

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE: §
UPPER PADRE PARTNERS, L.P. § Case No. 17-51045
Alleged Debtor. § Chapter 11

**AXYS CAPITAL CREDIT FUND LLC’s MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 14 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE CRAIG A. GARGOTTA, UNITED STATES BANKRUPTCY JUDGE:

Axys Capital Credit Fund LLC (“Axys”), files this Motion for Relief from the Automatic Stay, as follows:

Summary

1. This case was commenced by the filing of an involuntary bankruptcy petition by two alleged creditors of the putative Debtor on May 1, 2017. Upon information and belief, the “creditors” are hold disputed claims, are insiders or affiliates of the putative Debtor and the Debtor has more than 20 unsecured creditors. The involuntary bankruptcy case was commenced on the eve of Axys’ noticed foreclosure sale of its real property collateral, and the filing stayed the non-judicial foreclosure sale that was to be effected on May 2, 2017.

2. The Debtor owns and operates a Schlitterbahn water park, 9-hole golf course, lodging and related amenities in Corpus Christi, Texas. In addition, Debtor owns certain

undeveloped real estate which is pledged to secure its obligation to Axys. Axys provided a \$16 million loan, which has been in default and accelerated for months, secured by certain real property adjacent to the water park, which is vacant and undeveloped, not essential to the Debtor's business operations, and worth less than the debt owed to Axys. This bankruptcy filing, made by affiliates of the putative Debtor on the evening before a foreclosure sale, with less the required number of creditors to assert an involuntary petition is the result of and emblematic of an ongoing dispute between the principals and equity owners of the Debtor. Regardless of whether the Debtor can reorganize its core business, the property securing repayment of Axys' debt is not a necessary component of the Debtor's operations. Upon information and belief, the involuntary petition was a contrived mechanism to get the benefit of the automatic stay despite the terminally conflicted situation among Debtor's partners, who have now joined together to continue to delay the adjudication of the involuntary allegations. Axys is, however, currently caught in the feud, and should be released to pursue its remedies.

Jurisdiction and Procedural Background

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157, 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

4. This case was instituted against Upper Padre Partners, L.P. ("UPP" or "Debtor") by the filing of an Involuntary Petition on May 1, 2017. The Petition creditors, Schlitterbahn NP Water Resort Management and Waterpark Management, Inc. are affiliates of UPP. As of the date of this motion, UPP has not filed an answer because, as discussed below, the answer date has been extended by agreement of the Petition creditors and UPP.

Factual Background

5. On February 25, 2015, Axys and UPP executed a Loan Agreement and several ancillary loan documents (collectively, the “Loan Documents”) in connection with Axys’s advance of a loan (the “Loan”) to UPP in the original principal amount of \$16 million. The Loan is evidenced by the Note from UPP to Axys and secured by a lien on certain real property owned by UPP. See **Exhibit A**. The Note is secured by a Deed of Trust on real property located in Nueces County, Texas, along with other personal property described in the Deed of Trust. A true and correct copy of the Deed of Trust is attached as **Exhibit B**. The Note is also secured by an (1) Assignment of Leases and (2) Assignment of Contracts, and property described in a recorded UCC-1. The property securing repayment of the Note is referred to as the “Collateral.” The Collateral is not part of nor necessary to the Debtor’s core business of operating the Schlitterbahn water park, golf course and related amenities.

6. The Note required UPP to make monthly, interest-only payments calculated at the rate of 15% per annum for a period of two years until the maturity date on February 25, 2017, when all unpaid interest, principal, and other fees would become due. **Exhibit A** at 1. The Note also requires UPP to pay for all reasonable costs, legal fees, and expenses incurred by Axys in collecting on the Note, including those arising from any bankruptcy proceeding filed by UPP. *Id.* In the event of default, the Note provides for interest at the maximum rate allowed under Texas law, which is currently 18% per annum. *Id.* at 2. The Note and the obligations owed to Axys is guaranteed by four individuals. (the “Guarantors”) who are affiliates of the Debtor. Axys has commenced a state court action against the Guarantors.

7. UPP failed to make timely, complete payments due under the Note. On November 29, 2016, Axys sent UPP a notice of default. When the default was not cured, Axys sent UPP and the Guarantors a notice accelerating all amounts due under the Note on December

16, 2016. Since receiving the notice of acceleration, UPP has not paid the amount due under the Note, which continues to accrue interest at the default rate.

8. Axys, UPP and the Guarantors entered a “Forbearance Agreement” in December 2016 and January 2017, pursuant to which UPP (and the Guarantors): (1) acknowledged the extent and validity of the debt owed to Axys; (2) acknowledged that no offsets or counterclaims existed; and (3) released all claims against Axys. Additionally, UPP (and the Guarantors) agreed that, among other basis, Axys would be entitled to relief from the automatic stay in the event that any petition for bankruptcy relief was filed by or against UPP or any order for relief was entered. A true and correct copy of the January agreement is attached as **Exhibit C**.

9. As of this date, the amount due under the Note consists of \$16,000,000 principal and \$1,824,000 accrued and unpaid interest, which continues to accrue at the rate of \$8,000 per day, along with attorneys’ fees, costs and other expenses allowed under the Loan Documents. Additionally, Axys is entitled to recover its attorney’s fees and costs under the Note. Upon information and belief, the value of the Collateral securing repayment of the Note is between \$11,890,000 and \$15,850,000 based upon a recent “as is” Appraisal conducted by Colliers International Valuation and Advisory Services on February 28, 2017.

Basis for Relief

10. The automatic stay should be terminated pursuant to 11 U.S.C. §362(d)(1) for cause. First, there is no adequate protection for Axys. As noted above, the value of the Collateral repayment of the Note is less than the balance of the Note and no payments are being made to Axys to provide adequate protection. Additionally, cause exists to terminate the automatic stay due to the circumstances surrounding the filing of the Involuntary Petition. Upon information and belief, the Involuntary Petition was filed by the affiliates of the Debtor because there was no agreement among the partners, and equity interest owners of the Debtor to file a

bankruptcy petition. As noted above, at the time of the filing of this case, the real property was posted for foreclosure for the following day and the obligations owed to Axys had been in default literally for months, and the Involuntary Petition was filed on the evening before the scheduled foreclosure sale. The filing of the bankruptcy case is nothing more than a delay tactic, given that there is no agreement on how to proceed. The stipulation extending the answer date is nothing more than an additional delay tactic for the work and detriment of Axys. It is effectively the Debtor agreeing with itself to delay the obligations of being in Chapter 11 at the same time it obtains the benefits of the automatic stay and prevents Axys from obtaining its collateral. In effect, the Debtor has had all the benefit of a bankruptcy filing with none of the burdens of actually being in a bankruptcy case.

11. IslandWalk Development, LP, one of the Debtor's limited partners (and equity owners of the Debtor's general partner) instituted an arbitration proceeding against the Debtor, management of the Debtor and certain affiliates, referred to as the "Henry Group" in the arbitration complaint. A true and correct copy of the Arbitration Demand is attached as **Exhibit D**. The complaint alleges various causes of action, including claims for breach of fiduciary duty, fraud, breach of contract, conspiracy and other claims. Gary Henry, also a respondent in the arbitration proceeding, is the principal of the two entities that filed the involuntary petition, and signed the petition.¹ Upon information and belief, the claims asserted by the petitioning creditors are disputed and do not qualify under 11 U.S.C. 303. There is little doubt, although Debtor has not been required to file schedules because of the agreed delay in the involuntary adjudication, that the Debtor has more than 20 creditors and the involuntary petition cannot be granted without the joinder of at least one or more undisputed unsecured creditors.

¹ Upon information and belief, Jeff Henry and Paul Schexnaider, who are involved in the struggle for the control and direction of the Debtor, opposed filing for bankruptcy protection.

The Henrys control the management of the Debtor's general partner and, as a result, the Debtor. For all practical purposes, the Debtor has a dysfunctional management and is incapable of effective operations. The involuntary petition is nothing more than an artifice and another move in the chess game between the warring factions. The one thing that the dysfunctional management appears to be able to agree on is that Axys should be stayed from pursuing their remedies. "Cause" exists to terminate the automatic stay.

12. Additionally and alternatively, the automatic stay should be terminated pursuant to 11 U.S.C. §362(d)(2) because (1) UPP does not have any equity in the Collateral securing repayment of the Note; and (2) the Collateral is not necessary to an effective reorganization, both because the Collateral is not essential to the Debtor's business operations and because no reorganization is reasonably possible.. As noted above, the value of the property securing repayment of the Note is less than the balance of the Note. Additionally, the Debtor owes substantially additional indebtedness to IBC Bank (in excess of \$28,000,000), the petitioning creditors purportedly in excess of \$4.6 million, as well as other creditors. Cash flow from the Debtor's operations is insufficient to repay these obligations on any reasonable, confirmable basis. Additionally, the Collateral is not necessary to the operation of the Debtor's core business and is not necessary for the Debtor to operate its business. In fact, the Debtor re-drew certain of its property boundaries in 2015 to separate the Collateral from the Debtor's other business operations.

13. Finally, as noted above, the Debtor has consented to relief from the stay pursuant to the express terms of the Forbearance Agreement.

WHEREFORE, based on the foregoing, Axys requests the Court grant this motion and terminate the automatic stay to allow Axys to proceed with all available remedies against the

property securing repayment of the Note, and that Axys have such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

By: /s/ Mark C. Taylor

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ATTORNEYS FOR CREDITOR,
AXYS CAPITAL CREDIT FUND LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically filed and served via the Court's CM/ECF system upon all parties registered to receive notice in this case as listed on the attached service list and on the parties listed below by United States First Class Mail on this 16th day of June, 2017.

Alleged Debtor

Upper Padre Partners L.P.
381 East Austin Street
New Braunfels, TX 78130

Proposed Counsel for Alleged Debtor

Raymond W. Battaglia
66 Granburg Circle
San Antonio, TX 78218

/s/ Mark C. Taylor

Mark C. Taylor

SERVICE LIST (ECF PARTIES)

Michael G. Colvard
Martin & Drought, PC
2500 Bank of America Plaza
300 Convent St
San Antonio, TX 78205

Lisa C. Fancher
Fritz, Byrne, Head & Gilstrap PLLC
221 West Sixth Street
Suite 960
Austin, TX 78701

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Nathan Sommers Jacobs, P.C.
2800 Post Oak Blvd.
61st Floor
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Norton Rose Fulbright US LLP
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San Antonio, TX 78205

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Pulman Cappuccio Pullen Benson & Jones
2161 NW Military Hwy Suite 400
San Antonio, TX 78213

Diane W. Sanders
Linebarger Goggan Blair & Sampson LLP
P.O. Box 17428
Austin, TX 78760

EXHIBIT A

PROMISSORY NOTE

\$16,000,000.00

Austin, Texas

February 25, 2015

FOR VALUE RECEIVED, after date, without grace, in the manner, on the dates, and in the amounts so herein stipulated, the undersigned, UPPER PADRE PARTNERS, LP, a Texas limited partnership ("Maker"), promises to pay to the order of AXYS CAPITAL CREDIT FUND LLC, a Delaware limited liability company ("Payee"), at its offices in Austin, Texas, the sum of SIXTEEN MILLION AND NO/100 DOLLARS (\$16,000,000.00) in lawful money of the United States of America, which shall be legal tender, in payment of all debts and dues, public and private, at the time of payment and to pay interest thereon from date until maturity at a rate of fifteen percent (15.0%) per annum, payable as stipulated herein.

This note is payable as follows, to-wit:

Accrued interest shall be due and payable monthly, on the 25 day of each and every calendar month, commencing March 25, 2015 and continuing regularly and monthly thereafter until the expiration of two (2) years from the date hereof, at which time the entire unpaid balance of this note, principal together with unpaid accrued interest, shall be due and payable in full. During the first nine (9) months of the term hereof, Maker hereby authorizes and directs Payee to withdraw sums from the Interest Reserve Account (as defined in the Loan Agreement) to pay accrued and unpaid interest hereon as the same becomes due and payable hereunder.

Subsequent to six (6) months from the date hereof, this note may be prepaid in whole or in part at any time without notice or penalty; provided, however, that all payments received by Payee from Maker upon this note shall first be applied to the payment of accrued but unpaid interest, with the balance thereof to be applied to the reduction of the outstanding principal of this note. During the first six (6) months from the date hereof, Maker may prepay this note in full, but not in part, upon payment of (a) all accrued interest to and including the date of prepayment, (b) the Yield Maintenance Fee (as hereinafter defined), and (c) all other sums due under this note and the Loan Documents. The term "Yield Maintenance Fee" means an amount equal to fifteen percent (15%) per annum on the amount of this note so prepaid from the date of prepayment through and including six (6) months from the date hereof.

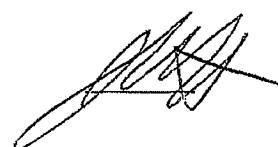
Interest shall be computed on the basis of the actual number of days elapsed in a year composed of 360 days.

Whenever any payment to be made under this note shall be stated to be due on a Saturday, Sunday or legal holiday for commercial banks under the laws of the State of Texas, then such payment shall be made on the next succeeding business day.

In addition to all principal and accrued interest on this note, Maker agrees to pay (a) all reasonable costs and expenses incurred by all owners and holders of this note in collecting this note through probate, reorganization, bankruptcy or any other proceeding, and (b) reasonable attorneys' fees when and if this note is placed in the hands of an attorney for collection after default.

Unless otherwise provided by law, Maker and any and all co-makers, endorsers, guarantors and sureties severally waive notice (including, but not limited to, notice of protest, notice of dishonor and notice of intent to accelerate and notice of acceleration), demand, presentment for payment, protest and the filing of suit for the purpose of fixing liability and consent that the time of payment hereof may be extended and re-extended from time to time without notice to them or any of them, and each agrees that his, her or its liability on or with respect to this note shall not be affected by any release of or change in any security at any time existing or by any failure to perfect or to maintain perfection of any lien on or security interest in any such security.

Maker warrants and represents to Payee, and to all other owners and holders of any indebtedness evidenced hereby, that the loan evidenced by this note is and shall be solely for business, commercial or agricultural purposes



and not primarily for personal, family or household use. Maker acknowledges that the loan evidenced by this note is specifically exempted under Section 226.3(a) of Regulation Z issued by the Board of Governors of the Federal Reserve System and under the Truth-in-Lending Act and that no disclosures are required to be given under such regulations and federal laws in connection with this note.

It is agreed that time is of the essence of this agreement, and that in the event of default in the payment of any installment of principal or interest when due and the continuation of that default after the expiration of any applicable grace or opportunity to cure period the holder hereof may declare the unpaid principal balance plus all accrued but unpaid interest due thereon immediately due and payable without further notice, and failure to exercise said option shall not constitute a waiver on the part of the holder of the right to exercise the same at any other time while said default continues.

In the event of default in the making of any payment herein provided, either of principal or interest, or in the event the entirety of the indebtedness evidenced hereby is declared due, interest shall accrue on the amount past due at the maximum rate allowed by law from and after Payee or other holder hereof gives Maker written notice of Payee's election to that effect.

All agreements between Maker and Payee, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no event, whether by reason of acceleration of maturity hereof or otherwise, shall the amount paid or agreed to be paid to Payee for the use, forbearance or detention of the money to be loaned hereunder or otherwise, exceed the maximum amount permissible under applicable law. If fulfillment of any provision hereof or of any mortgage, loan agreement, or other document evidencing or securing the indebtedness evidenced hereby, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity; and if Payee shall ever receive anything of value deemed interest under applicable law which would exceed interest at the highest lawful rate, an amount equal to any excessive interest shall be applied to the reduction of the principal amount owing hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to Maker. All sums paid or agreed to be paid to Payee for the use, forbearance, or detention of the indebtedness of Maker to Payee shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full so that the rate of interest on account of such indebtedness is uniform throughout the term thereof. The provisions of this paragraph shall control all agreements between Maker and Payee.

Payment of this note is secured by (1) a first lien Deed of Trust of even date herewith from Maker to Christopher Hamm, Trustee for the benefit of Payee covering certain property located in Nueces County, Texas, as more particularly described therein and (2) Limited Guaranty Agreements of even date herewith executed by Upper Padre GP, Inc., Gary Henry, Jeff W. Henry and Paul Schexnaider (collectively, together with (i) the Loan Agreement, (ii) this note and (iii) any other documents executed in connection herewith, the "Loan Documents").

This note is the promissory note referred to in, is subject to and is entitled to the benefits of, the Loan Agreement (herein so called) of even date herewith between Maker and Payee, as that Loan Agreement may be amended, modified or supplemented from time to time. The Loan Agreement contains, among other things, provisions for the acceleration of the maturity hereof upon the occurrence of certain stated events.

Maker shall pay to Payee on or before the closing hereof a commitment fee in the amount of \$320,000.00 and it is agreed that said fee shall be paid in consideration for Payee's taking appropriate action to insure that all of the funds that it is required to advance pursuant hereto are available to Maker when it requests the same, subject to the terms and conditions hereof.

Notwithstanding the provisions of §§ 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Maker agrees that Payee shall be entitled to seek a deficiency judgment from Maker and any other party obligated on this note, including any guarantor of this note, equal to the difference between the amount owing on this note and the amount for which the Property was sold pursuant to a judicial or nonjudicial foreclosure sale. Maker expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Maker independently (even absent the initiation of deficiency proceedings against it) to present competent evidence of the fair market value of the Property as of the date of foreclosure and offset against any deficiency the amount by which the



foreclosure sale price is determined to be less than such fair market value. Maker further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Maker, other borrowers on this note, guarantors and others against whom recovery of a deficiency is sought. The foregoing to the contrary notwithstanding, nothing herein shall prevent Payee from pursuing its remedies directly against any guarantor prior to any foreclosure in accordance with the provisions of such guaranty agreement. Alternatively, in the event the waiver provided for above is determined by a court of competent jurisdiction to be unenforceable, then notwithstanding the provisions of §§ 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Maker agrees that Payee shall be entitled to seek a deficiency judgment from Maker and any other party obligated on this note or under any guaranty agreement covering this note, to the limited extent stated in said guaranty agreement for the difference between the amount owing on this note and the fair market value of the Property as determined in accordance with the applicable provisions of the Deed of Trust.

For purposes of any suit relating to this note, Maker hereof submits itself to the jurisdiction of any court sitting in Nueces County, State of Texas, and further agrees that venue in any suit arising out of this note or any venue shall be fixed in Nueces County, Texas. Final judgment in any suit shall be conclusive and may be enforced in any jurisdiction within or without the United States of America, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of such liability.

"LENDER" MEANS, COLLECTIVELY, AXYS CAPITAL INCOME FUND LLC, AND ITS PREDECESSORS, SUCCESSORS, ASSIGNS, OFFICERS, REPRESENTATIVES, PARENT CORPORATIONS, SUBSIDIARIES AND AFFILIATES.

