30" EAST 250.00 FEET; THENCE NORTH 83°03'30" WEST 240.00 FEET; THENCE SOUTH 3°36'25" WEST 254.71 FEET; THENCE SOUTH 82°15'43" WEST 237.64 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINS 4.00 ACRES (MORE OR LESS)

LEGAL DESCRIPTION: PARCEL "A"

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY), AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

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POINT OF BEGINNING BEING NORTH 3,799.97 AND WEST 11,302.44, SAID TRUE POINT OF BEGINNING BEING A POINT ON A LINE THAT IS PARALLEL WITH AND 60.50 FEET AT RIGHT ANGLES NORTHEASTERLY FROM THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14,985-1-D, SAID POINT BEING OPPOSITE AT RIGHT ANGLES FROM ENGINEER'S STATION 36+35.31 ON SAID CENTERLINE; THENCE NORTH 5°59'55" EAST 1807.82 FEET; THENCE SOUTH 54°40'57" EAST 546.54 FEET; THENCE SOUTH 7°44'17" EAST 1531.96 FEET TO A POINT BEING 60.50 FEET NORTHERLY AND OPPOSITE AT RIGHT ANGLES FROM ENGINEER'S STATION 45+02.70 ON THE HEREINBEFORE MENTIONED CENTERLINE OF SEA WORLD DRIVE; THENCE PARALLEL WITH SAID CENTERLINE OF SEA WORLD DRIVE, SOUTH 82°15'43" WEST 70.00 FEET TO THE BEGINNING OF A TANGENT 1939.50 FOOT RADIUS CURVE CONCAVE NORTHERLY; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°48'34" AN ARC LENGTH OF 636.71 FEET; THENCE TANGENT TO SAID CURVE NORTH 78°55'43" WEST 140.82 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINS 25.00 ACRES (MORE OR LESS)

RESOLUTION NUMBER R-262370

ADOPTED ON JAN 22 1985

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, an agreement with SEA WORLD, INC. for the repair of the shoreline on certain City-owned property adjacent to the Sea World leasehold, and provide Sea World, Inc. a one-time rent credit not to exceed \$150,000, representing the City's share of the total cost, under the terms and conditions set forth in that agreement on file in the office of the City Clerk as Document No. RR-262370.

APPROVED: John W. Witt, City Attorney

By /s/ _____
for Harold O. Valderhaug
Deputy City Attorney

HOV:ps
01/08/84
Or. Dept:Prop.
R-85-1236
Form=r.none

RESOLUTION NUMBER R- _____

ADOPTED ON _____

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute a lease amendment with SEA WORLD, INC., which amendment basically provides for a revised general development plan and other changes, as more particularly described in that lease amendment on file in the office of the City Clerk as Document No. RR- _____ .

APPROVED: JOHN W. WITT, City Attorney

By /s/ Harold O. Valderhaug
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/11/85
Or.Dept:Prop.
Job:218401
R-85-2422
Form=r.none

RESOLUTION NUMBER R- _____

ADOPTED ON _____

BE IT RESOLVED, by the Council of The City of San Diego that it be and it is hereby certified that the information contained in ENVIRONMENTAL IMPACT REPORT EIR 84-0160, in connection with SEA WORLD, INC., on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto, and that said Report has been reviewed and considered by this Council.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code, Section 21081, the City Council hereby adopts the findings made with respect to the feasibility of the mitigating measures and project alternatives and the statements of overriding considerations, if any, contained within the said ENVIRONMENTAL IMPACT REPORT EIR 84-0160.

APPROVED: John W. Witt, City Attorney

By /s/ Harold O. Valderhaug _____
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/11/85
Or.Dept:Prop.
Job:218401
R-85-2423
Form=r.eir&fd

ATTENTION: PS&S Committee, Agenda of

SUBJECT: Sea World Lease Amendment

SUMMARY

Issue

1. Should the City amend the lease with Sea World to provide for approval of its revised long-term conceptual development plan?
2. Should the City adopt the findings of Environmental Impact Report 84-0160?

Manager's Recommendation—Approve the amendment, certify the Environmental Impact Report, and adopt findings and statement of overriding considerations.

Other Recommendations—The Park and Recreation Board approved the plan on February 21, 1985.

Fiscal Impact—Unknown at this time, however, the improvements made with the proposed new development plan, including those required for mitigation measures imposed by the EIR, should increase the park's attendance and subsequent rental revenue. This revenue may be reduced somewhat by the provision that Sea World is allowed a 50 percent rent credit for required public improvements, including the mitigation measures.

BACKGROUND

Sea World opened its original ocean aquarium park on 18 acres in Mission Bay in March 1964. Over the years, it has expanded until it reached its current size of 149 acres of land and 17 acres of water area. Besides park exhibits, the Sea World lease premises also include the Atlantis Restaurant and a recreational boat marina. The lease requires a minimum annual rent of \$1 million versus an applicable percentage of gross income, as listed in Attachment 1. In Fiscal Year 1984, the City received \$2,243,312 from Sea World.

Sea World is now revising its long-term conceptual development plan. The new plan, along with other lease modifications proposed by Sea World and City staff, requires Council authorization in the form of the lease amendment outlined as follows:

1. Development Plan. This plan is an update of Sea World's main features, including centralizing the main entrance, new Shamu Stadium and planned new exhibits and changes over the next several years.

2. Improvements, Repairs, and Alterations. Sea World will be responsible for all shoreline (riprap) maintenance on all portions of the leasehold premises. This responsibility is not specific in the existing lease.
3. Change in the Eastern Boundary Leasehold Line. Sea World agrees to allow a change in its easterly boundary line to accommodate the City's South Shores Area Master Plan when it is implemented with a revised legal description to be appended to the lease at a later date.
4. Atlantis Valet Parking Lot. The Atlantis valet parking lot is currently under a temporary permit from the City. Part of the parking lot will be utilized for the new Ingraham Street Bridge and its supporting structure. The remaining area of approximately one acre will be added to the Sea World leasehold. Sea World will take over the landscaping and maintenance of the area, which will eliminate costs to the Park and Recreation Department.

The Environmental Impact Report prepared in connection with the proposed lease amendment, as well as the City Planning Commission Resolution 5460 (Attachment II), provided that Sea World make certain mitigations. They are summarized as follows:

1. Improve Perez Cove Way/Ingraham Street Intersection (Perez Cove Way to be 66 feet wide), but not required prior to the widening of the Ingraham Street Bridge at Mission Bay Channel.
2. Reconstruct the driveway access to Perez Cove Way.
3. Provide a continuous Class 1 bikeway along and through the Sea World property lease line.
4. When the annual attendance at the park reaches 3.6 million, relocate Sea World Way (the main entrance) to its ultimate configuration (52 feet), plus all turn lanes to and from Sea World Way. Remove the old traffic signal and install new signals to City standards. Extend the bikeway from the present terminus to the new intersection.
5. When the annual attendance reaches 4 million, improve Sea World Drive along the leasehold frontage to half width of a six-lane primary arterial standard. This phasing may be revised by the Engineering and Development Department.
6. Provide pedestrian access to the general public through the Sea World leasehold during daylight hours.
7. Submit a detailed landscaping plan and irrigation plan for the parking and perimeter areas of its leasehold for approval by the Planning Director and Planning Commission prior to obtaining any building permits.

Sea World has agreed to all of the mitigations with the exception of the Class 1 bikeway, which it estimates would cost approximately \$380,000 to build and would negatively impact its leasehold operations. As a result, City Traffic and Engineering made a study of the issue. It recommended a Class 2 bikeway on Perez Cove Way from Ingraham Street to Sea World Drive, connecting to a Class 1 bikeway just north of Sea World Drive from Perez Cove Way to Sea World Drive; thence, a Class 1 bikeway from Sea World Way to the easterly lease line. It estimated the cost of its recommendation to be about \$22,000. Sea World has indicated that it is agreeable to this recommendation.

By the terms set out in Sea World's 1983 lease amendment (Section 13.B.), rent credits would be given for those aforesaid and future costs Sea World may incur for mitigation measures required by any public entity, including the City. The rent credit would amount to 50 percent of the mitigation cost and would be applied against the special rentals paid or due the City as a result of the 1983 amendment (to a maximum of \$1.25 million, plus CPI increases). For example, if mitigation costs total \$2.5 million, Sea World would be entitled to deduct \$1.25 million of such costs. Mitigation measures are defined as any expenditures or payments Sea World must make for permanent capital improvements on, to, or in Mission Bay Park, which would normally be the responsibility of the City as a condition to obtaining permission to develop, construct, install, or operate improvements, facilities or equipment in, to, or on its premises.

Other costs, subject to credit, could run into the hundreds of thousands of dollars, although no estimates can be made at this time. These would include the construction of any or all of the aforementioned improvements required by the Environmental Impact Report or the Coastal Commission.

ALTERNATIVE

Deny the request.

Respectfully submitted,

John P. Fowler
Deputy City Manager

JLS:WJP;jw(11)P10
6-11-85

Attachments: Sea World Percentage Rents
City Planning Commission Resolution 5460

SEA WORLD PERCENTAGE RENTS

<u>Percentage</u>	<u>Applied to all Gross Income Attributable to:</u>
2-1/2 Percent	Admission tickets.
2-1/2 Percent of first \$600,000	Food and nonalcoholic beverages.
3 Percent of all gross income over \$600,000	Food and nonalcoholic beverages.
5 Percent	All alcoholic beverages.
7 Percent	Parking lot income.
3 Percent	Boat rides, sky ride, Shamu ride, concession, and sky tower ride.
3 Percent	From sale of animal food to spectators.
5 Percent	From any game or amusement devise.
2-1/2 Percent	Institutional advertising.
3 Percent	Sale of petroleum, products, except diesel fuel.
1-1/2 Percent	Sale of diesel fuel.
2 Percent	Sale of boats, motors and accessories.
4 Percent	Service on boats, motors, sale of boat and motor parts, accessories and marina hardware.
7 Percent	Boat storage rental and related boating operations.
20 Percent	Boat slip rentals.
7 Percent	All other sale, service or operation.

WJP: jw(2)pg
2-25-85

CITY PLANNING COMMISSION
RESOLUTION NO. 5460

CONDITIONAL APPROVAL OF SEA WORLD MASTER PLAN
AND RED LION HOTEL ON THE SEA WORLD LEASEHOLD

WHEREAS, the Planning Commission has reviewed and considered the Sea World Master Plan and plans for the Red Lion Hotel Project at Sea World; and

WHEREAS, on February 21, 1985, the Planning Commission of the City of San Diego held a public hearing and received for its consideration documentary, written and oral testimony and heard from all interested parties present at the public hearing; and

WHEREAS, the expansion program for the Sea World complex envisioned in the Sea World Master Plan provides educational and recreational benefits for residents and visitors to San Diego,

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of San Diego approves the Sea World Master Plan amendment proposal, subject to conditions designed to assure consistency with the Mission Bay Master Plan and Mission Bay Coastal Access Study.

The following conditions of approval shall be assured prior to issuance of any building permits for construction of any facility within the leasehold. The Planning Director will be responsible for reviewing building plans for consistency prior to the obtaining of building permits by Sea World. Future development projects include any new buildings, outdoor exhibits, landscaping, lighting, fencing, signs, entryway redevelopment, parking lot redesign, bikeways, pedestrian paths and changes to traffic circulation systems within the Sea World leasehold. These conditions are based on the approved Mission Bay Coastal Access Study and Environmental Impact Report (EIR) No. 84-0160.

I. Bicycle Access

Sea World will construct a continuous Class I bikeway along and through the Sea World property lease which will link directly with existing or proposed bikeways to the north of Sea World along Ingraham Street and to the east of Sea World in South Shores. The bikeway will extend along Perez Cove Way from Ingraham Street to Sea World Drive and will continue from the Sea World Drive/Perez Cove Way intersection to the intersection of Sea World Drive/Sea World Way. The bikeway will be extended east from this intersection to connect with the South Shores bikeway segment. If Sea World implements changes to the vehicular access routes into the theme park which affect the bikeway, the bikeway will be reconstructed by Sea World to conform to the revised vehicular circulation system. When Sea World completes construction of the bikeway the City will assume liability and maintenance responsibility for the facility.

II. Pedestrian Access

Sea World will provide pedestrian access to the general public through the Sea World leasehold during daylight hours. Pathways will remain open and accessible to pedestrians entering the Sea World leasehold from connecting paths in the north (from Ingraham Street and Perez Cove), the south (from Sea World Drive) and from the east (along the Bay in South Shores). In the vicinity of the Proposed Red Lion Hotel and the Atlantis Restaurant the pedestrian way will be a promenade along the waters edge extending to the northwestern edge of the Atlantis Restaurant. In the vicinity of the theme park, the pedestrian way will be located adjacent to and outside the fence demarcating the perimeter of the controlled access area. The alignment of the pedestrian pathway system is shown in Figure 1 (attached). All pedestrian pathways shall be paved. The alignment of the pedestrian connection from the Atlantis through the two-acre parcel under the newly reconstructed Ingraham Street bridge will be subject to future study since the city has not yet identified the utilization of this area which is currently rented to Sea World on a monthly basis. At the time the study is completed, Sea World will be required to cooperate in the establishment of a pedestrian connection to the west under the bridge.

III. Landscaping

Sea World will submit a detailed landscaping plan and irrigation plan for the parking and perimeter areas of their leasehold for approval by the Planning Director and Planning Commission prior to obtaining any building permits.

The parking lot areas will be divided into sections containing not more than 500 parking spaces. Each section will be demarcated by landscaped buffers. The buffers are to be designed in accordance with the parking lot landscape details submitted by Sea World. No less than ten percent of the parking lot area shall be covered by landscaping as required by previous agreements on Sea World permits and as a minimum to make the development consistent with Mission Bay Design Guidelines. The entire perimeter of the Sea World parking lot will be screened. Perimeter planting will include specimen size trees (24-inch or 36-inch box).

IV. Traffic Circulation and Bicycle/Pedestrian Circulation : The following phasing plan will be incorporated into the Master Plan.

A. Prior to occupancy of the proposed hotel, the following improvements shall be completed and opened to traffic:

1. IMPROVE PEREZ COVE WAY/INGRAHAM STREET INTERSECTION as shown in EIR Fig. 4-4 (Perez Cove Way to be 66 feet wide), but not required prior to widening of Ingraham Street Bridge at Mission Bay Channel.
2. RECONSTRUCT DRIVEWAY ACCESS TO PEREZ COVE WAY as shown in EIR Fig. 4-4 (Perez Cove Way to be 66 feet wide).

-
- B. When the annual attendance at the theme park reaches 3,600,000 per year, the following improvements shall be completed:
 - 1. RELOCATE SEA WORLD WAY approximately 500 feet east along Sea World Drive and construct Sea World Way to its ultimate configuration (52 feet), plus all turn lanes to and from Sea World Way. Remove old traffic signal and install new signals to City standards. Extend Class I bikeway from present terminus to new intersection.
 - C. When the annual attendance at the theme park reaches 4,000,000 per year, the following improvement shall be implemented:
 - 1. IMPROVE SEA WORLD DRIVE along leasehold frontage to half width of a six-lane primary arterial standard.
- V. Biological Resources : Prior to approval of the Marina expansion, a revised dock design as shown on EIR Figure 4-8 to mitigate eelgrass impacts shall be submitted for Planning Director and Environmental Quality Division review and shall be incorporated into the marina expansion plans.
- VI. Red Lion Hotel Design :
- 1. That a promenade be developed along the waters edge to link the Perez Cove building with the northwestern edge of the Atlantis Restaurant, to insure future options to link the area to the west when a new bridge is developed along Mission Bay Drive/Ingraham Street.
 - 2. That the, development proposal maintain a 20% see-through with two of the guest buildings elevated and open off-the-ground to establish additional see-through opportunities.
 - 3. That roof lines be varied to create design interest and focus, compatible with the desired high quality design on all Mission Bay leases, and the high visual exposure the hotel site has to the Park's circulation network that will make it highly visible to the Visitor.
 - 4. That materials and colors will be consistent with Mission Bay Design Principles.

/s/ Sue Blackman
Sue Blackman, Secretary
to the Planning Commission

/s/ Bill Levin
Bill Levin, Associate Planner

Adopted: February 21, 1985
Vote: 6-0

SEA WORLD DOCUMENTS

Lease Amendment

Document No. RR-266641

September 12, 1986

- Requires Sea World to contribute monies for traffic impact mitigation as required by any future local coastal program in Mission Bay Park.

SEA WORLD DOCUMENTS

Resolution No. R-274591

October 17, 1989

- Approved sale of stock to Busch Entertainment Corp.

SEA WORLD DOCUMENTS**Resolution No, 275068****February 5, 1990**

- Resolution of mitigation issue.
- Use clause modified to permit Atlantis Restaurant site to be used as a banquet/conference center.

[Sea World of California letterhead]

February 29, 1996

Mr. Jack McGrory
City Manager
The City of San Diego
202 C Street
San Diego, California 92101

Re: Revised Rental Under Sea World Leasehold

Dear Jack:

Section IV.A.5 of the existing lease between the City and Sea World provides for the adjustment of percentage rental rates at the end of each 10-year period during the term of the lease, to be determined by good faith negotiation or arbitration. The most recent 10-year period ended as of December 31, 1993. The parties have negotiated in good faith and, based thereon, have entered into an agreement which provides that, in lieu of an adjustment in percentage rates, Sea World will, effective as of January 1, 1994, pay as additional rent an amount equal to three percent (3%) on an annual basis of the rental payable pursuant to the provisions of the existing lease (the "Surcharge").

The Surcharge will be payable concurrently with the rendering of each statement as provided in Section IV.C of the existing lease in an amount equal to three percent (3%) of the payment required to be made for the accounting period covered by such statement, provided that the amount of the Surcharge shall be adjusted at the end of each accounting year, as necessary to ensure that the Surcharge shall be no more or no less than 3% of the total rental due for such accounting year without taking the Surcharge into account. In calculating the amounts due each accounting period as provided in subsections 1 and 2 of Section IV.C, the "total rent previously paid for the accounting year" shall not include any payments of the Surcharge.

Payment of the Surcharge attributable to the period from January 1, 1994, through the date of first payment of the Surcharge shall be without interest, penalty or other additional charge.

The following provision memorializes a practice which, by mutual agreement, has been in effect for several years and which the parties wish to be in effect for the indefinite future during the term of the Lease: The concept of accounting years varying from calendar years, as provided in Article IV of the Lease has been and will be eliminated and has been and will be replaced by an accounting year which coincides with the calendar year.

If the foregoing correctly sets forth the City's understanding of the agreement between the City and Sea World, please have an authorized representative of the City so signify by signing and returning to me the enclosed copy of this letter.

Mr. Jack McGrory
The City of San Diego
February 29, 1996
Page 2

Thank you for your courtesy and cooperation and that of your staff.

Sincerely,

/s/ Mike Cross

Mike Cross
Executive Vice President
General Manager

CMC:ak

cc: Robert Collins
Real Estate Assets Manager
Real Estate Assets Department

THE CITY OF SAN DIEGO HEREBY AGREES TO
THE FOREGOING:

THE CITY OF SAN DIEGO

By: /s/ Robert J. Collins
Title: Real Estate Assets Mgr.

Date: 6/25/96

LEASE AMENDMENT

THIS LEASE AMENDMENT, executed in duplicate as of SEP 22 1986, 1986, at San Diego, California, by and between THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California (the "City"), and SEA WORLD, INC. a Delaware corporation, 1720 South Shores Road, San Diego, California 92109 (the "Lessee"), is made with reference to the following facts:

A. City leases to Lessee and Lessee leases from City certain real property in Mission Bay Park (the "Premises") described in lease amendments dated December 14, 1977, January 29, 1979, December 12, 1983, and June 24, 1985, and filed in the Office of the City Clerk of San Diego as Document Nos. 762304, 765767, and RR-259814, and RR-263507, respectively (hereinafter the foregoing lease amendments are collectively referred to in this Lease Amendment as the "Lease").

B. The parties hereto desire to amend the Lease as hereinafter provided.

THEREFORE, in consideration of the mutual covenants contained herein, the Lease is hereby amended to provide, and Lessee and City hereby agree, as follows:

1. Article XXXII GENERAL DEVELOPMENT PLAN is hereby amended by adding thereto Paragraph G, to read as follows:

"G. Should a local coastal program (hereinafter the "Local Coastal Program") ever be adopted for the Mission Bay Park (the "Park") segment of the City Local Coastal Program, and should the Local Coastal Program provide for the collection of a traffic impact mitigation fee from commercial lessees within the Park in order to fund all or a portion of the cost of a beach shuttle or other substantially similar public access improvements, Lessee agrees to contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to such a traffic impact mitigation program; provided that the amount payable by Lessee shall be reasonable and shall

DOCUMENT NO. RR- 266641

FILED SEP 22 1986
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

not exceed the amount Lessee would have paid had the entire amount to be funded by traffic impact mitigation fees been reasonably, equitably, and fairly apportioned among all of the commercial lessees in the Park. This Paragraph G shall not be altered or amended without the prior written approval of the California Coastal Commission or an amendment to California Coastal Permit No. 6-86-2.”

2. Except as provided above, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, this Lease Amendment is executed by City, acting by and through the City Manager under and pursuant to Resolution No. R-_____ of the City Council authorizing such execution, and by Lessee, acting by and through its duly authorized officers, as of the date first above written.

I HEREBY APPROVE the form and legality of the foregoing Agreement this 8 day of October, 1986.

JOHN W. WITT, City Attorney

By: /s/ Harold O. Valderhaug
Deputy

THE CITY OF SAN DIEGO

By: /s/
Title: Assistant to the City Manager

SEA WORLD, INC.

By: /s/
Title: Administrative V.P.

R-266641

RESOLUTION NUMBER R- 263507

ADOPTED ON JUN 24, 1985

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute a lease amendment with SEA WORLD, INC., which amendment basically provides for a revised general development plan and other changes, as more particularly described in that lease amendment on file in the office of the City Clerk as Document No. RR-263507.

APPROVED: JOHN W. WITT, City Attorney

By /s/ Harold O. Valderhaug
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/11/85
Or.Dept:Prop.
Job:218401
R-85-2422
Form=r.none

RESOLUTION NUMBER R-263508

ADOPTED ON JUN 24 1985

BE IT RESOLVED, by the Council of The City of San Diego that it be and it is hereby certified that the information contained in ENVIRONMENTAL IMPACT REPORT EIR 84-0160, in connection with SEA WORLD, INC., on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto, and that said Report has been reviewed and considered by this Council.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code, Section 21081, the City Council hereby adopts the findings made with respect to the feasibility of the mitigating measures and project alternatives and the statements of overriding considerations, if any, contained within the said ENVIRONMENTAL IMPACT REPORT EIR 84-0160.

APPROVED: John W. Witt, City Attorney

By /s/ Harold O. Valderhaug _____
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/11/85
Or.Dept:Prop.
Job:218401
R-85-2423
Form=r.eir&fd

NOTICE OF DETERMINATION

TO: County Clerk
County of San Diego
220 W. Broadway
San Diego, California 92101

FROM: City of San Diego
City Administration Building
202 "C" Street
San Diego, CA 92101

Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, California 95814

EQD Number: 84-0160 State Clearinghouse Number 84030708
(If submitted to Clearinghouse)

Project Title: Sea World Master Plan.

Project Location: Located between Sea World Dr. and Mission Bay just east of Ingraham Street in the South Shores area of Mission Bay Park

Project Description: Master Land Use Plan as a condition of a 32-acre, 50-year ground and water lease – expansion of theme park, marina, and parking areas

This is to advise that The City of San Diego City Council (Decision-making Body) on June 24, 1985 (date) approved the above described project and made the following determinations:

1. The project in its approved form will, will not, have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA. Resolution R-263508
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
The EIR or Negative Declaration and record of project approval may be examined at the address above.
3. Mitigation measures were, were not, made a condition of the approval of the project.
4. Findings were, were not, made pursuant to CEQA.
5. A statement of Overriding Considerations was, was not, adopted for this project.

Date Received for Filing: _____

/s/ Ellen Bovard 6/27/85
Signature

Deputy City Clerk
Title

The City of San Diego
MANAGER'S REPORT

DATE ISSUED: September 5, 1986
ATTENTION: PF&R, Agenda of September 10, 1986
SUBJECT: Sea World Lease Amendment

REPORT NO. 86-401

SUMMARY

Issue - Should the City Manager be authorized to execute a Ninth Amendment to the lease with Sea World, Inc., which provides that SeaWorld agree to contribute its fair and equitable share of money for traffic impact mitigation, as required by any future local coastal program in Mission Bay Park?

Manager's Recommendation - Authorize execution of the agreement.

Other Recommendations - None.

Fiscal Impact - None with this action.

BACKGROUND

In certain instances, the California Coastal Commission requires specified mitigation actions or fees from applicants for coastal permits. Sea World is currently applying for such a permit and is being required to contribute traffic mitigation fees in Mission Bay Park in the event that the Commission should implement a local coastal program in the future containing this requirement. The Commission is requesting Sea World to have its lease with the City amended to include this agreement prior to issuing the permit.

PROPOSAL

It is proposed that the City Council approve the requested lease amendment. The amendment will not alter any of the other terms and conditions of Sea World's existing lease agreement.

ALTERNATIVES

Deny the request for an amendment. This is not recommended since it would preclude Sea World from completing its 1985 Development Plan as previously approved by the Council.

Respectfully submitted,

/s/ John P. Fowler

John P. Fowler

Deputy City Manager

SPOTTTS:WJP:jw(66-2)

8-1-86

Dept:Prop:MR:495

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. Certificate Number N/A
TO: CITY ATTORNEY	2. FROM (ORIGINATOR) PROPERTY DEPT./PROPERTY MANAGEMENT DIVISION	3. Date August 4, 1986
4. SUBJECT Lease Amendment – Sea World		
5. PREPARATION OF: <input type="checkbox"/> RESOLUTION(S) <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S) Authorizing the City Manager to execute a lease amendment with Sea World, which would require it to contribute monies for traffic impact mitigation as required by any future local coastal program in Mission Bay Park. COUNCIL DISTRICT 6 COMMUNITY AREA: SEA WORLD REPORT TO COUNCIL		
6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION <u>NOT</u> COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION". ACTION REQUESTED BY: Property Director. DESCRIPTIVE LOCATION: Sea World – Mission Bay Park. DOCUMENTS SUBMITTED: Original and six copies of proposed agreement. ENVIRONMENTAL ASSESSMENT: This activity is exempt from CEQA Section 15301, Class 1, Existing Facilities. HANDLING: <u>DO NOT RECORD</u> , Deliver documents to Property Department, Attention Bill Punch, M.S. 503, for further handling.		
7. FOR INFORMATION CONTACT: (NAME & MAIL STA.) RANDOLPH/Punch 503	8. TELEPHONE 6792/6985	9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED <input type="checkbox"/>
10. COMPLETE FOR ACCOUNTING PURPOSES:		
FUND/DEPT.	BUDGETED	UNBUDGETED
ORGANIZATION		
OBJECT ACCOUNT		
JOB ORDER		
WORK ORDER NO.		
C.I.P. NO.		
FACILITY		
AMOUNT		
12. ESTIMATED COST: None Job 219045 cc: County Assessor Docket REDI BOOK PAGES 326 & 327 THOMAS BROS. MAP PAGE 59 WJP:baa		11. ROUTING AND APPROVALS
	ROUTE (✓)	APPROVING AUTHORITY
	✓	DEPARTMENT DIRECTOR
	X	CLEARING AUTH.EQD
		CLEARING AUTH.
		CLEARING AUTH.
		CLEARING AUTH.
	X	DEPUTY CITY MANAGER
	X	AUDITOR
	X	CITY ATTORNEY
	X	ORIGINATING DEPARTMENT
	✓	Mgr. Dkl Clerk _____ Council Rep _____ Date _____
		RULES COMMITTEE <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> Refer to _____ Date _____
		APPROVAL
		DATE SIGNED
		8/4/86
		8/5/86
		8/7/86
		8/12/86
		8/21/86

COPYRIGHT, © 1935 BY Thomas Blinn Map



ADOPTED ON _____

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a lease amendment with SEA WORLD, INC., a Delaware corporation, a copy of which is on file in the office of the City Clerk as Document No. RR- _____, which lease amendment will require Sea World, Inc. to contribute monies for traffic impact mitigation as required by any future local coastal program in Mission Bay Park.

APPROVED: JOHN W. WITT, City Attorney

By: /s/ Harold O. Valderhaug
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/11/86
Or.Dept:Prop.
Job:219045
R-87-325
Form=r.none

**SEA WORLD
DOCUMENTS**

Lease Amendment

Document No. OO-18538-1

June 29, 1998

- Parcel "A" Property 4 added - 16.5 acres South Shores
- Parcel "A" Property 5 added - physically traveled portion of Perez Cove Way between Sea World Drive and Ingraham Street.
- Minimum rent revised to \$4,500,000 and adjustments revised.
- Surcharge stated as three (3%) percent.
- Percentage rent rate adjustments beginning January 1, 2004 and every ten years thereafter.
- Insurance requirements revised to Five Million (\$5,000,000) Combined Single Limit Liability.
- Environmental Matters added.
- Minimum rent change if substantial change in entitlements occurs, e.g.—Removal of the 30 foot height limit,

**SEA WORLD
DOCUMENTS**

Land/Water Acreage

Parcel "A"	Property 1	Land	123.577 acres
Parcel "A"	Property 2	Land	25.002 acres
Parcel "A"	Property 3	Land	0.894 acres
Parcel "A"	Property 4	Land	16.37 acres
Parcel "A"	Property 5	Land	7.34 acres
Parcel "B"	Property 1	Water	16.932 acres
Parcel "B"	Property 2	Water	0.082 acres

**SEA WORLD
DOCUMENTS**

**Maintenance Permit
Document No. OO-18538-2
June 29, 1998**

- Landscape maintenance permit for Perez Cove Way.

LEASE AMENDMENT

This Lease Amendment ("Amendment"), executed in duplicate as of June 29, 1998, at San Diego, California, by and between **THE CITY OF SAN DIEGO**, a municipal corporation in the County of San Diego, State of California ("CITY"), as lessor, and **SEA WORLD, INC.**, a Delaware corporation, 1720 South Shores Road, San Diego, California 92109 ("LESSEE"), as lessee, is made with reference to the following facts:

A. CITY leases to LESSEE and LESSEE leases from CITY certain real property in Mission Bay Park (the "Premises") described in lease amendments dated December 14, 1977, January 29, 1979, December 12, 1983, June 24, 1985, and September 22, 1986, and filed in the office of the City Clerk of San Diego as Document Nos. 762304, 765767, RR-259814, RR-263507, and RR-266641; respectively (hereinafter the foregoing lease amendments are collectively referred to in this Amendment as the "Lease").

B. The parties hereto desire to amend the Lease as hereinafter provided.

THEREFORE, in consideration of the mutual covenants contained herein, the Lease is hereby amended to provide, and LESSEE and CITY hereby agree, as follows:

1. Article I, DEMISE, is hereby amended by a) deleting the last sentence of the section; and b) adding to the Premises 16.5 land acres, hereinafter Parcel "A" Property 4 and the physically-traveled portion of Perez Cove Way between Sea World Drive and Ingraham Street, hereinafter Parcel "A" Property 5, described on Exhibit 3 and delineated on Exhibit 4, attached hereto.

2. Article II, TERM, is hereby amended to read as follows:

"The term of this agreement shall be fifty (50) years, commencing on the first day of July, 1998. In no event shall the term exceed the period allowed by law, and the term shall be deemed to be the lesser of the period referred to herein or the maximum period allowed by law."

3. The preface to Paragraph A, Article IV, RENT, is hereby amended to read as follows:

"The rent which LESSEE hereby agrees to pay to CITY shall be as follows:"

4. The first paragraph of Paragraph A, Article IV, RENT, is hereby amended to read as follows:

"LESSEE shall pay to CITY a sum of money per annum equal to the total of the sums computed on the basis of the various percentages of LESSEE's gross income from the Premises as hereinafter set forth in this Article IV, or the minimum yearly rent as hereinafter set forth in this Article IV, whichever of the two sums is the greater, together with the "Surcharge" (as hereinafter defined in this Article IV)."

5. Subparagraph A.2 of Article IV, RENT, is hereby amended as follows:

“The minimum rent for the Premises shall be the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) for each accounting year. The minimum rent shall be prorated for a partial accounting year, commencing with the accounting year beginning with the commencement of the term of this Lease; provided that for the period of three full accounting years commencing at the end of the three full accounting years following commencement of the term of this Lease and for each subsequent period of three full accounting years during the term of this Lease, the minimum rent shall be adjusted to an amount equal to eighty percent (80%) of the “average accounting year rent” (determined as provided below) actually paid for the three previous full accounting years, but no such adjustment shall result in a decrease in the minimum rent in effect immediately prior to the adjustment date. For purposes of adjusting the minimum rent as provided above, the “average accounting year rent” shall be the average of the rent for the three full accounting years immediately preceding an adjustment date unless the highest rent of said three years differs from the middle rent of said three years by more than ten percent (10%) of the middle rent, in which case the “average accounting year rent” shall be the average of the middle rent and the lowest rent of said three years. In addition to the foregoing, the minimum rent may be adjusted from time to time during the term of this Lease pursuant to Article XLII, ADDITIONAL RENTAL ADJUSTMENT UPON CHANGE IN ENTITLEMENTS, below.”

6. A new Subparagraph A.l.r of Article IV, RENT, is hereby added as follows:

“In addition to any other rent provided in this Lease, LESSEE shall also pay on an annual basis an amount equal to three percent (3%) of the greater of the two sums calculated in accordance with Paragraph C of this Article IV (the ‘Surcharge’).”

7. Subparagraph A.5(a) of Article IV, RENT, is hereby amended to read as follows:

“5(a) As of January 1, 2004 and thereafter as of the beginning of each tenth accounting year thereafter (the “adjustment dates”), the percentage rates used to compute the percentage rent for the succeeding period until the next adjustment date may be adjusted to reflect fair market rental rates then generally in effect; provided that there shall be no adjustment as of the final adjustment date unless there are at least five (5) years remaining of the term of this Lease. At least eighteen (18) months prior to each such adjustment date, the parties shall negotiate in good faith to determine whether one or more or none of the rates then in effect should be adjusted and, if so, the extent of any such adjustment or adjustments. In the event that such determination is not made by mutual consent of the parties prior to fifteen (15) months before each adjustment date, either party may refer the matter to arbitration pursuant to Subsection (b) below, by giving the other party a written demand therefor prior to twelve (12) months before the applicable adjustment date. Notwithstanding the foregoing, no adjustment or adjustments, if any, of the percentage rate applicable to gross income derived from the sale of general admission tickets, as provided in Subsection A.l.c of Article IV of this Lease, shall cause said rate ever to exceed four percent (4%) during the term, and, further, no one adjustment of said rate may exceed one (1) percentage point; provided, that said four

percent (4%) limitation shall not apply to gross income, if any, received by LESSEE from the sale of general admission tickets that is attributable to the furnishing of goods or services for which other particular percentage rental rates are specified in this Lease and for which a separate charge is normally made. The imposition of the foregoing limitations does not suggest or imply that the rate applicable to charges for general admission tickets should ever be adjusted at all or in any particular amount, and the arbitrators shall be instructed not to consider the existence of such limitations in any arbitration. In addition to the foregoing, the percentage rates used to compute the percentage rent may be adjusted from time to time during the term of this Lease pursuant to Article XLII, ADDITIONAL RENTAL ADJUSTMENT UPON CHANGE ENTITLEMENTS, below.”

8. Subparagraph A.5(b)(2) of Article IV, RENT, is hereby amended to read as follows:

“If the parties cannot agree on a mutually acceptable arbitrator prior to ten (10) months before the applicable adjustment date, each party, within ten (10) days thereafter, shall appoint an arbitrator and give written notice of such appointment to the other party. The two arbitrators shall immediately choose a third arbitrator to work with them. If the two arbitrators fail to select a third arbitrator within ten (10) days following the date of their appointment, on written application by either party the third arbitrator shall be promptly appointed by the then presiding judge of the Superior Court of the State of California, County of San Diego, acting in his individual capacity. The party making the application shall give the other party written notice of its application.”

9. Paragraph C of Article IV, RENT, is hereby amended to read as follows:

“For purposes of this Paragraph C, the term of this Lease shall be divided into “accounting years” and each accounting year into “accounting periods.” Each accounting year will be commensurate with each calendar year during the term of this Lease and each— accounting period shall be commensurate with each month during each calendar year; provided, however, that if the first day of the term is a date other than January 1, then the first accounting year shall commence with the commencement of the term of this Lease, as provided in Article II above, and extend through December 31 of that year, and the last accounting year shall extend from the last January 1 through the end of the term.

“On or before the last day of each accounting period LESSEE shall render to CITY, in a form prescribed by CITY, a detailed report of gross income for that portion of the accounting year which ends with and includes the last day of the immediately preceding accounting period. Each report shall be signed by LESSEE or its responsible agent under penalty of perjury, attesting to the accuracy thereof, shall be legally binding upon LESSEE, and shall include the following: (1) the total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rental rate is established; (2) the related itemized amounts of percentage rent computed as herein provided and the total thereof; and (3) the total rent previously paid by LESSEE for the accounting year within which the immediately preceding accounting period falls. Concurrently with the rendering of each report LESSEE shall pay to CITY, in payment of the percentage or minimum rent required by Section A of this Article IV, the greater of the following two amounts:

- “1. The total percentage rent computed for that portion of the accounting year ending with and including the last day of the immediately preceding accounting period (Item (2) above), less total rent previously paid for the accounting year (Item (3) above); or
- “2. One-twelfth (1/12) of the minimum rent, multiplied by the number of accounting periods from the beginning of the accounting year to and including the immediately preceding accounting period, less total rent previously paid for the accounting year (Item (3) above), Notwithstanding the foregoing the final accounting year and accounting period shall end on the last day of the term of this Lease, as the same may be extended, and the accounting and reporting therefor shall be furnished to CITY within thirty (30) days thereafter.

“In addition, the Surcharge referred to in subsection A.1.r above shall be payable concurrently with the rendering of each report referred to above in an amount equal to three percent (3%) of the payment required to be made for the accounting period covered by such report provided that the amount of the Surcharge shall be adjusted at the end of each accounting year as necessary to ensure that the Surcharge shall be no more or no less than three percent (3%) of the total rental due for such accounting year without taking the Surcharge into account. In calculating the amounts due each accounting period as provided in subsections 1 and 2 of this subsection C, the ‘total rent previously paid for the accounting year’ shall not include any payments of the Surcharge. Notwithstanding the foregoing, there shall be an adjustment at the end of each accounting year, if and to the extent necessary to ensure that LESSEE shall pay no more and no less than the minimum rent or the percentage rent, computed on an annual basis, whichever is greater.”

10. Article XXIII, INSURANCE, is hereby amended to increase the amount of public liability and property damage insurance required, from an amount not less than One Million Dollars (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY to an amount not less than Five Million Dollars (\$5,000,000) COMBINED SINGLE LIMIT LIABILITY.

11. Article XXV, ENVIRONMENTAL MATTERS, is hereby added as follows:

“ARTICLE XXV

ENVIRONMENTAL MATTERS

A. Applicable Premises. The provisions of this Article XXV shall apply only to Parcel “A” Property 4, and shall not apply to any other portion of the Premises. The rights and obligations of CITY and LESSEE, respectively, with respect to Hazardous Substances (defined below) on, in and with respect to such other portions of the Premises shall instead be governed by applicable law, The term “Hazardous Substances” means those substances designated as such by the Environmental Protection Agency at 40 C.F.R. 302 or listed under California Labor Code Section 6382(b), as such regulations and lists may be amended from time to time, Hazardous Substances include, but are not limited to, such substances and materials in the ground of Parcel “A” Property 4 due to the use of the property as a municipal solid waste site prior to the commencement of this Lease.

B. Prohibited Releases. For the purposes of this Article XXV, "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of Hazardous Substances, but excludes incidental occurrences consistent with the normal use of motor vehicles', or consumer, household or office products. Except as authorized by applicable law, permit or regulation, LESSEE will not Release any Hazardous Substance used or produced by its operations in, on, under or from Parcel "A" Property 4.

C. Notification Requirements. If LESSEE knows or has reasonable cause to believe that LESSEE has caused a Release of any Hazardous Substance on or beneath Parcel "A" Property 4, in violation of this Article, LESSEE shall give written notice to the City Manager within 24 hours. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such—danger. LESSEE will notify the City Manager immediately of LESSEE's receipt of any notice of violation or claim received or the initiation of any environmental action, public or private, relative to any Hazardous Substances on, at or adjacent to Parcel "A" Property 4.

If CITY knows or has reasonable cause to believe that a Hazardous Substance previously Released as a result of the CITY's prior municipal solid waste site use is continuing to Release, or otherwise constitutes an imminent and substantial danger to public health and safety, CITY shall notify the LESSEE upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. CITY will notify LESSEE within five (5) working days of receipt of any notice of violation or claim received or the initiation of any environmental legal proceeding, public or private, relative to any Hazardous Substance, on, at or adjacent to Parcel "A" Property 4.

D. Compliance with Postclosure Land Use Conditions . LESSEE recognizes that all improvements above previously closed landfills constitute Postclosure Land Use, and therefore these improvements must comply with all of the conditions contained in the California Code of Regulations, Title 27, Section 21190, Postclosure Land Use. LESSEE's improvements shall be designed and maintained to protect public health and safety, and prevent public contact with waste, landfill gas and leachate.

LESSEE's improvements shall be constructed to retain the integrity of the final cover, the component of the containment system such as drainage and erosion control systems, and the functions of the monitoring system. The foundation system shall be designed to accommodate the anticipated total and differential settlements. Buried utility conduits shall be designed with flexible couplings and must be double lined to handle differential settlement, Utility conduits leading into the site shall be designed to include automatic pressure-sensitive shutoff valves and restrained pipe joints. All trees,

shrubs, plants and similar items shall be contained within precast concrete pots, and watered by means of a double sleeved, below ground, automatically controlled irrigation system. Irrigation Water inspection boxes must be included in the plan to allow for visual leak detection. The construction detail for installing water and irrigation lines must be submitted to the Local Enforcement Agency for review and approval.

Prior to implementation of the project, LESSEE shall provide to the Local Enforcement Agency, the following items for review and approval:

- Community Health & Safety Plan.
- Grading Plan and drainage calculations for the parking lot.
- Irrigation Plan, which must include, among other items, the location of irrigation lines, controller valves, plants and other pertinent information as related to landscape irrigation.
- Monitoring Plan.
- Maintenance Program.
- Construction schedule.

LESSEE shall develop and implement an aggressive maintenance plan, including inspection of the site to observe if the site suffers from settlement, leaks from water system and flexible utilities, ponding and cracks.

E. CITY Indemnity. CITY hereby agrees to indemnify, defend and hold harmless LESSEE from and against any and all claims, actions, damages, liability and expense (including, reasonable attorney's fees and costs and damages for injury to natural resources or the public, and costs of any health assessment or health effect studies) in connection with the investigation, response to and/or remediation of the existence or Release of any Hazardous Substance existing on and in Parcel "A" Property 4 as of the commencement of the term of this Lease, except to the extent the Release is caused by the disturbance of such substances by LESSEE's operations, including, without limitation, the construction of excavations, footings and piles. Any of the foregoing notwithstanding, a Release of any Hazardous Substance existing on and in Parcel "A" Property 4 as of the commencement of the term of this Lease shall not be deemed to be caused by the disturbance of such substances by LESSEE's operations as a result of LESSEE'S use of Parcel "A" Property 4, as long as Lessee has continuously complied and is in current compliance with all material rules, regulations and conditions set forth in that certain Postclosure Land Use Plan for Mission Bay South Shores Phase 3, Landfill Facility No. 37-AA-0026, Revised October 1995, as may be amended from time to time as a result of a change in use or state or federal regulatory actions (the "Closure Rules"). Furthermore, LESSEE shall not be responsible for any Release or continuing Release occurring before the commencement of LESSEE's occupancy of Parcel "A", Property 4, that continues to emanate, spread or migrate after that date except to the extent such Release or continuing Release is solely attributable to the activities of LESSEE in violation of the Closure Rules. LESSEE shall be deemed to have continuously complied with the Closure Rules if any failure to comply has been cured to the reasonable satisfaction of the applicable authorities.

F. LESSEE Indemnity. LESSEE hereby agrees to indemnify, defend and hold harmless CITY from and against any and all claims, actions, damages, liability and expense (include reasonable attorney's fees and costs and damages for injury to natural resources or the public, and costs of any health assessment or health effect studies) in connection with the investigation, response to and/or remediation of the existence or Release of any Hazardous Substance in or from the municipal waste site located in, on and at Parcel "A" Property 4, to the extent such costs are incurred due to a Release and to the extent that such Release is caused by LESSEE's operations, including the disturbance by LESSEE of any Hazardous Substances existing on and in Parcel "A" Property 4 as of the commencement of the term of this Lease. Any of the foregoing notwithstanding, a Release of any Hazardous Substance existing on and in Parcel "A" Property 4 as of the commencement of the term of this Lease shall not be deemed to be caused by the disturbance of such substances by LESSEE's operations as a result of LESSEE's use of Parcel "A" Property 4 as long as Lessee has continuously complied. and is in current compliance with all material portions of the Closure Rules. Furthermore, LESSEE shall not be responsible for any Release or continuing Release occurring before the commencement of LESSEE's improvements or occupancy of Parcel "A" Property 4, that continues to emanate, spread, or migrate after that date except to the extent such Release or continuing Release is solely attributable to the activities of LESSEE in violation of the Closure Rules. LESSEE shall be deemed to have continuously complied with the Closure Rules if any failure to comply has been cured to the reasonable satisfaction of the applicable authorities.

G. Maintenance. LESSEE recognizes that there will be increased maintenance as a result of the location of LESSEE's improvements over the municipal waste site. LESSEE agrees it shall be solely responsible for any increased maintenance on Parcel "A" Property 4, which occurs as a result of LESSEE'S improvements to and/or occupancy of Parcel "A" Property 4. LESSEE shall permit access to CITY and other regulatory agency representatives to inspect any Release, monitor any substance, or perform any other actions related to maintaining regulatory compliance regarding buried municipal waste located in, on and at Parcel "A" Property 4, with 24-hour advance notice. CITY shall make all best efforts to ensure that CITY's use of LESSEE's parking facilities shall not interfere with LESSEE's operations. LESSEE shall respond to written requests from CITY's Environmental Services Department, to maintain landfill surfaces according to regulatory requirements. LESSEE will also be responsible for any health and safety plans for Parcel "A" Property 4 resulting from LESSEE's improvements to and/or occupancy of Parcel "A" Property 4.

H. CITY's and LESSEE's obligations under this Article XXV shall survive the expiration or earlier termination of this Lease."

12. Subparagraph A of Article XXXII, GENERAL DEVELOPMENT PLAN, is hereby amended to read as follows:

“From and after the commencement of the term of this Lease the further development of the Premises shall be generally in accordance with the Development Plan for the Premises approved by the City Council and on file in the office of the City Clerk as Document No. RR-263507, as the same may from time to time be amended in writing by and between CITY and LESSEE (“Development Plan”), and, to the extent applicable, CITY’s MISSION BAY PARK MASTER PLAN UPDATE as the same is amended from time to time. It is understood that the Development Plan is a conceptual plan only, and that the depictions of the approved uses and improvements are illustrative only and are not binding as to the exact configuration and location of the uses and improvements authorized.

13. Subparagraph B of Article XXXII, GENERAL DEVELOPMENT PLAN, is hereby amended to read as follows:

“From and after the commencement of the term of this Lease, LESSEE shall implement the First Phase (as defined below) of the development plan attached hereto as Exhibit “5” (hereinafter referred to as the “New Plan”) as soon as practicable after LESSEE obtains the City Manager’s approval and all other required permits and approvals for the. First Phase of the New Plan (provided that commencement of construction of the First Phase of said plan shall not be required prior to the expiration of two (2) years following the commencement of the term of this Lease), and shall proceed diligently and without undue delay to completion thereof. “First Phase” shall mean the development and construction of a parking area. Subsequent new development included in the New Plan shall be new animal exhibits, interactive experiences, and/or theme attractions, subject to prior approval by the City Manager. LESSEE shall submit plans to CITY for such new exhibits or attractions prior to January 1, 2001. From and after the commencement of the term of this Lease, LESSEE shall make an aggregate investment (including direct and indirect construction costs and costs for architects, engineers, consultants fees and permitting and related expenses) of at least \$5,000,000, including at least \$1,000,000 attributable to Parcel “A” Property 4.”

14. [intentionally omitted.]

15 Subparagraph D of Article XXXII, GENERAL DEVELOPMENT PLAN, is hereby amended to read as follows:

“Should LESSEE fail to commence construction of the First Phase as provided above, subject to delays beyond LESSEE’s reasonable control, then Parcel “A” Property 4 shall revert to CITY, at CITY’s option, free and clear of this Lease or any other interest of LESSEE, unless LESSEE commences construction within thirty (30) days following receipt of written notice from CITY of its intention to cause such reversion, given on or after the date LESSEE should have commenced construction, subject to delays beyond its reasonable control. If requested by CITY, and if CITY’s notice of election is valid and LESSEE fails to commence construction within said thirty (30) day period, LESSEE shall execute, acknowledge, and deliver to CITY a quitclaim deed whereby LESSEE shall quitclaim all of its right, title and interest in Parcel “A” Property 4. Such reversion of Parcel “A” Property 4 shall be CITY’s sole remedy for LESSEE’s failure to timely commence construction of the First Phase of the improvements referred to in Exhibit “5,” New Plan.”