"CLAIMS" MEANS ANY AND ALL CLAIMS, COUNTERCLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION FOR DAMAGES, LOSSES, FINES, DEBTS, OBLIGATIONS AND LIABILITIES, WHETHER UNDER AGREEMENTS, COVENANTS OR CONTRACTS, EXPRESS OR IMPLIED, TO WHICH LENDER IS A PARTY, THAT WERE MADE, OR FOR ACTIONS OR OMISSIONS OF LENDER OF ANY NATURE WHATSOEVER WHICH OCCURRED, PRIOR TO THE EXECUTION OF THIS RELEASE AND ARE NOT CONTAINED IN OR REQUIRED BY THE LOAN DOCUMENTS. "CLAIMS" INCLUDES, WITHOUT LIMITING THE FOREGOING BUT SUBJECT TO THE LIMITATIONS OF THE FOREGOING, ALL CLAIMS, DEMANDS AND CAUSES OF ACTION (I) FOR CONTRIBUTION AND INDEMNITY, (II) WHETHER ARISING AT LAW OR IN EQUITY, IN CONTRACT OR IN TORT, UNDER STATUTE OR IN STRICT LIABILITY, (III) FOR FRAUD, DURESS, MISTAKE, TORTIOUS INTERFERENCE, USURY, NEGLIGENCE OR FRAUD IN RATES AND METHODS USED TO COMPUTE INTEREST, AND VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT, (IV) WHETHER PRESENTLY POSSESSED OR POSSESSED IN THE FUTURE, (V) WHETHER KNOWN OR UNKNOWN, (VI) WHETHER LIABILITY IS DIRECT OR INDIRECT, ABSOLUTE OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED, (VII) WHETHER PRESENTLY ACCRUED OR TO ACCRUE HEREAFTER, OR (VIII) WHETHER FORESEEN OR UNFORESEEN. "CLAIMS" DOES NOT INCLUDE ANY CLAIM, COUNTERCLAIM, DEMAND, SUIT OR CAUSE OF ACTION OF ANY AND EVERY KIND AND NATURE ARISING UNDER OF BY VIRTUE OF THE LOAN DOCUMENTS.

MAKER HEREBY RELEASES, COVENANTS NOT TO SUE, REMISES, ACQUITS, WAIVES AND FOREVER DISCHARGES AND RELIEVES LENDER AND EACH OF THEM OF AND FROM ALL CLAIMS.

UPPER PADRE PARTNERS, LP,
a Texas limited partnership

By: UPPER PADRE GP, INC.,
a Texas corporation, its General Partner

By: 
Jeff W. Henry, President



EXHIBIT B

CHICAGO TITLE OF# AG1101662AAR3
DEED OF TRUST

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF NUECES §

THAT THE UNDERSIGNED, UPPER PADRE PARTNERS, LP, a Texas limited partnership (hereinafter called "Grantors," whether one or more), whose mailing address is 381 East Austin Street, New Braunfels, Texas 78130, for and in consideration of the debt hereinafter described, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, in trust, unto CHRISTOPHER HAMM of Travis County, Texas, as Trustee, and unto his successors in the trust hereby created and unto his or their assigns and the heirs of such assigns (all of whom are hereinafter called "Trustee"), forever, all the property described in Exhibit "A" attached hereto and made a part hereof for all purposes. To have and to hold unto Trustee and his substitutes, successors and assigns the property described in Exhibit "A", together with any and all personal property now or hereafter located thereon owned by Grantors and any and all buildings and improvements of every kind and character now or hereafter situated or placed thereon (including, but not limited to, any and all plumbing, electrical, heating, cooling and other fixtures, equipment and appliances), and all replacements of and additions thereto, and all of Grantors' rights with respect to utility capacity, utilities and utility taps, wastewater capacity, proceeds arising from any claim pursuant to any policy of title insurance covering the property described in Exhibit "A" and all and singular the rights, privileges, hereditaments, appurtenances, rents, revenues, profits and income thereunto now or hereafter incident or belonging thereto (collectively referred to herein as the "Mortgaged Property"), forever and Grantors do hereby bind themselves, their heirs, successors, assigns and legal representatives to warrant and forever defend, all and singular the Mortgaged Property unto Trustee, his substitutes or successors and assigns forever, against the claim or claims of all persons to claim the same or any part thereof by, through or under Grantors, but not otherwise. It is hereby agreed that to the extent permitted by law all of the foregoing property is to be deemed and held to be a part of and affixed to the realty.

This conveyance is made in trust, however, to secure and enforce the payment of a promissory note (hereinafter referred to as "Note," whether one or more) of even date herewith, executed by Grantors, payable to the order of AXYS CAPITAL CREDIT FUND LLC, a Delaware limited liability company (hereinafter called "Beneficiary"), whose mailing address is 1613 S. Capital of Texas Hwy, #300, Austin, Texas 78746, in the principal amount of \$16,000,000.00, bearing interest and being payable as provided therein.

This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Beneficiary to or for the benefit of Grantors, as contemplated by any covenant or provision herein contained, and all other indebtedness, of whatever kind or character, owing or which may hereafter become owing by Grantors to Beneficiary under or pursuant to this Deed of Trust, the Note, or the other loan documents executed by Grantors in connection therewith, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Grantors may hereafter become indebted to Beneficiary in further sum or sums as and to the extent contemplated hereunder. All indebtedness secured hereby shall be payable in Travis County, Texas, until Beneficiary gives written notice to Grantors designating another place of payment; and shall bear interest at the rate or rates stated in the instrument evidencing said indebtedness. If the Note or any other indebtedness secured hereby shall be collected by legal proceedings or through a probate or bankruptcy court or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by the option given to Beneficiary to mature same, Grantors agree that all attorneys' or collection fees as provided for in the Note shall be paid by Grantors and shall be a part of the indebtedness secured hereby. This Deed of Trust shall also secure all renewals, rearrangements and extensions of any of the indebtedness secured hereby.

Better to secure payment of said indebtedness, Grantors do hereby jointly and severally covenant and agree with Beneficiary and with Trustee as follows:

- (1) Grantors will pay all of the indebtedness secured hereby, together with the interest and other charges thereon to which Grantors have agreed under, and when the same shall become due in accordance with, the terms of the Note or other instruments evidencing said indebtedness or evidencing any renewal or extension of the same or any part thereof.

Doc# 2015007143
Pages 35
02/27/2015 12:31PM
e-Filed & e-Recorded in the
Official Public Records of
NUECES COUNTY
KARA SANDS
COUNTY CLERK
Fees \$147.00

Any provision herein which restricts the Sale, Rental
or use of the described REAL PROPERTY because of
Race, Color, Religion, Sex, Handicap, Familial Status
or National Origin is invalid and unenforceable
under FEDERAL LAW, 3/12/89

STATE OF TEXAS
COUNTY OF NUECES
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS
FILED IN FILE NUMBER SEQUENCE ON THE DATE AND
AT THE TIME STAMPED HEREON BY ME AND WAS DULY
RECORDED IN THE OFFICIAL PUBLIC
RECORDS OF NUECES COUNTY TEXAS



Kara Sands
COUNTY CLERK
NUECES COUNTY, TEXAS

CHICAGO TITLE GF# AG1101662AA 25

DEED OF TRUST

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF NUECES §

THAT THE UNDERSIGNED, UPPER PADRE PARTNERS, LP, a Texas limited partnership (hereinafter called "Grantors," whether one or more), whose mailing address is 381 East Austin Street, New Braunfels, Texas 78130, for and in consideration of the debt hereinafter described, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, in trust, unto CHRISTOPHER HAMM of Travis County, Texas, as Trustee, and unto his successors in the trust hereby created and unto his or their assigns and the heirs of such assigns (all of whom are hereinafter called "Trustee"), forever, all the property described in Exhibit "A" attached hereto and made a part hereof for all purposes. To have and to hold unto Trustee and his substitutes, successors and assigns the property described in Exhibit "A", together with any and all personal property now or hereafter located thereon owned by Grantors and any and all buildings and improvements of every kind and character now or hereafter situated or placed thereon (including, but not limited to, any and all plumbing, electrical, heating, cooling and other fixtures, equipment and appliances), and all replacements of and additions thereto, and all of Grantors' rights with respect to utility capacity, utilities and utility taps, wastewater capacity, proceeds arising from any claim pursuant to any policy of title insurance covering the property described in Exhibit "A" and all and singular the rights, privileges, hereditaments, appurtenances, rents, revenues, profits and income thereunto now or hereafter incident or belonging thereto (collectively referred to herein as the "Mortgaged Property"), forever and Grantors do hereby bind themselves, their heirs, successors, assigns and legal representatives to warrant and forever defend, all and singular the Mortgaged Property unto Trustee, his substitutes or successors and assigns forever, against the claim or claims of all persons to claim the same or any part thereof by, through or under Grantors, but not otherwise. It is hereby agreed that to the extent permitted by law all of the foregoing property is to be deemed and held to be a part of and affixed to the realty.

This conveyance is made in trust, however, to secure and enforce the payment of a promissory note (hereinafter referred to as "Note," whether one or more) of even date herewith, executed by Grantors, payable to the order of AXYS CAPITAL CREDIT FUND LLC, a Delaware limited liability company (hereinafter called "Beneficiary"), whose mailing address is 1613 S. Capital of Texas Hwy, #300, Austin, Texas 78746, in the principal amount of \$16,000,000.00, bearing interest and being payable as provided therein.

This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Beneficiary to or for the benefit of Grantors, as contemplated by any covenant or provision herein contained, and all other indebtedness, of whatever kind or character, owing or which may hereafter become owing by Grantors to Beneficiary under or pursuant to this Deed of Trust, the Note, or the other loan documents executed by Grantors in connection therewith, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Grantors may hereafter become indebted to Beneficiary in further sum or sums as and to the extent contemplated hereunder. All indebtedness secured hereby shall be payable in Travis County, Texas, until Beneficiary gives written notice to Grantors designating another place of payment; and shall bear interest at the rate or rates stated in the instrument evidencing said indebtedness. If the Note or any other indebtedness secured hereby shall be collected by legal proceedings or through a probate or bankruptcy court or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by the option given to Beneficiary to mature same, Grantors agree that all attorneys' or collection fees as provided for in the Note shall be paid by Grantors and shall be a part of the indebtedness secured hereby. This Deed of Trust shall also secure all renewals, rearrangements and extensions of any of the indebtedness secured hereby.

Better to secure payment of said indebtedness, Grantors do hereby jointly and severally covenant and agree with Beneficiary and with Trustee as follows:

- (1) Grantors will pay all of the indebtedness secured hereby, together with the interest and other charges thereon to which Grantors have agreed under, and when the same shall become due in accordance with, the terms of the Note or other instruments evidencing said indebtedness or evidencing any renewal or extension of the same or any part thereof.

(2) Subject to the terms of the Subordination Agreement and Agreement among Creditors of even date herewith by and between Beneficiary and International Bank of Commerce, a Texas banking corporation ("IBC"), and to the matters listed on Exhibit "B" attached hereto, incorporated herein by this reference and made a part hereof for all purposes, Grantors have, in their own right, good and indefeasible title in fee simple to the Mortgaged Property, which is free from encumbrance superior to the liens and security interests hereby created unless otherwise herein provided and have full right and authority to make this conveyance. Grantors shall at all times comply with and perform all obligations under any applicable laws, statutes, regulations, covenants, restrictions or ordinances relating to the Mortgaged Property.

(3) Grantors will keep all buildings and other property covered by this Deed of Trust insured against fire, lightning, tornado, hail, explosion and against such other risks as Beneficiary may reasonably require, all in reasonable amounts approved by Beneficiary. In addition to the above required insurance, Grantors will keep all buildings and other property covered by this Deed of Trust and all personal property covered hereby or covered by any other instrument securing payment of the Note insured for the term of the Note with flood insurance in an amount at least equal to the outstanding principal of the Note or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less. Such flood insurance is required hereunder only when such property is located or to be located in an area that has been identified by the Secretary of Housing and Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968. Such insurance is to be written in form and in companies acceptable to Beneficiary with mortgagee clauses of standard form in favor of Beneficiary and will deliver the policies of insurance to Beneficiary promptly as issued; and, in case Grantors fail so to do, Beneficiary, at its option but subject to applicable notice and cure provisions set forth in the Loan Agreement ("Loan Agreement") of even date herewith by and between Grantors and Beneficiary (which are hereby made applicable to this Deed of Trust and all obligations hereunder), may procure such insurance at Grantors' expense. All renewal and substitute policies of insurance shall be delivered at the office of Beneficiary, premiums paid, at least ten (10) days before termination of policies theretofore delivered to Beneficiary. All policies shall provide, by way of riders, endorsements or otherwise, that the insurance provided thereby shall not be terminated, reduced or otherwise limited, regardless of any breach of the representations and agreements set forth therein and that the interest of Beneficiary will not be invalidated by any act or omission of Grantors and that no such policy shall be canceled, endorsed or amended to any extent unless the issuer thereof shall have first given Beneficiary at least fifteen (15) days prior written notice. In case Grantors fail to furnish such policies, Beneficiary, at its option, may procure such insurance at Grantors' expense. In case of loss, Beneficiary, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same toward payment of said indebtedness as Beneficiary shall see fit provided, however, if Grantors are not otherwise in default hereunder, Beneficiary will pay the same over to Grantors for the repair of said building or improvements or for the erection of a new buildings or improvements in their place or for any other purpose satisfactory to Beneficiary determined reasonably, but Beneficiary shall not be obligated to see to the proper application of any amount paid over to Grantors. If Beneficiary elects to allow payment of all or part of such proceeds to Grantors, or is otherwise obligated to do so in accordance with the foregoing terms, such payments shall be disbursed on such terms and subject to such reasonable conditions as Beneficiary may specify. Should Beneficiary elect to allow Grantors to repair such damage, Grantors agree that, to the extent of any insurance proceeds received by them, Grantors shall promptly commence and carry out the repair, replacement, restoration and rebuilding of any and all of the Mortgaged Property damaged or destroyed by fire or other casualty so as to return same, to the extent reasonably practicable, to its condition immediately prior to such damage to or destruction thereof. Grantors shall not permit or carry on any activities within or relating to the Mortgaged Property that is prohibited by the terms of any insurance policy covering any part of the Mortgaged Property or which permits cancellation of or increase in the premium payable for any insurance policy covering any part of the Mortgaged Property. In the event of a foreclosure of this Deed of Trust, the purchaser of the Mortgaged Property shall succeed to all the rights of Grantors, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to Beneficiary pursuant to the provisions of this Deed of Trust. Regardless of the types or amounts of insurance required and approved by Beneficiary, Grantors shall assign and deliver to Beneficiary all policies of insurance that insure against any loss or damage to the Mortgaged Property as collateral and further security for the payment of the Note and any other indebtedness secured hereby. Grantors shall also obtain and maintain in force and effect such reasonable liability and other insurance policies and protection as Beneficiary may from time to time reasonably specify.

(4) Grantors will pay all taxes and assessments against the Mortgaged Property including, without limitation, all taxes in lieu of ad valorem taxes as the same become due and payable and provide Beneficiary with copies of paid tax receipts or tax certificates evidencing payment, from each taxing authority having jurisdiction over the Mortgaged Property. Unless Grantors are properly contesting taxes in accordance with applicable laws, if Grantors fail to provide such evidence of payment within thirty (30) days after the date such taxes are due and payable, Beneficiary may procure a tax certificate(s) at Grantors' sole cost and expense. In the event of the passage after date of this Deed of Trust of any law by the State of Texas deducting from the taxable value of the Mortgaged Property for the purposes of taxation any lien thereon or changing in any way the laws now in force for the taxation of mortgages, deeds of trust or indebtedness secured thereby for state or local purposes or the manner of the operation of any such taxes so as to affect the interest of Beneficiary, then, and in such event, Grantors shall bear and pay the full amount of such taxes. Subject to applicable notice and cure provisions set forth in the Loan Agreement, if Grantors fail to pay any such taxes and assessments including, without limitation, taxes in lieu of ad valorem taxes and taxes against this Deed of Trust or said indebtedness secured hereby, Beneficiary may pay the same, together with all costs and penalties thereon, at Grantors' expense; provided, however, that if, for any reason, payment by Grantors of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render said indebtedness wholly or partially usurious under any of the terms or provisions of the Note or this Deed of Trust or otherwise, Beneficiary may, at its option, declare the indebtedness secured hereby, with all accrued interest thereon, to be immediately due and payable or Beneficiary may, at its option, pay the amount or portion of such taxes as renders the indebtedness secured hereby unlawful or usurious, in which event Grantors shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

(5) All judgments, decrees, awards or payment for injury or damage to the Mortgaged Property and all awards pursuant to proceeding for condemnation thereof, including interest thereon, are hereby assigned in their entirety to Beneficiary, who may apply the same first to reimbursement of all reasonable costs and expenses incurred by Beneficiary in connection with such condemnation proceeding and the balance to the indebtedness secured hereby in such reasonable manner as it may elect; and Beneficiary is hereby authorized, in the name of Grantors, to execute and deliver valid acquittances for and to appeal from any such award, judgment or decree. Grantors shall promptly notify Beneficiary of the institution or threatened institution of any proceeding for the condemnation of any of the Mortgaged Property received by Grantors. Beneficiary shall have the right to participate in any such condemnation proceeding.

(6) If, while this trust is in force, the title of Trustee to the Mortgaged Property or any part thereof shall be attacked pursuant to lawsuit, Grantors hereby authorize Beneficiary, at Grantors' expense, to take all reasonably necessary and proper steps for the defense of said title, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against said title.

(7) If, in pursuance of any covenant herein contained, Beneficiary shall pay out any money chargeable to Grantors or subject to reimbursement by Grantors under the terms of said covenant or agreement, Grantors will repay the same to Beneficiary within five (5) days after the date Grantors are given written notice of such payment by Beneficiary at the place where the Note or other indebtedness hereby secured is payable, together with interest thereon at the maximum non-usurious rate allowed by applicable law from and after the date of Beneficiary's making such payment. The sum of each such payment shall be added to the Note and thereafter shall form a part of the same; and it shall be secured by this Deed of Trust and by subrogation to all the rights of the person, corporation or body politic receiving such payment.

(8) Grantors will keep every part of the Mortgaged Property in at least the same condition and presenting the same appearance as other properties similar to the Mortgaged Properties, making promptly all repairs, renewals and replacements necessary to such end and doing promptly all else necessary to such end; but Grantors will discharge all claims for labor performed and material furnished therefor; and will not suffer any lien of mechanics or materialmen therefor to be enforced against any part of the Mortgaged Property; and Grantors will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened. No building or other property now or hereafter covered by the lien of this Deed of Trust shall be removed, demolished or materially altered or enlarged, nor shall any new building be constructed, without the prior written consent of Beneficiary. Grantors shall not initiate, join in or consent to any change in any private restrictive covenants, zoning ordinances or other public or private restrictions limiting or defining the uses that may be made of the Mortgaged Property or any

part thereof without the prior written consent of Beneficiary, which Beneficiary shall not unreasonably withhold, condition or delay. Beneficiary and its agents or representatives shall have access to the Mortgaged Property at all reasonable times in order to inspect same and verify Grantors' compliance with their duties and obligations under this Deed of Trust. Except for the liens granted to IBC, Grantors shall not, without prior written approval of Beneficiary, grant, convey or otherwise create or permit to be created, any type of mortgage, lien, security interest or other encumbrance on any of the Mortgaged Property, regardless whether same shall be inferior and subordinate to the liens and security interests of Beneficiary in and to the Mortgaged Property.

(9) Until partially released from the liens and security interests of this Deed of Trust, Grantors shall not sell, transfer, assign or mortgage all or any portion of the Mortgaged Property (including any utilities, utility capacity, utility taps or any rights or interests thereto), nor shall Grantors grant any easement or right-of-way, or file of record any restrictive covenants or restrictions whatsoever with respect to the Mortgaged Property, nor shall Grantors rent or lease any or all of the Mortgaged Property for a period in excess of one (1) year without the express written consent of Beneficiary, which in each instance and case Beneficiary agrees not to unreasonably withhold, condition or delay; provided, that it shall not be unreasonable for Beneficiary to withhold granting of a partial release of a portion of the Mortgaged Property unless Grantors comply with the partial release provisions contained in the Loan Agreement. If Grantors are a corporation or partnership, any sale of corporate stock or partnership interests shall constitute a sale of the Mortgaged Property for the purposes hereof.

(10) In the event the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Grantors, Beneficiary may, without notice to Grantors, deal with such successor or successors in interest with reference to this Deed of Trust and to said indebtedness in the same manner as with Grantors, without in any way vitiating or discharging Grantors' liability hereunder or upon said indebtedness. No sale of the Mortgaged Property and no forbearance on the part of Beneficiary and no extension of the time for the payment of said indebtedness given by Beneficiary shall operate to release, discharge, modify, change or affect, either in whole or in part, any original liability of Grantors or the liability of the guarantors or sureties of Grantors or of any other party liable for payment of said indebtedness or any part thereof.