16. Article XXXVII, NONDISCRIMINATION, is hereby amended to read ‘ as follows:

“LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE’s use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations and the obtaining and holding of employment.”

17. Article XXXIX, INSTITUTIONAL ADVERTISING, is hereby amended to read as follows:

“Institutional advertising, as authorized herein, shall mean corporate sponsorship of certain exhibits and attractions of the Premises whereby the sponsors may promote, or cause to be promoted or advertised, their products and/or services on said Premises. LESSEE agrees to control said institutional advertising to whatever extent necessary to maintain compatibility thereof with the primary purpose of a Marine Life Exhibit on the Premises and with CITY standards for the general development and uses of Mission Bay Park. CITY agrees to accept such institutional advertising as exists on the Premises as of the effective date of this Amendment to Lease Agreement; thereafter, however, all new contracts for institutional advertising on the Premises shall require the prior written approval of the City Manager. The CITY shall not impose a fee for approval of institutional advertising contracts, which are renewal contracts containing the same conditions as the previous contract, except for the term of the contract.”

18. Article XL, AFFIRMATIVE ACTION, is hereby deleted and the following is added in its place:

“ARTICLE XL

COMPLIANCE WITH CITY’S EQUAL
OPPORTUNITY CONTRACTING PROGRAM

a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY’S commitment to equal employment opportunities.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year."

19. The following provisions shall be added to Article XLI, GENERAL:

"H. So long as LESSEE operates a water ski and personal watercraft show in the lagoon, LESSEE agrees to conduct one boating safety class each year for the duration of this Lease. LESSEE will make a good faith effort to assemble 2,500 personal watercraft owners and operators, and working with CITY's Lifeguard Services Division, present to the audience boating safety information. The boating safety class will include exhibition riding by professional personal watercraft operators and displays of personal watercrafts. A nominal fee may be charged to the attendees and will include admittance to Sea World park on the day of the event. LESSEE may limit the number of individual ticket orders to four tickets. Twenty-five percent (25%) of the gross revenue from this event will be donated to the San Diego Lifeguard Service Boating Safety Education Fund.

I. CITY has requested that LESSEE contribute to the development of a nature center in Mission Bay Park after CITY develops a concept for the center. LESSEE has indicated to CITY, and CITY understands, that it cannot make any binding commitments for support of a nature center but agrees to cooperate with CITY and will consider providing in-kind support by, for example, its internal graphic design personnel and facilities, provided that the expenditures are not material.

J. LESSEE agrees to comply with the California Coastal Act, at its sole cost and expense, and, to the extent legally required, to apply to the California Coastal Commission or such other authorized state or local body for necessary coastal development permits authorizing the construction of any other improvements in the coastal zone.

K. LESSEE agrees to allow City to use LESSEE'S parking facilities, located on Parcel "A" Property 4, as needed by CITY for parking for patrons of the proposed Amphitheater, or for patrons of other CITY special events, during those times such parking facilities are not needed by LESSEE, City shall make all best efforts to ensure that CITY'S use of LESSEE'S parking facilities shall not interfere with LESSEE'S operations. CITY shall notify LESSEE of CITY'S desire to use LESSEE'S parking facilities as far in advance as is practical, and LESSEE shall respond to such request in a timely manner. LESSEE agrees to install a gate in the fence on the easterly side of the Premises in order to facilitate said parking, at a location to be selected by LESSEE and approved by CITY, which approval shall not be unreasonably withheld.

CITY agrees to indemnify and hold LESSEE harmless from and against any claims asserted or liability established for damages or injuries to any person or property which arise out of CITY'S use of the parking facilities; provided, however that CITY'S duty to indemnify shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of LESSEE, its agents, officers or employees.

L. This Lease Amendment shall not become effective until it has been approved by resolution of the Board of Directors of LESSEE and of LESSEE'S parent company."

20. Article XLII, ADDITIONAL RENTAL ADJUSTMENT UPON CHANGE OF ENTITLEMENTS, is hereby added as follows:

A. From time to time during the term of this Lease, the minimum rent shall be adjusted as set forth in this Article XLII upon the occurrence of a "Substantial Change in Entitlements," as defined below.

B. As used herein, a "Substantial Change in Entitlements" shall mean the occurrence of an event or events pursuant to which LESSEE shall thereafter be fully and completely vested under this Lease and pursuant to all applicable laws (such that all discretionary approvals have been obtained) to use the Premises in a manner different from that contemplated by this Lease immediately prior to such Substantial Change in Entitlements such that the value of LESSEE'S leasehold interest is increased thereby. By way of an example and not as a limitation, a Substantial Change in Entitlements may include an increase in, or removal of, the statutory thirty foot (30') height restriction currently imposed upon the Premises, together with an amendment to the Mission Bay Park Master Plan and LESSEE'S master plan to allow development of the Premises consistent therewith (including the receipt of all California Coastal Commission approvals necessary in connection therewith), LESSEE'S obtaining (on a fully vested and irrevocable basis) all other city, state, federal and other governmental approvals, permits and entitlements (other than building permits) necessary in connection therewith in order to fully vest LESSEE with the right to develop the Premises in connection therewith, and

LESSEE's obtaining such approvals of CITY as are required under this Lease to develop the Premises in connection therewith. Any of the foregoing notwithstanding, a Substantial Change in Entitlements shall not include LESSEE's obtaining CITY's consent to, and other necessary governmental approvals for, the further development of the Premises in a manner consistent with and contemplated by this Lease and the Development Plan and pursuant to uses already allowed under this Lease. Nor shall this Article XLII be applicable to a request by LESSEE for the addition of a new use for the Premises not currently allowed by this Lease (including but not limited to the development of a hotel on the Premises); the parties acknowledge that any such additional use not currently permitted pursuant to this Lease shall require the consent of CITY and the agreement of both parties as to the rent to be charged by CITY under this Lease in connection therewith.

C. Upon the occurrence of a Substantial Change in Entitlements, the minimum rent shall be adjusted equitably as a result of the increase in value, if any, resulting solely from the Substantial Change in Entitlements. Such adjustment in minimum rent shall not include any increase in fair market rental value arising for any other reason, including, but not limited to, improved economic conditions, a general increase in land values, inflation, improvements to the Premises made by LESSEE, or a decrease in competition for tourist or recreational spending. Such adjustment in minimum rent shall, be made only with respect to the incremental increase in value, if any, resulting solely from the Substantial Change in Entitlements. Nothing herein shall be deemed to imply that an increase in value shall result from a Substantial Change in Entitlements.

D. Upon the occurrence of a Substantial Change in Entitlements, the parties shall negotiate in good faith to determine whether the minimum rent then in effect should be adjusted pursuant hereto, and, if so, the extent of any such adjustment. In the event that such determination is not made by mutual consent of the parties within one (1) year of such Substantial Change in Entitlements, either party may refer the matter to arbitration in accordance with the following provisions:

1. If the parties cannot agree upon a mutually acceptable arbitrator within thirty (30) days after the written demand therefore, each party shall, within ten (10) days thereafter, appoint an arbitrator and give written notice of such appointment to the other party. The two (2) arbitrators shall immediately choose a third arbitrator to work with them. If the two (2) arbitrators fail to select a third arbitrator within ten (10) days following the date of their appointment, on written application by either party, the third arbitrator shall be promptly appointed by the then-presiding judge of the superior court of the State of California, County of San Diego, acting in 'his individual capacity. The party making the application shall give the other party written notice of its application.

2. Unless the parties otherwise agree, all of the arbitrators shall be members in good standing of the American Institute of Real Estate Appraisers with an M.A.I. designation and shall have at least five (5) years experience in appraising commercial and other properties. Each party shall bear the expenses of its own appointed appraiser and shall bear other expenses pursuant to section 1284.2 of the California Code of Civil Procedure. Hearings shall be held in the City of San Diego, California. If there

EXHIBIT 3

LEGAL DESCRIPTION: PARCEL "A"; PROPERTY 4 (EAST LEASE EXPANSION)

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY) AND A PORTION OF PUEBLO LOTS 252 AND 258 OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2,000.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC TRIANGULATION, STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X=1,712,415.17 AND Y=213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING-ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 3773.34 FEET AND WEST 10,533.21 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 3773.34 AND WEST 10,533.21, SAID TRUE POINT OF BEGINNING BEING A POINT ON A LINE THAT IS PARALLEL WITH AND 79.50 FEET AT RIGHT ANGLES NORTHERLY FROM THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14985-1-D, SAID POINT BEING OPPOSITE AT RIGHT ANGLES FROM ENGINEER'S STATION 44+32.70 ON SAID CENTERLINE; SAID POINT ALSO BEING THE BEGINNING OF A 1920.50 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL TO WHICH BEARS SOUTH 07° 44' 17" EAST; (1) THENCE WESTERLY ALONG THE ARC OF SAID CURVE AND PARALLEL TO SAID CENTERLINE THROUGH A CENTRAL ANGLE OF 00°49' 15" A DISTANCE OF 27.51 FEET TO THE MOST SOUTHEASTERLY CORNER OF THE SEA WORLD LEASE AREA AS DESCRIBED IN LEASE AMENDMENT PER CITY COUNCIL RESOLUTION NO. 263507, ADOPTED JUNE 24, 1985, AND ON DOCUMENT NO. 769275 ADOPTED DECEMBER 10, 1985, BOTH IN THE OFFICE OF THE CITY CLERK OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA; (2) THENCE ALONG THE EASTERLY BOUNDARY OF SAID LEASE AREA NORTH 00°17'19" WEST, 1,456.09

FEET ;(3) THENCE CONTINUING ALONG THE BOUNDARY OF SAID LEASE AREA NORTH 55°43'04" WEST, 660.41 FEET; (4) THENCE ALONG SAID BOUNDARY NORTH 71°35'40" WEST, 598.11 FEET; (5) THENCE ALONG SAID BOUNDARY NORTH 18° 24'20" EAST, 50.00 FEET; (6) THENCE LEAVING SAID LEASE BOUNDARY SOUTH 71°35'40" EAST, 1,192.78 FEET TO THE BEGINNING OF A TANGENT 2,200.00 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL TO WHICH BEARS SOUTH 18° 24'20" WEST; (7) THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 05°42'28" A DISTANCE OF 219.16 FEET; (8) THENCE SOUTH 12°41'52" WEST, 92.37 FEET TO THE BEGINNING OF A 60.00 FOOT RADIUS CURVE CONCAVE EASTERLY, A RADIAL TO WHICH BEARS NORTH 77°18'08" WEST; (9) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 66°05'56" A DISTANCE OF 69.22 FEET TO THE BEGINNING OF A REVERSE 10.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, A RADIAL TO WHICH BEARS NORTH 36°35'56" EAST; (10) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 56°54'10", A DISTANCE OF 9.93 FEET; (11) THENCE SOUTH 03°30'00" WEST, 323.08 FEET TO THE BEGINNING OF A TANGENT 900.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; A RADIAL TO WHICH BEARS NORTH 86°30'00" WEST; (12) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 65°29'51", A DISTANCE OF 1,028.83 FEET ; (13) THENCE SOUTH 07° 44'17" EAST, 200.00 FEET TO A POINT ON THE AFOREMENTIONED LINE THAT IS PARALLEL WITH AND 79.50 FEET AT RIGHT ANGLES NORTHERLY FROM THE CENTERLINE OF SEA WORLD DRIVE; (14) THENCE WESTERLY ALONG SAID PARALLEL LINE SOUTH 82°15'43" WEST, 706.66 FEET TO THE TRUE POINT OF BEGINNING.

(SAID PARCEL OF LAND CONTAINS 16.37 ACRES MORE OF LESS).

/s/ Clinton E. Hale 06-18-96

Clinton E. Hale, PLS 6787 Date

Hale Engineering

Registration Expires: 09-30-00

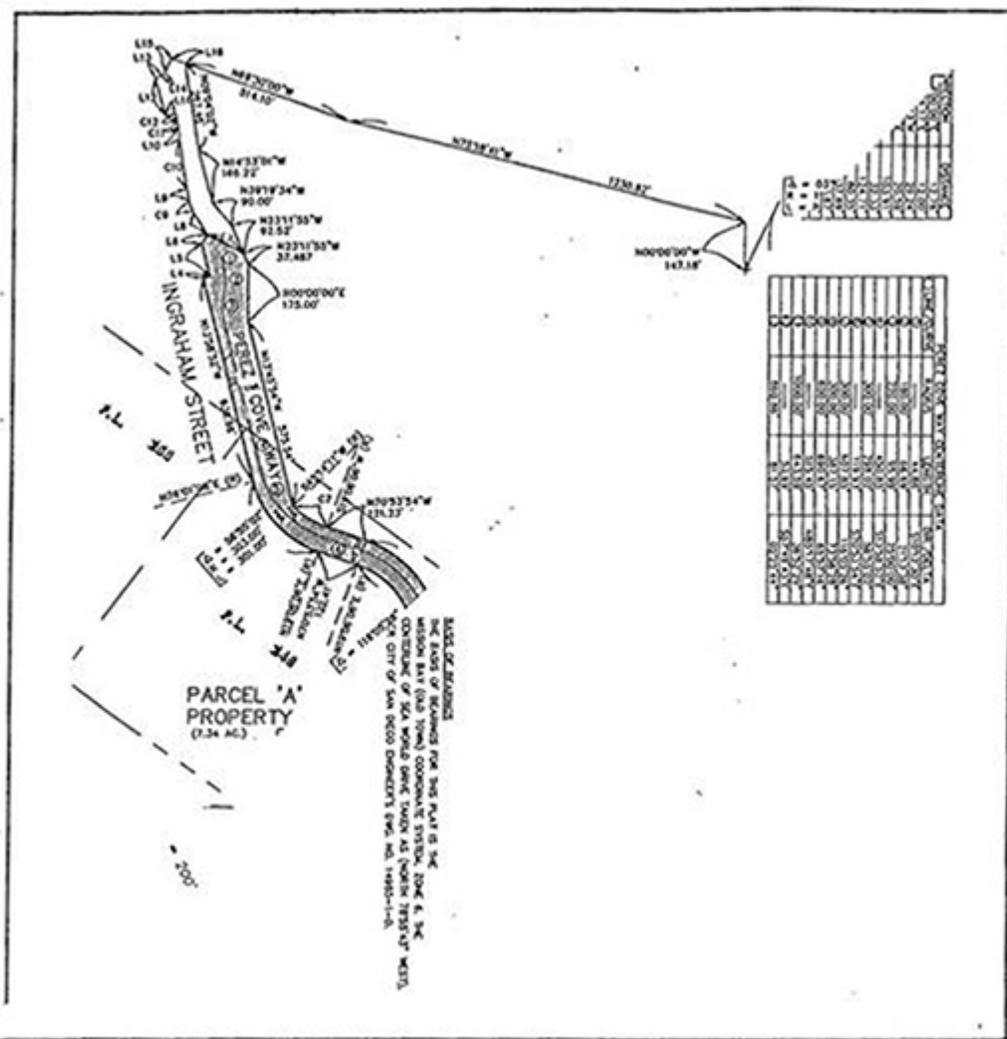


EXHIBIT 3

LEGAL DESCRIPTION: PARCEL "A"; PROPERTY 5 (PEREZ COVE WAY LEASE)

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY (FORMERLY FALSE BAY) AND A PORTION OF PUEBLO LOTS 246, 247, 248, 249, 250 and 252 OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 RESUBDIVISION OF BLOCKS 7, 8, AND 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89°55'56" WEST, (RECORD NORTH 89°59'00" WEST), 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00°04'04" EAST, 2000.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89°55'56" EAST, 249.70 FEET; THENCE NORTH 05°30'02" WEST, =104.06 FEET TO THE UNITED STATES COAST AND GEODETIC TRIANGULATION STATION "OLD TOWN" (THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X=1,712,415.17 AND Y=213,819.22) AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32°45'02" NORTH AND LONGITUDE 117°11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 3,921.99 FEET AND WEST 11,925.93 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY, THE MISSION BAY COORDINATES OF SAID TRUE POINT OF BEGINNING BEING NORTH 3,921.99 AND WEST 11,925.93, SAID TRUE POINT OF BEGINNING BEING A POINT ON A LINE THAT IS PARALLEL WITH AND 60.50 FEET AT RIGHT ANGLES NORTHERLY FROM THE CENTERLINE OF SEA WORLD DRIVE AS SHOWN ON CITY OF SAN DIEGO ENGINEER'S DRAWING NO. 14985-1-D, SAID POINT BEING OPPOSITE AT RIGHT ANGLES FROM ENGINEER'S STATION 30+00.00 ON SAID CENTERLINE; (1) THENCE PARALLEL TO SAID CENTERLINE NORTH 78°55'43" WEST, 346.04 FEET; (2) THENCE NORTH 57°49'43" WEST, 29.24 FEET TO THE BEGINNING OF A TANGENT 963.00 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL TO WHICH BEARS NORTH 32°10'17" EAST; (3) THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°52'29" A DISTANCE OF 619.77 FEET; (4) THENCE SOUTH 85°17'48" WEST, 529.75 FEET TO THE BEGINNING OF A TANGENT 600.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL TO WHICH BEARS SOUTH 04°42'12" EAST; (5) THENCE WESTERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 60°17'06" A DISTANCE OF 631.30 FEET; (6)

THENCE NORTH 34°25'06" WEST, 109.04 FEET TO THE BEGINNING OF A TANGENT 223.00 FOOT RADIUS CURVE CONCAVE EASTERLY, A RADIAL TO WHICH BEARS SOUTH 55°34'54" WEST; (7) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°22'23" A DISTANCE OF 102.97 FEET TO THE BEGINNING OF A COMPOUND 345.00 FOOT RADIUS CURVE CONCAVE EASTERLY, A RADIAL TO WHICH BEARS SOUTH 82°02'17" WEST; (8) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 53°09'15" A DISTANCE OF 320.06 FEET TO THE BEGINNING OF A REVERSE 255.00 FOOT RADIUS CURVE CONCAVE WESTERLY, A RADIAL TO WHICH BEARS SOUTH 44° 48'28" EAST; (9) THENCE NORTHERLY, NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 116°05'26" A DISTANCE OF 516.67 FEET; (10) THENCE NORTH 70°53'54" WEST, 122.41 FEET TO THE BEGINNING OF A TANGENT 303.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL TO WHICH BEARS SOUTH 19°06'06" WEST; (11) THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 56° 55'02" A DISTANCE OF 301.00 FEET; (12) THENCE NORTH 13°58'52" WEST, 636.66 FEET; (13) THENCE NORTH 76°01'08" EAST, 2059 FEET; (14) THENCE NORTH 13°58'52" WEST, 103.91 FEET; (15) THENCE NORTH 28°24'10" EAST, 32.33 FEET TO A POINT ON THE SEA WORLD LEASE AREA AS DESCRIBED IN LEASE AMENDMENT PER CITY COUNCIL RESOLUTION NO. 263507, ADOPTED JUNE 24, 1985, AND ON DOCUMENT NO, 769275 ADOPTED DECEMBER 10, 1985, BOTH IN THE OFFICE OF THE CITY CLERK OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA; (16) THENCE ALONG THE BOUNDARY OF SAID LEASE AREA SOUTH 61°35'50" EAST, 124,71 FEET; (17) THENCE SOUTH 23°11'55" EAST, 37.48 FEET; (18) THENCE SOUTH 00°00'00" EAST, 175.00 FEET; (19) THENCE SOUTH 13°45'54" EAST, 575.54 FEET TO THE BEGINNING OF A NON-TANGENT 270.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL TO WHICH BEARS SOUTH 45°14'11" WEST; (20) THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°08'05" A DISTANCE OF 123.16 FEET; (21) THENCE SOUTH 70°53'54" EAST, 121.23 FEET TO THE BEGINNING OF A TANGENT 332.00 FOOT RADIUS CURVE CONCAVE WESTERLY, A RADIAL TO WHICH BEARS NORTH 19°06'06" EAST; (22) THENCE SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 116°05'26" A DISTANCE OF 672.68 FEET; TO THE BEGINNING OF A REVERSE 268.00 FOOT RADIUS CURVE CONCAVE EASTERLY, A RADIAL TO WHICH BEARS NORTH 44°48'28" WEST; (23) THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 73°56'28" A DISTANCE OF 345.86 FEET; TO THE BEGINNING OF A COMPOUND 568.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL TO WHICH BEARS SOUTH 61°15'04" WEST; (24) THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 65°57'16" A DISTANCE OF 653.84 FEET; (25) THENCE NORTH 85°17'48" EAST, 515,45 FEET TO THE BEGINNING OF A TANGENT 1032,00 FOOT RADIUS CURVE CONCAVE SOUTHERLY, A RADIAL TO WHICH BEARS NORTH 04°42'12" WEST; (26) THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°52'29" A DISTANCE OF 664.18 FEET; (27) THENCE SOUTH 57°49'43" EAST, 53.69 FEET TO THE BEGINNING OF A TANGENT 828.86 FOOT

RADIUS CURVE CONCAVE NORTHERLY, A RADIAL TO WHICH BEARS SOUTH 32°10'17" WEST; (28) THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°06'00" A DISTANCE OF 305.24 FEET TO THE TRUE POINT OF BEGINNING.

(SAID PARCEL OF LAND CONTAINS 7.34 ACRES MORE OR LESS).