(11) If an Event of Default as defined in the Loan Agreement shall occur, including, without limitation, in the event Grantors or any person liable for the indebtedness secured hereby or any part thereof file a voluntary petition in bankruptcy, make an assignment for the benefit of any creditor or are adjudicated a bankrupt or insolvent or if the Mortgaged Property is placed under control or in the custody of any court or if Grantors abandon any of the Mortgaged Property; then Beneficiary, at its option but only after complying with the provisions of the Loan Agreement for the giving of notice and an opportunity to cure defaults, may declare the entire indebtedness secured hereby immediately due and payable, whereupon it shall be so due and payable.

(12) All of the covenants and agreements of Grantors set forth herein shall survive the execution and delivery of this Deed of Trust and shall continue in force until the indebtedness secured hereby is paid in full. Accordingly, if Grantors shall perform faithfully each and all of the covenants and agreements herein contained, then, and then only, this conveyance shall become null and void and shall be released in due form at Grantors' expense; otherwise, it shall remain in full force and effect. No release of this conveyance or the lien thereof shall be valid unless executed by Beneficiary or other then holder of the Note.

(13) Subject to the notice and opportunity to cure provisions in the Loan Agreement, if Grantors shall fail to perform faithfully any covenant or agreement herein contained, Grantors hereby authorize and empower Trustee and each and all of his successors in this trust, at the request of Beneficiary, at any time when Grantors shall be in default in the performance of any such covenant or agreement, to sell the Mortgaged Property at public venue to the highest bidder for cash at the door of the county courthouse of the county in Texas in which the Mortgaged Property or any part thereof is situated, as herein described, between the hours of 10:00 a.m. and 4:00 p.m. (as more particularly described in the hereinafter described notice) of the first Tuesday of any month, after advertising the time, place and terms of said sale and the Mortgaged Property to be sold, by posting (or by having some person or persons acting for him post) for at least twenty-one (21) days preceding the date of the sale, written or printed notice of the proposed sale at the courthouse of said county in the area of the courthouse designated by the Commissioner's Court as the area for sales pursuant to Section 51.002 of the Texas Property Code and if no area is designated by the Commissioner's Court, the notice of sale shall designate the area of the courthouse where the sale is to take place; in addition to such posting of notice, the holder of the indebtedness hereby secured shall, at least twenty-one (21) days

preceding the date of sale: (a) serve written or printed notice of the proposed sale by certified mail on Grantors and on each other debtor, if any, obligated to pay the indebtedness hereby secured according to records of such holder, which shall state the earliest time at which the sale will begin and the sale shall begin at such time or not later than three (3) hours after that time, and (b) file a copy of the notice of proposed sale with the county clerk or county clerks of the county or counties where such notice was posted. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to Grantors and such other debtors at their most recent address or addresses as shown by the records of the holder of the indebtedness hereby secured, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be *prima facie* evidence of the fact of service. The provisions hereof with respect to posting and giving notices of sale are intended to comply with the provisions of Section 51.002 of the Property Code of the State of Texas, and, in the event the requirement for any notice under such Section 51.002 shall be eliminated or the prescribed manner of giving same modified by future amendment to or adoption of any statute superseding such Section 51.002, the requirement for such particular notice shall be deemed stricken from or modified in this instrument in conformity with such amendment or superseding statute, effective as of the effective date of same. The manner herein prescribed for serving or giving any notice, other than that to be posted or caused to be posted by Trustee, shall not be deemed exclusive, but such notice or notices may be given in any other manner which may be permitted by applicable law. Grantors agree that no notice of any sale other than as set out in this paragraph need be given by Trustee, Beneficiary or any other person. Grantors hereby designate as their address for the purposes of such notice the address set out in the first paragraph hereof and agree that such address shall be changed only by depositing notice of such change, enclosed in a postpaid wrapper, in a post office or official depository under the care and custody of the United States Postal Service, certified mail, postage prepaid, return receipt requested, addressed to Beneficiary at the address for Beneficiary set out herein (or to such other address as Beneficiary may have designated by notice given as above provided to Grantors and such other debtors), any such notice of change of address of Grantors or other debtors shall be effective upon receipt by Beneficiary. Any change of address of Beneficiary shall be effective three (3) business days after deposit thereof in the above described manner in a post office or official depository under the care and custody of the United States Postal Service. Grantors do hereby authorize and empower Trustee and each and all of his successors in this trust to sell the Mortgaged Property or any interest or estate in the Mortgaged Property, together or in lots or parcels, as such Trustee shall deem expedient and to execute and deliver to the purchaser or purchasers of the Mortgaged Property good and sufficient deed or deeds of conveyance thereof and bills of sale with covenants of general warranty binding on Grantors and Grantors' respective heirs, legal representatives, successors and assigns. Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (a) he shall pay the reasonable expense of executing this trust, including a reasonable commission to himself not to exceed five percent (5%) of the gross proceeds of the sale; (b) after paying such expenses, he shall pay, so far as may be possible, the indebtedness hereby secured, discharging first that portion of said indebtedness arising under the covenants or agreements herein contained and not evidenced by Note; (c) then, he shall pay, so far as may be possible, the indebtedness secured by any liens equal or superior to the lien created hereby; and (d) he shall pay the residue, if any, to Grantors, their respective heirs, legal representatives, successors or assigns. Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale therefor and he shall not be bound to look after the application thereof.

(14) If the herein-named Trustee shall die or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by Beneficiary so to do or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee to act instead of the herein-named Trustee, Beneficiary shall have full power to appoint, by written instrument, a substitute trustee and, if necessary, several substitute trustees in succession, who shall succeed to all the estate, rights, powers and duties of Trustee named herein and no notice of such appointment need be given to Grantors or any other person and such notice shall be recorded in the office of the county clerk of the county in which the Mortgaged Property is located prior to the date of any foreclosure sale held pursuant to this instrument. Such appointment may be executed by any authorized agent of Beneficiary; and such appointment executed in its behalf by any officer of such entity shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of such entity. Grantors severally hereby ratify and confirm any and all acts that Trustee, or his successor or successors in this trust shall do lawfully by virtue hereof. Grantors hereby agree, on behalf of Grantors and of Grantors' heirs, legal representatives, successors and assigns, that the recitals contained in any deed or deeds or other instrument executed in due form by any Trustee or substitute trustee acting under the provisions of this Deed of Trust shall be *prima facie* evidence of the facts recited and that it shall not be necessary to prove in any court,

otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds or other instrument and the passing of title thereby and all prerequisites and requirements of any sale or sales shall be conclusively presumed to have been performed and all persons subsequently dealing with the Mortgaged Property purported to be conveyed by such deed or deeds or other instrument including, without limitation, the purchaser or purchasers thereof, shall be fully protected in relying upon the truthfulness of such recitals.

(15) The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental or lease contract made in violation of any provision of this Deed of Trust and may take immediate possession of the Mortgaged Property free from and despite the terms of such grant of easement and rental or lease contract.

(16) Beneficiary may bid and become the purchaser of the Mortgaged Property at any trustee's or foreclosure sale hereunder.

(17) Subsequent to default hereunder or default pursuant to the Note or any other instrument securing payment thereof, Grantors hereby authorize Beneficiary, if and whenever it shall desire, to demand and receive, in Grantors' right, all sums that may become due under any and each oil, gas, mineral or other lease, rental contract and easement contract pertaining to any portion of the Mortgaged Property and, when received, to apply the same on the indebtedness secured hereby. No demand for and no receipt or application of any such sum shall be deemed to minimize, subordinate or affect in any way the liens and rights hereunder of Beneficiary or any rights of a purchaser of the Mortgaged Property at trustee's or foreclosure sale hereunder as against the person from whom such sum was demanded or received or his executors, administrators or assigns or anyone claiming under such lease, rental or easement contract.

(18) Any part of the Mortgaged Property may be released by Beneficiary without affecting the lien hereof against the remainder. The lien and rights hereby granted shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security or the extension, renewal or rearrangement of the same indebtedness or any part thereof, shall at no time release or impair the lien and rights granted hereby or affect the liability of any endorser or surety or improve the right of any junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby or any part thereof, shall be and remain a first and prior lien on all of the Mortgaged Property not expressly released until the said indebtedness is completely paid.

(19) The invalidity or unenforceability in particular circumstances of any provision of this Deed of Trust shall not extend beyond such provision or such circumstances and no other provision of this Deed of Trust shall be affected thereby. It is the intention of the parties hereto to comply with applicable usury laws; accordingly, the terms and provisions of this Deed of Trust are subject to the terms and provisions of the Loan Agreement pertaining thereto, which provisions control over all other provisions of this Deed of Trust.

(20) None of Grantors, their heirs, executors, administrators or assigns, ever shall have or assert any right under any statute or rule of law pertaining to the marshaling of assets, the exemption of homestead, the administration of estates of decedents or other matter whatever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Mortgaged Property for the collection of said indebtedness (without any prior or different resort for collection) or the right of Beneficiary under the terms of this Deed of Trust to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses as aforesaid being first deducted).

(21) Subject to the notice and opportunity to cure provisions in the Loan Agreement, it is agreed that if default be made in the payment of any installment of the Note, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item, either through the courts or by directing Trustee or his successors in trust to proceed as if under a full foreclosure, conducting the sale as herein provided and without declaring the whole debt due and provided that, if sale is made because of default of an installment or a part of an installment, such sale may be made subject to the unmatured part of the Note and debt secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the debt secured by this Deed of Trust but, as to such unmatured part of this

Deed of Trust, shall remain in full force and effect just as though no sale had been made under the provisions of this paragraph. And it is further agreed that several sales may be made hereunder without exhausting the right of sale for any unmatured part of the debt secured hereby, it being the purpose to provide for a foreclosure and sale of the security for any matured portion of the debt secured hereby without exhausting the power to foreclose and to sell the security for any other part of the debt secured hereby, whether matured at the time or subsequently maturing. It is agreed that an assignee holding any installment or installments or part of any installment of the Note secured hereby shall have the same powers as are hereby conferred on the holder of the indebtedness to proceed with foreclosure on a matured installment or installments and also to request Trustee or successors in trust to sell the Mortgaged Property; but if an assignee forecloses or causes a sale to be made to satisfy any installment, part of an installment or installments, then such foreclosure or sale shall be made subject to the unmatured part of the Note and the debt secured hereby owned by the holder of the indebtedness at the time or assigned subsequent to the assignment of the item to satisfy which the sale is being made.

(22) It is expressly agreed that (a) no waiver of any default on the part of Grantors or breach of any of the provisions of this Deed of Trust shall be considered a waiver of any other or subsequent default or breach and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers and, likewise, no exercise or enforcement of any right or powers hereunder shall be held to exhaust such rights and powers and every such right and power may be exercised from time to time; (b) any failure by Beneficiary to insist upon the strict performance by Grantors of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof and Beneficiary, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Grantors of any and all of the terms and provisions of this Deed of Trust; (c) neither Grantors nor any other person now or hereafter obligated for the payment of the whole or any part of said indebtedness shall be relieved of such obligation by reason of the failure of Beneficiary or Trustee to comply with any request of Grantors or of any other person so obligated to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any obligations secured by this Deed of Trust or by reason of the release, regardless of consideration, of the whole or any part of the security held for said indebtedness or by reason of the subordination in whole or in part by Beneficiary of the lien, security interest or rights evidenced hereby or by reason of any agreement or stipulation which any subsequent owner or owners of the Mortgaged Property extending the time of payment or modifying the terms of said indebtedness or this Deed of Trust without first having obtained the consent of Grantors or such other person and, in the latter event, Grantors and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Beneficiary; (d) regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien or security interest on the Mortgaged Property, Beneficiary may release the obligation of anyone at any time liable for any of said indebtedness or any part of the security held for said indebtedness and may extend the time of payment or otherwise modify the terms of said indebtedness and/or this Deed of Trust without, as to the security or the remainder thereof, in anywise impairing or affecting the lien or security interest of this Deed of Trust or the priority of such lien or security interest as security for the payment of said indebtedness as it may be so extended or modified over any subordinate lien or security interest; (e) the holder of any subordinate lien or security interest shall have no right to terminate any lease affecting the Mortgaged Property, whether or not such lease be subordinate to this Deed of Trust; and (f) Beneficiary may resort, for the payment of said indebtedness, to any security therefor held by Beneficiary in such order and manner as Beneficiary may elect. Anything herein to the contrary notwithstanding, Grantors, to the greatest extent permitted by law, hereby waive all rights, remedies, claims and defenses based upon or related to Section 51.003 of the Texas Property Code, including, without limitation, the right to introduce evidence of the amount of the sales price of the Mortgaged Property or the fair market value thereof. To the extent the prior sentence is not enforceable, then notwithstanding the provisions of Sections 51.003, 51.004 and 51.005 of the Texas Property Code, as the same may be amended from time to time, and to the extent permitted by law, Grantors agree that Beneficiary shall be entitled to seek a deficiency judgment from Grantors and any other party obligated on the Note or guaranty of the Note equal to the difference between the amount owing on the Note and the fair market value of the Mortgaged Property as hereinafter determined. The following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time):

- (a) The Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure;
- (b) The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Mortgaged Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale;
- (c) All reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, attorneys' fees and marketing costs;
- (d) The gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in subparagraph (c) above), and other maintenance expenses; and
- (e) Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

(23) In the event that there be a trustee's sale hereunder and if, at the time of such sale, Grantors, their heirs, executors, administrators or assigns, be occupying the premises so sold, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day, based upon the value of the Mortgaged Property, such rental to be due daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of the Mortgaged Property; and this Deed of Trust and Trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

(24) In the event any portion of said indebtedness is not, for any reason whatsoever, secured by this Deed of Trust on the Mortgaged Property, the full amount of all payments made on said indebtedness shall first be applied to such unsecured portion of said indebtedness until the same has been fully paid.

(25) It is agreed that the lien hereby created shall take precedence over and be a prior lien to any other lien of any character, whether vendors', materialmen's or mechanics' lien hereafter created on the Mortgaged Property and, in the event the proceeds of the Note are used to pay off and satisfy any liens heretofore existing on the Mortgaged Property, then Beneficiary is and shall be subrogated to all of the rights, liens and remedies of the holders of the indebtedness so paid.

(26) The covenants herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto and to any substitute trustee. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. The term "Beneficiary" shall also include any lawful owner, holder or pledgee of any indebtedness secured hereby.

(27) Without limiting any of the provisions of this Deed of Trust, Grantors, as Debtors and referred to in this Paragraph as "Debtors," expressly:

- (a) Grant unto the holder of all indebtedness described herein, as Secured Party and referred to in this Paragraph as "Secured Party," a security interest in all of the properties hereinabove described (including both those now and those hereafter existing) to the full extent that same may be subject to Chapter 9 of the Texas Business and Commerce Code, as it may hereinafter be amended or succeeded (hereinafter called "Uniform Commercial Code").

- (b) Agree that, in addition to any other remedies granted in this instrument to the Secured Party or Trustee, the Secured Party may, in the event of any default, proceed under the Uniform Commercial Code as to all or any part of the personal property (tangible or intangible) and fixtures included in the properties described herein or located on or affixed to the Mortgaged Property (such portion of the properties being herein referred to as "Collateral") and shall have and may exercise, with respect to the Collateral, all the rights, remedies and powers of a Secured Party under the Uniform Commercial Code including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner authorized or permitted under said Uniform Commercial Code after default by a debtor and to apply the proceeds thereof toward payment of any costs and expenses and attorneys' fees and legal expenses thereby incurred by Secured Party and toward payment of Debtors' obligations including the Note and all other indebtedness described in this instrument in such order or manner as Secured Party may elect. Among the rights of Secured Party in the event of default and, without limitation, Secured Party shall have the right to take possession of the Collateral and to enter upon any premises where same may be situated for such purpose without being deemed guilty of trespass and without liability for damages thereby occasioned and to take any action deemed necessary or appropriate or desirable by Secured Party, at its option and in its discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease, or other use or disposition as herein authorized. To the extent permitted by law, Debtors expressly waive any notice of sale or other disposition of the Collateral and any other rights or remedies of a debtor or formalities prescribed by law relative to sale or disposition of the Collateral or exercise of any other right or remedy of Secured Party existing after default hereunder; and to the extent any such notice is required and cannot be waived, Debtors agree that if such notice is mailed, postage prepaid, to Debtors at the address shown herein at least five (5) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice.
- (c) Grant to the Secured Party, after default hereunder, the right, at its option, to transfer at any time to itself or to its nominee the Collateral or any part thereof and to receive the monies, income, proceeds or benefits attributable or accruing thereto and to hold the same as security for Debtors' obligations or to apply it on the principal and interest or other amounts owing on any of Debtors' obligations, whether or not then due, in such order or manner as Secured Party may elect. All rights or marshaling of assets of Debtors, including any such right with respect to the Collateral, are hereby waived.
- (d) Covenant, stipulate and agree that all recitals in any instrument of assignment or any other instrument executed by Secured Party incident to sale, transfer, assignment, lease, or other disposition or utilization of the Collateral or any part thereof hereunder shall be full proof of the matters stated therein and no other proof shall be requisite to establish full legal propriety of the sale or other action taken by Secured Party or of any fact, condition or thing incident thereto and all prerequisites of such sale or other action or of any fact, condition or thing incident thereto shall be presumed conclusively to have been performed or to have occurred.
- (e) Covenant and agree that Secured Party may require Debtors, after default hereunder, to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties. All reasonable expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the Collateral and the like which are incurred or paid by Secured Party as authorized or permitted hereunder, including also all attorneys' fees, legal expenses and costs, shall be added to Debtors' obligations and Debtors shall be liable therefor.
- (f) Covenant and agree that Secured Party may, at its election, at any time after delivery of this instrument, sign one or more copies of this instrument in order that such copies may be used as a Financing Statement under the Uniform Commercial Code. Such signature by Secured Party may be placed between the last sentence of the instrument and Debtors' acknowledgment or may follow Debtors' acknowledgment. Secured Party's signature need not be acknowledged and is not

necessary to the effectiveness of this instrument as a deed of trust, mortgage, assignment, pledge or security agreement.

Except for the security interest hereby granted in the Collateral and the subordinated security interests of IBC, Debtors are the owners and holders of the Collateral free of any adverse claim, security interest or encumbrance, and Debtors will defend the Collateral against all claims and demands of any person at any time claiming the same or any interest therein. Except as to financing statements associated with the IBC debt and obligations, Debtors have not heretofore signed any financing statement covering the Collateral and no such financing statement signed by Debtors is now on file in any public office except those statements true and correct copies of which have been delivered to Secured Party. So long as any amount remains unpaid on any indebtednesses described in this Deed of Trust, Debtors will not execute and there will not be filed in any public office such financing statement or statements affecting the Collateral other than financing statements in favor of Secured Party hereunder unless the same secure or relate to the loan or loans by IBC or unless the prior written specific consent and approval of Secured Party shall have first been obtained. Debtors authorize Secured Party to file, in jurisdictions where this authorization will be given effect, a financing statement covering the Collateral and, at the request of Secured Party, Debtors will pay the cost of filing the same or filing or recording this instrument as a financing statement in all public offices at any time and from time to time whenever filing or recording of any financing statement or of this instrument is deemed by Secured Party to be necessary or desirable.

(28) Portions of the Mortgaged Property are goods which are or are to become fixtures relating to the property described in Exhibit "A", and Grantors herein expressly covenant and agree that the filing of this Deed of Trust in the real estate records of the county where the Mortgaged Property is located shall also operate from time of filing therein as a financing statement filed as a fixture filing in accordance with Section 9.402(f) of the Uniform Commercial Code - Secured Transaction of the State of Texas.