/s/ Clinton E. Hale 06-18-96

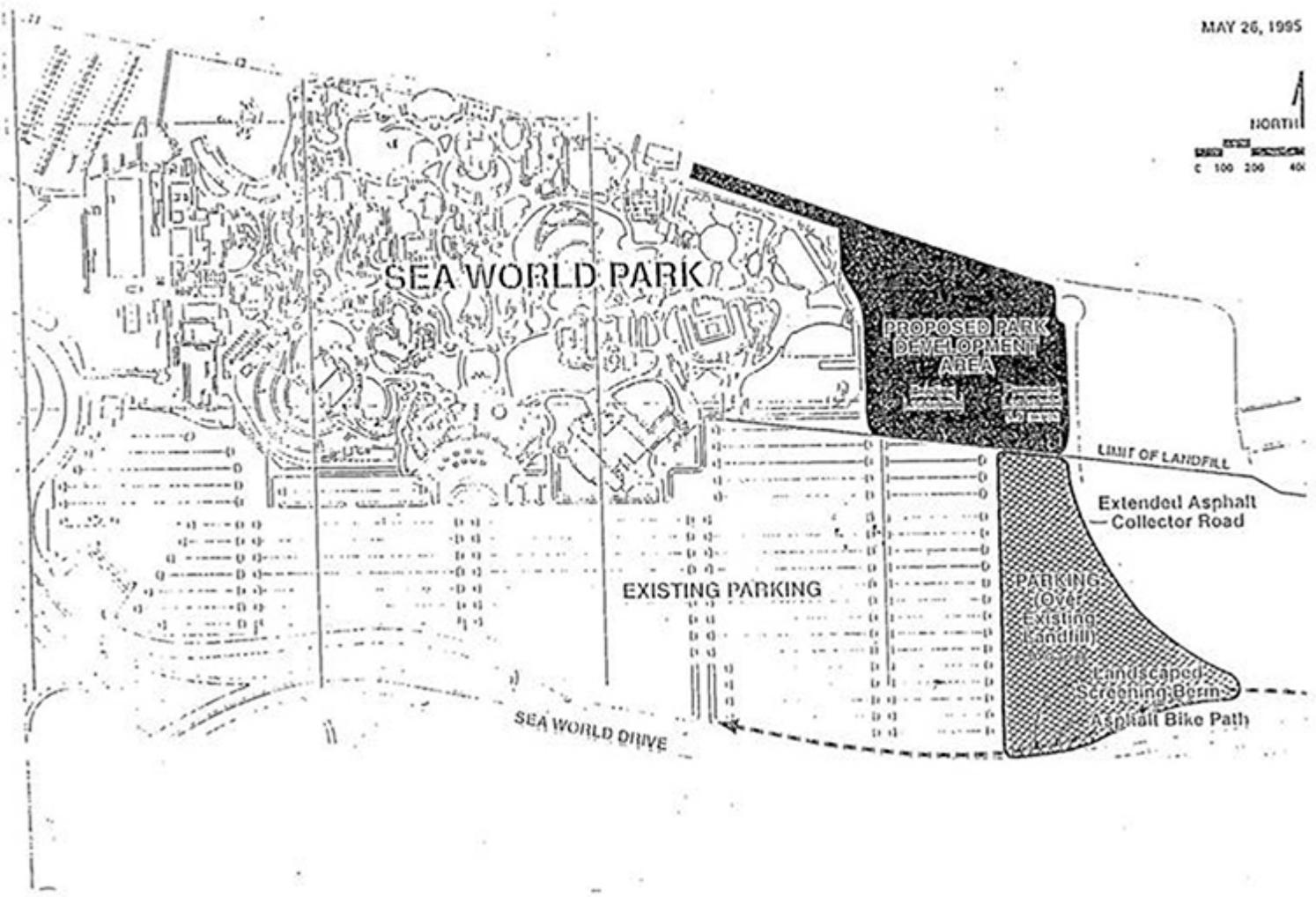
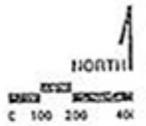
Clinton E. Hale, PLS 6787 Date

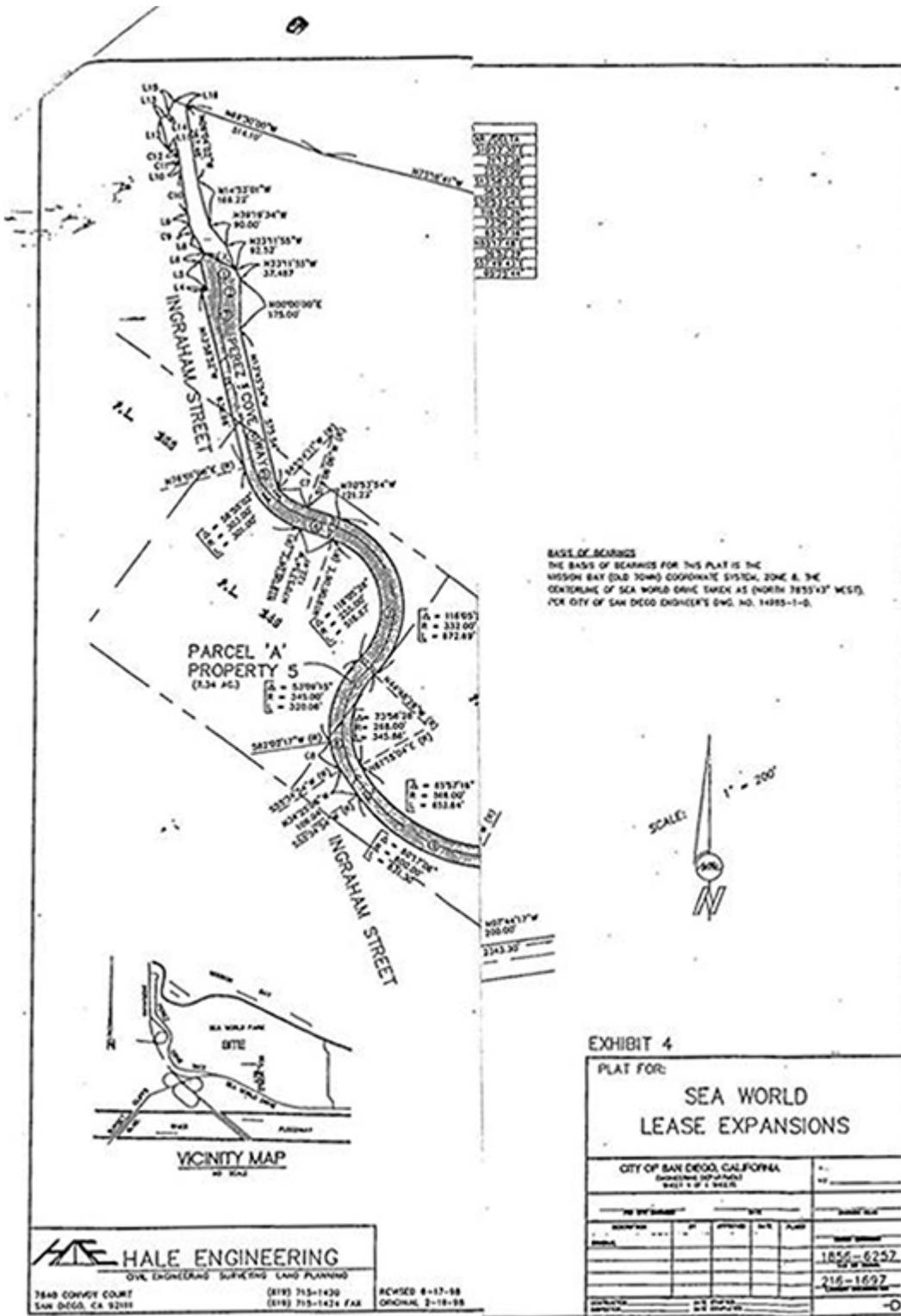
Hale Engineering

Registration Expires: 09-30-00

PROPOSED 16.5-ACRE EXPANSION for

MAY 26, 1995





RESOLUTION NUMBER R- 290216

ADOPTED ON JUN 0 8 1998

BE IT RESOLVED, by the Council of The City of San Diego, that it is hereby certified that Negative Declaration LDR No. 96-7987, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the Declaration reflects the independent judgment of The City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the Lease Amendment for the Sea World expansion of its facilities and parking.

APPROVED: CASEY GWINN, City Attorney

By: /s/ William T. Griffith
Deputy City Attorney

WTG:lc
05/27/98
Or.Dept:REA
R-98-1385
Form-ndmndgen.frm

NOTICE OF DETERMINATION

TO: County Clerk
County of San Diego
220 W. Broadway, MS C-11
San Diego, CA 92101

From: City of San Diego
Development Services
1222 First Ave., MS 501
San Diego, CA 92101

LDR No: 96-7987

SCH No. 98011076

Project Title: SEA WORLD LEASEHOLD/PARKING LOT EXPANSION

Project Location: The project site is located within the City's Mission Bay Regional Park. The site is on the South Shores area of the City's Mission Bay Park, adjoining Sea World to the east, generally south of Pacific Passage and north of Sea World Drive between 1-5 and W. Mission Bay Drive.

Project Description: The expansion of the Sea World leasehold by 16.5 acres. This proposal would allow the immediate use of 10.5 acres for the exclusive parking area for the amusement park visitors with the remaining 6 acres for future amusement park exhibits.

This is to advise that the City of San Diego City Council on June 8, 1998 approved the above described project and made the following determinations:

1. The project will not have a significant effect on the environment.
2. A Negative Declaration (LDR No.96-7987; SCH No.98011076) was prepared for this project and certified pursuant to the provisions of CEQA. R-290216
3. Mitigation measures were not made a condition of the approval of the project.

It is hereby certified that the final environmental document is available to the general public at the office of the Land Development Review, Development Services, 1222 First Avenue, Mail Station 501, San Diego, CA 92101.

Analyst: John M. Kovac
Sr. Env. Planner

Telephone: 236-268
File by: /s/ Peggy Rogers
Peggy Rogers
Deputy City Clerk

CALIFORNIA DEPARTMENT OF FISH AND GA
CERTIFICATE OF FEE EXEMPTION

*De Minimis Impact Finding or
One Fee Per Project Provision*

Project Title/Location: SEA WORLD LEASEHOLD/PARKING LOT EXPANSION/MISSION BAY PARK

LDR NO. 96-7987

SCH NO. 98011076

Project Applicants: City of San Diego
Real Estate Assets Dept.
1200 Third Avenue, MS 51A
San Diego, CA 92101

Sea World/Busch Entertainment Corp.
500 Sea World Drive
San Diego, CA 92109-7995

Project Description: The expansion of the Sea World leasehold by 16.5 acres. This proposal would allow the immediate use of 10.5 acres for the exclusive parking area for the amusement park visitors with the remaining 6 acres for future amusement park exhibits.

Findings of Exemption:

An Environmental Impact Report have been prepared by the Southeast San Diego Development Corporation for the project. The report concludes that the project would result in a de minimis impact to wildlife resources as all of the following apply:

1. No significant biological resources exist on the project site.
2. The project would have no adverse impacts on biological resources located off-site.
3. No biological studies were requested for the project.
4. No mitigation measures are proposed to address impacts to biological resources.
5. No conditions in any discretionary actions associated with the project address biological resource issues.
6. No broader impacts on a habitat (for example—urban runoff effects on wetland) were identified.

Certification:

I hereby certify that the lead agency has made the above findings of fact and that based upon the initial study and hearing record, the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

Tina Christiansen
Development Services Manager

By: /s/ Tina Christiansen
Title: Senior Environmental Planner
Lead Agency: City of San Diego
Date: June 5, 1998

ORDINANCE NUMBER 0-18538 (NEW SERIES)

ADOPTED ON JUN 29, 1998

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AMENDMENT AND MAINTENANCE AGREEMENT WITH SEA WORLD, INC., FOR A 23.5 ACRE EXPANSION AREA.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the City Manager is authorized to execute, for and on behalf of The City of San Diego, a Lease Amendment with Sea World, Inc., for a 16.5 acre parcel for the expansion of Sea World's facilities and parking, and 7 acres of Perez Cove Way, for a total of 23.5 acres, the market value of which is \$4,150,000 as determined by an independent fee appraisal, for a new fifty-year (50-year) term, under the terms and conditions set forth in that Lease Amendment on file in the office of the City Clerk as Document No. OO - 18538-1

Section 2. That the City Manager is authorized to execute, for and on behalf of The City of San Diego, a Maintenance Agreement with Sea World, Inc., under the terms and conditions set forth in that Maintenance Agreement on file in the office of the City Clerk as Document No. OO - 18538-2.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By: /s/ William T. Griffith

William T. Griffith
Deputy City Attorney

WTG:lc
05/27/98
Or.Dept:REA
0-98-144
Foilir-leaseo.frm

THE CITY OF SAN DIEGO

June 1, 1998

Mr. William A. Davis
Executive Vice President
and General Manager
Sea World of California
1720 South Shores Road
San Diego, California 92109.9980

RE: Maintenance Permit - Portion of Mission Bay Park

Dear Mr. Davis:

In connection with Sea World's use and occupancy of certain premises in Mission Bay Park known as "Sea World" pursuant to that certain lease (the "Lease") between the City of San Diego ("City") and Sea World, Inc., a Delaware corporation ("Permittee") dated as of JUN 29, 1998, as amended from time to time, City hereby grants permission to Permittee, and its officers, agents and employees to enter upon that certain City-owned property ("Permit Area"), as depicted on the attached Exhibit A-1 upon the following terms and conditions:

1. Permittee's use of the Permit Area shall be limited to entry upon the same for the purpose of maintaining the landscaping, and irrigation systems for such landscaping, located within the Permit Area. Such maintenance obligations shall include but not be limited to irrigation, weeding, pruning and landscape replacement.
2. Consideration to City for granting this permit shall be the Permittee's assuming and discharging the responsibility for complete maintenance of the landscaping within the Permit Area, its irrigation and irrigation systems. Landscaping plans and future changes in landscaping will be subject to the prior written approval of the District Manager of Mission Bay Park, which shall not be unreasonably withheld. Permittee shall not be responsible for any other equipment, facilities or other property not owned by it located within the Permit Area including but not limited to traffic signals, street lighting, directional signs or utilities, it being understood that the operation, maintenance, repair or replacement thereof shall remain the responsibility of City.

Document No. 00-18538-2
Filed June 219, 1998
Office of the City Clerk
SAN DIEGO, CALIFORNIA

3. Permittee shall operate, repair, maintain and replace the irrigation systems required for the landscaping located within the Permit Areas, provided that City shall first provide and install (and convey to Permittee by bill of sale) a working irrigation and landscaping system initially required as part of the City's planned development of South Shores. Water for the maintenance of such landscaping shall be provided by the City, but only to the extent that would have been required as part of the City's planned development of South Shores. Permittee shall not be required to provide water for the City's landscaping.

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4. The term of this permit shall be the same as the term of the Lease, with the right of cancellation by the City upon six (6) months prior written notice to the Permittee; provided, that in the event this permit is no longer in effect as a result of cancellation or other action by the City, then Permittee's obligations as set forth in this permit, including the obligation to maintain, repair and replace certain landscaping and irrigation systems of the City, shall terminate.
5. Permittee certifies that a policy of public liability and property damage insurance, in which "The City of San Diego" is named as an additional insured, has been secured in an amount of not less than \$5 million combined single limit liability with an occurrence claims form and that said policy shall be kept in force for the duration of this permit. A certificate of said insurance shall be filed with the City Real Estate Assets Department upon execution of this permit.
6. Permittee agrees to defend, indemnify, protect, and hold City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries (including death) to any person or property, including, but not limited to, injury to Permittee's employees, agents, officers or invitees, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Permittee and its agents, officers, or employees in performing the work or services herein and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of City, its agents, officers, or employees.
- City agrees to defend, indemnify, protect, and hold Permittee and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries (including death) to any person or property, including, but not limited to, injury to City's employees, agents, officers or invitees, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of City and its agents, officers, or employees within or related to the Permit Area and all expenses of investigating and defending against same; provided, however, that City's duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of Permittee, its agents, officers, or employees.
7. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee but only to the extent such damages are not the result of the negligent acts or omissions of the City or its agents.
8. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
9. As set out in Section 5 above, this permit is revocable upon six (6) months written notice to Permittee at any time by the City of San Diego. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.

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10. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City of San Diego hereunder and that such tax shall be paid by Permittee before becoming delinquent.
 11. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the performance of its obligations in the Permit Area.
 12. Permittee shall not assign any rights granted by this permit nor any interest therein. Any assignment by operation of law shall automatically terminate this permit. Notwithstanding the foregoing, this permit may be assigned to an approved assignee of Sea World, Inc.'s Lease with the City.
 13. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager, which shall not be unreasonably withheld provided: all such signs are in compliance with Mission Bay Park standards, laws related to sign requirements, and acceptable to the Traffic Engineering Division of the City.
 14. Permittee shall not remove any plant material from the Permit Area without the prior written consent of the Park and Recreation Department of City. Should the Permittee need to remove any plant material, a written request must be submitted to the City of San Diego, Park and Recreation Department, Coastal Division, attention District Manager, at 2581 Quivira Way, San Diego, California 92109. Permittee agrees to transplant or box trees disturbed within the Permit Area and relocate the same within Mission Bay Park as directed by the Park and Recreation Department of City. Permittee shall be responsible for the maintenance of the Permit Area and that maintenance will conform to Mission Bay Park maintenance standards.
 15. Permittee will provide plans for irrigation systems that will be demolished or made obsolete by any proposed construction and showing how they will be repaired by Permittee. Plans shall be submitted to the City Park and Recreation Department and all repairs shall be done in conformance with Mission Bay Park maintenance standards with regard to parts used, etc.
 16. Upon execution of this Permit, Permittee will provide a construction schedule for all improvements and will furnish updates to District Manager, City of San Diego, Park and Recreation Department, 2581 Quivira Way, San Diego, California 92109.
 17. This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.
 18. Permittee and City understand and agree that if any provisions of this permit augment, modify, remove, or conflict with the project description and/or special conditions of any required coastal development permit, further action by the Coastal Commission may be required, either through an amendment to the coastal development permit or issuance of a separate coastal development permit.

19. Permittee agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to the City Property Department, together with your insurance certificate.

If you should require additional information or have any questions, please call Linda M. Ferro, Property Agent, at 236-6985.

Very truly yours,

/s/ Robert J. Collins

ROBERT J. COLLINS

Real Estate Assets Manager

jmj

Attachments

cc: County Assessor

THE ABOVE IS ACKNOWLEDGED AND
ACCEPTED THIS 1 DAY OF JUNE, 1998

SEA WORLD, INC.
a Delaware corporation

By: /s/ William A. Davis _____

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, City Attorney

By: /s/ Priscilla Wayward _____
Deputy City Attorney

DEVELOPMENT AND ENVIRONMENTAL
PLANNING

ENVIRONMENTAL CLEARANCE:

/s/ Sr. Planner/EAS

7/8/98
0-18538

M A N A G E R ' S R E P O R T

DATE ISSUED: June 3, 1998

REPORT NO. 98-116

ATTENTION: Honorable Mayor and City Council
Agenda of June 8, 1998

SUBJECT: Sea World - Lease Amendment and Expansion

REFERENCE: City Manager's Report Numbers 98-59, dated March 18, 1998 and 98-90, dated April 29, 1998

SUMMARY

Issues - 1) Should the City enter into a lease amendment to amend the terms and conditions of the lease and expand the leasehold premises with Sea World? 2) Should the City Council certify and adopt that the information contained in LDR No. 96-7987 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Negative Declaration reflects the independent judgement of the City of San Diego as Lead Agency?

Manager's Recommendation - Direct the City Manager to enter into a lease amendment with Sea World and certify the Negative Declaration.

Other Recommendations - The Natural Resources and Culture Committee, at its May 6, 1998 meeting, forwarded this item to full City Council without a recommendation. The Committee also requested additional information on the appraisal and water runoff issues. The Clairemont Mesa Planning Group approved this item at its May 19, 1998 meeting. The Park & Recreation Board approved this item at its April 16, 1998 meeting. The Mission Bay Park Committee approved this item at its April 7, 1998. The Real Estate Advisory Board recommended approval of this project at its March 5, 1998 meeting.

Fiscal Impact - Sea World paid the City \$5.2 million in rent during fiscal year 1997. It is estimated that an expansion of the Sea World leasehold will result in increased annual revenues (including a \$1.2 million option payment) in the amount of \$800,000 for the first 5 years following development (year 2000), due to increased attendance. Sea World anticipates spending approximately \$20,000 to \$30,000 per year, on landscape, maintenance and irrigation of adjacent Mission Bay Park land. Landscaping by Sea World will not result in a cost savings to the Park & Recreation Department, however it will allow staff time and materials to be redirected to other areas of the park.

Environmental Status - The Development Services Department issued a Final Negative Declaration on March 9, 1998.

Economic Impact - Sea World's economic impact is estimated to be \$920 million annually to the San Diego economy. By the year 2005, it is estimated to grow to \$1.35 billion with the proposed expansion.

BACKGROUND

In 1994, during negotiations for a percentage rental rate adjustment for the Sea World lease agreement, Sea World proposed an expansion of its leased premises to include an adjacent 16.5 acre parcel. The parcel is identified in the Mission Bay Master Plan for future commercial development. The plan lists an expansion of Sea World as one of the potential uses for the site and identifies the parcel as 16.5 acres. It has since been determined that the parcel is approximately 12 acres. Sea World's proposal included adjusting the boundary of the expansion parcel to achieve a total of 16.5 acres. 10.5 acres of the expansion parcel are located over the Mission Bay landfill.

Letter of Intent

In 1996, the City and Sea World negotiated a letter of intent which provided for the expansion and preparation of a lease or lease amendment, It also provided for an option fee of \$1.2 million to the City and allowed Sea World to perform environmental testing on the parcel before determining whether to pursue the expansion. The terms of a new lease or lease amendment were included in the letter of intent and are as follows:

- Option payment of \$1.2 million (paid in 1996). One-half of this amount will be refunded to Sea World in the form of rent credits if a lease amendment is not completed by June, 1999. The full amount of \$1.2 million will be refunded in cash if the amendment is not approved.
- 15 year extension of the lease (a new 50 year term).
- Minimum capital improvement investment of \$5 million.
- Inclusion of 16.5 acres with development to begin within two years.
- Inclusion of the physically-traveled portion of Perez Cove Way to the leasehold boundary (7 acres).
- Separate permit for landscape maintenance along Perez Cove Way, the median of Sea World Drive from the Sea World main entrance to Friars Road, and the north side of Sea World Drive from the expansion area to the South Shores Park entrance.
- Sea World to provide a boat safety class and design support for the proposed Mission Bay Nature Center.

In addition to the provisions of the letter of intent, Sea World has agreed to allow the public to utilize the expanded guest parking area during Sea World non-peak hours, for amphitheater and other City special event parking. A separate gate will be constructed on the east side of the guest parking area for access by the public. Sea World has also agreed to an increase in the annual minimum rent (from \$3.58 million to \$4.1 million), and insurance coverage (from \$1 million to \$5 million). Attached as Exhibit 1 is a chart showing the lease provisions which will be modified by the proposed lease amendment and lease provisions which remain unchanged.

In March of 1996, the Mission Bay Park Committee recommended approval of an option to lease and develop the South Shores commercial parcel (16.5 acres) with Sea World, with a caveat that if a lease was negotiated, the issue of runoff of pollutants from the Sea World parking lots be addressed. In March of 1996, the Park & Recreation Board approved an option to lease with Sea World. On June 25, 1996, the San Diego City Council approved the letter of intent with Sea World, which provided for a subsequent lease amendment and expansion of 16.5 acres. More recently, at its March 25, 1998 meeting, the Natural Resources and Culture Committee directed staff to return to its May 6 meeting with additional information regarding the development of the 16.5 acre parcel, the March 16, 1998 appraisal and City-Sea World joint use of the proposed guest parking area. Attached as Exhibit 2 is a matrix of issues raised by the public at the March 25 committee meeting.

DISCUSSION

Landfill Assessment

After the letter of intent was approved by the City Council, Sea World hired a consultant to perform a Phase 1 site assessment of the expansion parcel, Sea World's consultant installed six monitoring wells on the parcel in order to determine the level of contamination, if any, and to verify the boundaries of the known landfill. The assessment findings confirmed the boundaries of the landfill and revealed no unknown or unexpected contamination. Sea World decided to pursue the expansion.

Development Plan

Development of the 16.5 acre parcel would be in three phases, 1) development of perimeter fencing with landscaping berm, 2) development of parking area, and 3) development of the exhibits. (See Exhibit 3.) Development of the 10.5 acre guest parking area will occur within two years. 6 acres will be used for future exhibits, along with approximately 6 acres of existing Sea World leased property, which adjoins the 16.5 acre parcel. The planning phase of development of the future exhibits will begin in 2001. Development of the exhibits require prior approval by City staff, Park & Recreation Department committees and the California Coastal Commission. Guest parking will be located over the landfill area of the expansion parcel. Any other type of development over the landfill would be severely restricted by requirements imposed by local governmental agencies. The portion of the existing pedestrian path which crosses the expansion area will be realigned onto park land by Sea World in a location approved by City staff.

In conjunction with the letter of intent, but under a separate permit, Sea World has agreed to continue maintaining the landscaping along Perez Cove Way and to begin to maintain the median landscaping along Sea World Drive from Friars Road to the Sea World entrance and the north side of Sea World Drive from the expansion area to the South Shores Park entrance. This will allow Park & Recreation Department staff to reallocate current resources to other areas of Mission Bay Park. Sea World anticipates spending \$20,000 to \$30,000 per year for landscape, maintenance and irrigation of these areas. The landscape maintenance agreement requires that at a minimum, Sea World maintain the landscaping according to the Mission Bay Park maintenance standards currently utilized by the City's Park & Recreation Department. Landscaping by Sea World will not result in savings to the Park & Recreation Department, however it will allow staff time and materials to be redirected to other areas of the park.

Proposed Uses for Expansion

Attached as Exhibit 4 is Table 2-2, an excerpt from Sea World's existing Master Plan. This Master Plan was approved by City Council in 1985 and is referred to as the Development Plan in a Sea World Lease Amendment dated June 24, 1985. Table 2-2, Phase 3, identifies proposed development projects which Sea World may construct on the expansion parcel. These uses include an aviary, gift shops, snack kiosks, small animal nursery, marine aquarium, an education theater and a marine exhibit. Sea World will present a more detailed development plan by January 2001. This development plan will be subject to additional environmental review.

Sea World Appraisal

An appraisal of the land leased to Sea World was completed by a City-approved independent appraiser on March 16, 1998. The appraiser estimates the land (including the proposed expansion area of 23.5 acres) to have a fair market value of \$52.5 million and suggests a fair market annual rental of \$5.25 million (a 10% return on the value of the land). The City received \$5.21 million in rent this past fiscal year without the expansion.

The 16.5 acre parcel was also appraised separately and the appraiser concluded the value of the parcel to be \$4.1 million. A 10% return on this value would be a fair market annual rental of \$400,000 per year. It is anticipated that the City will receive an average of \$800,000 per year for the first five years (including the \$1.2 million option payment) following development of the expansion area in 2000. This increase is a result of Sea World's proposed expansion and ability to attract more guests to the park.

The appraiser utilized several methods for the Sea World appraisal, including the "direct comparison" method. Staff feel this is the most appropriate method since it utilizes recent and comparable real estate transactions and lease agreements as the basis for the valuation. Other methods utilize a high degree of subjective variables and data, and are therefore less favorable. Attached as Exhibit 5 is a summary of the appraisal findings.

Comparison of Sea World to other Developments

Comparisons have been made between this proposal and existing agreements for Yosemite National Park, Old Town State Park, Raging Waters in Los Angeles County and Great American. Staff has reviewed these agreements and had discussions with the lessors.

Yosemite: The federal government issued a Request for Proposals for the hotel, restaurants and gift shops in Yosemite National Park. The operator selected paid approximately \$60 million to the previous operator for the cost of the improvements which the previous operator owned. The operator is obligated to pay into government (\$223,000 per year) and operator's capital improvement (5%) funds; however the franchise fee, or rent to the Federal Government, is currently 0%.

Old Town San Diego: The State of California owns the land and improvements. The State enters into short term (10 years) concession agreements for the operation of specialty shops and restaurants. These agreements do not provide for rental adjustments. The percentage rental rates currently in place for these agreements is 7.3% of the concessionaire's gross income. Old Town State Park had 7.5 million visitors last year and generated \$2 million in rent for the State of California.

Raging Waters: The County of Los Angeles has a 35 year lease agreement for the operation of Raging Waters. The lease rate is 13% of the lessee's gross annual income; 6.5% is spent on capital improvements, at the discretion of the lessee and 6.5% is paid to the County as rent. Last year the County of Los Angeles received \$900,000 in rental revenue from Raging Waters.

Great American: Located in a redevelopment area in the City of Santa Clara, the Redevelopment Agency issued bonds in order to purchase this theme park from Marriott in order to retain its use as a theme park. Paramount Parks Inc. subsequently purchased the improvements and lease agreement and currently operates the theme park. The agency is a party to a loan on the property which is being amortized through the base rental payment of \$5.3 million per year. The lease agreement provides for 5% of gross revenue over \$56 million and 7.5% of gross revenue over \$100 million. In 1996, gross revenue exceeded \$56 million and Paramount paid a percentage rent of \$848,696 to the City. The park is comprised of 110 acres for the park plus 50 acres of guest parking. Exhibit 6 shows a comparison of Sea World to these venues in terms of capital improvement expenditures and rental revenue received.

Mission Bay Master Plan Environmental Consistency

On March 9, 1998, the City's Development Services Department issued a final Negative Declaration for this project. Sea World has submitted a Coastal Development Permit application to the California Coastal Commission. The project must also comply with the Post Closure Landfill Plan for Mission Bay South Shores. The project will not impact habitat, is consistent with the Mission Bay Master Plan and poses no adverse water quality effects.

Sea World treats the majority of water runoff within its exhibit area through two water treatment and discharge facilities. It also is able to capture approximately 14% of the runoff from the parking lot areas and treat it before discharging into the bay. Sea World utilizes a high flow bypass treatment system which is able to treat "first flush" stormwater during large storm events. The remainder of the parking lot runoff goes directly to the City's storm drain system before being discharged into the bay. The City utilizes a storm drain interceptor system to divert dry weather low flow runoff from the storm drain to the sanitary sewer before it discharges into Mission Bay. This interceptor system diverts water from San Clement Canyon Creek, Rose Creek, Tecolote Creek, and portions of Pacific Beach.

San Diego Municipal Code Section 43.03, "Stormwater Management and Discharge Control", requires all businesses within the City limits to mitigate or prevent the flow of pollutants into the City's storm drain system to the maximum extent practicable. Federal, State and local environmental regulations do not require any business to treat stormwater runoff from their parking areas as part of their regular maintenance schedule.

Sea World cleans its parking areas daily by picking up litter and sweeping the lots. In addition, oil stains are covered with absorbent material and then discarded. To City staff's knowledge, this level of cleaning far exceeds the maintenance efforts of any other parking area within the City. Further, Sea World is the only business that treats a portion of its stormwater runoff through its own water treatment facilities. Sea World will connect the expansion area to its existing treatment facilities by adding a diverter box to capture water runoff and divert it to one of its water treatment facilities.

Summary

The City Manager recommends entering into the lease amendment with Sea World for an expansion from 149.73 land acres to 173.23 land acres (water acres would remain at 17 acres), enabling Sea World to accommodate an estimated 500,000 additional visitors by 2005. Increased attendance at Sea World benefits the local economy and results in increased percentage rental revenues to the City. Since Anheuser-Busch assumed the Sea World lease in 1989, it has invested \$150 million in capital improvements. Sea World is a known lessee, with the financial ability and expertise to continue operating the premises in an outstanding manner.

ALTERNATIVES

1. Do not approve the lease amendment and refund Sea World's option fee.
2. Direct staff to issue a Request for Proposals for future development of the expansion parcel.

Respectfully submitted,

/s/ George I. Loveland

Approved: GEORGE I. LOVELAND
Deputy City Manager

/s/ Robert J. Collins

Submitted by: ROBERT J. COLLINS
Real Estate Assets Manager

COLLINS/LMF

ATTACHMENTS

1. Exhibit 1/Comparison of Lease Provisions
2. Exhibit 2/Issues Raised at Public Testimony
3. Exhibit 3/Development of the 16.5 Acre Parcel
4. Exhibit 4/Existing Sea World Development Plan
5. Exhibit 5/Appraisal Summary
6. Exhibit 6/Theme Park Comparison

EXHIBIT 1
COMPARISON OF LEASE PROVISIONS

<u>ISSUE</u>	<u>CURRENT LEASE POSITION</u>	<u>PROPOSED LEASE AMENDMENT</u>
1. Term of the lease	50 years. Current lease will expire in 2033.	A new 50-year term. Amended lease will expire in 2048 (a 15-year lease extension).
2. Annual minimum rent	Annual minimum rent of \$3,581,626.66. This amount is to be adjusted on 11/1999.	Annual minimum rent to be adjusted with commencement of amended lease. New amount: \$4,162,481.
3. 3% Surcharge	Not specifically included in the actual lease document.	Adds it to the Rent Section of the lease.
4. For rent payment purposes, lease is broken down into lease years or "Accounting Years."	Accounting years currently fluctuate making rental calculations more difficult.	Accounting years would be established as each calendar year.
5. A. Percentage Rent Adjustment Process B. Time period provided for negotiating & processing Percentage Rent adjustment.	A. Adjusted to market rates every 10 years. 4% cap on Admission. B. Parties begin process 4 months before adjustment is due.	A. Unchanged B. Parties begin process 18 months before adjustment is due.
6. General Development Plan	A. Contains outdated provision for development. B. Requires minimum development expenditure of \$2.5 million. C. Contains provision for mitigation rent credits of up to \$500,000 for permanent capital improvements to Mission Bay Park required by a governmental agency, which would normally be the City's responsibility (e.g., street improvements, installation of street lights). None are contemplated at this time.	A. Provides for the proposed development. B. Requires minimum development expenditure of \$5 million. C. Unchanged.

<u>ISSUE</u>	<u>CURRENT LEASE POSITION</u>	<u>PROPOSED LEASE AMENDMENT</u>
7. Perez Cove Way	In a 1993 permit, Sea World assumed possession of this park road for queuing into Sea World. Landscape & lighting maintenance was also assumed by Sea World. The permit could be terminated by either party with 6 month's notice.	The physically-traveled road will be included in the lease. The City will issue a 50-year Maintenance Permit for continued maintenance of the perimeter areas. The permit may be canceled by either party with 6 month's notice.
8. Additional Landscape	None.	Sea World would perform landscaping in center median of Sea World Drive from Friars Road to current Sea World entrance on Perez Cove Way and on the north side of Sea World Drive from the east boundary to the entrance of South Shores.
9. Sea World currently sponsors a boating safety class for Mission Bay.	Not currently required in the lease.	Will be required so long as Sea World maintains a water ski show.
10. Nature Center	Not currently required.	Sea World agrees to cooperate with City and will provide graphic design support.
11. Insurance	A minimum of \$1 million.	A minimum of \$5 million.
12. Environmental matters	Not addressed in the current lease.	<p>A. Language added to address HazMat over expansion parcel only. Sea World responsible for additional maintenance, compliance with the Postclosure Land Use Plan and disturbance to landfill caused by its development or use. City responsible for a disturbance not caused by Sea World's development or use.</p> <p>B. Existing leased area will be governed by applicable laws.</p>

<u>ISSUE</u>	<u>CURRENT LEASE POSITION</u>	<u>PROPOSED LEASE AMENDMENT</u>
13. Nondiscrimination	Existing lease contains outdated language.	Replaces outdated language with City's current standard language.
14. Institutional Advertising	City currently charges a \$360 processing fee for review of each agreement and subsequent renewals.	City will charge \$360 processing fee for each agreement except renewal contracts containing same conditions except for term.
15. Equal Opportunity Contracting Program	Existing lease contains outdated Affirmative Action language.	Replaces outdated language with City's current EOCP Language.
16. Use	Operating a theme park as generally shown in the Development Plan.	Unchanged.
17. Leased area	149.73 land acres 17.02 water acres	Expansion of 23.5 acres, to 173.23 land acres 17.02 water acres
18. Operation of Hubbs Research	May occupy 8000 sq. ft. so long as remains non- profit. No rent charge unless Hubbs does not comply, then 7% of all revenue.	Unchanged.
19. Improvements, Repairs, Alterations and Maintenance	Sea World is responsible for all, including shoreline maintenance.	Unchanged.
20. Percentage Rent	Various percentage rates by categories	Unchanged, however percentage rent is subject to adjustment every 10 years.

	<u>ISSUE</u>	<u>CURRENT LEASE POSITION</u>	<u>PROPOSED LEASE AMENDMENT</u>
21.	Assignment	Sea World may assign only with City Manager approval.	Unchanged.
22.	Compliance with Law	Sea World must comply with all municipal, state and federal laws.	Unchanged.
23.	Ownership of Improvements	When lease is terminated or expires, improvements become property of City at City's option.	Unchanged.
24.	Noncompetition	Sea World may not establish or operate another theme park within a 560 mile radius of San Diego.	Unchanged.
25.	Damaged Equipment	Sunken vessels or equipment must be salvaged within 24 hours.	Unchanged.
26.	Taxes	Sea World is responsible for payment of taxes.	Unchanged.
27.	Lease Encumbrance	Must be approved by City Manager.	Unchanged.
28.	Utilities	By Lessee.	Unchanged.
29.	Educational Program	Sea World must provide an educational program for elementary school children.	Unchanged.

EXHIBIT 2

ISSUES RAISED AT PUBLIC TESTIMONY - SEA WORLD LEASE AMENDMENT

Staff Response:

Sea World's Best Management Practices keep some of the runoff from entering the storm sewer system. A diverter box currently in place on the expansion parcel will be connected to Sea World's treatment facility and will treat the runoff before it is released into the

Assets staff are competent & are able to negotiate and recommend an equitable transaction for the City's interest.

It is consistent with the Mission Bay Master Plan, no Planning Commission review is required.

1998 appraisal recommends an annual rental rate of \$5,200,000 per year on the existing and proposed leased premises. (Total payment for FY 1997 exceeded this amount without the expansion.) It is anticipated that the City will receive an annual rent of \$800,000 per year as a result of the expansion.

The new Sea World lease will be for a 50 year term.

The site plan included in the lease amendment identifies the guest parking area and the area which will be used for future aquatic exhibit development. Development requires the prior approval of the City Manager and public committees. The height limitation is 30 feet. If the voters approve a height exemption for the leased area, Sea World may propose exhibits of up to 30 feet. The City Manager's and public committees' prior approval is still required. Sea World's improvements (queuing for 460+ vehicles) on Cove Way has lowered traffic impact on Sea World Drive.

Access is provided to control access for security, safety and liability purposes. Shoreline access is also not practical because of the rocky shoreline with rip rap, which is currently in place. Other opportunities for access to the water can be made as part of the contemplated development of Fiesta Island.

The proposed expansion of Sea World onto the 16.5 acre parcel has been heard at nine public, noticed, meetings including the Planning Commission, City Manager's Committee and City Council, since March of 1996.

The Environmental staff issued a Negative Declaration for this project. An Environmental Impact Report was completed in 1985 and the Master Plan currently in place.

or Council Committee may direct staff to enter into exclusive negotiations with an existing lessee. At its June 25, _____, the City Council approved the letter of intent with Sea World, authorizing exclusive negotiations.

ay Master Plan recommends that the Boat & Ski Club relocate to a 4-acre site adjacent to the boat ramp and sell _____ ries and bait. If the Boat & Ski Club does not relocate, the 4-acre parcel may be developed for commercial purposes _____ to support the boat ramp.

Mission Bay Master Plan recommends commercial development for this parcel, other areas of the park may be used for _____ tion uses.

ag is the only practical use of the area over the landfill. It is also the most compatible use. Parking will support entire Sea _____ fore it is consistent with the Master Plan.

ned. Residential uses of the park would not be allowed.

mittee may request that a particular item be brought forward as an “Action” item rather than an

ressed in the Negative Declaration and no significant impact was noted.

ent on new attractions to keep Sea World competitive and to maintain or raise attendance. This also _____ ased revenue and tourism. A multi-story- parking structure would be obtrusive and would dominate the _____ ve.

rtize its capital improvement investments which are estimated to be in excess of \$160 million in the next

rk-Restrictions upon Commercial Development,” allows a commercial lease maximum of up to 471 land _____ 5-acre expansion, current commercial leases total 438 acres.

EXHIBIT 3

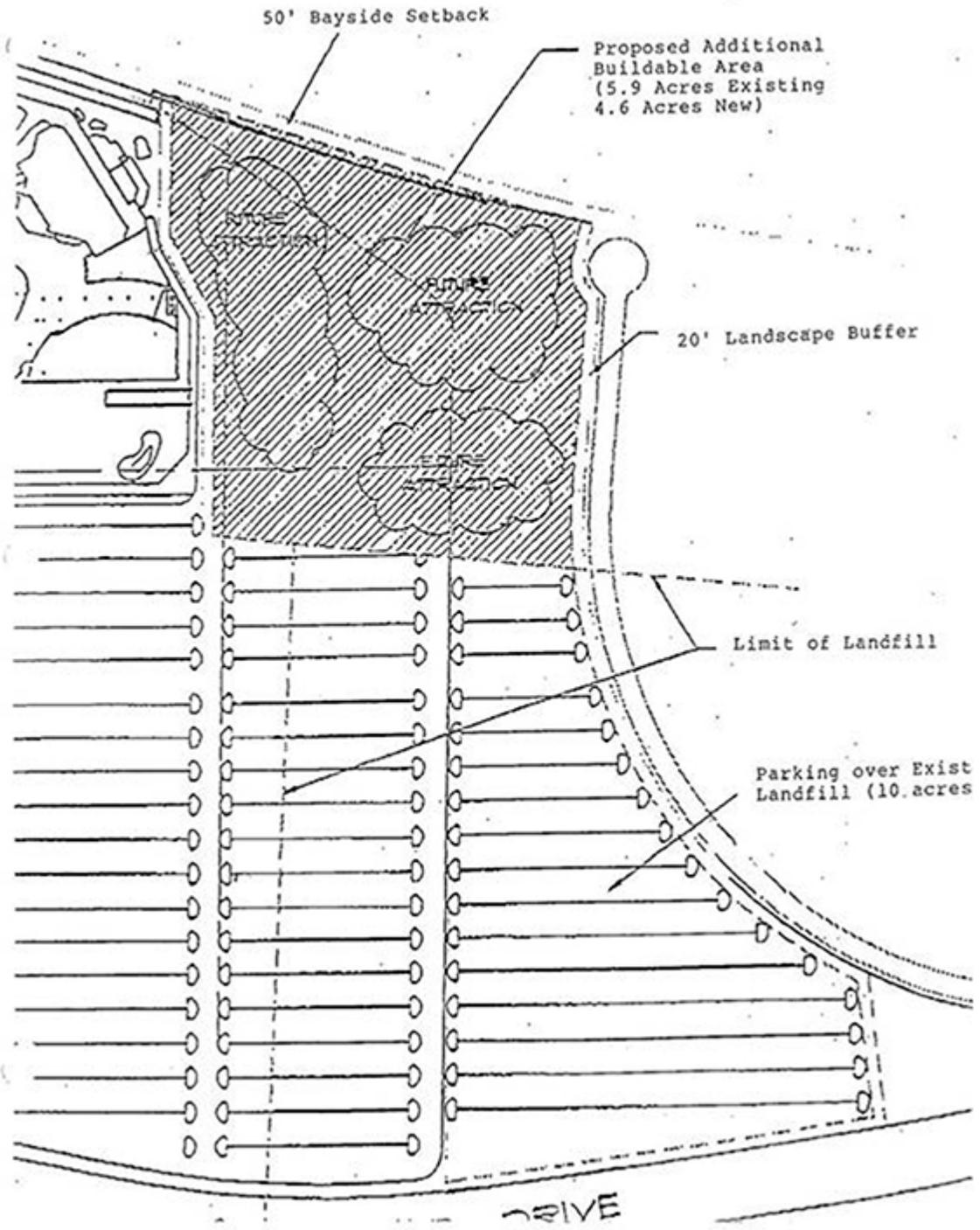


Table 2-2

PROPOSED FACILITIES AND PHASING PLANS
SEA WORLD MARINE PARK

Phase 1

Main Entrance
Preview Center
Support Facility Structures
Gift Shops
Specialty Foods Restaurant
Exit Plaza
Guest Services Structure
Restaurant/Lounge

Phase 2

Shamu Stadium
Support Facility Structures
Snack Kiosks
Restrooms
Landscape Nursery
Filter Plant

Phase 3

New Nautilus Showpiece Aviary
Support Facility Structures Gift Shops
Snack Kiosks
Small Animal Nursery
Marine Aquarium
Water Playground
Education Theater
Secondary Entrance
Restaurant and Catering Facility Marine Exhibit
Walrus Stadium
Polar Exhibit

EXHIBIT 5

Summary of Important Facts and Conclusions

Project	Market Value Estimate	
Property Locations:	16.50-acre parcel:	North side of Sea World Drive, west of South Shores public boat launching area, east of existing Sea World leasehold
	Sea World Leasehold:	1720 South Shores north of Sea World Drive, south of Mission Bay, east of Ingraham Street and west of South Shores public boat launching area.
Effective Date	March 4, 1998	
Date of Report	March 16, 1998	
Vested Owner	City of San Diego	
Appraisal Purpose	1) Provide an estimate of Market Value for a 16.50-acre parcel, as a separate parcel and in assembly with the existing Sea World leasehold; plus a seven acre parcel used for Perez Cove Way. 2) Provide an estimate of an annual Market Rent for the combined Sea World leasehold.	
Land Area	165.973-acre upland; Sea World Park 17.014 acres submerged land; Marina 7.0 acre parcel; Perez Cove Way 16.50-acre parcel; Supplemental Assembly Parcel	
Zoning/Community Plan	Both parcels are located within the Mission Bay Master Plan Update; both parcels are designated for commercial-visitor use.	
Highest and Best Use	16.50-acre parcel:	Waterfront hotel/motel development
	Sea World Leasehold:	Theme park development

Estimate of Market Value and Market Rent

16.5 acre supplemental parcel	\$ 4,150,000
166 acre assembled Sea World Leasehold including a 16.5-acre parcel and the 7.0 acre Perez Cove Way.	\$52,425,000
Annual Market Rate of Return Estimate	10%
Annual Market Rent Estimate	\$ 5,242,500

DAVID J. YERKE COMPANY
City of San Diego / Sea World / 98020

EXHIBIT 6: RENT/PAYMENTS COMPARISONS

<u>Payment Class</u>	<u>Sea World California</u>	<u>Old Town State Park</u>	<u>Yosemite National Park</u>	<u>Raging Waters</u>	<u>Great America</u>
Rent	4.5%	7.3%	0	6.5%	5% of annual revenues over \$53 Mil. And 7.5% of revenues over \$100 Mil.
Capital Improvements	15.0%	N/A	\$222,750 for govt. property plus 5% for operators property	6.5%	None specified, see note 1
Payments for retiring debt used to acquire capital improvements owned by a prior lessee	N/A	N/A	8.8 percent	N/A	\$5.3 Mil.
Total rent/ capital improvements/ payments for amortizing debt	19.5%	7.3%	14%	13%	10% at annual revenues of \$53 Million declining to 7.5% at \$100 mil. and over

1. Capital improvements and alterations permitted with prior approval of lessor.

jmj
5/29/98

The City of San Diego

MANAGER'S
REPORT

DATE ISSUED: June 19, 1996

REPORT NO. 96-130

ATTENTION: Council Docket of June 25, 1996

SUBJECT: Letter of Intent - Sea World, Inc.

SUMMARY

- Issue :1. Should the City Manager execute a letter of intent, which proposes the addition of 16.5 acres to Sea World's existing leasehold area, inclusion of Perez Cove Way and an extension of the Sea World lease to 50 years?
2. Should the City waive its interest charges of approximately \$27,826, with regard to settlement of the percentage rental rate adjustment?

Manager's Recommendation : 1. Execute the letter of intent.

2. Waive the interest charges.

Other Recommendations : The Mission Bay Park Committee, at its March 5, 1996 meeting recommended approval of Sea World's request to lease and develop the South Shores 12.5 acre commercial parcel plus an additional 4 acres, located adjacent to the South Shores site. The recommendation contained a caveat that if a lease is negotiated, it should address the Committee's environmental concerns regarding potential runoff of pollutants from Sea World's parking lots into Mission Bay.

The Park and Recreation Board, at its March 21, 1996 meeting, unanimously approved Sea World's request to lease and develop the 16.5 acre parcel.

Fiscal Impact : 1. Consideration for the additional leasehold area and 50 year lease extension is \$1.2 million, payable by Sea World upon execution of the letter of intent. The City will also receive increased rents from the expansion. The consideration will be deposited into the City's General Fund.

2. The interest charges on the percentage rental settlement amount to approximately \$27,826. If waived, this amount will not be deposited into the City's General Fund.

Consideration.

The \$1.2 million consideration will be credited against Sea World's rent as it becomes due commencing July 1, 1999, if: 1) preliminary site assessments determine development of the site is infeasible, or 2) the parties, working in good faith, have not completed the transaction within a 12 month period. However, if

Sea World determines that it does not wish to proceed with the proposed expansion, for reasons other than stated above, the City will retain \$600,000 and credit the remaining \$600,000 against Sea World rent as it becomes due, commencing July 1, 1999.

Consideration and Rent :

If Sea World moves forward with development of the site, it is estimated that the City will receive an average of \$667,800 per year considering the option payment and additional rent which would accrue to the City for the first 5 years following expansion of the park.

Economic Impact :

In addition, it is estimated that the annual economic impact of the expansion to the local economy will amount to \$26 million per year.

BACKGROUND

The Mission Bay Master Plan Update provides for development of the South Shores commercial parcel, located adjacent to Sea World. The plan states that development, such as an expansion of Sea World, a 200-room motel, or a water- oriented entertainment center, should be considered. The Master Plan refers to the parcel as 16.5 acres; however, it has since been determined that the parcel actually contains approximately 12.5 acres.

DISCUSSION

16.5 Acre Expansion : Sea World has requested to lease the 12.5 acre parcel, along with an additional 4 acres located adjacent to the South Shores parcel, for a total of 16.5 acres. Sea World proposes paying \$1.2 million to the City, as consideration for the 16.5 acre expansion and lease extension to 50 years. Also, Perez Cove way, currently under a separate permit to Sea World, would be included in the amended lease. Sea World plans to develop the portion of the site situated over a closed landfill (approximately one-half of the parcel) with additional parking. The remainder of the site, which is located adjacent to the bay, will be developed with additional exhibit(s). In addition, Sea World will maintain landscaping on portions of City-owned property along Sea World Drive and conduct an annual boating safety class on Mission Bay.

Attached to the Letter of Intent is a short-term right of entry permit, which allows Sea World to perform soil and groundwater sampling and testing, in order to determine if the landfill poses a problem with respect to development. If results of the assessments are positive, Sea World and City staff would prepare: 1) a lease amendment, 2) a development plan, and 3) environmental documentation. This process would include appropriate governmental and community review and approval; If the site assessment is negative, Sea World would not pursue the lease amendment or development, and the \$1.2 million would be credited against Sea World's rent commencing July 1, 1999. If Sea World chooses not to move forward with the expansion for reasons other than the site assessment, the City would retain \$600,000 and credit \$600,000 to Sea World's rent beginning in July 1999.

The City has received two unsolicited offers from other parties interested in developing the site. One is for a water park similar to that located in the City of Vista. The other is for a marine theme amusement park. Staff believes it is in the City's best interest to negotiate with Sea World rather than consider other proposals, since Sea World is a proven lessee with the expertise and financial ability to be successful. By including the South Shores commercial parcel in Sea World's leasehold, it will allow Sea World to increase exhibit space, encourage capital investment, attract more visitors and increase rent payments to the City.

Interest Charge Waiver : Sea World's existing lease agreement with the City provides for a percentage rental rate adjustment with interest due if the adjustment is not completed by the due date stated in the agreement. As a result of prolonged negotiations on the part of both Sea World and the City, settlement of the adjusted percentage rates was not completed by the due date. Final settlement of the adjustment was a 3% annual surcharge on all rents paid to the City by Sea World. Sea World has requested, as a good will gesture, a waiver of the interest charges for the percentage rate adjustment.

it is the Manager's recommendation that the City execute the letter of intent and work with Sea World toward preparation of a lease amendment and development of the South Shores commercial parcel and waive the interest charges associated with the percentage rental rate adjustment.

ALTERNATIVES

- 1 Do nothing to encourage development of the site. This alternative is not recommended since the Mission Bay Master Plan provides for commercial development of this site. Commercial development would result in additional revenue to the City and improvements to a vacant parcel of land.
- 2 Issue a Request for Proposals for the development of this site. This alternative is not recommended since Sea World is a proven lessee with the expertise and financial ability to be successful. Sea World also has a substantial economic impact on the San Diego economy. It is estimated that the expansion will have an annual economic impact of \$26 million on the local economy.
- 3 Do not waive the interest charges. This alternative is not recommended since settlement of the percentage rent adjustment resulted in increased revenue to the City and both parties worked diligently toward completing the adjustment.