(29) Grantors will pay all fees or costs for appraisals that Beneficiary may reasonably require from time to time, but in no event more than one (1) appraisal annually. In addition, Grantors will pay all recording fees, taxes, abstract fees, attorneys' fees, and all other reasonable costs and expenses from time to time reasonably incurred in connection with the making, closing and servicing of the loan evidenced by the Note, or any renewal, modification, rearrangement or extension thereof and will pay all reasonable fees and charges made by Trustee for services performed hereunder and will reimburse Beneficiary and Trustee for all reasonable expenses incurred by them, respectively, and will indemnify and hold harmless Beneficiary and Trustee from and against all claims, demands, liabilities and causes of action asserted against either of them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property or this Deed of Trust, save and except for their gross negligence or willful misconduct. Any such sums shall become part of the indebtedness secured by this Deed of Trust and shall bear interest from the date incurred by Beneficiary at the rate provided in the Note.

(30) Grantors hereby specifically agree with Beneficiary that they will in no event or under any circumstances allow any entity or individual, other than Grantors and/or Beneficiary, to pay any ad valorem taxes in connection with all or any portion of the Mortgaged Property to any taxing unit. Specifically, under no event shall Grantors authorize or consent to the transfer of any tax lien in connection with the Mortgaged Property or any portion thereof, including, without limitation, pursuant to Section 32.06 of the Texas Tax Code, as amended. In the event any tax lien in connection with the Mortgaged Property or any portion thereof is transferred to any individual or entity or Grantors authorize any individual or entity to pay the taxes with respect to the Mortgaged Property or any portion thereof (other than Beneficiary), then, in such event, any and all indebtedness secured hereby or referenced herein shall become immediately due and payable, notwithstanding any notice or opportunity to cure or any other waiver set forth herein. Although specifically prohibited hereby, in the event Grantors consent to the transfer of a tax lien in connection with all or any portion of the Mortgaged Property, authorize any individual or entity to pay any taxes covering all or any portion of the Mortgaged Property, or otherwise cause any lien covering all or any portion of the Mortgaged Property in favor of any taxing unit to be transferred, assigned or conveyed in any manner to any individual or entity, Grantors specifically authorize Beneficiary to deal directly with any transferee (as hereinafter defined). Specifically, Grantors hereby irrevocably constitute and appoint Beneficiary, herein sometimes referred to as "Attorney" (and all officers, employees or agents designated by Attorney), with full power of substitution, as Grantors' true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantors and in the name of Grantors or their own name, from time to time in Attorney's dis-

cretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to (a) deal in any manner with a Transferee (herein so called and/or as such term is defined in Section 32.06(a)(2) of the Texas Tax Code, as the same may be amended from time to time) of a tax lien in connection with all or any portion of the Mortgaged Property; (b) pay or discharge any taxes, liens, or other encumbrances levied or placed on or threatened against Grantors or the Mortgaged Property or any portion thereof in connection with any transferred tax lien in connection with all or any portion of the Mortgaged Property, including, without limitation, payment to any Transferee; (c) defend any suit, action or proceeding brought against Grantors if Grantors do not defend such suit, action or proceeding or if Attorney believes that Grantors are not pursuing such defense in a manner that will maximize the recovery to Beneficiary and/or Attorney, and settle, compromise or adjust any suit, action or proceeding and, in connection therewith, give such discharges or releases as Attorney may deem appropriate, all in connection with any transferred tax lien in connection with all or any portion of the Mortgaged Property; (d) communicate in its own name with any Transferee with regard to the assignment of any tax lien in connection with the Mortgaged Property or any portion thereof, and other matters relating thereto, including, without limitation, requesting payoff statements from any Transferee; and (e) do, at Attorney's option and Grantors' expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary in connection with this power of attorney, all as fully and effectively as Grantors might do. Grantors hereby ratify, to the extent permitted by law, all that said Attorney shall lawfully do or cause to be done by virtue hereof. No person to whom this power of attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from Grantors as to the authority of Attorney to take any action set forth herein, or as to the existence of or fulfillment of any condition to this power of attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and Grantors irrevocably waive any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this power of attorney. The power of attorney granted hereby is coupled with an interest, and may not be revoked or canceled by Grantors without Attorney's prior written consent recorded of record in the real property records of the county in which the Mortgaged Property is located.

(31) The term "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) underground storage tanks, whether empty, filled or partially filled with any substances; (f) any substance the presence of which on the Mortgaged Property is prohibited by any Governmental Requirements; and (g) any other substance which by any Governmental Requirement requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment or disposal. The term "Governmental Requirements" shall mean all laws, ordinances, rules and regulation of the United States, the state, the county, the city or any other political subdivision in which the Mortgaged Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Grantors, any guarantor of the Note, or the Mortgaged Property.

The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Mortgaged Property, any improvements, facilities, soil, groundwater, air or other elements on or of the Mortgaged Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date hereof) emanating from the Mortgaged Property.

Grantors represent and warrant to Beneficiary that:

- (a) To the best of Grantors' knowledge, no Hazardous Materials are located on the Mortgaged Property or have been released into the environment, or deposited, discharged, placed or disposed of at, on, under or near the Mortgaged Property. No portion of the Mortgaged Property is being used or, to the knowledge of Grantors, has been used at any previous time for the disposal, storage, treatment, processing or other handling of Hazardous Materials nor is the Mortgaged Property affected by any Hazardous Materials Contamination.

- (b) To the best of Grantors' knowledge, no Hazardous Materials are located in the vicinity of the Mortgaged Property, no property adjoining the Mortgaged Property is being used, or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Materials, nor is any other property adjoining the Mortgaged Property affected by Hazardous Materials Contamination.
- (c) To the best of Grantors' knowledge, no polychlorinated biphenyls are located on or in the Mortgaged Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.
- (d) No investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. To the best of Grantors' knowledge, the Mortgaged Property and its existing and prior uses comply and at all times have complied with any applicable Governmental Requirements relating to environmental matters or Hazardous Materials. There is no condition on the Mortgaged Property which is in violation of any applicable Governmental Requirements relating to Hazardous Materials, and Grantors have received no communication from or on behalf of any Governmental Authority that any such condition exists. The Mortgaged Property is not currently on and, to Grantors' knowledge after diligent investigation and inquiry, has never been on any federal or state "Superfund" or "Superlien" list.
- (e) All representations and warranties contained in this Section shall survive the consummation of the transactions contemplated hereby.

Grantors further represent and warrant that:

- (f) Grantors agree to (i) give notice to Beneficiary immediately upon Grantors' acquiring knowledge of the presence of any Hazardous Materials on the Mortgaged Property or of any Hazardous Materials Contamination with a full description thereof; (ii) promptly, at Grantors' sole cost and expense, comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Beneficiary with satisfactory evidence of such compliance; and (iii) provide Beneficiary, within thirty (30) days after demand by Beneficiary, with a bond, letter of credit or similar financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Mortgaged Property as a result thereof.
- (g) Grantors shall not cause or suffer any liens to be recorded against the Mortgaged Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Material in or about the Mortgaged Property, including any state, federal or local so-called "Superfund" lien relating to such matters.
- (h) Grantors shall at all times retain any and all liabilities arising from the presence, handling, treatment, storage, transportation, removal or disposal of Hazardous Materials on the Mortgaged Property. Regardless of whether any Event of Default shall have occurred and be continuing or any remedies in respect of the Mortgaged Property are exercised by Beneficiary, Grantors shall defend, indemnify and hold harmless Beneficiary from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, attorneys' fees and expenses, and remedial costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future (whether before or after the culmination of the transactions contemplated hereby) be incurred or suffered by Beneficiary by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any warranty or covenant or the inaccuracy of any representation of Grantors contained or referred to in this Section or which may be asserted as a

direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Mortgaged Property of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Mortgaged Property or the applicability of any Governmental Requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Beneficiary.

Such Liabilities shall include, without limitation; (i) injury or death to any person; (ii) damage to or loss of the use of any property; (iii) the cost of any demolition and rebuilding of the improvements, repair or remediation, and the preparation of any activity required by any Governmental Authority; (iv) any lawsuit brought or threatened, good faith settlement reached, or governmental order relating to the presence, disposal, release or threatened release of any Hazardous Material on, from or under the Mortgaged Property; and (v) the imposition of any lien on the Mortgaged Property arising from the activity of Grantors or Grantors' predecessors in interest on the Mortgaged Property or from the existence of Hazardous Materials or Hazardous Materials Contamination upon the Mortgaged Property.

The covenants and agreements contained in this Section shall survive the consummation of the transactions contemplated hereby.

Notwithstanding anything contained in the Note, this Deed of Trust or in any of the other Loan Documents, Grantors shall not be released of personal liability and shall have personal liability for any and all of Beneficiary's costs, expenses, damages or liabilities (including, without limitation, all reasonable attorneys' fees, whether incurred by Beneficiary prior to or following foreclosure of the Deed of Trust and whether Beneficiary shall be in the status of a lienholder or an owner of the Mortgaged Property following foreclosure) directly or indirectly arising out of or attributable to the use, generation, manufacture, storage, release, threatened release, discharge, disposal, or presence on, under, to, from or about the Mortgaged Property of any Hazardous Materials and/or Hazardous Materials Contamination which arose or occurred during the ownership of the Mortgaged Property by Grantors.

(32) Anything herein to the contrary notwithstanding, Beneficiary hereby consents to an inferior lien(s) covering all or a portion of the Mortgaged Property in favor of IBC, to secure debt not to exceed \$31,900,000.00 of principal plus accrued interest and other costs, fees and charges as provided in the loan documents evidencing said loan. The terms hereof are further subject to the terms and provisions of a subordination agreement or intercreditor agreement by and between Beneficiary and IBC dated on or about even date herewith to be recorded in the Real Property Records of Nueces County, Texas.

(33) Grantors and Beneficiary agree that the existence of the IBC Liens shall not constitute a default or event of default under the Note, this Deed of Trust or any documents executed in connection with the Note, including the Loan Agreement, and agree that in the event Beneficiary shall collect any sums under this Deed of Trust in excess of the sums hereby secured, upon satisfaction of the sums hereby secured in full, such sums shall promptly be paid to IBC. Grantors acknowledge and agree to the payment of such sums to IBC.

(34) GRANTORS HEREBY EXPRESSLY RECOGNIZE THAT CONTAINED IN SECTIONS (29) AND (30) OF THIS DEED OF TRUST ARE PROVISIONS WHICH REQUIRE GRANTORS TO INDEMNIFY BENEFICIARY UNDER CERTAIN CIRCUMSTANCES, AND GRANTORS HEREBY ACKNOWLEDGE THAT BY EXECUTING THIS DEED OF TRUST, GRANTORS ACCEPT THESE PROVISIONS AND THE OBLIGATIONS TO INDEMNIFY BENEFICIARY UNDER SUCH CIRCUMSTANCES.

EXECUTED this 25 day of February, 2015.

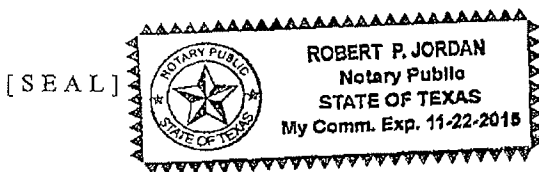
UPPER PADRE PARTNERS, LP,
a Texas limited partnership

By: UPPER PADRE GP, INC.,
a Texas corporation, its General Partner

By: [Signature]
Jeff W. Henry, President

STATE OF TEXAS §
COUNTY OF Bexar §

This instrument was acknowledged before me on this 25 day of February, 2015, by Jeff W. Henry, President of Upper Padre GP, Inc., a Texas corporation, in its capacity as the general partner of Upper Padre Partners, LP, a Texas limited partnership, for and on behalf of said partnership.



[Signature]
Notary Public, State of Texas

EXHIBIT "A"

LEGAL DESCRIPTION

TRACT I:

BEING 230.85 ACRES OF LAND, MORE OR LESS, COMPRISED OF ALL OF PADRE ISLAND - CORPUS CHRISTI COMMODORE'S COVE UNIT TWO, a Subdivision in the City of Corpus Christi, Nueces County, Texas, as shown by the map thereof recorded in Volume 38, Pages 36 thru 44, Map Records of Nueces County, Texas; together with all dedicated streets, easements and reservations as set out and a portion of Aquarius Street dedicated right of way by the plat of Padre Island-Corpus Christi, Island Fairway Estates, a Subdivision on Padre Island, situated in Corpus Christ, Nueces County, Texas, as shown by map or plat thereof, recorded in Volume 38, Page 55-61, Map Records of Nueces County, Texas, to which reference is here made for all pertinent purposes; together with all dedicated streets, easements and reservations, Block 22-R, Padre Island - Corpus Christi Island Fairway Estates, a map of which is recorded in Volume 48, Page 19, said Map Records, and a portion of 48.61 Acres, Vacated Plat, a map of which is recorded in Volume 67, Page 688, said Map Records and a portion of Aquarius Street;

SAVE AND EXCEPT all of Lots 1-8, Block 31, Padre Island - Corpus Christi Commodore's Cove Unit Two, as shown by the map thereof recorded in Volume 38, Pages 36 thru 44, Map Records of Nueces County, Texas, together with that portion of Dragonet Street and Bello Drive;

SAVE AND EXCEPT all of Lot 37, Block 4, Padre Island - Corpus Christi Commodore's Cove Unit Two, as shown by the map thereof recorded in Volume 38, Pages 36 thru 44, Map Records of Nueces County, Texas, together with that portion of Callado Drive;

SAVE AND EXCEPT all lots affected by Mitigation Site, being a portion out of Lots 22 thru 31, and all of Lots 1 thru 21, Block 20; all of Lots 1 thru 14, Block 21; portion of Lots 3, 4 & 5, Block 22; portion out of Lots 1, 38 & 39, and all of Lots 2 thru 37, Block 23; all of Lots 7 thru 45, Block 24; portion out of Lots 6, 7, 48 & 49, and all of Lots 8 thru 47, Block 28; and portion out of Lots 1, 39 & 40, and all of Lots 2 thru 38, Block 30, Padre Island - Corpus Christi, Commodore's Cove Unit Two, as shown by map or plat thereof, recorded in Volume 38, Pages 36 thru 44, Map Records of Nueces County, Texas, being more fully described therein, by metes and bounds as a 50.816 acre tract of land, not based on an on-the-ground survey, being out of and part of Share 3 of the Blucher and Naismith Survey as recorded in Volume 4, Page 49 of the Miscellaneous Map Records of Nueces County, Texas, and described as 50.816 Acres in Deed Restrictions dated December 28, 2000, executed by and between Asset Development corporation ("Declarant") and the United States Army Corps of the Unites States of America (the "USAC"), recorded under Clerk's File No. 2000052230, Official Public Records of Nueces County, Texas.

SAVE AND EXCEPT all of Lots 94-105, Block 1 and that portion of Lucio Drive, and all of Blocks 5, 6, 7 and 8 of said Padre Island-Corpus Christi, Commodore's Cove Unit 2, re-platted as Commodore's Pointe P.U.D. 2, Unit 1, a map of which is recorded in Volume 64, Page 275 of the said Map Records, Commodore's Pointe P.U.D. 2, Unit 2, a map of which is recorded in Volume 65, Pages 87-88, of the said Map Records, Commodore's Pointe P.U.D. 2, Unit 3, a map of which is recorded in Volume 65, Pages 89-90 of the said Map Records of Nueces County, Texas.

SAID 230.85 ACRES BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: Beginning at a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found on the West boundary of Aquarius Street, a public roadway, the East line of the said Padre Island- Corpus Christi Commodore's Cove Unit 2, for a corner of this tract, from which, a 5/8 inch iron rod with red

plastic cap stamped "Urban Engr. C.C. TX" found on the East boundary of said Aquarius Street, the West corner of a 48.61 Acre tract, as shown on the Vacating Plat of Portions of Island Fairway Estates, Padre Island-Corpus Christi Island Fairway Estates, recorded in Volume 67, Page 688, Map Records of Nueces County, Texas, bears, South 64° 24' 53" East, a distance of 70.00 feet;

THENCE, South 25° 31' 02" West, with the common line of the said Aquarius Street and said Commodore's Cove Unit 2, a distance of 979.99 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for the point of curvature of a circular curve to the right, whose radius point bears North 64° 28' 58" West, a distance of 10.00 feet, having a central angle of 90° 00' 00", a radius 10.00 feet, a tangent length of 10.00 feet, and an arc length of 15.71 feet;

THENCE, along said circular curve to the right, an arc length of 15.71 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found on the North boundary line of Lucio Drive, a public roadway (not open to traffic) for a corner of this tract;

THENCE, with the common line of the said Lucio Drive and this tract, as follows:

North 64° 28' 58" West, 210.00 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for the point of curvature of a circular curve to the left, whose radius point bears South 25° 31' 02" West, a distance of 280.26 feet, having a central angle of 26° 27' 16", a radius 280.26 feet, a tangent length of 65.87 feet, and an arc length of 129.40 feet;

along said circular curve to the left, an arc length of 129.40 feet (Record =129.40 feet) to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found;

South 89° 03' 46" West, 474.00 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for an interior corner of this tract, from which the East corner of Lot 37, Block 4, of said Commodore's Cove Unit 2, bears South 87° 19' 17" West, a distance of 602.28 feet (Platted lot dimensions 60.00 feet by 110.00 feet);

THENCE, South 00° 56' 14" East, 185.00 feet to a corner of the said Commodore's Pointe P.U.D. 2 Unit 2, being the North corner of the said Commodore's Pointe P.U.D. 2 Unit 3, for an exterior corner of this tract;

THENCE, with the common line of the said Commodore's Pointe P.U.D. 2 Unit 3 and this tract, as follows:

South 89° 03' 46" West, 263.50 feet; South 53° 31' 02" West, 162.50 feet;

South 25° 31' 02" West, 413.00 feet, to the South line of said Padre Island-Corpus Christi Commodore's Cove Unit 2, the Southwest corner of the said Commodore's Pointe P.U.D. 2, Unit 3, for an exterior corner of this tract, from which the South corner of Lot 37, Block 4, of said Commodore's Cove Unit 2, bears North 07° 30' 17" West, a distance of 596.17 feet (Platted lot dimensions 60.00 feet by 110.00 feet);

THENCE, with the South line of the said Padre Island-Corpus Christi Commodore's Cove Unit 2 and this tract, as follows:

North 64° 28' 58" West, 136.00 feet;

South 25° 31' 02" West, 252.75 feet, to the Western most Southeast corner of the said Padre Island – Corpus Christi Commodore's Cove Unit 2 and of this tract;

North 64° 03' 14" West, 1590.73 feet, to the Mutually Agreed on West Shore line of Padre Island, a map of which is on file at the Texas General Land Office, File No. ME 1601, for the Southwest corner of the said Padre Island- Corpus Christi Commodore's Cove Unit 2 and of this tract;

North 25° 57' 21" East, with the said Mutually Agreed on West Shore line of Padre Island, the West line of the said Padre Island-Corpus Christi Commodore's Cove Unit 2 and of this tract 1942.66 feet, to the South Corner of a 50.816 Acre tract, described as Exhibit 1, in Deed Restrictions, as recorded in Document No. 2000052230 of the Official Records of Nueces County, Texas, an exterior corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears North 08° 59' 35" East, a distance of 1699.72 feet, having a central angle of 102° 13' 14", a radius 1699.72 feet, a tangent length of 2107.26 feet, and an arc length of 3032.44 feet;

THENCE, along said circular curve to the left, an arc length of 3032.44 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, on the South line of Padre Island-Corpus Christi Commodore's Cove Unit 1, a subdivision on Padre Island, situated in Corpus Christi, Nueces County, Texas, as shown by map or plat thereof, recorded in Volume 38, Page 34-35, Map Records of Nueces County, Texas, the North line of the said Padre Island-Corpus Christi Commodore's Cove Unit 2, the East corner of the said 50.816 Acre tract, for the Northwest corner of this tract;