Respectfully submitted,

/s/ George Loveland
George Loveland
Public Works Center Manager

/s/ Robert J. Collins
Robert J. Collins
Real Estate Assets Manager

Collins/LMF

Attachment: Area map

LEASE AMENDMENT

This Lease Amendment (“Amendment”), executed in duplicate as of July 9, 2002, at San Diego, California, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California (“CITY”), as lessor, and SEA WORLD, INC., a Delaware corporation, 500 Sea World Drive, San Diego, California 92109 (“LESSEE”); as lessee, is made with reference to the following facts:

A. CITY leases to LESSEE and LESSEE leases from CITY certain real property in Mission Bay Park (the “Premises”) described in lease amendments dated December 14, 1977, January 29, 1979, December 12, 1983, June 24, 1985, September 22, 1986, and June 29, 1998 and filed in the office of the City Clerk of San Diego as Document Nos. 762304, 765767, RR-259814, RR-263507, RR-266641, and OO-18538-1, respectively collectively referred to in this Amendment as the “Lease”).

B. On July 10, 2001, the San Diego City Council (the “City Council”) adopted Resolution Number R-295139 (the “Resolution”), which approved the SeaWorld Master Plan Update (“SeaWorld Master Plan”), and Local Coastal Program Amendment 2-2001-C (collectively, the “LCP Amendment”) and amendments to CITY’s Progress Guide and General Plan and required CITY and LESSEE to make certain modifications to the Lease. On February 7, 2002, the California Coastal Commission voted to certify the LCP Amendment subject to suggested modifications and required CITY and LESSEE to make additional modifications to the Lease.

C. The parties desire to amend the Lease to satisfy the requirements of the Resolution and the LCP Amendment as hereinafter provided.

THEREFORE, in consideration of the mutual covenants contained herein, the Lease is amended to provide, and LESSEE and CITY agree, as follows:

1. Personal Watercraft. Subparagraph D of Article HI, USE OF THE PREMISES, is amended to add the following after the last paragraph:

“The rights and privileges hereby granted extend only to the operation of personal watercraft by LESSEE. LESSEE may not rent, sell or lease personal watercraft for use by members of the public without the written consent and approval of the City Council.”

2. Identification of Mission Bay Master Park Master Plan. Subparagraph A of Article XXXII, GENERAL DEVELOPMENT PLAN, is deleted and the following is added in its place:

“A. From and after the commencement of the term of this Lease the further development of the Premises shall be generally in accordance with the SeaWorld Master Plan for the Premises as set forth in the LCP Amendment (“Development Plan”), as the same may from time to time be amended, and, to the extent applicable, CITY’S MISSION BAY PARK MASTER PLAN UPDATE as the same is amended from time to

time or as otherwise approved by CITY or the California Coastal Commission. It is understood that the Development Plan is a conceptual plan only, and that the depictions of the approved uses and improvements are illustrative only and are not binding as to the exact configuration and location of the uses and improvements authorized.”

3. Subparagraph C of Article XXXII, GENERAL DEVELOPMENT PLAN, including the substantial rent credit to LESSEE, is deleted in its entirety and the following is added in its place:

“C. Traffic Mitigation Fund.

(i) LESSEE shall pay to CITY a total amount of Ten Million Two Hundred Fifty Three Thousand One Hundred Dollars (\$10,253,100) plus the increase adjustment as provided below (collectively, the “Traffic Mitigation Fund”) in five (5) annual installments as provided herein for use as provided in the LCP Amendment and further detailed in section 2.C.(ii) below. CITY and LESSEE acknowledge that the Traffic Mitigation Fund constitutes the aggregate of LESSEE’s individual fair share contributions to the funding of traffic mitigation measures identified in the Mitigation Monitoring and Reporting Program (“MMRP”) of Environmental Impact Report LDR No. 99-0618 certified by the City Council on July 10, 2001 pursuant to Resolution Number R-295138 (“EIR”) and more particularly explained in the traffic mitigation measure implementation table attached hereto as Exhibit “6” (the “Traffic Mitigation Table”) ¹. Pursuant to the MMRP, LESSEE is required to pay to CITY LESSEE’s fair share contribution for funding of an identified traffic mitigation measure only when the level of traffic impacts directly attributable to LESSEE’s park operations attain or exceed the corresponding threshold of significance for such traffic mitigation measure as identified in the MMRP and more particularly explained in the Traffic Mitigation Table. Notwithstanding the MMRP, and instead, pursuant to this Subparagraph C, LESSEE’s payment of the Traffic Mitigation Fund, representing the aggregate of its fair share contributions under the MMRP, may be made prior to the date LESSEE’s traffic impacts attain or exceed each of the requisite thresholds of significance as provided herein.

(ii) CITY shall use the Traffic Mitigation Fund only for the planning, development and construction of traffic congestion reduction measures in Mission Bay Park as provided in the LCP Amendment, and more specifically, Mitigation Measures 2.1.1, 2.4.2, 2.5.1, 2.4.3, 2.4.4, and 2.3.1 of the MMRP and Mitigation Measures 4.4-1, 4.4-4, 4.4-5, 4.4-6, and 4.4-7 of the EIR, and CIP 52-706 and CIP 52-643, The Traffic Mitigation Fund amounts for MMRP mitigation measures identified in Exhibit “6” shall be deposited into CIP 52-706 and CIP 52-643 and the required mitigation measures shall be constructed as required by the EIR and MMRP in phases as set forth in Exhibit “7,” unless otherwise agreed to by CITY, LESSEE and the California Department of Transportation (“Caltrans”). LESSEE shall be solely responsible for the performance, construction, installation and estimated costs of Four Hundred Eighty-Six Thousand Five Hundred Dollars (\$486,500) for Mitigation Measures 2.2.1, 2.4.1, 2.6.1, 2.6.2 and 2.6.3 of the MMRP and Mitigation Measures 4.4-2, 4.4-3, 4.4-8, 4.4-9 and 4.4-10 of the EI.

¹ Lessee and City acknowledge and agree that Exhibits 6, 7 & 8 are provided for illustrative purposes only and are not intended to supersede the mitigation requirements of the EIR and the MMRP as certified by the City Council.

(iii) The Traffic Mitigation Fund shall be payable in five (5) annual installments adjusted annually as provided below. The installment amounts shall be revised to the extent LESSEE's traffic impacts attain or exceed each of the requisite thresholds of significance set forth in the Traffic Mitigation Table to ensure that payment for impacts is never made later than actually due according to the thresholds. The first annual installment of the Traffic Mitigation Fund shall be due and payable upon the date of the effective certification of the LCP Amendment by the California Coastal Commission ("First Payment Date"), and consecutive annual installments shall be due and payable on each anniversary of the First Payment Date thereafter. The five (5)-year period beginning on the First Payment Date shall be the "Mitigation Payment Period." On each anniversary of the First Payment Date, the then unpaid balance of the Traffic Mitigation Fund shall be subject to an increase adjustment calculated using the U.S. Department of Labor Consumer Price Index for the Western Urban Region ("CPI") or three percent (3%) thereof, whichever is greater. The annual installment that is then due shall be calculated based on the remaining number of payment years and the amount of the unpaid balance of the Traffic Mitigation Fund after the foregoing increase adjustment. Exhibit "8" ("Traffic Mitigation Payment Schedule") provides a schedule of LESSEE payments at the three percent (3%) minimum. City shall create a separate interest-bearing fund for the Traffic Mitigation Fund to be used solely for this purpose.

(iv) If LESSEE's traffic impacts do not attain or exceed each of the requisite thresholds of significance provided in the Traffic Mitigation Table, LESSEE shall be entitled to annual refunds of prepaid mitigation payments during the succeeding five (5)-year period ("Unrealized Mitigation Reimbursement Period") commencing upon the expiration of the Mitigation Payment Period for all traffic mitigation measures that do not attain or exceed their respective threshold of significance identified in the MMRP and the Traffic Mitigation Table during the Mitigation Payment Period. The amount of each mitigation reimbursement payment shall be calculated based on the Traffic Mitigation Payment for the corresponding year of the Mitigation Payment Period (i.e., the first year of each period will be compared, the second year of each period, and so on), less any mitigation actually due in the corresponding year of the Mitigation Payment Period because of thresholds having been attained and any interest accrued during said period. LESSEE's Traffic Mitigation Payments shall be deposited into interest bearing accounts in accordance with City's standard practice for deposit of development impact fees. All interest shall accrue to the benefit of the Traffic Mitigation Fund for payment of costs of mitigation measures or refund to LESSEE as provided in this Lease.

(v) When traffic impacts directly attributable to LESSEE's park operations attain or exceed a threshold of significance for any or all of the improvements identified in the MMRP and the Traffic Mitigation Table, City shall use the Traffic Mitigation Funds to pay for the required mitigation measures in phases as set forth in Exhibit "7." If the then existing balance of the Traffic Mitigation Fund is insufficient to cover LESSEE's fair share contribution for the funding of any Traffic Mitigation

Measure identified in the MMRP and the EIR for which a significance threshold has been met, LESSEE shall immediately pay to City an amount sufficient to cover the difference between the amount for that mitigation measure in the Traffic Mitigation Fund and LESSEE's required fair share contribution for that mitigation measure. To the extent LESSEE has received a reimbursement for prepayment of such mitigation, LESSEE shall immediately pay such refund amount and any additional amount necessary to cover LESSEE's required fair share contribution to CITY. For traffic mitigation measures in the MMRP that attain or exceed a threshold of significance during the Mitigation Payback Period, LESSEE will not be eligible for a refund. For traffic mitigation measures that attain or exceed a threshold of significance following the Unrealized Mitigation Reimbursement Period, LESSEE will immediately pay to City an amount equal to LESSEE's fair share contribution for the then current cost of the required mitigation measure. All of LESSEE's traffic mitigation payments shall be based solely on LESSEE's fair share of the costs of only the mitigation measures identified in the MMRP and ER.

(vi) Prior to conducting the annual mitigation monitoring traffic analysis required in the EIR, LESSEE shall determine whether any of the intersections and road segments identified in the Traffic Mitigation Table have been improved since the EIR traffic analysis was conducted in 2000. For intersections or road segments where improvements have been constructed or installed since the EIR traffic analysis was conducted, the annual traffic analysis will be based on the pre-improvement condition. To determine whether the project described in the EIR has an impact relative to the pre-improvement condition, LESSEE shall determine the appropriate background traffic level to use in the analysis by comparing the traffic counts for the year monitored with the "calculated background traffic" for the same year. "Calculated background traffic" shall be derived by interpolation of the projected traffic volumes set forth in the EIR traffic study, using standard methods accepted by City traffic engineers. The annual traffic analysis shall be conducted as provided in the EIR if the annual 24-hour tube counts (ADTs) at LESSEE access points as established in the MMRP show an increase in traffic generation.

In the event LESSEE amends the SeaWorld Master Plan (the Development Plan) in a manner that requires environmental review subsequent to this Lease Amendment, any mitigation measures imposed pursuant to any subsequent environmental review shall supersede and replace the mitigation measures set forth in the MMRP and the MR and the Lease shall be amended accordingly."

4. The following provisions shall be added to Article XXXII, GENERAL DEVELOPMENT PLAN:

H. A minimum of 75% of LESSEE's total attractions within Area 1, the Theme Park, as designated in the Development Plan, shall include significant animal education or conservation related elements. Within the SeaWorld Theme Park, the current mix of attractions existing as of the date of this Amendment, reflect the dominant marine animal theme and the primary emphasis areas of entertainment, education, research, and conservation.

Within Area I, the SeaWorld Theme Park, an element in a larger, single attraction shall be considered “significant” if, in the reasonable opinion of the City Manager (i) the education or animal-conservation related element could function as a separate exhibit, independent of the larger attraction into which it is incorporated, and (ii) the education or animal-conservation related element imparts information and knowledge about the animal and/or its environment.

I. If CITY and/or the Metropolitan Transit District or any other agency construct a public transit station (“Transit Station”) on the Premises, (1) LESSEE shall provide reasonable right-of-way for, to and from the Transit Station, at a location on the Premises mutually agreed upon by CITY and LESSEE, provided that the location of such right-of-way is no further from the entrance gate to SeaWorld Theme Park than any vehicle parking space, with the exception of spaces designated for handicap parking; and (2) LESSEE shall contribute to CITY: (1) funds sufficient to provide 50% of the total cost for siting, design, installation and construction of a standard design station, provided, however, that LESSEE’s maximum required contribution shall be limited to \$500,000, as increased by the greater of CPI or 3% per annum beginning on the effective date of this Amendment; and (2) additional costs attributable to adding a SeaWorld thematic style to the Transit Station.

J. LESSEE may not submit a development permit application for construction of the hotel identified in the Development Plan prior to July 10, 2011. LESSEE agrees to give the City ninety (90) days written notice prior to the submittal of any applications for development of the hotel. City and LESSEE agree to negotiate in good faith any amendment to the lease necessary for the development of a hotel on the Premises.

K. Except for displays on July 4, LESSEE’s fireworks displays are permitted only from the “fireworks barge” and shall be limited to a maximum of one hundred fifty (150) nights per year. LESSEE agrees to relocate the fireworks barge eastwardly one-half mile toward South Shores from its [current] approved location from April 1 to September 15 of each year for the least tern nesting season.

5. Article XLIII, ANNUAL ATTENDANCE FIGURES, is hereby added as follows:

“During the entire Term of this Lease, LESSEE shall prepare and submit annually to the City Manager on or before March 1 an audit report showing LESSEE’s attendance figures for the preceding calendar year.”

IN WITNESS WHEREOF, this Amendment is executed by CITY, acting by and through its City Manager under and pursuant to Resolution No. R-296787 of the City Council authorizing such execution, and by LESSEE, acting by and through its duly authorized officer, as of the date first above written.

Approved as to form and legality:

_____, 2002

CASEY G. GWINN, City Attorney

By: _____
Deputy City Attorney

THE CITY OF SAN DIEGO

By: /s/ _____
Title: Deputy Director

SEA WORLD, INC.

By: /s/ _____
Title: Executive VP & General Mgr

EXHIBIT 6
TRAFFIC MITIGATION MEASURE IMPLEMENTATION SCHEDULE

Traffic Mitigation Measure (Referenced by MMRP and EIR Mitigation Measure number)	Implementation (Significance) Thresholds	LESSEE's Fair Share Contribution (Estimated Cost)
MMRP 2.1.1; EIR 4.4-1 Sea World Drive between 1-5 and Sea World Way: Widen Sea World Drive to 6 lanes	Threshold is more than 2% increase in roadway volume over capacity ratio by LESSEE's traffic.	44% (\$2,740,100)
MMRP 2.4.2 AND 2.5.1; EIR 4.4-4 SeaWorld Drive/I-5. Intersection: Add westbound right-turn lane and northbound dual left-turn lane at northbound ramps intersections. Ramps: storage by adding an additional lane at northbound and southbound ramps.	Intersection threshold is a 2-second increase in the overall intersection delay by LESSEE's traffic. Ramp threshold is adding more than 2 minutes to ramp having more than 15-minute delay.	29% of WB RT and NB lefts 50% of NB ramps 27% of SB ramps (\$1,435,000)
MMRP 2.4.3; EIR 4.4-5 Seaworld Drive/Pacific Highway: Reconstruct three southbound (westbound) thru lanes on Sea World Drive across Pacific Highway and three northbound (eastbound) thru lanes on Sea World Drive across Pacific Highway and one southbound (westbound) right turn lane.	Threshold is a 2-second increase in the overall intersection delay by LESSEE's traffic.	100% of NB lanes 36% of SB lanes (\$773,300)
MMRP 2.4.4; EIR 4.4-6 West Mission Bay Drive/I-8 westbound off-ramp. Add third right-turn lane.	Threshold is a 2-second increase in the overall intersection delay by LESSEE'S traffic.	28% (\$134,200)
MMRP 2.3.1; EIR 4.4-7 West Mission Bay Drive Bridge widened to 6 lanes.	Threshold is more than 2% increase in roadway volume over capacity ratio by LESSEE's traffic.	9.4% (47% of the City's cost) (\$5,170,000)
Estimated Cost Subtotal		\$10,253,100.00
LESSEE Will Maintain 100% Responsibility for the Following Mitigation Measures		
		Estimated Cost
MMRP 2.2.1; EIR 4.4-2 Install traffic signal interconnect on Sea World Drive between Friars Rd and 1-5 northbound ramps and extend eastbound right-turn lane back 400 feet at Sea World Dr/I-5 SB ramps.	Upon approval of a Tier I project.	\$ 366,500
MMRP 2.4.1; EIR 4.4-3 Ingraham Street/Perez Cove Way Intersection re-phasing, re-stripe and reconstruction to provide dual left turns and a shared thru/right lane westbound.	Threshold is a 2-second increase in the overall intersection delay by LESSEE's traffic.	\$ 77,500
MMRP 2.6.1; EIR 4.4-8 Traffic event officers at SeaWorld Drive/I-5 interchange during busy days.	Upon approval of a Tier I project.	\$ 36,500
MMRP 2.6.2; EIR 4.4-9 improve lane management at the entrance gates to maximize vehicle storage.	Upon approval of a Tier I project.	\$ 5,000
MMRP 2.6.3; MR 4.4-10 Distribute promotional material to employees and repeat patrons to use alternative routes.	Upon approval of a Tier I project.	\$ 1,000
Subtotal		\$ 486,500.00
TOTAL		\$ 10,739,600

EXHIBIT 7
RECOMMENDED PHASING PLAN FOR CIP 52-706

Rank	Mitigation, Monitoring and Reporting Program Mitigation Measure	Total Cost	Running Total
1	2.4.2 (Part I) Seaworld Dr/I-5 NB Ramps: Add WB right turn lane (from Baseline Cost in Table 1, this is only half of the improvement; therefore, the total cost is estimated at one-half of \$1,887,900 or \$943,950).	\$ 943,950	\$ 943,950
2	2.2.1 Install traffic signal interconnect on Sea World Dr btw Friars Rd and 1-5 NB ramps and extend EB RT lane back 400 feet at Sea World Dr/1-5 SB ramps (from Baseline Cost in Table 1, \$198,100 + \$168,400 = \$366,500).	\$ 366,500	\$ 1,310,450
3	2.4.3 Seaworld Dr/Pacific Highway: Reconstruct for three SB (WB) thru lanes on Sea World Dr across Pac Hwy and three NB (EB) thru lanes on Sea World Dr across Pac Hwy (from Baseline Cost in Table 1, \$630,000 + \$546,000 = \$1,176,500).	\$1,176,500	\$ 2,486,950
<i>Fulfills Sea World's short-term fair share obligation (\$3,106,600 from Table 1). Remaining items will require funds from Sea World's long-term fair share obligations. Sea World's short-term obligation exceeds the total improvement by \$619,650 (\$3,106,600 - \$2,486,950 = \$619,650), which is carried over to the next phase.</i>			
4	2.5.1 Sea World Drive northbound and southbound 1-5 on-ramps: Increase vehicle storage by adding an additional lane (from Baseline Cost in Table 1, \$1,424,900 + \$650,000 = \$2,074,900).	\$2,074,900	\$ 4,561,850
<i>Fulfills Sea World's fair share long-term obligation (long-term of \$2,206,600 + short-term of \$3,106,600 for a total of \$5,315,400, from Table 1). Remaining items will require funding from other sources. After this improvement, Sea World has a credit of \$753,550 (\$5,315,400 - \$4,561,850 = \$753,550), which is not enough to pay for the next complete improvement. Therefore, the \$753,550 would be applied to the next improvement when sufficient funds to complete that improvement become available.</i>			
5	2.4.2 (Part II) Seaworld Dr/1-5 NB Ramps: Add NB dual left turn lane (from Baseline Cost in Table 1, this is only half of the improvement; therefore, the total cost is estimated at one-half of \$1,887,900 or \$943,950).	\$ 943,950	\$ 5,505,800
6	2.1.1 Sea World Drive btw 1-5 and Sea World Way: Widen Sea World Drive to 6 lanes (from Baseline Cost in Table 1, \$6,227,400	\$6,227,400	\$11,733,200

Exhibit 7

Exhibit 8
Traffic Mitigation Payment Schedule

Balance	\$10,253,100
CPI (1)	3%
Mitigation Payment Period	2002 - 2007

Pay-in

	Due	Amount
Payment # 1	2002(2)	\$ 2,050,620
Unpaid Balance		\$ 8,202,480
New Balance		\$ 8,448,554
Payment # 2	2003	\$ 2,112,139
Unpaid Balance		\$ 6,336,416
New Balance		\$ 6,526,508
Payment # 3	2004	\$ 2,175,503
Unpaid Balance		\$ 4,351,006
New Balance		\$ 4,481,536
Payment # 4	2005	\$ 2,240,768
Unpaid Balance		\$ 2,240,768
New Balance		\$ 2,307,991
Payment # 5	2006	\$ 2,307,991
Total Pay-in		\$10,887,020
Present Value	(3)	\$10,253,100

Item Explanations

- (1) Increase adjustment calculated using the U.S. Department of Labor Consumer Price Index for the Western Urban Region or three percent, whichever is greater.
- (2) Date of effective certification of the LCP Amendment by the California Coastal Commission. Remaining payments due on anniversary date of certification.
- (3) Rate = 3% from first payment date.

TRADEMARK LICENSE AGREEMENT

This TRADEMARK LICENSE AGREEMENT (the “Agreement”) is entered into as of the 1st day of December 2009 (the “Effective Date”), by and between Anheuser-Busch, Incorporated, a Missouri corporation (“Licensor”), and Busch Entertainment LLC, a Delaware limited liability company (“Licensee”, and each of Licensor and Licensee, a “Party”).

WHEREAS, Licensor exclusively owns the marks identified on Exhibit A and is the registrant of the Internet domain names identified on Exhibit B (collectively, “Licensed Marks”);

WHEREAS, Anheuser-Busch Companies, Inc., a Delaware corporation (“Seller”), BPOF Corp., a Delaware corporation, HSHO Corp., a Delaware corporation, SW Acquisitions Co., Inc. (formerly known as Orca Acquisition Co., Inc.), a Delaware corporation, Anheuser-Busch InBev SA/NV, a public company organized under the laws of Belgium (“ABI”), solely with respect to Section 5.3, Section 5.11, Article VII, Section 9.8 and Section 9.9 therein, and the Limited Partnership Entities named therein, solely for purposes of Section 2.2 and Section 5.23 therein, have entered into that certain Purchase Agreement, dated as of October 7, 2009 and amended and restated as of November [], 2009, (“Purchase Agreement”), pursuant to which, among other things, Seller has agreed to cause Licensor to license the Licensed Marks to Licensee at the closing of the transactions contemplated by the Purchase Agreement;

WHEREAS, Seller and Licensee entered into that certain Sponsorship Agreement (“Sponsorship Agreement”), dated as of December 1, 2009, pursuant to which, among other things, Seller and Licensee have agreed to certain sponsorship benefits that Seller will receive with regard to the Parks and the Program (as such terms are defined in the Sponsorship Agreement); and

WHEREAS, in order to effect the purposes of the Sponsorship Agreement, Licensor wishes to grant to Licensee, and Licensee wishes to obtain a license to, the Licensed Marks on the terms and subject to the conditions set forth in this Agreement;

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

1. Definitions. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as set forth in the Purchase Agreement. The following capitalized terms used in this Agreement shall have the meanings set forth below.

(a) “Ancillary Sublicense” has the meaning ascribed to it in Section 2(b)(i)A.

(b) “Affiliate” means, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with, such other Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(c) “Busch Gardens Theme Parks” means the following two (2) amusement parks: (i) Busch Gardens, Williamsburg, Virginia, and (ii) Busch Gardens, Tampa, Florida.

(d) “Change of Control” of a Person (the “Target”) shall mean the occurrence of one of the following events: (i) if any Competing Person shall acquire beneficial ownership of more than 50% of the issued and outstanding voting securities of such Target, (ii) the consummation of a merger, consolidation, binding share exchange or other business combination of such Target into or with another Competing Person in which the stockholders of such Target immediately prior to the consummation of such transaction shall own less than 50% of the voting securities of the surviving Person (or the parent of the surviving Person where the surviving Person is wholly owned by the parent) immediately following the consummation of such transaction, or (iii) the consummation of the sale, transfer, lease or other disposition (but not including a pledge or mortgage to a bona fide lender) of all or substantially all of the assets of such Target to a Competing Person.

(e) “Chosen Courts” has the meaning ascribed to it in Section 13(c).

(f) “Claims” has the meaning ascribed to it in Section 8(a).

(g) “Competing Person” shall mean any Person (i) whose primary business (50% or more of its annual revenues) for the fiscal year preceding the date of determination is manufacturing, brewing, importing or wholesaling of beverages, (ii) whose primary public identity is manufacturing, brewing, importing or being a wholesaler of beverage products, or (iii) who is a direct or indirect subsidiary of any Person described in (i) or (ii).