THENCE, with the common line of the said Padre Island- Corpus Christi Commodore's Cove Unit 1, Padre Island-Corpus Christi Commodore's Cove Unit 2 and this tract, as follows:

North 81° 00' 07" East, 35.00 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, on the East boundary line of Nube Avenue, a public roadway, for an interior corner of this tract;

North 08° 59' 53" West, 15.00 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, on the said East boundary line of Nube Avenue, for an exterior corner of this tract;

North 81° 00' 07" East, 604.90 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for the point of curvature of a circular curve to the right, whose radius point bears South 08° 59' 54" East, a distance of 166.45 feet, having a central angle of 34° 28' 37", a radius 166.45 feet, a tangent length of 51.65 feet, and an arc length of 100.16 feet;

along said circular curve to the right, an arc length of 100.16 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found;

South 64° 27' 54" East, 300.00 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, on the West boundary line of Dragonet Street, a public roadway, an interior corner of the said Padre Island- Corpus Christi Commodore's Cove Unit 1, for an exterior corner of the said Padre Island-Corpus Christi Commodore's Cove Unit 2 and this tract;

THENCE, South 25° 31' 05" West, with the said West boundary line of Dragonet Street, 164.80 feet to the South boundary line of Bello Drive, a public roadway, for an interior corner of this tract;

THENCE, South 64° 24' 25" East, with the said South boundary line of Bello Drive, 285.01 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for the point of curvature of a circular curve to the right, whose radius point bears South 25° 35' 33" West, a distance of 10.00 feet, having a central angle of 90° 13' 30", a radius 10.00 feet, a tangent length of 10.04 feet, and an arc length of 15.75 feet;

THENCE, along said circular curve to the right, an arc length of 15.75 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found on the West boundary line of the said Aquarius Street, for a corner of this tract;

THENCE, South 64° 28' 55" East, 60.00 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, on the East boundary line of the said Aquarius Street, the West line of the said Lot Block 22-R of Padre Island Corpus Christi Island Fairway Estates, for an interior corner of this tract;

THENCE, with the common line of the said Block 22-R and this tract as follows:

North 25° 31' 05" East, with the said East boundary line of Aquarius Street, 145.00 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for the point of curvature of a circular curve to the right, whose radius point bears South 64° 28' 09" East, a distance of 10.00 feet, having a central angle of 90° 00' 42", a radius 10.00 feet, a tangent length of 10.00 feet, and an arc length of 15.71 feet;

along said circular curve to the right, an arc length of 15.71 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found on the South boundary line of Commodore's Drive, a public roadway, for a corner of this tract;

South 64° 28' 09" East, with the said South boundary line of Commodore's Drive, 512.27 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for the point of curvature of a circular curve to the right, whose radius point bears South 25° 32' 56" West, a distance of 377.25 feet, having a central angle of 44° 42' 27", a radius 377.25 feet, a tangent length of 155.13 feet, and an arc length of 294.36 feet;

along said circular curve to the right, an arc length of 294.36 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for a corner of this tract;

THENCE, South 19° 43' 09" East, pass the East corner of said Block 22-R, continue with the Southwest boundary line of the said Commodore's Drive, 988.39 feet, to a 5/8 inch iron rod found, for the point of curvature of a circular curve to the left, whose radius point bears North 70° 33' 55" East, a distance of 506.86 feet, having a central angle of 10° 25' 57", a radius 506.86 feet, a tangent length of 46.27 feet, and an arc length of 92.29 feet;

THENCE, along said circular curve to the left, an arc length of 92.29 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found on the Southwest boundary line of Commodore's Drive, a public roadway, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears South 60° 07' 59" West, a distance of 20.00 feet, having a central angle of 85° 39' 11", a radius 20.00 feet, a tangent length of 18.54 feet, and an arc length of 29.90 feet;

THENCE, along said circular curve to the right, an arc length of 29.90 feet, for the North boundary line of Aquarius Street, a public roadway, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears North 34° 12' 50" West, a distance of 139.50 feet, having a central angle of 31° 32' 43", a radius 139.50 feet, a tangent length of 39.40 feet, and an arc length of 76.80 feet;

THENCE, along said circular curve to the right, an arc length of 76.80 feet to, for the North boundary line of Aquarius Street, a public roadway, for a corner of this tract;

THENCE, South 87° 20' 07" West, 153.62 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears South 02° 39' 53" East, a distance of 410.00 feet,

having a central angle of $18^{\circ} 31' 58''$, a radius 410.00 feet, a tangent length of 66.89 feet, and an arc length of 132.62 feet;

THENCE, along said circular curve to the right, an arc length of 132.62 feet to, for the said North boundary line of Aquarius Street, for a corner of this tract;

THENCE, South $68^{\circ} 48' 09''$ East, with the said North boundary line of Aquarius Street, 1070.11 feet, for the said North line of Aquarius Street, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears South $21^{\circ} 11' 51''$ East, a distance of 410.00 feet, having a central angle of $43^{\circ} 17' 02''$, a radius 410.00 feet, a tangent length of 162.68 feet, and an arc length of 309.73 feet;

THENCE, along said circular curve to the left, an arc length of 309.73 feet to, for the said North boundary line of Aquarius Street, for a corner of this tract;

THENCE, South $25^{\circ} 31' 07''$ West, 305.98 feet, for a corner of this tract;

THENCE, South $64^{\circ} 28' 53''$ East, a distance of 10.00 feet, to the POINT OF BEGINNING and containing 230.85 acres (10, 055, 695.00 Sq. Ft.) of land, more or less.

TRACT II:

FIELD NOTES FOR A 39.67 ACRE TRACT, OUT OF LOTS 27C AND 27D, PADRE ISLAND -- CORPUS CHRISTI ISLAND FAIRWAY ESTATES, a Subdivision in the City of Corpus Christi, Nueces County, Texas, as shown by the map thereof recorded in Volume 67, Pages 779 thru 785, Map Records of Nueces County, Texas, to which reference is here made for all pertinent purposes; said 36.67 Acre Tract, being more fully described by metes and bounds as follows:

BEGINNING, at a found $5/8$ inch iron rod found, on the West boundary of South Padre Island Drive (Park Road 22), a public roadway, the Northeast corner of Lot 1, Block 46, Padre Island-Corpus Christi Island Fairway Estates, a map of which is recorded in Volume 42, Pages 153-154, Map Records of Nueces County, Texas, a Southeast corner of the said Lot 27D, for the Southeast corner of this tract;

THENCE, North $89^{\circ} 16' 36''$ West, along the common boundary of the said Block 46 and the said Lot 27D, a distance of 262.65 feet to a $5/8$ inch iron rod found for the point of curvature for a circular curve to the left, whose radius point bears South $00^{\circ} 43' 14''$ West, a distance of 254.65 feet, having a central angle of $60^{\circ} 59' 25''$, a radius of 254.65 feet, a tangent length of 149.27 feet, and an arc length of 271.07 feet;

THENCE, along said circular curve to the left, an arc length of 271.07 feet to a $5/8$ inch iron rod found for a corner of said Block 46, said Lot 27D and this tract;

THENCE, South $29^{\circ} 47' 00''$ West, along the common boundary of the said Block 46 and the said Lot 27D, a distance of 170.73 feet, for a corner of this tract;

THENCE, with the South and West boundaries of this tract as follows:

North $60^{\circ} 07' 11''$ West, 225.00 feet;

South 29° 47' 00" West, 362.15 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears South 60° 13' 00" East, a distance of 390.00 feet, having a central angle of 07° 47' 35", a radius of 390.00 feet, a tangent length of 26.56 feet, and an arc length of 53.05 feet;

along said circular curve to the left, an arc length of 53.05 feet, for a corner of this tract; North 64° 59' 16" West, 92.26 feet; North 27° 00' 39" West, 55.67 feet;

North 81° 30' 53" West, 207.33 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears South 08° 29' 07" West, a distance of 145.00 feet, having a central angle of 81° 05' 39", a radius of 145.00 feet, a tangent length of 124.05 feet, and an arc length of 205.23 feet;

along said circular curve to the left, an arc length of 205.23 feet, for a corner of this tract;

North 17° 55' 32" West, 128.44 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears South 67° 57' 32" East, a distance of 200.00 feet, having a central angle of 25° 31' 56", a radius of 200.00 feet, a tangent length of 45.31 feet, and an arc length of 89.12 feet;

along said circular curve to the right, an arc length of 89.12 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears North 42° 25' 36" West, a distance of 200.00 feet, having a central angle of 14° 34' 06", a radius of 200.00 feet, a tangent length of 25.56 feet, and an arc length of 50.85 feet;

along said circular curve to the left, an arc length of 50.85 feet, for a corner of this tract;

North 33° 00' 19" East, 188.80 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears South 56° 59' 41" East, a distance of 300.00 feet, having a central angle of 16° 18' 23", a radius of 300.00 feet, a tangent length of 42.98 feet, and an arc length of 85.38 feet;

along said circular curve to the right, an arc length of 85.38 feet, for a corner of this tract; North 49° 18' 42" East, 193.33 feet;

North 31° 32' 32" West, 197.16 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears North 58° 27' 28" East, a distance of 53.05 feet, having a central angle of 47° 56' 50", a radius of 53.05 feet, a tangent length of 23.59 feet, and an arc length of 44.39 feet;

along said circular curve to the right, an arc length of 44.39 feet, for a corner of this tract; North 11° 19' 46" East, 504.43 feet;

North 67° 26' 22" East, 55.80 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears North 58° 36' 03" East, a distance of 120.00 feet, having a central angle of 38° 27' 44", a radius of 120.00 feet, a tangent length of 41.86 feet, and an arc length of 80.56 feet;

along said circular curve to the right, an arc length of 80.56 feet, for a corner of this tract; North 07° 04' 31" East, 147.14 feet;

South 88° 39' 54" East, 88.19 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears North 75° 34' 05" East, a distance of 70.00 feet, having a central angle of 74° 21' 01", a radius of 70.00 feet, a tangent length of 53.09 feet, and an arc length of 90.84 feet;

along said circular curve to the right, an arc length of 90.84 feet, for a corner of this tract; South 88° 46' 57" East, 291.63 feet; North 01° 20' 06" East, 50.38 feet;

North 41° 09' 40" West, 96.97 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears North 41° 27' 16" East, a distance of 36.52 feet, having a central angle of 61° 21' 11", a radius of 36.52 feet, a tangent length of 21.67 feet, and an arc length of 39.11 feet;

along said circular curve to the right, an arc length of 39.11 feet, for a corner of this tract;

North 26° 52' 49" East, 43.58 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears North 69° 08' 07" West, a distance of 160.49 feet, having a central angle of 33° 45' 08", a radius of 160.49 feet, a tangent length of 48.69 feet, and an arc length of 94.54 feet;

along said circular curve to the right, an arc length of 94.54 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears North 78° 50' 05" East, a distance of 224.76 feet, having a central angle of 16° 28' 03", a radius of 224.76 feet, a tangent length of 32.52 feet, and an arc length of 64.60 feet;

along said circular curve to the right, an arc length of 64.60 feet, for a corner of this tract;

North 09° 00' 3" East, 160.18 feet;

North 05° 17' 34" East, 75.84 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears South 88° 17' 11" East, a distance of 54.40 feet, having a central angle of 30° 55' 30", a radius of 54.40 feet, a tangent length of 15.05 feet, and an arc length of 29.36 feet;

along said circular curve to the right, an arc length of 29.36 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears North 58° 49' 55" West, a distance of 126.17 feet, having a central angle of 21° 47' 45", a radius of 126.17 feet, a tangent length of 24.29 feet, and an arc length of 48.00 feet;

along said circular curve to the left, an arc length of 48.00 feet, for a corner of this tract;

North 01° 16' 54" West, 91.61 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears South 81° 20' 59" East, a distance of 252.95 feet, having a central angle of 07° 58' 34", a radius of 252.95 feet, a tangent length of 17.63 feet, and an arc length of 35.21 feet;

along said circular curve to the right, an arc length of 35.21 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears North 73° 22' 24" West, a distance of 75.93 feet, having a central angle of 30° 26' 59", a radius of 75.93 feet, a tangent length of 20.66 feet, and an arc length of 40.35 feet;

along said circular curve to the left, an arc length of 40.35 feet, for a corner of this tract, for the point of curvature of a circular curve to the right, whose radius point bears North 72° 11' 32" East, a distance of

354.88 feet, having a central angle of $23^{\circ} 04' 22''$, a radius of 354.88 feet, a tangent length of 72.44 feet, and an arc length of 142.91 feet;

along said circular curve to the right, an arc length of 142.91 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears North $86^{\circ} 47' 27''$ West, a distance of 199.85 feet, having a central angle of $52^{\circ} 48' 12''$, a radius of 199.85 feet, a tangent length of 99.22 feet, and an arc length of 184.18 feet;

along said circular curve to the left, an arc length of 184.18 feet, for a corner of this tract; North $32^{\circ} 38' 10''$ East, 161.42 feet; North $09^{\circ} 09' 05''$ West, 319.29 feet; North $15^{\circ} 20' 23''$ East, 56.53 feet;

South $74^{\circ} 39' 37''$ East, 17.85 feet, for a corner of this tract, for the point of curvature of a circular curve to the left, whose radius point bears North $15^{\circ} 20' 23''$ East, a distance of 78.00 feet, having a central angle of $25^{\circ} 26' 30''$, a radius of 78.00 feet, a tangent length of 17.61 feet, and an arc length of 34.64 feet;

along said circular curve to the left, an arc length of 34.64 feet, for a corner of this tract;

North $79^{\circ} 53' 54''$ East, 133.13 feet;

THENCE, South $10^{\circ} 22' 47''$ East, a distance of 328.92 feet to a 5/8 inch iron rod found for the Southwest corner of Lot 7, Block 41, Padre Island-Corpus Christi, Island Fairway Estates, a map of which is recorded in Volume 42, Page 16-17, Map Records, a corner of Lot 6, said Block 4, a corner of said Lot 27C, for a corner of this tract;

THENCE, South $80^{\circ} 14' 25''$ West, continuing along the East boundary of said Lot 27C, same being the North boundary of said Lot 6, Block 41, a distance of 89.00 feet, to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr, C.C. TX" found, for a corner of said Lot 27C, for the Northwest corner of said Lot 6, Block 41, and for a corner of this tract;

THENCE, South $09^{\circ} 45' 35''$ East, along the East boundary of said Lot 27C, same being the West boundary of said Lot 6, Block 41, a distance of 132.00 feet to a 5/8 inch iron rod with red plastic cap stamped "Urban Engr. C.C. TX" found, for a corner of said Lot 27C, the Southwest corner of said Lot 6, Block 41, a corner of Lot 5, said Block 41, for a corner of this tract;

THENCE, South $79^{\circ} 55' 10''$ West, along the East boundary of said Lot 27C, same being the North boundary of said Lot 5, Block 41, a distance of 130.87 feet to a 5/8 inch iron rod found for a corner of said Lot 27C, for the Northwest corner of said Lot 5, Block 41, and for a corner of this tract;

THENCE, South $09^{\circ} 54' 06''$ East, continuing along the East boundary of said Lot 27C, same being the West boundary of Lots 4 and 5, said Block 41, a distance of 311.05 feet, to a 5/8 inch iron rod found for a corner of said Lot 27C, for the Southwest corner of said Lot 5, Block 41, for the Northwest corner of said Lot 4, Block 41, and for a corner of this tract;

THENCE, South $00^{\circ} 44' 01''$ West, along the East boundary of said Lot 27C, same being the West boundary of said Lot 4, Block 41, and the West boundary of said Lot 1, Block 27-B, a distance of 238.42 feet to a 5/8 inch iron rod found, for a corner of said Lot 27C, a corner of said Lot 1, Block 27-B, and this tract;

THENCE, South $25^{\circ} 02' 42''$ East, continuing along the East boundary of said Lot 27C, same being the West boundary of said Block 27-B, a distance of 314.11 feet, for the Southwest corner of the said Lot 1, Block 27-B, a corner of the said Lot 27C and this tract;

THENCE, South 87° 44' 57" East, along the common boundary of said Lot 27C, Lot 27D and Lot 1 and 2, said Block 27-B, a distance of 104.73 feet for a corner of the said Lot 2, the said Lot 27D and this tract;

THENCE, South 18° 13' 27" East, along the common boundary of said Lot 27D, same being the West boundary of Lots 2 and 3, said Block 27-B, a distance of 285.11 feet to a 5/8 inch iron rod with red plastic caps stamped "Urban Engr. C.C. TX" found, for a corner of the said Lot 3, the said Lot 27D and this tract;

THENCE, South 47° 41' 49" East, continuing along the common boundary of said Lot 27D and the said Lot 3, a distance of 288.22 feet to a 5/8 inch iron rod found, on the West boundary line of South Padre Island Drive (State of Texas Park Road No. 22), the South corner of said Lot 3, for a corner of said Lot 27D and this tract;

THENCE, South 00° 46' 28" West, along the common boundary of the said South Padre Island Drive and the said Lot 27D, a distance of 831.48 feet to the POINT OF BEGINNING and containing 39.67 Acres (1, 728, 050 Sq. Ft.) of land, more or less.

EXHIBIT "B"

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

File No. 874371, Volume 1424, Page 388, Deed Records of Nueces County, Texas; File No. 874374, Volume 1424, Page 417, Deed Records of Nueces County, Texas; File No. 931165, Volume 1480, Page 813, Deed Records of Nueces County, Texas; File No. 933464, Volume 1482, Page 1008, Deed Records of Nueces County, Texas; File No. 954076, Volume 1504, Page 988, Deed Records of Nueces County, Texas; File No. 965354, Volume 1517, Page 111, Deed Records of Nueces County, Texas; File No. 971252, Volume 1524, Page 5, Deed Records of Nueces County, Texas; File No. 1659, Volume 1556, Page 691, Deed Records of Nueces County, Texas; File No. 47561, Volume 1805, Page 521, Deed Records of Nueces County, Texas; File No. 233030, Volume 1788, Page 729, Deed Records of Nueces County, Texas; File No. 246244, Volume 1800, Page 721, Deed Records of Nueces County, Texas; File No. 248238, Volume 1802, Page 600, Deed Records of Nueces County, Texas; File No. 361687, Volume 1906, Page 86, Deed Records of Nueces County, Texas; File No. 828183, Official Public Records of Real Property of Nueces County, Texas; File No. 886711, Official Public Records of Nueces County, Texas; File No. 931043, Official Public Records of Real Property of Nueces County, Texas; File No. 931045, Official Public Records of Real Property of Nueces County, Texas; File No. 931047, Official Public Records of Real Property of Nueces County, Texas; File No. 979735, Official Public Records of Nueces County, Texas; File No. 2000052230, Official Public Records of Real Property of Nueces County, Texas; File No. 2006000529, Official Public Records of Nueces County, Texas; File No. 2006023844, Official Public Records of Nueces County, Texas; File No. 2006023845, Official Public Records of Nueces County, Texas; File No. 2006024571, Official Public Records of Nueces County, Texas; File No. 2007000378, Official Public Records of Nueces County, Texas; File No. 2007017106, Official Public Records of Nueces County, Texas; File No. 2010021787, Official Public Records of Nueces County, Texas; File No. 2011000128, Official Public Records of Nueces County, Texas; File No. 2013013509, Official Public Records of Nueces County, Texas; Volume 38, Pages 36 thru 44, Map Records of Nueces County, Texas; Volume 38, Pages 55-61, Map Records of Nueces County, Texas; Volume 39, Pages 198 and 199, Map Records of Nueces County, Texas; Volume 40, Pages 145-146, Map Records of Nueces County, Texas; Volume 40, Pages 154-159, Map Records of Nueces County, Texas; Volume 40, Pages 183-184, Map Records of Nueces County, Texas; Volume 41, Pages 128 and 129, Map Records of Nueces County, Texas; Volume 42, Pages 10-11, Map Records of Nueces County, Texas; File No. 48278, Volume 42, Pages 153-154, Map Records of Nueces County, Texas; File No. 244368, Volume 46, Pages 208-210, Map Records of Nueces County, Texas; File No. 282585, Volume 47, Pages 163 and 165, Map Records of Nueces County, Texas; Volume 48, Page 19, Map Records of Nueces County, Texas. (RESERVED BLOCK); Volume 64, Page 275, Map Records of Nueces County, Texas; Volume 65, Pages 87 and 88, Map Records of Nueces County, Texas; Volume 65, Pages 89 and 90, Map Records of Nueces County, Texas; Volume 67, Page 688, Map Records of Nueces County, Texas; Volume 67, Pages 779 thru 785, Map Records of Nueces County, Texas; but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

- a. Subject to all the dedicated streets, utility easements, drainage easements, pipeline easements, building lines, bulkhead lines, water access easements, private road, common area, navigation channel and restrictive covenants, all as set out in maps or plats recorded in Volume 38, Pages 36 thru 44, Map Records, Volume 38, Pages 55-61, Map Records, Volume 39, Pages 198 and 199, Map Records, Volume 40, Pages 145-146, Map Records, Volume 40, Pages 154-159, Map Records, Volume 40, Pages 183-184, Map Records, Volume 41, Pages 128 and 129, Map Records, Volume 42, Pages 10-11, Map Records, Volume 42, Pages 153-154, Map Records, Volume 46, Pages 208-210, Map Records, Volume 47, Pages 163 and 165, Map Records, Volume 48, Page 19, Map Records, Volume 64, Page 275, Map Records, Volume 65, Pages 87 and 88, Map Records, Volume 65, Pages 89 and 90, Map Records, Volume 67, Page 688, Map Records, and Volume 67, Pages 779 thru 785, Map Records, Nueces County, Texas.
- b. Subject to the re-plat eliminating the streets and easements set out in the current maps or plats recorded in Volume 38, Pages 55-61, Map Records, Volume 38, Pages 36-44, Map Records, Volume 41, Pages 128-129, Map Records, and Volume 40, Pages 154-159, all in Nueces County, Texas, prior to any construction. (This of course will require consent of the city/county in order to get the re-plat approved).
- c. Any and all terms, conditions and stipulations contained in that certain Protective Covenants and Landowners' Agreement Padre Island-Corpus Christi Commodore's Cove Unit Two, dated February 25, 1972, and recorded under Clerk's File No. 874371, Volume 1424, Page 388, Deed Records of Nueces County, Texas. First Amendment to Protective Covenants and Landowners' Agreement Padre Island-Corpus Christi Commodore's Cove Unit Two, dated November 27, 1973, recorded under Clerk's File No. 931165, Volume 1480, Page 813, Deed Records of Nueces County, Texas. Amendment dated December 19, 1973, recorded under Clerk's File No. 933464, Volume 1482, Page 1008, Deed Records of Nueces County, Texas; and Amendment dated October 23, 1992, recorded under Clerk's File No. 828183, Deed Records of Nueces County, Texas. Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 233030, Volume 1788, Page 729, Deed Records of Nueces County, Texas; and Ratification of Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 246244, Volume 1800, Page 721, Deed Records of Nueces County, Texas, together with any amendments present or future thereto, including but not limited to all covenants and restrictions covering the use, occupancy and transfer of the insured premises contained therein. (NOTE: Any lien for maintenance as established therein having been subordinated to all purchase and/or construction liens on subject property.)
- d. Any and all terms, conditions and stipulations contained in that certain Protective Covenants and Landowners' Agreement Padre Island-Corpus Christi Island Fairway Estates, dated February 25, 1972, recorded under Clerk's File No. 874374, Volume 1424, Page 417, Deed Records of Nueces County, Texas. Amendment dated December 19, 1973, recorded under Clerk's File No. 933464, Volume 1482, Page 1008, Deed Records of Nueces County, Texas, and Amendment dated October 23, 1992, recorded under Clerk's File No. 828183, Deed Records of Nueces County, Texas. Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 233030, Volume 1788, Page 729, Deed Records of Nueces County, Texas; and Ratification of Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 246244, Volume 1800, Page 721, Deed Records of Nueces County, Texas, together with any amendments present or future thereto, including but not limited to all covenants and restrictions covering the use, occupancy and transfer of the insured premises contained therein. (NOTE: Any lien for maintenance as established therein having been subordinated to all purchase and/or construction liens on subject property.)

- e. Any and all terms, conditions and stipulations contained in that certain Protective Covenants and Landowners' Agreement Padre Island-Corpus Christi, Island Fairway Estates Block 3, dated August 23, 1974, recorded under Clerk's File No. 954076, Volume 1504, Page 988, Deed Records of Nueces County, Texas. First Amendment to Protective Covenants and Landowners' Agreement Padre Island-Corpus Christi, Island Fairway Estates Block 3, dated November 30, 1976, recorded under Clerk's File No. 47561, Volume 1605, Page 521, Deed Records of Nueces County, Texas; and Second Amendment to Protective Covenants and Landowners' Agreement Padre Island-Corpus Christi, Island Fairway Estates Block 3, dated September 3, 1981, recorded under Clerk's File No. 248238, Volume 1802, Page 600, Deed Records of Nueces County, Texas. Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 233030, Volume 1788, Page 729, Deed Records of Nueces County, Texas; and Ratification of Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 246244, Volume 1800, Page 721, Deed Records of Nueces County, Texas, together with any amendments present or future thereto, including but not limited to all covenants and restrictions covering the use, occupancy and transfer of the insured premises contained therein. (NOTE: Any lien for maintenance as established therein having been subordinated to all purchase and/or construction liens on subject property.)
- f. Any and all terms, conditions and stipulations contained in that certain Protective Covenants and Landowners' Agreement Blocks 29, 31, 32, 33, Padre Island-Corpus Christi, Island Fairway Estates Block 33-34, dated July 15, 1975, recorded under Clerk's File No. 965353, Volume 1517, Page 100, Deed Records of Nueces County, Texas. Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 233030, Volume 1788, Page 729, Deed Records of Nueces County, Texas; and Ratification of Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 246244, Volume 1800, Page 721, Deed Records of Nueces County, Texas. Amendment dated January 20, 2007, recorded under Clerk's File No. 2007000379, Official Public Records of Nueces County, Texas, being corrected by Correction Amendment dated April 3, 2007, but effective January 2, 2007, recorded under Clerk's File No. 2007017105, Official Public Records of Nueces County, Texas. Supplement to Amendment dated December 31, 2010, recorded under Clerk's File No. 2011000128, Official Public Records of Nueces County, Texas, together with any amendments present or future thereto, including but not limited to all covenants and restrictions covering the use, occupancy and transfer of the insured premises contained therein. (NOTE: Any lien for maintenance as established therein having been subordinated to all purchase and/or construction liens on subject property.)
- g. Any and all terms, conditions and stipulations contained in that certain Protective Covenants and Landowners' Agreement Padre Island-Corpus Christi, Island Fairway Estates Blocks 37, 38, 39 and 40, dated February 18, 1976, recorded under Clerk's File No. 1659, Volume 1556, Page 691, Deed Records of Nueces County, Texas. Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 233030, Volume 1788, Page 729, Deed Records of Nueces County, Texas; and Ratification of Assignment dated June 15, 1981, executed by Padre Island Investment Corporation to Padre Isles Property Owners Association, Inc., recorded under Clerk's File No. 246244, Volume 1800, Page 721, Deed Records of Nueces County, Texas, together with any amendments present or future thereto, including but not limited to all covenants and restrictions covering the use, occupancy and transfer of the insured premises contained therein. (NOTE: Any lien for maintenance as established therein having been subordinated to all purchase and/or construction liens on subject property.)

- h. Maintenance and/or special assessment(s) payable to Padre Isles Homeowner's Association, as set out in instruments for Protective Covenants and Landowners' Agreements for Padre Island-Corpus Christi, Island Fairway Estates and Padre Island-Corpus Christi Commodore's Cove Unit Two, recorded in the Official Records, Nueces County, Texas.
- i. All rights and privileges of Co-Tenants, contractual or otherwise, in and to all general and common elements, as that term is defined by Texas Law, which passed as an appurtenance to the insured premises.
- j. ANY TITLES OR RIGHTS asserted by anyone, including but not limited to persons, corporations, governments or other entities to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs, or oceans, or to any land extending from the line of mean low tides to the line of vegetation, or to lands beyond the line of the harbor or bulkhead lines as established or changed by any government or to filled lands, or artificial islands, or to riparian rights or the rights or interests of the State of Texas, or the public generally in the area extending from the line of mean low tide to the line of vegetation or their rights of access thereto or right to easement along and across the same. (Mortgagee's Policy Only)
- k. Intentionally Deleted
 - l. 1000' Sand Dune Protection Line established by the Commissioner's Court of Nueces County, Texas, Pursuant to order dated October 23, 1973, together with the laws of the State of Texas pertaining to same.
- m. Any changes in the boundary lines of the above described property caused by erosion from the actions of the waters of the Gulf of Mexico.
- n. The Rights, if any, of the State of Texas and/or the Public, individually and collectively, to the use of any portion of such property bordering on the Gulf of Mexico.
- o. The Company Does Not Assume any loss or liability arising from the lose of use or title to any portion of the subject property outside of the bulkhead line, as shown by map or plat recorded in the Map Records of Nueces County, Texas.
- p. SUBJECT to terms and conditions of the Texas Open Beaches Act; Article 5415D, indicating an easement for public access to the beaches on subject property between the leeward shore of the Gulf of Mexico and the line of vegetation.
- q. SUBJECT to terms, conditions and compliances with the United States Army Corps of the United States of America (USACE), and the Texas Natural Resources Code, Chapters 593, Acts of the 74th Legislature Regular Session, 1995. Any title or use/easement rights asserted by the public under Chapters 33, 51 & 61 of the Texas Natural Resources Code to any portion of the Property which is in proximity to a beach fronting the Gulf of Mexico.
- r. Any and all rights under the jurisdiction of the U.S. Corps of Engineers.
- s. Right of Way to the United State of America under the Spoil Disposal and Right of Way Easement Deed dated August 21, 1947, executed by and between Arroy Colorado Navigation District to and with the United State of America, recorded under Clerk's File No. 250737, Volume 382, Page 307, Deed Records of Nueces County, Texas.
- t. Subject to Quitclaim Deed dated August 6, 1949, executed by K.E. Allison and wife, Elsie Allison to Padre Island Land and Cattle Company, recorded under Clerk's File No. 284003, Volume 438, Page 216, Deed Records of Nueces County, Texas; together with all rights incident to the owners and lessees of the minerals. Title to said interest not checked subsequent to date of aforesaid instrument.

- u. Easement dated May 29, 1950, from Padre Island Investment Corporation, a Texas corporation, to Nueces County, Texas, recorded under Clerk's File No. 304483, Volume 474, Page 287, Deed Records of Nueces County, Texas.
- v. Agreement & Deed dated June 12, 1950, from Padre Island Land & Cattle Company to Nueces County, Texas, recorded under Clerk's File No. 304484, Volume 474, Page 299, Deed Records of Nueces County, Texas.
- w. All Rights of the County of Nueces and/or State of Texas, if any, under Agreement between Padre Island Development Company and Nueces County, dated June 29, 1950, recorded under Clerk's File No. 305876, Volume 476, Page 562, Deed Records of Nueces County, Texas.
- x. Right of Way Easement dated August 1, 1950, executed by Padre Island Development Company to Central Power and Light Company, recorded under Clerk's File No. 308574, Volume 481, Page 411, Deed Records of Nueces County, Texas.
- y. Right of Way Grant dated August 8, 1950, executed by George A. Prowse, County Judge to Central Power and Light Company, recorded under Clerk's File No. 309606, Volume 483, Page 144, Deed Records, Nueces County, Texas.
- z. Easement and/or Right of Way dated December 1 1960, from Leeco Gas and Oil Company, et al, to Nueces County, Texas, recorded under Clerk's File No. 567313, Volume 911, Page 24, Deed Records of Nueces County, Texas; and also recorded under Clerk's File 567314, Volume 911, Page 29, Deed Records of Nueces County, Texas.
- aa. Right of Way dated May 4, 1973, from Padre Island Investment Corporation to Central Power and Light Company, recorded under Clerk's File No. 913418, Volume 1462, Page 453, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.
- bb. Right of Way dated October 19, 1973, from Padre Island Investment Corporation to Central Power and Light Company, recorded under Clerk's File No. 935056, Volume 1484, Page 633, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.
- cc. Easement dated June 10, 1974, from Padre Island Investment Corporation to Central Power and Light Company, recorded under Clerk's File No. 949172, Volume 1499, Page 710, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.
- dd. Easement dated June 10, 1974, from Padre Island Investment Corporation to Central Power and Light Company, recorded under Clerk's File No. 949173, Volume 1499, Page 726, Deed Records, Nueces County, Texas, affecting Island Fairway Estates.
- ee. Utility Easement dated November 26, 1974, executed by Padre Island Investment Corporation, et al, to the Public, recorded under Clerk's File No. 951881, Volume 1513, Page 56, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.
- ff. Easement and Right of Way dated June 5, 1975, executed by Padre Island Investment Corporation to Central Power and Light Company, recorded under Clerk's File No. 980108, Volume 1533, Page 731, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.

- gg. Easement and Right of Way dated July 21, 1975, from Padre Island Investment Corporation to Central Power and Light Company, recorded under Clerk's File No. 985307, Volume 1539, Page 94, Deed Records of Nueces County, Texas.
- hh. Dedication of Utility Easement dated November 3, 1975, executed by Padre Island Investment Corporation, et al, to the Public, recorded under Clerk's File No. 992482, Volume 1547, Page 55, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.
- ii. Dedication of Drainage Easement dated November 17, 1975, executed by Padre Island Investment Corporation, et al, to the Public, recorded under Clerk's File No. 997510, Volume 1552, Page 224, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.
- jj. Easement and Right of Way dated August 4, 1975, from Padre Island Investment Corporation to Central Power and Light company, recorded under Clerk's File No. 997549, Volume 1552, Page 288, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.
- kk. Amendment (Agreement of Consolidation) dated February 15, 1984, by and between the City of Corpus Christi and Padre Island Investment Corporation, recorded under Clerk's File No. 361687, Volume 1906, Page 86, Deed Records of Nueces County, Texas.
- ll. Easement dated October 18, 1984, executed by Mustang Dune Resort, Inc. to Central Power and Light Company, recorded under Clerk's File No. 411911, Volume 1947, Page 365, Deed Records of Nueces County, Texas, affecting Island Fairway Estates.
- mm. All terms and Conditions of Assignment of Rights dated September 26, 1994 executed by Seashore Development, Inc. to Asset Development Corporation, a Texas corporation, recorded under Clerk's Files No. 931043, No. 931045 & No. 931047, Official Public Records of Nueces County, Texas.
- nn. All terms and conditions of Ordinance No. 022383 dated October 31, 1995, executed by the City of Corpus Christi to The Public, recorded under Clerk's File No. 985283, Official Public Records of Nueces County, Texas.
- oo. Intentionally Deleted
- pp. Intentionally Deleted
- qq. Intentionally Deleted
- rr. Drainage Easement dated October 28, 2011, executed by Asset Development GP LLC to the City of Corpus Christi, recorded under Clerk's File No. 2011039225, Official Public Records of Nueces County, Texas.
- ss. Right of Way Easement dated October 28, 2011, executed by Asset Development GP LLC to the City of Corpus Christi, recorded under Clerk's File No. 2011039226, Official Public Records of Nueces County, Texas.
- tt. Easement and Right of Way dated September 12, 2012, executed by Asset Development GP LLC to AEP Texas Central Company, recorded under Clerk's File No. 2012035578, Official Public Records of Nueces County, Texas.
- uu. Easement and Right of Way dated May 8, 2014, filed June 4, 2014, executed by Upper Padre GP, Inc. to AEP Texas Central Company, recorded under Clerk's File No. 2014020874, Official Public Records of Nueces County, Texas.

- vv. Lease for coal, lignite, oil, gas or other minerals, together with rights incident thereto, contained in Oil and Gas Lease from Wayne V. Jones, et al, Lessors, to The Louisiana Land and Exploration Company, as Lessee, dated July 15, 1965, recorded under Clerk's File No. 688187, Volume 216, Page 492, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- ww. Lease for coal, lignite, oil, gas or other minerals, together with rights incident thereto, contained in Oil and Gas Lease from Burton Dunn, et al to J. B. Clark and Paul M. Strunk dated May 22, 1970, recorded under Clerk's File No. 821286, Volume 288, Page 375, Oil and Gas Records of Nueces County, Texas; amended by Clerk's File No. 831052, Volume 289, Page 904, Oil and Gas Records of Nueces County, Texas, and further amended by Clerk's File No. 871779, Volume 295, Page 266, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- xx. Lease for coal, lignite, oil, gas or other minerals, together with rights incident thereto, contained in Oil and Gas Lease dated March 21, 1981, from Wayne V. Jones, et al to Fischer-Webb, Inc., recorded in counterparts under Clerk's File Nos. 225903, 225904, and 225905, Volume 346, Pages 261, 274; and 287, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- yy. Lease for coal, lignite, oil, gas or other minerals, together with rights incident thereto, contained in Oil and Gas Lease dated October 1, 1981, by and between Gilbert Kerlin

Individually and as Trustee; Virginia Jones Mullin; Commerce Bank of Kansas City, Missouri, N.A. and Barbara P. Niedringhaus, Co-Trustees under the Will of Laurence R. Jones, Deceased; Harold H. Jones; Wayne V. Jones; Eleanor Jones Florence and Exxon Corporation, recorded in counterparts under Clerk's File Nos. 253698, 253699, and 253700, Volume 351, Pages 397, 412 and 427, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- zz. Lease for coal, lignite, oil, gas or other minerals, together with rights incident thereto, contained in Oil, Gas and Mineral Leases dated December 21, 1990, from The Board of Regents of The University of Texas System, Lessors, to Jimmie B. Myers, Lessee, recorded under Clerk's File No. 739947, Volume 413, Page 577, Oil and Gas Records of Nueces County, Texas; and dated December 21, 1990, from Laurence R. Jones, Jr., Lessor, to Jimmie B. Myers, Lessee, recorded under Clerk's File No. 740437, Volume 413, Page 599, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- aaa. Lease for coal, lignite, oil, gas or other minerals, together with rights incident thereto, contained in Oil, Gas and Mineral Lease dated January 7, 1991, from Commerce Bank of Kansas City Missouri, Lessors, to Jimmie B. Myers, Lessee, recorded under Clerk's File No. 742550, Volume 413, Page 776, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).

- bbb. Lease for coal, lignite, oil, gas or other minerals, together with rights incident thereto, contained in Oil, Gas, and Mineral Lease dated October 1, 1998, from Carolyn Davy Altheide, et al, Lessors, to Seiskin Interests, Ltd., Lessee, being executed in counterparts, recorded under Clerk's File No. 1998053970, 1998053971, 1998053972; 1998053973 and 1998053974, Official Public Records of Real Property of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- ccc. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Memorandum of Seismic Permit and Option Contract effective September 1, 1998, by and between Commerce Bank of Kansas City Missouri, N.A., and Barbara P. Niedringhaus, Co-Trustee under the Will of Laurence R. Jones, Deceased and others, being executed in counterparts, recorded under Clerk's File No. 1999000125 and No. 1999000126, Official Public Records of Real Property of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- ddd. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Conveyance, Assignment and Transfer dated January 1, 1986, filed January 8, 1986, executed by Gilbert Kerlin, Individually and as Trustee and Sarah M. Kerlin, et al, to PI Corporation recorded under Clerk's File No. 471467, Volume 383, Page 870, Oil and Gas Records, Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- eee. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Agreement executed by Burton Dunn et al, dated May 22, 1970, Volume 288, Page 364, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- fff. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Mineral Deed dated July 14, 1975, filed August 8, 1975, executed by Patricia Snyder Schaeffer, et al to Thomas A. McCampbell, recorded under Clerk's File No. 983704, Volume 300, Page 28 Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- ggg. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Royalty Deed dated February 9, 1982, from Juliana Dunn Smith to Burton Dunn Smith, et al, recorded under Clerk's File No. 258944, Volume 352, Page 1034, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- hhh. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Royalty Deed dated October 26, 1981, from Lure Vista Sweatt to Lure Vista Sweatt, or her successors, Trustee for Charles Blake Latham, recorded under Clerk's File No. 267361, Volume 355, Page 321, Oil and Gas Records, Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).