(h) “Coverage Amount” means Ten Million U.S. Dollars (U.S. \$10,000,000) except that on January 1, 2010 and on January 1 of each succeeding year during the Term, the Coverage Amount shall be reevaluated and shall be increased by One Million U.S. Dollars (U.S. \$1,000,000) for each ten (10) percentage increase in the Consumer Price Index (U.S. City Average) published by the Bureau of Labor Statistics over the Consumer Price Index as of the Closing Date.

(i) “Divested Entity” means any former Affiliate of Licensee owning one or more Theme Parks as and from the moment it no longer constitutes an Affiliate hereunder because of a sale, conveyance or other transfer or change of control of such Affiliate.

(j) “Effective Date” has the meaning set forth in the preamble.

(k) “Existing Park Sublicense” means a sublicense of this Agreement, on substantially similar terms as if such sublicensee were the “Licensee” hereunder, solely to operate the Theme Parks that the sublicensee owns on the date that the sublicense is granted, but with no rights to use the Licensed Marks in connection with any New Parks.

(l) “ Field of Use ” means all current and future activities and services related to operation, marketing, promotion and advertising of the Theme Parks, in all current and future forms and media, including the Internet, electronic and social media.

(m) “ Licensor Indemnified Party ” has the meaning ascribed to it in Section 8(a).

(n) “ Law ” means all federal, state and local laws, regulations, rules and ordinances, and all applicable industry and governmental standards and guidelines.

(o) “ Licensed Items ” means any item produced, used, distributed, offered for sale or sold in connection with the Theme Parks and any packaging, advertising and promotional materials used in connection therewith and the promotion thereof; provided that Licensed Items shall not include any beverage product, obscene or pornographic materials, items with a sexual function or purpose, firearms or other weapons, toys or video games that are violent in nature, cigarettes or any substance regulated under the Controlled Substance Act. For the avoidance of doubt, nothing contained herein shall restrict the sale of beverages or cigarettes on the premises of any Theme Park, provided that such items themselves are not branded with the Licensed Marks.

(p) “ Licensed Marks ” has the meaning set forth in the preamble.

(q) “ New Parks ” means any amusement or theme park anywhere in the world which Licensee or any of its Affiliates, any Acquirer or any Divested Entity shall own after the Effective Date that is similar in design and nature to one or more of the following parks: Discovery Cove, SeaWorld Orlando, SeaWorld San Antonio, SeaWorld San Diego, Busch Gardens Tampa, Busch Gardens Williamsburg, Adventure Island, Water Country USA, Aquatica and Sesame Place as they were operated as of the Effective Date. For clarity, a “New Park” includes an amusement or theme park (i) built after the Effective Date and (ii) in existence as of the Effective Date, but rebranded with the Licensed Marks thereafter. As an illustrative but not limiting example, the Parties agree that “New Parks” includes parks with air, land or water-based rides, animals, historical or cultural themes and/or themes around fictional characters but excludes parks whose primary attraction or theme is video games, concert music halls, sporting events, or cruise ships.

(r) “ New Trademark Use ” has the meaning ascribed to it in Section 3.

(s) “ Person ” means an individual, a corporation, a partnership, an association, a limited liability company, a government entity, a trust or other entity or organization.

(t) “ Security Interest ” has the meaning ascribed to it in Section 11.

(u) “ Sublicensee ” means a sublicensee of Licensee as permitted by Section 2(a)(iii).

(v) “ Term ” has the meaning ascribed to it in Section 7(a).

(w) “Theme Park Operator” has the meaning ascribed to it in Section 2(b)(i)B.

(x) “Theme Parks” means (i) the Busch Gardens Theme Parks and (ii) the New Park, once branded or rebranded with “Busch Gardens”.

(y) “Trademark” means trademark, service mark, trade name, corporate name, logo, trade dress, domain name or any other indicator of source or origin.

(z) Other Definitional Provisions . Unless the express context otherwise requires:

(i) the words “hereof”, herein”, and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(ii) the terms defined in the singular have a comparable meaning when used in the plural, and vice versa;

(iii) references herein to a specific Section, Subsection, Exhibit or Schedule shall refer, respectively, to Sections, Subsections, Exhibits or Schedules of this Agreement;

(iv) wherever the word “include”, “includes”, or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation”;

(v) references herein to any gender includes each other gender; and

(vi) for purposes of this Agreement, neither Licensee nor any of its subsidiaries will be deemed to be an Affiliate of Licensor or any entity controlling Licensee before the Effective Date.

2. License.

(a) Grant of Rights .

(i) Theme Parks . Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee, effective as of the Effective Date, a perpetual, exclusive (even as against Licensor and its Affiliates), royalty-free, non-transferable, and non-assignable (except to the extent expressly permitted in Sections 13 and 14), non-sublicensable (except to the extent expressly permitted in Sections 2(b) and 12) and worldwide license to use and display the Licensed Marks as Trademarks (other than as corporate or trade names) within the Field of Use. Subject to Licensor’s rights under Section 7(b), Licensee is under no obligation to use the Licensed Mark.

(ii) Merchandising . Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee a perpetual, exclusive, royalty-free, nontransferable, non-assignable (except to the extent expressly permitted in Section 12), nonsublicensable (except to the extent expressly permitted in Sections 2(b) or 12) and

worldwide license to use and display the Licensed Marks as Trademarks (other than as corporate or trade names) on or in the Licensed Items or in connection with the production, use, distribution, offer for sale or sale thereof. Subject to Licensor's rights under Section 7(b), Licensee is under no obligation to use the Licensed Marks.

(iii) Exclusivity. To support the exclusive nature of the above licenses, Licensor agrees that, during the Term, Licensor and its Affiliates will not use or license to any other Person the right to use (A) any Trademark containing the word "Busch" or "Bush" (or any translation or transliteration thereof) in the Field of Use or in connection with Licensed Items used to promote amusement or theme parks; or (B) any Trademark containing the words "Busch Garden(s)" or "Bush Garden(s)" as a whole (or any translation or transliteration thereof) for any purpose. For clarity, this Section 2(a)(iii) shall not prohibit, limit or restrict Licensor, its Affiliates or their licensees from using or licensing any Trademark containing the word "Busch" or "Bush" without the word "Garden" or "Gardens" on any merchandise, promotional items, or marketing or advertising materials (including those used to promote the sale and consumption of beer and other beverages) so long as such use does not suggest a corporate or "Busch"-branded endorsement of any other amusement or theme park or its operator. As an illustrative but not limiting example, Licensor may advertise its products within an amusement or theme park, or for morale purposes, host a corporate-sponsored free day for employees at a competing amusement or theme park, but Licensor and its Affiliates will not serve as a corporate or brand-based sponsor for any other amusement or theme park or its operator. Without limiting the foregoing, this Agreement will not be violated if Licensor or its Affiliates use the words (A) "Busch" or "Bush" in a non-trademark manner or in a manner consistent with "fair use"; or (B) "Busch Gardens" in a non-trademark manner to describe accurately Licensor's corporate history and the transactions described in the Purchase Agreement and herein.

(b) Sublicensing.

(i) Licensee may sublicense the rights granted in Section 2(a) without the right to further sublicense such rights (other than as expressly indicated herein), as follows:

A. to advertisers, distributors, vendors, suppliers and other Persons, with no further right to sublicense such rights, as necessary or desirable for Licensee to exercise its own rights under the license in Section 2(a), but not for any other use (including any use for their own benefit) by such advertisers, distributors, vendors, suppliers and other Persons (an "Ancillary Sublicense");

B. to one or more Persons who leases one or more Theme Parks or operates or manages one or more of the Theme Parks on Licensee's behalf (a "Theme Park Operator"), with the right of such Theme Park Operator to grant Ancillary Sublicenses but no other sublicenses, provided that Licensee or its agents must directly supervise all material aspects of such Theme Parks' design and operation;

C. as permitted in Section 12(b); and

D. to its Affiliates, so long as they remain Affiliates of Licensee, who have the further sublicensing rights in subsections (A)-(C) above.

(ii) Each sublicense granted by Licensee or Sublicensee shall be in writing and shall provide that Licensor is a third party beneficiary of such sublicense, and that Licensor is entitled to enforce directly upon the Sublicensee the terms of this Agreement relating to the Licensed Marks, including the sampling and quality control obligations set forth herein.

(iii) Each sublicense shall not allow for further sublicensing, except for Ancillary Sublicenses.

(iv) Licensee shall notify Licensor promptly of, and in no event more than ten (10) days after, entering into a sublicense, and upon Licensor's request, shall provide Licensor with a copy of each such sublicense.

(v) Licensee shall enforce the terms of each sublicense unless Licensor has agreed with Licensee that enforcement may be waived.

(vi) Licensee shall remain liable to Licensor hereunder for any and all damages suffered by Licensor or its Affiliates due to acts or omissions of any Sublicensee under any sublicense as if such acts or omissions were made by Licensee directly, provided that Licensor may not make a duplicate recovery against both Licensee and any Sublicensee with respect to any such same act or omission. A material breach by a Sublicensee of its sublicense (and Licensee's failure to prevent same) shall not constitute a material breach of this Agreement by Licensee for purposes of termination this Agreement pursuant to Section 7(c)(i) unless (y) such Sublicensee does not cure such material breach within forty-five (45) days after (1) receipt of notice from either Licensor (with a copy to Licensee) or Licensee or (2) Licensor notifying Licensee of such matter, or (z) Licensee has not, after using reasonable best efforts to have its Sublicensee cure such material breach, terminated the applicable sublicense at the end of such forty-five (45) day period.

(c) Domain Names.

(i) Notwithstanding anything herein to the contrary, and subject to Section 3, Licensee may use domain names included in the Licensed Marks only as domain names and not as any other type of Trademark.

(ii) Without limiting transfers in Section 2(c)(iii), Licensee shall not, and shall specify in any sublicense agreement that such Sublicensee shall not register or apply for any Internet domain name that contains any of the Licensed Marks or any Trademark that is confusingly similar thereto.

(iii) During the Term, Licensor agrees that it or its Affiliates will remain the registrant of all domain names included in the Licensed Marks; provided however, that Licensor shall give Licensee at least thirty (30) days advance notice of its intent to cancel or no longer maintain any such domain names, and at Licensee's request

and expense, will transfer same to Licensee. Licensor agrees that Licensee shall, subject to the terms hereof, including those pertaining to standards of use and quality control: (i) have exclusive control over the content and operation of all websites operating under any Licensed Marks, including redirecting the domain names included in the Licensed Marks to the server Internet protocol (IP) address designated in writing by Licensee, and (ii) to the extent possible, be the first and primary point of communication (e.g., the administrative and technical contact) with the applicable registrar for such domain name.

(d) Licensed Marks Used at Theme Parks. Licensor represents and warrants that, except for the Trademarks set forth on Schedule 5.6(a) of the Purchase Agreement and the Trademarks owned by Licensee or its subsidiaries (or licensed to Licensee or its subsidiaries from third parties), the Licensed Marks are all of the material Trademarks used at the Theme Parks as of the Effective Date. If either Party discovers any "Busch Gardens" Trademark (other than a corporate name or trade name) that is owned by Licensor or its Affiliates (other than Licensee and its subsidiaries) and used in the Theme Parks as of the Effective Date, the Parties will amend the definition of "Licensed Marks" to include same.

(e) Combination/Composite Marks. Except as expressly set forth in this Agreement, neither Licensee nor any Sublicensee shall use the Licensed Marks: (i) as part of any composite Trademark bearing Licensee's or any Sublicensee's Trademarks; (ii) as part of any composite Trademark bearing any Trademark of any Person; or (iii) as a part of any other combination or composite mark. The foregoing restriction shall not prohibit Licensee or its Affiliates from using the Licensed Marks in connection with the names of any New Parks owned by Licensee or its Affiliates.

(f) Products/Services. Except as expressly set forth in this Agreement, the Licensed Marks shall not be used by Licensee to identify products or services other than Licensed Items or within the Field of Use.

(g) Alterations/Display. When Licensee uses the Licensed Mark "Busch Gardens", (i) Licensee must use the words "Busch Gardens" together and may not use the word "Busch" separately from the word "Gardens" and (ii) the word "Busch" must appear in equal prominence as the word "Gardens".

(h) Reservation of Rights. This Agreement provides Licensee with no right to use any Trademark or other intellectual property of Licensor or its Affiliates, except for the Licensed Marks as expressly permitted by and subject to this Agreement. All rights in the Licensed Marks other than the rights expressly granted to Licensee by this Agreement are hereby reserved to Licensor.

(i) Websites. Each Party agrees that it and its Affiliates will not link its websites to the other Party's and its Affiliates' websites, without consent, except as provided for in the Purchase Agreement and/or the Sponsorship Agreement.

3. Sampling and Approval.

Licensee must submit any proposed (i) new translation, transliteration, modification or stylization of any Licensed Marks or inclusion in a new composite Trademark or domain name, (ii) new use of the Licensed Marks within the Field of Use, (iii) new use of a Licensed Mark on a Licensed Item, (iv) adoption of a Licensed Mark in a new country or jurisdiction or (v) new registration of any Licensed Mark in any country or jurisdiction (each, a “New Trademark Use”) by Licensee or any Sublicensee to Licensor for prior review and approval to ensure that such New Trademark Use is in compliance with this Agreement, and such approval shall not be unreasonably withheld. Licensee shall, and shall provide in any sublicense agreement that such Sublicensee shall, submit all requests for approval of a New Trademark Use in writing and furnish to Licensor’s designated contact on Exhibit C samples of and/or applicable information relating to such proposed New Trademark Use. Licensor shall have twenty (20) days from the date Licensor receives such samples or information to object to any proposed New Trademark Use, and if Licensor does not respond within such twenty (20) day period, then Licensee shall resubmit such approval materials and provide notice of such resubmission to Licensor’s additional contacts on Exhibit C, with a prominent header on the top page or front of such submission saying “FINAL NOTICE FOR APPROVAL” or words of similar import. If Licensor does not object within twenty (20) days of receiving such second notice, Licensor shall be deemed to have consented to such use. Any objection by Licensor must be reasonably detailed so as to facilitate cure by Licensee, who may resubmit the New Trademark Use, subject to the above timetable. Licensor shall not object to any New Trademark Use if it does not (i) exceed the scope of Licensee’s rights in this Agreement, (ii) violate any provision of Section 4, (iii) violate any Person’s rights or (iv) harm Licensor’s rights in the Licensed Marks. If any of the foregoing will occur, Licensor shall not be deemed to have unreasonably objected to a New Trademark Use. Once a New Trademark Use is approved, such New Trademark Use need not be submitted for further approvals, unless such New Trademark Use is altered in any way (other than insignificant alterations) thereafter. Licensee shall ensure that no approved New Trademark Uses are altered in any way (other than insignificant alterations) without prior notification to Licensor, for which the above procedures shall apply. Licensor agrees that any uses of the Licensed Marks in a manner consistent with their use immediately prior to the Effective Date does not require further approval from Licensor.

4. Quality Control.

(a) Licensee shall ensure that the Licensed Marks are used in a manner that (i) is consistent with the purpose of the Theme Parks; (ii) complies with Licensor’s branding guidelines as may be reasonably updated and provided to Licensee by Licensor from time-to-time, and any other reasonable standards, guidelines and formats provided to Licensee from time-to-time; and (iii) is in accordance with good trademark practice in the applicable country or jurisdiction.

(b) Licensee acknowledges the high standards, quality, style and image of the Licensed Marks and that the quality control provisions of this Agreement are designed to ensure that all uses of the Licensed Marks are consistent with the reputation for high quality symbolized by the Licensed Marks and attributed to Licensor. Licensee shall ensure that:

(i) the operation of the Theme Parks, in connection with the grant of rights in Section 2(a), shall be consistent with the high standards and practices employed by Licensor in connection with its operation of the Busch Gardens Theme Parks;

(ii) all Licensed Items (A) shall be suitable for their intended use; (B) shall not be designed or produced to be inherently dangerous or contain or be packaged in any injurious, poisonous, deleterious or toxic substance or material; and (C) shall be manufactured, offered for sale, sold, labeled, packaged and distributed, advertised and otherwise exploited, in accordance with all applicable Laws (including all child and other labor Law, all customs requirements country of origin regulations, Laws relating to health and safety, such as flammability-related Laws);

(iii) the Licensed Marks are not used by Licensee and the Theme Parks are not operated in any manner that would reflect adversely on the reputation for high quality symbolized by the Licensed Marks or the reputation of Licensor or its Affiliates;

(iv) neither Licensee nor any Sublicensees use the Licensed Marks in any manner that devalues, injures, demeans or dilutes the reputation of the Licensed Mark or the reputation of Licensor or its Affiliates; and

(v) the use of the Licensed Marks shall adhere to a level of quality at least as high as the highest standard used by the Licensee in connection with its use of any Trademarks it may own, develop or acquire.

(c) Upon the reasonable request of Licensor, Licensee shall deliver to Licensor representative samples of any of its uses of the Licensed Marks (including any uses in or on advertising materials) and any Licensed Items as necessary to ensure the above standards are being maintained.

(d) Non-compliance of Licensee with this Section 4 shall constitute a material breach of Licensee hereunder.

5. Notices and Legends.

(a) Uses of the Licensed Mark shall reasonably include any notices and legends required by applicable Law or as reasonably requested by Licensor to preserve the validity of or Licensor's rights in and to the Licensed Marks, including where applicable the ® and ™ notices.

(b) Each trademark notice need be used only the first time the Licensed Mark appears or is displayed in such materials.

6. Intellectual Property Rights.

(a) Licensee acknowledges and agrees that, as between Licensor and Licensee, Licensor is the sole and exclusive owner of all right, title and interest in and to the Licensed Marks and is entitled to all goodwill associated therewith, and that all uses of the Licensed Marks by Licensee and any Sublicensees and the goodwill generated thereby shall inure solely to the benefit of and be on behalf of Licensor. Licensee acknowledges and agrees that nothing in this Agreement shall give Licensee or any Sublicensees any right, title or interest in or to the Licensed Marks or the goodwill associated therewith, other than the right to use the Licensed Marks solely in accordance with and subject to this Agreement. To the extent that any rights in or to the Licensed Marks are deemed to accrue to Licensee or any Sublicensees anywhere in the world pursuant to this Agreement, any use of the Licensed Marks or otherwise, Licensee hereby assigns, and shall specify in any sublicense agreement that such Sublicensee shall, assign all such rights, at such time as they may be deemed to accrue, to Licensor.

(b) Licensee shall not, and shall specify in any sublicense agreement that such Sublicensee shall not, at any time during or after the Term:

(i) challenge, contest or attack, directly or indirectly, Licensor's right, title or interest in or to any of the Licensed Marks in any jurisdiction, or do or cause to be done or intentionally omit to do anything, the doing, causing or omitting of which would contest or in any way impair the rights of Licensor in or to any of the Licensed Marks, or that could affect the validity of any of the Licensed Marks or any registrations or applications thereof, including in any action in which enforcement of a provision of this Agreement is sought. Licensee shall not willingly become a party adverse to Licensor in any claim, action, suit, arbitration, litigation or other proceeding in which a third party contests the value, validity and/or enforceability of the Licensed Marks or Licensor's rights therein;

(ii) except as permitted in Section 3, use (A) any Trademark that is confusingly similar to any of the Licensed Marks; or (B) any word, symbol, character or set of words, symbols or characters, which in any language or any characters would be identified as any of the Licensed Marks or which is otherwise confusingly similar to any of the Licensed Marks; and

(iii) except as permitted in Section 3, adopt, use, reserve, register or attempt to register (or allow others within its control to do the same), in any state or country or other jurisdiction throughout the world, any Trademark that is confusingly similar to, misleading or deceptive with respect to, or dilutes or damages, any of the Licensed Marks.

(c) In the event that either Party learns of any actual or threatened unauthorized use of any of the Licensed Marks by a third party, such Party shall promptly notify the other Party of such use and any details thereof of which such Party is aware. Within twenty (20) days of such notice (or sooner, if reasonably justified under the circumstances), Licensor, in its sole discretion, shall decide and inform Licensee whether

Licensor will commence legal proceedings or take any other action in connection with such use. If Licensor makes such election, Licensee shall, at Licensor's expense, provide all information in its possession and reasonable assistance to Licensor or its authorized representatives in connection therewith. If Licensor does not so elect and such unauthorized use is materially impairing Licensee's rights under this Agreement, Licensee may, in its sole discretion, in consultation with Licensor, commence legal proceedings in its own name and/or take other action in connection with such use and Licensor shall, at Licensee's expense, provide all information in its possession and reasonable assistance to Licensee or its authorized representatives (including all actions reasonably required to assist Licensee in enforcing its rights) in connection therewith. Absent a future agreement to the contrary, the Party bringing an action under this Section shall control such action, bear all costs and expenses associated with such action and keep all settlements and recoveries in connection therewith; provided, however, that neither Party shall enter into any settlement that would prejudice the other Party's rights in or to the Licensed Trademarks or otherwise impose any liability or obligations on the other Party, without the prior written consent of such Party.

(d) Each Party, as applicable, shall promptly notify the other Party of (i) any material dispute or claim, or any anticipated investigation, by regulators involving the Licensed Marks or products or services provided hereunder; and (ii) any threatened legal action involving the Licensed Marks or products or services provided hereunder.

(e) Licensee shall, upon Licensor's reasonable request and at Licensor's expense, execute and deliver to Licensor all documents which are necessary or useful to: (A) secure or preserve Licensor's rights in and to the Licensed Marks (including Licensor's ownership of the Licensed Marks and any goodwill associated therewith); (B) protect and enforce Licensor's rights in and to the Licensed Marks (including in any action taken by Licensor with regard to third parties); (C) record this Agreement or to record Licensee or any Sublicensees as registered user(s) of the Licensed Marks, as appropriate; or (D) cancel such registered user recordations when appropriate.

7. Term and Terminations.

(a) Term. This Agreement shall commence on the Effective Date and shall continue in perpetuity in full force and effect unless and until terminated as provided herein (the "Term").

(b) Termination as to Theme Park. If Licensee or a Sublicensee ceases to operate any Theme Park under the name of "Busch Gardens", this Agreement or the applicable sublicense shall terminate with respect to such Theme Park and Licensee's or Sublicensee's rights, as applicable in the Licensed Marks, with respect to such Theme Park (but with respect to no other Theme Parks), shall likewise be terminated. If no Person (i.e., Licensee or any Sublicensee) is operating at least one Theme Park under the name of "Busch Gardens", this Agreement shall terminate in whole. For clarity, the above termination applies if the name of a Theme Park is changed but not if the entire Theme Park ceases to be operational due to a force majeure or similar event, unless Licensee or a Sublicensee (as applicable) does not take active steps within a year to return the Theme Park to operation, in which case, Licensor may terminate this Agreement with respect to such Theme Park, effective upon notice.

(c) Termination as to Licensee. This Agreement shall terminate immediately as to Licensee (and except as provided in Section 12(b), all sublicenses granted pursuant to this Agreement shall terminate immediately as to the respective Sublicensees) in the event:

(i) that Licensee materially breaches Sections 2, 4, 8 or any other provision of this Agreement, in each case, in such a manner that materially impairs the value or validity of, or Licensor's goodwill in, the Licensed Marks and such breach is not cured within forty-five (45) days after receipt of such notice;

(ii) of a Change of Control of Licensee (including if and after Licensee files for bankruptcy); or

(iii) that Licensee assigns this Agreement or any obligation hereunder (including if and after Licensee files for bankruptcy) to a third party in violation of Section 12.

(d) Termination of Sponsorship Agreement. This Agreement shall terminate immediately if the Sponsorship Agreement terminates pursuant to an uncured material breach by Licensee of (i) Section 2(a) ("Official Corporate Sponsor" rights in the Initial Term), 2(b) ("Presenting Sponsor" rights in the Initial Term), 3 (with respect to the sponsorship rights in Section 2(a) referenced therein), 7(a)(vii)(3) (compliance with applicable law), 14(n) (competing brewer sponsorships) or 14(o) ("Pouring Rights") thereof, subject to the 45-day cure period set forth in the Sponsorship Agreement, or (ii) Section 14(m) (sponsorship exclusions) thereof, only if (x) Sponsor (as defined in the Sponsorship Agreement) does not elect to terminate the Sponsorship Agreement at the end of such 45-day cure period, (y) such material breach is not cured after sixty (60) days after receipt of notice of such breach, and (z) Sponsor elects to terminate the Sponsorship Agreement thereafter.

(e) Termination as to Sublicensees. Any sublicense granted pursuant to Section 2(b) hereof shall provide that (i) such sublicense shall terminate immediately as to such Sublicensee if this Agreement terminates and/or in the event (A) that such Sublicensee materially breaches any of its obligations under the sublicense and such breach is not cured within forty-five (45) days after receipt of such notice; (B) of a Change of Control of such Sublicensee (including if and after Sublicensee files for bankruptcy); or (C) that such Sublicensee sublicenses this Agreement or any of its obligations thereunder (including if and after Sublicensee files for bankruptcy) and (ii) upon any such termination, such Sublicensee shall terminate all further use of the Licensed Marks as soon as reasonably practicable but in no event more than ninety (90) days after termination, and at Licensor's option, return to Licensee or irretrievably destroy or delete all materials bearing the Licensed Marks.