- iii. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Agreement and Conveyance of Royalty Interest dated January 16, 1985, from Gilbert Kerlin, Individually and as Trustee to Manufacturers Hanover Trust Company as Trustee under the Last Will and Testament of Rafe L. Gilbert dated May 5, 1920, for Frank F. Hayward, et al, recorded under Clerk's File No. 423395, Volume 378, Page 83, Oil and Gas Records, Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- jjj. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Agreement and Conveyance dated January 26, 1985 from Gilbert Kerlin, Individually and as Trustee to Sarah M. Kerlin, et al, recorded under Clerk's File No. 432945, Volume 378, Page 88, Oil and Gas Records, Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- kkk. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Executor's Mineral Deed dated July 18, 1985, from Donald K Alex, Independent Executor of the Estate of Thomas A. McCampbell to Thomas Ward McCampbell and Margaret Courtney McCampbell, recorded under Clerk's File No. 452899, Volume 380, Page 805, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- iii. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Mineral Deed dated February 27, 1987, from to N.D.C., Inc., recorded under Clerk's File No. 541449, Volume 390, Page 84, Oil and Gas Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- mmm. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Mineral Deed filed September 13, 1993, executed by Helen B. Bocquet, Executrix of the Estate of Phillip E. Bocquet, Deceased, et al to Lisa Bocquet Hope recorded under Clerk's File No. 874130, Official Public Records of Real Property of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- nnn. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Gift Royalty Deed filed October 29, 1993 executed by Cornelius M. Robinson, III to Michael M. Robinson, et al, recorded under Clerk's File No. 881335, Official Public Records of Real Property of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).

- ooo. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Mineral and/or Royalty Deed dated to be effective as of April 1, 2004, executed by JP Morgan Chase Bank (Estate of Kate L. Gilbert, et al) to Ralph V. St. John, recorded under Clerk's File No. 2004027991, Official Public Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- ppp. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Overriding Royalty Agreement dated to be effective as of September 1, 2004, executed by and between Novus Oil & Gas, LP, et al, to and with O/G Paltex, Ltd., et al, recorded under Clerk's File No. 2004058302, Official Public Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- qqq. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Mineral Deed dated May 4, 2008, executed by Gillette D. Burton, Independent Executor of the Estate of Lura Dunn Sweatt, Deceased to Gillette D. Burton and Charles Blake Latham, recorded under Clerk's File No. 2008022365, Official Public Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- rrr. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in Special Warranty Deed dated October 29, 2008, executed by AM GENPAR, LLC to Padre Island Minerals, LLC, recorded under Clerk's File No. 2008050251, Official Public Records of Nueces County, Texas. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).
- sss. Interest in and to all coal, lignite, oil, gas, and other minerals, and all rights incident thereto, contained in the following Deeds:
 - (a) P. F. Dunn to Sam A. Robertson, Trustee, dated February 1, 1926, recorded under Clerk's File No. 25373, Volume 159, Page 72, Deed Records of Nueces County, Texas. As Amended

in Agreement dated May 22, 1970, executed by executed by and between Burton Dunn, et al, to and with Gilbert Kerlin, et al, recorded under Clerk's File No. 821285, Volume 288, Page 364, Oil and Gas Records of Nueces County, Texas. As amended by instrument dated July 26, 1972, recorded under Clerk's File No. 895481, Volume 298, Page 40, Oil and Gas Records, Nueces County, Texas.

(b) Albert R. Jones et al, to M.E. Allison, dated April 25, 1949, recoded under Clerk's File No. 284001, Volume 438, Page 204, Deed Records of Nueces County, Texas.

(c) Albert R. Jones et al, to Padre Island Land and Cattle Company, dated August 6, 1949, recorded under Clerk's File No. 284002, Volume 438, Page 210, Deed Records of Nueces County, Texas.

(d) K.E. Allison and wife, Elsie Allison to Padre Island Land and Cattle Company, dated August 6, 1949, recorded under Clerk's File No. 284003, Volume 438, Page 216, Deed Records of Nueces County, Texas.

(e) Albert R. Jones et al, to Padre Island Land and Cattle Company, dated February 10, 1950, under Clerk's File No. 296571, Volume 460, Page 287, Deed Records of Nueces County, Texas.

Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).

- tit. Rights to oil, gas and other minerals of every kind and character in, on and under the property described in Schedule A, together with the rights, privileges and immunities relating thereto. It is expressly excluded hereunder, and this Company does not insure title to oil, gas and other minerals of every kind or character, in, on, and under the property herein described.
- uuu. Building, Zoning, Platting and/or Regulatory Laws and/or Ordinances of any Municipal and/or other Governmental Authority.
- vvv. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservation of mineral interest that are not listed.

EXHIBIT C

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (as amended, this "Agreement") is made and entered into as of this 13th day of January 2017, by and among UPPER PADRE PARTNERS, L.P., a Texas limited partnership ("Borrower"), and GARY HENRY, JEFF W. HENRY, PAUL SCHEXNAILDER and JANA FABER, each an individual (collectively referred to as "Guarantors"), and AXYS CAPITAL CREDIT FUND LLC, a Delaware limited liability company ("Lender").

WITNESSETH:

WHEREAS, on February 25, 2015 ("Initial Closing Date"), Borrower executed and delivered to Lender and Lender accepted that certain Promissory Note in the original principal amount of \$16,000,000.00 (the "Note"), the Note was executed in connection with, and pursuant to, that certain Loan Agreement (the "Loan Agreement") dated of even date therewith;

WHEREAS, the obligations and liabilities of Borrower to Lender under the Loan Agreement and Additional Agreements (as hereinafter defined) are guaranteed pursuant to those certain Guaranty Agreements dated as of the Initial Closing Date executed by Guarantors in favor of Lender (collectively the "Guaranties");

WHEREAS, as a condition precedent to its execution and delivery of the Loan Agreement and its extensions of credit to Borrower thereunder, Lender required and Borrower executed certain documents referenced therein (collectively the "Real Property Collateral Documents"), including, without limitation, that certain (i) Deed of Trust (herein so called), (ii) Assignment of Leases (herein so called) and (iii) Assignment of Contracts (herein so called) all dated as of the Initial Closing Date, all by Borrower in favor of Lender and all recorded of record in the Official Public Records of Real Property of Nueces County, Texas and covering, among other things, certain real and personal property (herein so called) located in Nueces County, Texas, as more particularly described in the Deed of Trust, together with all improvements located thereon;

WHEREAS, the Note, the Loan Agreement, the Guaranties, the Real Property Collateral Documents, the Deed of Trust, various Uniform Commercial Code financing statements executed in connection therewith, and all other documents executed in connection with the Loan Agreement are collectively referred to as the "Loan Documents"; and capitalized terms used herein without definition or as otherwise indicated have the meanings given to them in the Loan Agreement;

WHEREAS, by letter dated November 29, 2016, Lender notified Borrower that it had defaulted in the timely payment of an installment of interest that had become due and payable under the Note on November 25, 2016, and informed Borrower that if such default was not cured by, on or before ten (10) days that Lender would accelerate the maturity of the Note, causing the entire unpaid principal balance of the Note, plus all accrued interest on the Note, to become immediately due and payable. Borrower has not cured the default that existed and the entirety of the Note has been accelerated and the entire amount thereof is currently due and payable.

WHEREAS, as a consequence of the default, Lender may elect to exercise its rights and remedies under the Loan Documents and applicable law, including but not limited to, instituting foreclosure proceedings under the Deed of Trust and causing a Notice of Trustee's Sale to be posted in Nueces County, Texas, in accordance with the terms of the Deed of Trust securing the Note and the laws of the State of Texas (the "Foreclosure Sale");

WHEREAS, because such Events of Default have occurred and are continuing, Lender has the present right, in addition to the foreclosure proceedings referenced above, to collect the indebtedness due to it under the Loan Agreement, to make demand upon Guarantors for payment of the foregoing amounts under the Guaranties, and to exercise any and all legal rights and remedies available to it under the Loan Documents and applicable law, having reserved all rights it has at law, in equity, by agreement or otherwise;

WHEREAS, Borrower has requested that Lender forbear from exercising its rights and remedies otherwise available to it at law, in equity, by agreement or otherwise as a result of such Events of Default, including, but not limited to the Foreclosure Sale;

WHEREAS, upon the terms and conditions contained herein, Lender is prepared, for a limited period of time and subject to Borrower and Guarantors complying with the terms hereof, to forbear from the exercise of such rights and remedies. However, nothing herein shall be deemed to be a waiver of the acceleration of the Note; and

WHEREAS, the forbearance by Lender as provided for herein from the current exercise of its rights and remedies under the Loan Documents and applicable law shall result in a direct and tangible benefit to each of Borrower and Guarantors.

NOW, THEREFORE, in consideration of the foregoing premises and the agreements and undertakings 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:

1. **Acknowledgments by Borrower and Guarantors.** Borrower and Guarantors hereby acknowledge and agree as follows:

(a) Acknowledgment of Default. That on and as of the date hereof: (i) material Events of Default existed and continue to exist under the Loan Documents, including, without limitation, those Events of Default identified in the recitals to this Agreement; (ii) timely, adequate and proper written notice of the occurrence of such Events of Default under the Loan Documents have been received by them from Lender (and Borrower and Guarantors waive any requirement that any such notices be in writing); (iii) all grace periods, if any, applicable to the cure of such Events of Default after receipt of such notice have expired; (iv) each of said Events of Default was and is continuing without timely cure by Borrower; and (v) Lender has not waived in any respect any or all of such Events of Default or its rights and remedies with respect thereto under the Loan Documents and applicable law.

(b) Acknowledgment of Lender's Right to Make Demand. That on and as of the date hereof, (i) Lender had the right to make demand upon Borrower and Guarantors for the payment in full of all such indebtedness under the Loan Documents.; (ii) such demand for payment was in all respects adequate and proper; and (iii) Borrower and Guarantors have waived any and all further notice, presentment, notice of dishonor or demand with respect to the indebtedness.

(c) Acknowledgment of Indebtedness. That (i) Borrower is indebted to Lender as set forth on Exhibit "A"; (ii) and interest on the Note is accruing at the default rate of 18% per annum; (iii) all such amounts remain outstanding and unpaid; (iv) all such amounts are due and payable in full, without offset, deduction or counterclaim of any kind or character whatsoever, but are subject to increase, as a result of any and all interest, fees and other charges including, without limitation, attorneys' fees and costs of collection, which are payable to Lender under the Loan Documents.

(d) Acknowledgment that Liabilities Continue in Full Force and Effect. That the Loan Agreement and all other respective liabilities and obligations of Borrower and Guarantors to Lender under the Loan Documents, including, without limitation, the Guaranties, shall, except as expressly modified herein during the Forbearance Period (as defined below), remain in full force and effect, and shall not be released, impaired, diminished or in any other way modified or amended as a result of the execution and delivery of this Agreement or by the agreements and undertakings of the parties contained herein and that this Agreement shall not be deemed to or have the effect of reinstating or deaccelerating the Note.

(e) Conditions Precedent to Forbearance. In addition to other conditions precedent set forth in this Agreement, the Forbearance Period shall not be effective or binding on Lender unless Lender receives the following by no later than January 9th, 2016:

(i) Financial statements as of December 31, 2016 from Borrower, Guarantors, and any and all related parties controlled by or in common control with Guarantors; and

(ii) schedule of current and near current liabilities not included in above referenced financial statement from Borrower; and

(iii) 2017 budget, including sources of funding operating deficits, debt service, capital expenditures, ~~etc.~~; and

(iv) a comprehensive written plan as to the means by which Borrower and/or Guarantors intend to pay the Note.

Further, Borrower and Guarantors agree to work in good faith with Lender during the Forbearance Period to come to a mutual resolution concerning payment of the Note. Further, Borrower hereby stipulates and agrees that pursuant to the Loan Documents all municipal incentives related to the Property have heretofore been assigned to Lender. Borrower specifically hereby grants a security interest in and to any and all municipal incentives, including, without limitation, any Chapter 380 Economic Development Incentive Agreements or the like applicable to the Property or any adjacent property ("380 Agreements"), and agrees to diligently pursue consent from the applicable municipal authorities to such assignment. Further, Guarantors (or the applicable Guarantor that holds such permit) hereby assign to Borrower rights to use the USACE permit in the event Lender becomes the owner of the Property or any adjacent property to which such permit is applicable. Paul Shexnailder will have Asset Development provide a permit to Axy's for Commodore's Cove by transfer of that portion of the permit. The permit work in IslandWalk Village will not be transferred but but agreement for the permit use will be extended by agreement with Axy's to perform the work in a timely manner.

2. **Forbearance by Lender.**

(a) Forbearance Period. At the request of Borrower and Guarantors, Lender agrees conditioned upon receipt of the items set forth in 2(d) hereof, to forbear from the exercise of its rights and remedies, whether at law, in equity, by agreement or otherwise, available to it as a result of the Events of Default existing under the Loan Documents, as of 12:01 a.m., Austin, Texas, time, on the date of this Agreement until the earliest to occur of the following times: (i) 5:00 p.m., Austin, Texas time, on February 10th, 2017; (ii) the time at which Borrower or Guarantors fail to comply in any respect with their respective covenants to Lender set forth in Section 3 hereof; or (iii) the occurrence of any further Event of Default under any of the Loan Documents (other than the continuation of the Events of Default specified in the recitals to this Agreement (the period beginning as of 12:01 a.m., Austin, Texas time, on

the date of this Agreement and terminating on the earliest of such foregoing dates is hereinafter referred to as the "Forbearance Period").

(b) Termination of Forbearance Period. Upon the termination of the Forbearance Period pursuant to any of clauses (i) through (iii) of subparagraph 2(a) above, unless Borrower has theretofore paid in full the amounts referenced in subparagraph 3(a), all forbearances, deferrals and indulgences granted by Lender in subparagraphs 2(a) above shall automatically expire and Lender shall thereupon have, and shall be entitled to exercise, any and all rights and remedies which it may have, without limitation, those referred to in the recitals to this Agreement, under the Loan Documents or under applicable law. However, in no event shall the provisions of subparagraphs 3(c) and 3(d) below terminate.

3. **Covenants of Borrower during the Forbearance Period.** At all times during the Forbearance Period, and in order to induce Lender to enter into this Agreement and as a condition precedent to the continuation of the Forbearance Period pursuant to subparagraph 2(a) hereof, Borrower and Guarantors hereby covenant and agree as follows:

(a) Payment of Principal, Interest and All Amounts Due under the Loan Documents. Borrower promises to pay the then outstanding principal and all accrued and unpaid interest together with all other amounts due and payable pursuant to the Loan Documents to the order of Lender at its office in Austin, Texas on or before 5:00 p.m., February 10th, 2017.

(b) Payment of Lender's Attorneys' Fees and Expenses. Upon execution of this Agreement, Borrower shall pay all of Lender's attorneys' fees and expenses incurred in connection with the preparation, registration and execution of this Agreement.

(c) Confirmation of Security Interest in Collateral. As security for the payment and performance of all liabilities and obligations of Borrower to Lender, each of Borrower and Guarantors confirm its respective grant to Lender of, and ratifies and further agrees that Lender has, a continuing perfected first lien and security interest in the Collateral under the Loan Documents, whether such Collateral is now owned or existing or hereafter acquired or arising and wheresoever located, including, without any 380 Agreements.

(d) Inspections. Lender shall at all times have access to inspect, audit and make extracts from all of Borrower's and Guarantor's records, files and books of account, and have access to examine and inspect the Property at Borrower's and Guarantors' expense.

4. **Consent to Relief from Stay.** Each of Borrower and Guarantors hereby agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, including the forbearance of Lender from exercising its rights and remedies otherwise available to it under the Loan Documents, the receipt and sufficiency of which are hereby acknowledged, in the event Borrower or Guarantors (by their own action or the action of any of their partners or creditors, if applicable) shall, on or before the expiration of the Forbearance Period, (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition for relief under Title 11 of the U.S. Code, as amended, (ii) be the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended, (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or other relief for debtors, (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator, (v) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment,

liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or relief for debtors, Lender shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan Documents as hereby amended, and as otherwise provided by law, and each of Borrower and Guarantors hereby waives the benefits of such automatic stay and consents and agrees to raise no objection to such relief.

5. **Release.** Each of Borrower and Guarantors hereby releases, acquits and forever discharges Lender, and each and every past and present subsidiary, affiliate, stockholder, member, manager, officer, director, agent, servant, employee, representative and attorney of Lender, from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including attorneys' fees) of any kind, character or nature whatsoever, known or unknown, fixed or contingent, which Borrower or Guarantors may have or claim to have now or which may hereafter arise out of or connected with any act of commission or omission of Lender existing or occurring prior to the date of this Agreement or any instrument executed prior to the date of this Agreement including, without limitation, any claims, liabilities or obligations arising with respect to the indebtedness evidenced by the Loan Agreement, or any other of the Loan Documents. The provisions of this Section 5 shall be binding upon Borrower and Guarantors and shall inure to the benefit of Lender, and its successors and assigns.

Borrower and Guarantors represent and warrant that Lender has not made any promises or representations relating to this Forbearance Agreement that are not contained within the four corners of this document and that they are not relying on any oral representations or omissions of Lender in entering in to this Forbearance Agreement and specifically providing this release. Borrower and Guarantors have conducted their own investigation concerning the facts and circumstances surrounding this Agreement and have been represented by counsel of their own choice and advised by counsel in connection with this Agreement. Borrower and Guarantors stipulate and acknowledge that this paragraph shall forever preclude them from asserting that this Agreement and the releases provided herein were procured by fraud or were fraudulently induced and hereby specifically waive any such claim.

6. **Receipt and Application of Payments.** Borrower and Guarantors acknowledge and agree that Lender shall be entitled during the term of this Agreement to accept such payments and proceeds, if any, as are remitted to it pursuant to any provision of the Loan Documents or this Agreement, that Lender shall be entitled to apply any and all such proceeds and payments against the liabilities and obligations owed by Borrower and Guarantors to Lender in such order of application as Lender in its sole and absolute discretion shall determine proper, and that the acceptance by Lender of any such proceeds and payments as are remitted to it pursuant to the Loan Documents or this Agreement or otherwise shall in no way affect or impair the status of the indebtedness owed to Lender by Borrower or Guarantors or be deemed to be a waiver of any Events of Default or the acceleration of the Note..

7. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement reflects the entire understanding of the parties with respect to the subject matter herein contained and supersedes any prior agreements, whether written or oral, in regard thereto.

(b) **Full Force and Effect.** Except to the extent that Lender has agreed to forbear from the exercise of its rights as provided herein during the Forbearance Period, all terms of the Loan Documents shall be and shall remain in full force and effect and shall constitute the legal, valid, binding and enforceable obligations and covenants of Borrower and Guarantors to Lender.

(c) No Waiver. This Agreement is not intended to operate as, and shall not be construed as, a waiver of any Event of Default, whether known or unknown to Lender, as to which all rights of Lender shall remain reserved.

(d) Governing Law. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Texas (without regard to conflicts of law principles) and all applicable laws of the United States of America.

(e) Waiver of Right to Jury Trial. EACH OF LENDER, BORROWER AND GUARANTORS WAIVE TRIAL BY JURY AND CONSENT TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY A JUDGE OF A COURT OF COMPETENT JURISDICTION.