(f) Effect of Termination. Upon the termination of this Agreement (or of any license to a Theme Park granted): (i) Licensee shall terminate all further use of the Licensed Marks as soon as reasonably practicable but in no event more than ninety (90) days after termination (provided that any such permitted post-termination use complies with the terms of this Agreement), and at Licensor's option, return to Licensor or irretrievably destroy or delete all materials bearing the Licensed Marks; and (ii) except as permitted by the foregoing, any and all rights to the Licensed Marks granted hereunder shall immediately cease and without further act or instrument revert to Licensor.

8. Indemnification and Insurance

(a) Indemnification. Licensee acknowledges that it will have no claims under this Agreement against Licensor, its Affiliates and each of their respective directors, officers, shareholders, employees, agents and representatives (each, a “Licensor Indemnified Party”) for any damage to property or injury to Persons arising out of the operation of Licensee’s business. Licensee agrees to indemnify, hold harmless and defend each Licensor Indemnified Party, with legal counsel reasonably acceptable to Licensor, from and against all third-party demands, claims, injuries, losses, damages, actions, suits, causes of action, proceedings, judgments, liabilities and expenses, including attorneys’ fees, court costs and other legal expenses (collectively, “Claims”), arising out of or connected with, except as otherwise provided in and without limiting the Purchase Agreement: (i) the Theme Parks and their operation after the Closing Date (excluding claims to the extent caused in whole or in part by such Licensor Indemnified Party’s gross negligence), (ii) Licensee’s promotions of the Theme Parks or Licensee’s methods of marketing or promoting the Theme Parks, (iii) any website located at a domain name included in the Licensed Marks, (iv) any Licensed Item, (v) infringement, dilution or other violation of a third party’s intellectual property rights in relation to any use of the Licensed Marks by Licensee not made by the Licensor or its Affiliates immediately prior to the Effective Date, or (iii) any breach by Licensee of any provision of this Agreement or of any representation or warranty made by Licensee in this Agreement. No approval by Licensor of any action by Licensee shall affect any right of Licensor to indemnification hereunder. Licensor agrees to indemnify, hold harmless and defend Licensee, its Affiliates and each of their respective directors, officers, shareholders, employees, agents and representatives, with legal counsel reasonably acceptable to Licensee, from and against all third-party Claims arising out of or connected with (i) Licensor’s operation of its business (but excluding Claims covered by Licensee’s indemnity obligations in Section 8(a) above) or (ii) any breach by Licensor of any provision of this Agreement or of any representation or warranty made by Licensor in this Agreement.

(b) Insurance. Licensee shall obtain and maintain during the term of this Agreement comprehensive general liability insurance coverage, including products, premises, completed operations and contractual liability insurance (to the extent that such contractual liability insurance can be obtained through commercially reasonable efforts), naming Licensor and its Affiliates as additional insureds. Such insurance shall be underwritten by insurers with an A.M. Best rating of A- or above and shall be written for limits of not less than the Coverage Amount each occurrence combined, for bodily injury,

including death and property damage. Licensee shall furnish Licensor promptly upon the execution of this Agreement and annually thereafter on each anniversary date of this Agreement with a certificate of insurance stating thereon the Coverage Amount, the limits of liability, the period of coverage, the parties insured (including Licensee and Licensor), and the insurer's agreement not to terminate or materially modify such insurance without endeavoring to notify Licensor in writing at least ninety (90) days before such termination or modification. Coverage maintained for Licensor by Licensee shall be exhausted before any insurance maintained by Licensor shall attach. Coverage shall be on an occurrence rather than a claims made basis. In no event shall Licensee make any use of the Licensed Marks before Licensor's receipt of such insurance certificate. The existence of the insurance coverage shall not mitigate, alter or waive the indemnity provisions in this Agreement. Licensor shall not be responsible for the payment of the premiums, charge taxes, assessments or other costs for the insurance coverage provided by Licensee.

(c) Procedure. The provisions of Section 7.5 ("Third Party Claim Indemnification Procedures") and Section 7.6 ("Payments") of the Purchase Agreement shall govern indemnification under this Section 8, mutatis mutandis.

9. Licensor's Remedies.

Each Party acknowledges and agrees that there would be no adequate remedy at law for its failure to comply with the provisions of this Agreement and agrees that, in the event of such failure and in addition to the rights provided by Section 8, each Party shall be entitled to equitable relief by way of temporary restraining order, preliminary injunction and permanent injunction and such other and further relief as any court with jurisdiction may deem just and proper, without the necessity of posting bond or proving actual damages. This remedy is separate and apart from any other remedy a Party may have.

10. Maintenance.

Licensee shall have the sole right, but not the obligation, at Licensee's sole cost and expense, to maintain and renew all Licensed Marks in the United States Patent and Trademark Office or any other federal, state or local agency or foreign equivalent, or any other registry (including domain name registries) or equivalent, as applicable, which shall include the filing of all necessary documentation and payment of all renewal, maintenance and other fees. Licensor will reasonably cooperate with Licensee in such maintenance efforts, at Licensee's sole cost and expense, including by executing all documents and performing all acts reasonably requested by Licensee in connection therewith. Licensee shall give Licensor at least thirty (30) days advance notice of its intent to no longer maintain any such Licensed Marks, and at Licensor's request and expense, will allow Licensor to do so.

11. Security Interest.

To protect Licensee from and against all damages of any kind or nature resulting from Licensor's rejection of this agreement in bankruptcy, Licensor hereby grants to Licensee a continuing security interest in and first priority lien upon the Licensed Marks (the "Security Interest"). Licensor shall execute any documents and perform all further acts, including with all applicable government agencies and authorities, at Licensee's expense, which Licensee reasonably requests in order to evidence and perfect the Security Interest. Upon termination of this Agreement as to all Theme Parks under Section 7(b) (but not if Licensor rejects this Agreement in bankruptcy), the Security Interest shall automatically terminate (subject to Section 12(b)) and Licensee shall execute any documents and perform all further acts, including with all applicable government agencies and authorities, at Licensor's expense, which Licensor reasonably requests in order to evidence and record such termination.

12. Assignment and Sales.

(a) Complete Sale to a Single Acquirer. Licensee must, and may without consent, assign this Agreement in whole (i) if Licensee (A) divests all of the Theme Parks (or the Persons who own them) as one or more divested entities to be acquired by a single Person that is not a Competing Person) or (B) sells all of the Theme Parks (or the Persons who own them) to a Person that is not a Competing Person or (ii) in any transaction described in Section 12(b)(iii). For clarity, Licensee cannot retain any of its rights under this Agreement unless Licensee continues to own at least one Theme Park.

(b) Sale to Partial Acquirer. If Licensee either (i) divests less than all of the Theme Parks (or the Persons who own them) as one or more divested entities to be acquired by one or more Persons (none of which may be a Competing Person) or (ii) sells less than all of the Theme Parks (or the Persons who own them) to one or more Persons (none of which may be a Competing Person), the following provisions apply. For clarity, after any transaction in this Section 12(b), only one Person at a time, the person who is "Licensee" hereunder, can hold the right under this Agreement to use the Licensed Marks in connection with New Parks (e.g. to build or rebrand amusement or theme parks under the Licensed Marks).

(i) If the transaction involves a single divested entity or acquirer (for example, Licensee owns 10 Theme Parks: Licensee retains 5 Theme Parks and sells 5 Theme Parks to one Person), Licensee may, without consent, (A) assign this Agreement in whole to such entity or acquirer, and at Licensee's request, Licensor must consent to a grant by the acquirer or divested entity to Licensee of an Existing Park Sublicense or (B) retain this Agreement and grant an Existing Park Sublicense to such entity or acquirer. In the event that any party grants an Existing Park Sublicense under this Section 12(b)(i), such Existing Park Sublicense will require, that if sublicensor's rights under this Agreement are terminated for any reason (or rejected in bankruptcy), the sublicensee will enter into a direct license with Licensor on substantially similar terms as the Existing Park Sublicense for the applicable Theme Parks, and Licensor agrees to enter into such direct license.

(ii) If the transaction involves more than one divested entity or acquirer and Licensee continues to own at least one existing Theme Park (for example, Licensee owns 10 Theme Parks: Licensee retains 2 Theme Parks, sells 5 Theme Parks to one Person and sells 3 to another Person), Licensee may, without consent, (A) assign this Agreement in whole to one such entity or acquirer, and at Licensee's request, Licensor must consent to a grant by the acquirer or divested entity to Licensee and any other divested entities or acquirers of one or more Existing Park Sublicenses; or (B) retain this Agreement and grant an Existing Park Sublicense to each such entity or acquirer. In the event that any party grants any Existing Park Sublicenses under this Section 12(b)(ii), such Existing Park Sublicenses will require, that if sublicensor's rights under this Agreement are terminated for any reason (or rejected in bankruptcy), each such sublicensee will enter into a direct license with Licensor on substantially similar terms as the Existing Park Sublicense for the applicable Theme Parks, and Licensor agrees to enter into such direct license.

(iii) If the transaction involves more than one divested entity or acquirer, and Licensee will no longer continue to own at least one existing Theme Park (for example, Licensee owns 10 Theme Parks: Licensee sells 5 Theme Parks to one Person and sells 5 to another Person), Licensee must and may without consent, assign this Agreement in whole to one such entity or acquirer, and at Licensee's request, Licensor must consent to a grant by the acquirer or divested entity to any other divested entities or acquirers of one or more Existing Park Sublicenses. Any such sublicense will require, that if sublicensor's rights under this Agreement are terminated for any reason (or rejected in bankruptcy), each such sublicensee will enter into a direct license with Licensor on substantially similar terms as the Existing Park Sublicense for the applicable Theme Parks, and Licensor agrees to enter into such direct license.

(c) Sponsorship Agreement. Any assignee or sublicensee under an Existing Park Sublicense must promptly enter into an agreement with Licensor on terms substantially similar to the Sponsorship Agreement, with respect to the applicable Theme Parks.

(d) Other Rights. This Section 12 does not restrict Licensee from making any sale, lease or other disposition of any assets or rights relating to one or more Theme Parks without assigning or sublicensing this Agreement. For clarity, if Licensee sells one or more (but not all) of the Theme Parks but does not assign or sublicense this Agreement pursuant to Section 12(a) or 12(b), Licensee retains the right to exercise its rights under Section 12(a) or 12(b) in a future qualifying transaction.

(e) Assignment by Licensor. Licensor may not assign, transfer, sell or otherwise dispose of the Licensed Marks to any Person other than an Affiliate without first granting Licensee a reasonable right of first refusal to purchase them, and any assignee, transferee, or purchaser of the Licensed Marks must assume in writing all of Licensor's obligations hereunder. Licensor may not assign this Agreement except to the then-current owner of the Licensed Marks.

(f) Other Transactions. Licensor agrees that Licensee may pledge or grant a lien in its rights in this Agreement and/or assume this Agreement in bankruptcy; provided that Licensee does not assign this Agreement to a Competing Person and subject to all other terms and conditions of this Agreement. Except as permitted in Section 12, neither Party may assign this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld.

(g) Effect of Assignment. Any purported sublicense or assignment granted in violation of this Agreement shall be null and void ab initio and of no force and effect. In the event of a permitted assignment, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective permitted successors, assigns and transferees.

13. Miscellaneous

(a) Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

(b) Notices. All notices or other communications required under the provisions of this Agreement shall be (i) in writing; (ii) delivered by hand; by registered or certified mail, return receipt requested or by facsimile transmission; and (iii) deemed given upon receipt. All notices or other communications shall be sent to the parties at the address set forth below, or at such other address as the parties shall have specified by written notice:

If to Licensor:

Anheuser-Busch Companies, Inc.
One Busch Place
St. Louis, Missouri 63118
Telecopy: (314) 577-0776
Attn: Vice President and General Counsel

If to Licensee:

The Blackstone Group L.P.
345 Park Avenue
New York, NY 10154
Telephone: 212-583-5000
Fax: 212-583-5710
Email: wallace@blackstone.com
Attn: Peter Wallace

(c) Governing Law; Submission to Jurisdiction; Selection of Forum; Waiver of Trial by Jury. THE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement, exclusively in the United States District Court for the Southern District of New York or any New York State court sitting in New York City (the “Chosen Courts”), and solely in connection with claims arising under this Agreement (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto and (iv) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 13(b) of this Agreement. Each party hereto irrevocably designates C.T. Corporation as its agent and attorney-in-fact for the acceptance of service of process and making an appearance on its behalf in any such claim or proceeding and for the taking of all such acts as may be necessary or appropriate in order to confer jurisdiction over it before the Chosen Courts and each party hereto stipulates that such consent and appointment is irrevocable and coupled with an interest. Each party hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

(d) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

(e) Entire Agreement. This Agreement (including all Exhibits hereto) and the applicable provisions of the Sponsorship Agreement and Purchase Agreement contain the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters. Any representation, promise, or condition not explicitly set forth herein shall not be binding on any party. Any amendments or modifications to this Agreement must be in writing specifically referencing and amending or modifying this Agreement and signed by an officer of each party.

(f) Nonwaiver. The failure of any party to assert or enforce any right arising under this Agreement shall not constitute a waiver of such right, or any other right arising hereunder. No waiver of any of the provisions hereof shall be effective unless in writing and signed by the party charged with such waiver.

(g) Headings. Any headings or captions appearing in this Agreement are intended solely for convenience of reference and shall not constitute a part of this Agreement or define or limit any of the terms and conditions hereof.

(h) Relationship. The parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture or agency relationship between the parties. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

(i) No Third-Party Rights. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity, other than the parties hereto and their respective permitted successors and assigns, any rights or remedies resulting from this Agreement.

(j) Costs. Unless expressly stated to the contrary in this Agreement, all costs incurred by a party hereto in connection with its performance hereunder shall be borne by that party.

(k) Survival. Each of the provisions of this Agreement which are not, by the expressed terms of this Agreement, fully to be performed during the term of this Agreement including, without limitation, Sections 6(a), 7(f), 8(a), 9, 12(b) (as applicable) and 13 (as applicable) shall survive the termination of this Agreement for any reason.

(l) Further Assurances. Licensor and Licensee agree to execute such further documentation and perform such further actions, including the recordation of such documentation with the appropriate authorities, as may be reasonably requested by the other party to evidence and effectuate further the purposes and intents set forth in this Agreement.

IN WITNESS WHEREOF , this Agreement has been executed by each party hereto through a duly authorized representative as of the day and year first above written.

LICENSOR:

ANHEUSER-BUSCH, INCORPORATED

By: /s/ Thomas Larson

Name: Thomas Larson

Title: Assistant Secretary

LICENSEE:

BUSCH ENTERTAINMENT LLC

By: _____

Name: James D. Atchison

Title: Authorized Person

Signature Page to Trademark License Agreement

IN WITNESS WHEREOF , this Agreement has been executed by each party hereto through a duly authorized representative as of the day and year first above written.

LICENSOR:

ANHEUSER-BUSCH, INCORPORATED

By: _____

Name: Thomas Larson

Title: Assistant Secretary

LICENSEE:

BUSCH ENTERTAINMENT LLC

By: /s/ James D. Atchison _____

Name: James D. Atchison

Title: Authorized Person

Signature Page to Trademark License Agreement

Exhibit A**Licensed Marks**

<u>Country Name</u>	<u>Trademark Name</u>	<u>App Number</u>	<u>Fil Date</u>	<u>Reg Number</u>	<u>Reg Date</u>	<u>Owner</u>
Azerbaijan	BUSCH GARDENS	967395	18-June-2008	967395	18-Jun-2008	Licensor
Saudi Arabia	BUSCH GARDENS	135321	14-Sep-2008			
Spain	BUSCH GARDENS	1548637	12-Feb-1990	1548637	04-Jan-1993	Licensor
China (People's Republic)	BUSCH GARDENS	93092481	02-Sep-1993	778712	28-Feb-1995	Licensor
Korea, Republic of	BUSCH GARDENS	93002302	03-May-1993	25113	12-Oct-1994	Licensor
Canada	BUSCH GARDENS	1157533	05-Nov-2002	618382	01-Sep-2004	Licensor
United Arab Emirates	BUSCH GARDENS	73146	14-Sep-2005	60421	16-May-2006	Licensor
United Arab Emirates	BUSCH GARDENS	73147	14-Sep-2005	77711	21-Nov-2006	Licensor
Iran	BUSCH GARDENS	87082107	11-Nov-2008			Licensor
Turkmenistan	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor

<u>Country Name</u>	<u>Trademark Name</u>	<u>App Number</u>	<u>Fil Date</u>	<u>Reg Number</u>	<u>Reg Date</u>	<u>Owner</u>
Belarus	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor
European Community	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor
Georgia	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor
Croatia	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor
Kyrgyz Republic	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor
Moldova	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor
Russian Federation	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor
Int'l Registration – Madrid Protocol Only	BUSCH GARDENS	967395	18-Jun-2008	967395	18-Jun-2008	Licensor
United States of America	BUSCH GARDENS	72/347190	29-Dec-1969	925302	07-Dec-1971	Licensor
United States of America	BUSCH GARDENS (Stylized)	78/172574	09-Oct-2002	2783350	11-Nov-2003	Licensor
United States of America	THE WORLDS OF BUSCH GARDENS	77/090868	25-Jan-2007	3293429	18-Sep-2007	Licensor
United States of America	BUSCH GARDENS	78/953564	16-Aug-2006	3256146	26-Jun-2007	Licensor

<u>Country Name</u>	<u>Trademark Name</u>	<u>App Number</u>	<u>Fil Date</u>	<u>Reg Number</u>	<u>Reg Date</u>	<u>Owner</u>
United States of America	BUSCH GARDENS	78/953522	16-Aug-2006	3283086	21-Aug-2007	Licensor
United States of America	BUSCH GARDENS	78/958346	23-Aug-2006	3312598	16-Oct-2007	Licensor
United States of America	BUSCH GARDENS	78/958231	23-Aug-2006	3256382	26-Jun-2007	Licensor
United States of America	BUSCH GARDENS	78/959322	24-Aug-2006	3256430	26-Jun-2007	Licensor
United States of America	BUSCH GARDENS	78/964851	31-Aug-2006	3256481	26-Jun-2007	Licensor
United States of America	BUSCH GARDENS	78/965306	31-Aug-2006	3302601	02-Oct-2007	Licensor
United States of America	BUSCH GARDENS	78/965962	01-Sep-2006	3256484	26-Jun-2007	Licensor
United States of America	BUSCH GARDENS	77/000227	15-Sep-2006	3273349	07-Aug-2007	Licensor
United States of America	BUSCH GARDENS	77/002024	19-Sep-2006	3273369	07-Aug-2007	Licensor
United States of America	BUSCH GARDENS	77/003565	20-Sep-2006	3235723	01-May-2007	Licensor
United States of America	BUSCH GARDENS	77/005002	22-Sep-2006	3337890	20-Nov-2007	Licensor
United States of America	BUSCH GARDENS	77/215259	26-Jun-2006	3503701	23-Sep-2008	Licensor

Exhibit B**Interest Domain Names**

<u>Domain Name</u>	<u>Expiration Date</u>
bgtip.com	2010-07-01
bgtmobile.com	2010-04-16
bgwchristmas.com	2010-11-07
bgwfun.com	2010-12-16
bgwilliamsburg.com	2010-05-11
bgwjjobs.com	2010-10-21
bgwmobile.com	2010-04-16
bgwpolls.com	2011-06-25
boycottbusch-gardens.com	2010-11-17
boycottbuschgardens.com	2010-11-17
busch-gardens.com	2010-03-26
busch-gardens.us	2010-04-18
buschentertainmentcorporation.us	2010-04-25
buschgarden.cn	2010-03-16
buschgarden.com.cn	2010-12-15
buschgarden.net.cn	2010-12-15
buschgarden.org	2011-01-29
buschgarden.org.cn	2010-12-15
buschgardenmobile.com	2010-04-16
buschgardennews.com	2010-11-13
buschgardens.asia	2009-11-21
buschgardens.biz	2010-11-18
buschgardens.com	2010-07-06
buschgardens.info	2010-08-01
buschgardens.mobi	2010-06-12
buschgardens.net	2010-03-23
buschgardens.org	2010-12-12
buschgardens.us	2010-04-18
buschgardensdubai.com	2010-02-22
buschgardensdubai.org	2010-02-22
buschgardensdubai.travel	2010-02-22
buschgardensexcursions.com	2010-04-12
buschgardensezticket.com	2010-05-01
buschgardensgroupevents.com	2010-09-08
buschgardensinfo.com	2010-03-30
buschgardensjobs.com	2010-04-18
busehgardenspassmember.com	2010-06-10
buschgardensshop.com	2010-12-19
buschgardenstalent.com	2010-07-11
buschgardenstampa.biz	2010-06-17
busehgardenstampa.info	2010-06-18
buschgardenstampa.mobi	2010-09-26

<u>Domain Name</u>	<u>Expiration Date</u>
buschgardenstampa.net	2010-06-18
buschgardenstampa.org	2010-06-18
buschgardenstampa.us	2010-04-23
buschgardenstampabay.com	2010-05-11
buschgardensusa.org	2010-02-22
buschgardensusa.travel	2010-02-22
buschgardensvacations.com	2010-05-30
buschgardenswilliamsburg.biz	2010-06-17
buschgardenswilliamsburg.com	2010-07-25
buschgardenswilliamsburg.info	2010-06-18
buschgardenswilliamsburg.mobi	2010-09-26
buschgardenswilliamsburg.net	2010-06-18
buschgardenswilliamsburg.org	2010-06-18
buschgardenswilliamsburg.us	2010-04-23
bush-gardens.com	2010-04-20
bush-gardens.net	2010-04-20
bushgardenmobile.com	2010-04-16
bushgardens.com	2010-09-18
bushgardens.net	2010-04-18
bushgardensfl.com	2010-05-24
bushgardensflorida.com	2010-05-24
bushgardenmobile.com	2010-04-16
bushgardenstampabay.com	2010-04-14
bushgardensvacations.com	2010-04-05
bushgardensvacations.net	2010-04-05
christmasatbushgardens.com	2010-07-28
clubbushgardens.com	2010-01-26
floridabushgardens.com	2010-05-24
gloryatthegardens.com	2010-07-28
gloryatthegardenstampa.com	2010-01-14
mybuschgardens.com	2011-03-09
mybuschgardens.info	2011-02-16
mybuschgardensinfo.com	2011-02-08
mybuschgardensphoto.com	2011-06-02
mybuschgardensphotos.com	2011-06-02
swbg-adventurecamp.com	2010-03-11
swbg-adventurecamps.com	2010-03-11
swbg-animal.com	2010-08-06
swbg-animal.org	2010-08-06
swbg-animals.com	2010-08-06
swbg-animals.org	2010-08-06
swbg-conservation.org	2010-06-06
swbg-conservationfund.com	2010-03-20
swbg-conservationfund.net	2010-03-20
swbg-conservationfund.org	2010-04-25
swbg-estore.com	2010-01-10

<u>Domain Name</u>	<u>Expiration Date</u>
swbgadventurecamp.com	2010-03-10
swbgadventurecamps.com	2010-03-11
swbganimal.com	2010-08-06
swbganimal.org	2010-08-06
swbganimals.com	2010-08-06
swbganimals.org	2010-08-06
swbgconservationfund.com	2010-03-20
swbgconservationfund.net	2010-03-20
swbgconservationfund.org	2010-08-12
swbgfund.com	2010-05-05
swbgfund.org	2010-05-05
talentsearchbgw.com	2010-12-03
williamsburgbuschgardens.com	2010-10-10

Exhibit C – Approval Contacts

Anheuser-Busch Companies, Inc.
One Busch Place
St. Louis, Missouri 63118
Telecopy: (314) 577-0776
Attn: General Counsel

With copy to:

Anheuser-Busch Companies, Inc.
One Busch Place
St. Louis, Missouri 63118
Telecopy: (314) 577-0776
Attn: Intellectual Property Section Head, Legal Department

Subsidiaries of SeaWorld Entertainment, Inc.

<u>Name</u>	<u>Jurisdiction of Incorporation/Organization</u>
SeaWorld Parks & Entertainment, Inc.	Delaware
SeaWorld Parks & Entertainment LLC	Delaware
Sea World LLC	Delaware
Sea World of Florida LLC	Florida
Sea World of Texas LLC	Delaware
Langhorne Food Services LLC	Delaware
SeaWorld Parks & Entertainment International, Inc.	Delaware
SeaWorld of Texas Holdings, LLC	Texas
SeaWorld of Texas Management, LLC	Texas
SeaWorld of Texas Beverage, LLC	Texas

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 of our report dated December 26, 2012 relating to the financial statements and financial statement schedule of SeaWorld Entertainment, Inc. appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to us under the heading “Experts” in such Prospectus.

/s/ Deloitte & Touche LLP

Tampa, Florida

December 26, 2012