(f) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which, taken together, shall constitute but one and the same agreement among the parties.

(g) Binding Nature. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(h) Captions. The captions to the sections and paragraphs of this Agreement are for the convenience of the parties only, and are not a part hereof.

(i) Time of the Essence. Time is of the essence under this Agreement.

(j) Conflict with Loan Documents. To the extent any of the terms of this Agreement are inconsistent with or conflict with any terms or conditions of the Loan Documents, the terms hereof shall control and the Loan Documents are hereby modified and amended to incorporate the provisions hereof.

(k) Guarantors. Guarantors have executed this Agreement to evidence their consent to the actions herein set forth and acknowledge that the guaranty agreements executed by Guarantors are in full force and effect and shall not be diminished by the agreements herein set forth and shall continue to guaranty the payment and performance of the Loan Documents as the same may be modified or amended hereby.

(l) Notice. Anything in the Loan Documents to the contrary notwithstanding notice may be given electronically as follows:

If to Lender:

Chris Hamm
chamm@axysroup.com

If to Borrower:

(m) Authorized Representative. For the purposes of dealing with Borrower regarding this Agreement, the Loan Documents and/or any matters in connection with the loan described in the Loan Agreement, including, without limitation the Property (as defined in the Deed of Trust) _____ is authorized to deal with Lender and bind Borrower in connection with all matters related to the above.

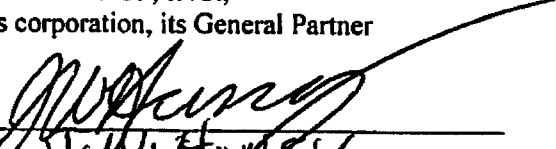
[Signatures appear on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BORROWER:

UPPER PADRE PARTNERS, L.P.,
a Texas limited partnership

By: UPPER PADRE GP, INC.,
a Texas corporation, its General Partner

By: 
Name: J. W. Henry
Title: President, U.P.P.

GUARANTORS:



GARY HENRY



JEFF W. HENRY



PAUL SCHEXNAIDER

JANA FABER

LENDER:

AXYS CAPITAL CREDIT FUND LLC,
a Delaware limited liability company

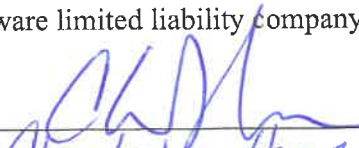
By 
Name: Christopher A. Hume
Title: President, ACIF (SMM)

EXHIBIT D

BEFORE THE
AMERICAN ARBITRATION ASSOCIATION

ISLANDWALK DEVELOPMENT, LLC,	:	Case No. 01-15-0005-1388
	:	
	:	
CLAIMANT,	:	
	:	Claims for Declaratory Judgment;
	:	Breaches of Contract;
	:	Breaches of Fiduciary Duty;
	:	Accounting; Fraud;
	:	Fraudulent Transfers; Aiding and
	:	Abetting; Conspiracy;
	:	Statutory Violations; and
	:	Attorney Fees
NORTH PADRE WATERPARK HOLDINGS,	:	
LTD,	:	
HENRY & SONS, CONSTRUCTION, INC.,	:	
WATERPARK MANAGEMENT, INC.,	:	
JEFF HENRY,	:	
GARY HENRY,	:	
UPPER PADRE PARTNERS, LP,	:	
UPPER PADRE PARTNERS GP, Inc.,	:	
WIND, WATER & WAVES, LLC,	:	
and individuals and entities collectively known as	:	
THE HENRY GROUP,	:	
	:	
RESPONDENTS	:	

**FIRST AMENDED DEMAND FOR ARBITRATION AND
STATEMENT OF CAUSES OF ACTION AND CLAIMS**

The Claimant is IslandWalk Development, LLC, (“IWD”) (a limited partner of Upper Padre Partners, LP, a Texas Limited Partnership (“UPP”) and a shareholder of Upper Padre GP, Inc. (“UPGP”).

The Respondents are UPP; UPGP; North Padre Waterpark Holdings, Ltd. (“NPWH”) (a limited partner of UPP, and a shareholder of UPGP); Wind, Water & Wave, LLC, (“WWW”) (a limited partner of UPP, and a shareholder of UPGP); Henry & Sons Construction, Inc. (“HSC”);

Waterpark Management, Inc. (“WMI”); and the Henry brothers, Jeff Henry (“Jeff”) and Gary Henry (“Gary”) (both of whom are collectively referred to as the “Henrys”); and other individuals and entities related to and/or affiliated with the Henrys, NPWH, HSC, and WMI, all of whom are collectively referred to herein (and in UPP Limited Partnership Agreement and other related documents) as the “Henry Group.” A listing of additional individuals and entities comprising the Henry Group is attached to and incorporated by reference in this Amended Demand as Exhibit “A”.

The Claimant hereby demands arbitration pursuant to Section 6.2 of the AIA Design-Build Contract, as amended by the AIA Modification to the Design-Build Contract, and Section 16.15 of the UPP Limited Partnership Agreement, and seek an audit of the persons and entities comprising the Henry Group. Claimants’ allegations and causes of action are set forth below.

I. SUMMARY OF DISPUTE

This case arises from a planned 500-acre real estate development in Corpus Christ, Texas (on Padre Island), a portion of which would include a waterpark and related lodging facilities (“Water Resort”). IWD, formed to become a limited partner in UPP, owned interests in the 500 acres that included a 188 acre golf course. IWD made the 500 acres available to UPP. UPP was formed to develop the property, and IWD’s initial contribution to UPP was to make that interest available.

The first step in the development plan was to be the Water Resort. This was to be followed by other facilities which, among other things, included a golf course and club, residential properties, a marina, and an interconnecting canal to be commercially developed as the “IslandWalk” (similar in concept to the San Antonio River Walk).

The dispute between the parties involves breaches of contractual and legal promises, duties and obligations assumed by the Henrys and their legal entities, including NPWH and HSC, to timely design, build and deliver the Water Resort. As of the date of the filing of this Amended Demand, the completion dates for the Water Resort have long past, but it still has not been completed or delivered. The breaches have caused, and continue to cause damages to the Claimants.

II. FACTS

A. THE CONTRACTS IN DISPUTE AND KEY CONTRACTUAL TERMS

This case involves the interpretation and performance of a series of written contracts that govern the development of the Water Resort, which was a specific portion of the "Initial Schlitterbahn Phase" of the entire planned development.

The written contracts at issue include the following:

- Upper Padre Partners, L.P. Amended and Restated Limited Partnership Agreement (superseding the Upper Padre Partners, L.P. Original Limited Partnership Agreement) and Certificate of Formation ("LP Agreement"), including a Trademark Licensing Agreement (License Agreement);
- Upper Padre GP, Inc. Agreement of Shareholders (the "UPGP Shareholder Agreement" or "Shareholder Agreement");
- AIA Document A141-2004 Standard Form Agreement Between Owner, Upper Padre Partners, L.P., and Design-Builder, Henry & Sons Construction, Inc. ("Design-Build Contract");
- Modification to AIA Document A141-2004 ("Modification to the Design-Build Contract");
- Management Agreement - Schlitterbahn North Padre Water Resort ("Management Agreement"); and
- Assignment, Settlement and Release Agreement - Wind, Water & Waves, LLC. ("WWW Buy-out Agreement").

The promises, obligations and duties arising from and related to the foregoing contracts, together with related financing, guarantee, and security agreements, are at the foundation of this dispute. These documents, individually and collectively, are incorporated by reference into this Amended Demand.

To properly construe the written contracts at issue, it is important to understand the distinction between the defined terms “Water Resort” and “Initial Schlitterbahn Phase”:

- The “Initial Schlitterbahn Phase” refers to Phase 1 of the planned development. Phase 1 was to include three (3) features:
 - the Water Resort (25.38 acres), budgeted at \$27,300,000;
 - the acquisition of a golf course (61.25 acres), budgeted at \$3,000,000; and
 - the development of a residential subdivision to be known as IslandWalk Village, along with the IslandWalk canal and entrance road.

The total budget for the Initial Schlitterbahn Phase, including the Water Resort portion, was \$33,000,000. This amount was funded by UPP through a combination of cash equity, government incentives and third-party loans.

- The Water Resort is a subset of the Initial Schlitterbahn Phase. At \$27,300,000, it is by far the biggest and most costly portion of the Initial Schlitterbahn Phase. The Water Resort portion of the Initial Schlitterbahn Phase does *not* include the golf course, IslandWalk village, canal and entrance road; it includes only the Schlitterbahn waterpark, (i.e. the park rides), and the park-related lodging facilities. The budget for the waterpark infrastructure and rides was \$24,549,676, and the budget for the related lodging facilities (originally called “Treehouses” and “Cabins”) was \$2,750,324. Combined, the water park and lodging budgets totaled the \$27,300,000 budget for the Water Resort portion of the Initial Schlitterbahn Phase.

The Water Resort was to be developed on a small portion of the 500-acre tract contributed and/or made available by IWD to UPP. The Water Resort was referred to in the Design-Build Contract as the “Schlitterbahn Beach Country Water Park and Resort.” At the time UPP was formed, the limited partners contemplated the development of other phases in addition to the Initial Schlitterbahn Phase (including, among other things, a hotel conference center and

three entertainment venues with an amphitheater), which would be built *after* the completion of the Initial Schlitterbahn Phase.

B. THE PARTIES, THEIR AFFILIATES AND RELATED PARTIES, AND THEIR ROLES

The numerous individuals and entities involved in this dispute are identified in this Amended Demand in the same manner as they are identified in the written contracts at issue (including the definitions contained in those contracts), which are incorporated by reference in this pleading.

Respondent, UPP, was created as a limited partnership for the purpose of building and managing the phased development of the 500-acre tract. The limited partners of UPP are the Claimant, IWD, and two of the Respondents, NPWH and WWW. (These three limited partners are collectively referred to herein as the "Limited Partners.") The general partner of UPP is Respondent, UPGP, a corporation. UPGP's shareholders are the Limited Partners.

IWD acquired a 33.3% interest in UPP in consideration for its contribution of the 500-acre tract of land, which was valued for contribution purposes at \$10,000,000 by agreement of the parties (though its fair market value at the time of the contribution was, and still is, far higher than the agreed value). WWW (initially owned by Willard Hammonds, II, and his group of investors, but later acquired by members of the Henry Group) received a 30% interest in UPP in consideration for its contribution of \$9,000,000 in cash. Respondent, NPWH, owned and controlled by the Henrys and the Henry Group, obtained an interest of 36.6% in UPP in consideration for its contribution of five (5) things:

- The delivery and opening for business of the Initial Schlitterbahn Phase of the project;
- a note payable to UPP for \$2,800,000 to reimburse UPP for its purchase of the country club and golf course;

- its promise to provide certain future services, including management of the construction of the Water Resort and other facilities;
- the rights to use of the name “Schlitterbahn” under the License Agreement; and
- \$1,000,000 in cash.

The remaining one-tenth of a percent (.10%) interest in UPP was held by its General Partner, UPGP. The three Limited Partners, NPWH, WWW, and IWD, each had a vote in decisions of UPGP, though their respective nominees to the UPGP’s corporate board of directors. Initially, the Board members were Jeff for NPWH, Willard Hammonds, II, for WWW (and its group of investors), and Paul Schexnaider for IWD (and its group of investors). NPWH also was empowered to designate the President of the UPGP corporate entity. NPWH named Gary as president of UPGP.

The contracts also gave the Henrys and the Henry Group responsibility for and control of the construction of the Water Resort. At all times relevant to this action, either Gary or Jeff owned and controlled HSC, which was the Design-Build Contractor engaged by UPP to build the Water Resort. Gary was, and to this day remains, the President of HSC, and Jeff supervised and controlled HSC’s design and construction of the Water Resort. Both Gary and Jeff have served as President and members of the Board of UPGP at one time or another throughout the relevant time period, while they simultaneously served as principals of HSC. Moreover, NPWH was contractually bound to manage the construction work provided by HSC, and to deliver a completed Water Resort to UPP; and consistent with this obligation, Gary served, and to this day serves, as “Owners’ Representative” for UPP on the Design-Build Contract, with responsibility to oversee performance of, and approve payment for, the services of HSC.

Because of the complete control given to the Henrys and the Henry Group over the construction of the Water Resort, the Limited Partnership Agreement and the Design-Build Contract were drafted to protect UPP, IWD and WWW from the risk of any cost overruns that might be incurred to build the Water Resort. In the Design-Build Contract with UPP, HSC expressly promised to be solely responsible for any cost overruns that exceeded the \$27,300,000 “not to exceed price” (“NTE Price”) (which was the same as the construction budget for the Water Resort approved by the Limited Partners). Consistent with this promise, and with its guarantee to deliver and open the Water Resort, NPWH expressly promised that IWD and WWW would not be called upon to make any further contribution to cover any cost overruns that might be incurred above the construction budget to complete the Water Resort.

Later, the Henrys purchased WWW from Willard Hammonds, II, and the other WWW investors. The acquisition of WWW put the Henrys and the Henry Group in a position of controlling two thirds of the vote in UPGP, in addition to their ownership and/or control of the NPWH, WWW, and HSC, and the resulting control over the construction of the Water Resort. The Henrys and the Henry Group are clearly within the contractual definitions of “Affiliates” and “Related Parties” to NPWH, and are collectively identified in one or more of the written contracts at issue as the “Henry Group”; and the Design-Build Contract executed between UPP and HSC was a defined “Related Party Transaction” with UPP.

As promised, IWD contributed its land, and WWW contributed its cash. However, the Henrys and the Henry Group, through NPWH and its Affiliates and Related Parties, including HSC, totally failed to deliver the Water Resort they promised. NPWH, the Henrys, and the Henry Group (including HSC) failed to provide proper construction planning, design and management services. They failed to cause HSC to cover its cost overruns for the Water Resort

above the NTE Price of \$27,300,000. Instead, through their later acquisition of the control of UPGP, the Henrys and the Henry Group violated their contractual and legal duties to IWD by:

- forcing UPP to incur greater debt on false representations, as explained below;
- charging or attempting to charge UPP and IWD for the cost overruns that HSC incurred on the Water Resort; and
- threatening IWD with UPP's insolvency and financial failure if IWD does not make contributions to cover the cost overruns that it should never have to make.

C. THE FAILURES TO HONOR PROMISES AND DUTIES OWED TO IWD

On or about February 18, 2013, UPP entered into the Design-Build Contract with HSC for delivery of the Water Resort for the NTE Price (equal to the construction budget) of \$27,300,000. Gary signed the Design-Build Contract on behalf of UPP, and Jeff signed it on behalf of HSC. The Design-Build Contract expressly stated that time was of the essence (as did every other written contract at issue in this case). Substantial Completion of the Water Resort was required by June 30, 2014. UPP was authorized to and did obtain third-party financing to fund the \$27.3 million NTE Price (and construction budget) for the Water Resort portion of the Initial Schlitterbahn Phase, as well as the golf course acquisition, and the IslandWalk canal and entrance road development work.

Work commenced under the agreements on or before March 30, 2013. HSC and NPWH as Design Builder and construction manager made changes to the scope without seeking change orders or board approval. Jeff Henry represented to the investors in February of 2014 that all of the scope changes would be completed on time and in budget.

HSC failed to substantially complete the design and construction of the Water Resort by June 30, 2014, and overran the NTE Price (and construction budget). By February 13, 2014, HSC had substantially expanded the planned entry building and lodging facilities without

authorization and approved change orders. On that day, standing on the third floor of the expanded facilities, Jeff Henry was questioned as to how this expansion could be achieved without overrunning the budget. Jeff Henry assured the investors that his people were the best in the business. No change orders had been requested and none were issued.

In fact (and unbeknownst to IWD at the time), UPP's original equity and debt funding for the entire Initial Schlitterbahn Phase was nearly exhausted as early as April, 2014, due to Gary and Jeff's unauthorized and substantial modification of the size and scope of the Water Resort, reducing the features of the waterpark while greatly expanding the size and cost of the lodging facilities within the Water Resort. Moreover, the unauthorized expansion of the lodging facilities within the Water Resort, included facilities that were planned for a later phase of the development.

Knowing they had already commenced their unauthorized expansion and that they had exhausted the funding needed to meet the NTE price, the Henrys sought additional third-party financing from UPP and its lender, IBC, to cover the overruns they were incurring. As part of this effort, on June 23, 2014, the Henrys falsely represented to IBC Bank, WWW and IWD that if UPP borrowed an additional \$19,000,000, Gary and Jeff would use the money to expand the Water Resort's lodging facilities beyond its original scope, without revealing the true cost they had already expended on them without authorization and misappropriated UPP's construction budget to do so. To get financing for their unauthorized expansion, the Henrys further represented that the expanded entry building and lodging facility would enable the Water Resort to produce a 168% increase in EBITDA (earnings before interest, taxes, depreciation and amortization). Following this meeting, IBC Bank issued a term sheet proposing to loan only an additional \$15,000,000, while requiring that UPP provide \$4,000,000 of additional equity.

Believing in the Henry's false representations that expanding the entry building and the lodging facilities would increase the Water Resort's EBITDA, WWW and IWD offered to consent to the unauthorized expansion and fund with an additional UPP borrowing of \$15,000,000 if the Henrys would agree to temporarily cover the additional \$4,000,000 equity requirement. WWW and IWD agreed to pay their pro rata share of the additional equity upon completion and opening of the Water Resort and the Henrys agreed to defer a collection of an equal amount of payment due to HSC under the Design-Build Contract until after the Water Resort opened. The Henrys later refused to honor this, and furthermore insisted that HSC be released from its obligation to deliver the Water Resort for the NTE Price. Because of these fundamental changes by the Henrys, the IBC loan was not concluded and the agreements of the parties remained unchanged.

Meanwhile, having depleted UPP's original capital and agreed budget, the Henrys continued to spend at will additional funds above the NTE Price (and construction budget), using their funds internally transferred within the Henry Group. Specifically, HSC obtained additional funds by drawing against its affiliate, WMI's line of credit with Frost Bank. Neither UPP, nor IWD or WWW, were at that time made aware of this loan to HSC, and none of them approved the transaction. The Henrys drew down all, or a significant portion, of WMI's \$7,000,000 line of credit with Frost Bank to fund HSC's mounting cost overrun on the ever-changing Water Resort construction. HSC additionally withheld payment to its vendors and contractors to the point of receiving liens and lawsuits filed against UPP's property.

After several months of drawing down WMI's line of credit to cover HSC's overruns, Gary resigned from UPGP, now faced with liens foreclosures and threats of litigation. However, Gary continued to serve as the Owner's Representative overseeing HSC's work. Gary

and Jeff informed the Limited Partners that the Henrys were out of money and they would no longer continue to fund the overruns. The Henrys threatened UPP with bankruptcy unless UPP obtained additional funding to repay the money that the Henrys had borrowed from the WMI line of credit. By this time the overruns had substantially escalated beyond the \$19,000,000 represented to IBC, WWW, UPP and IWD in June, 2014.

WWW threatened litigation against the Henrys and, ultimately, the Henrys and the Henry Group bought out WWW. IWD reluctantly consented to the Henrys' desire to authorize UPP to borrow additional funds from AXYS Capital Credit Fund, LLC ("AXYS"). Upon information and belief, the borrowed additional funds were used to re-pay their WMI/Frost Bank credit line in order to avert the threatened financial failure of the Henry Group.

The borrowing of additional funds coincided with the transaction of the Modification to the Design-Build Contract, which required HSC to complete the Water Resort by no later than July 1, 2015, for a new NTE Price of \$58,026,983.00. The Modification to the Design-Build Contract included an executory release of HSC from liability to UPP if HSC satisfied several conditions, including, among other things, timely delivery of the Water Resort by July 1, 2015 and the delivery of a complete set of as-builts plans, specifications, warranties, and maintenance manuals. Upon IWD's insistence, the Modification to the Design-Build Contract's executory release provision stated the release of HSC would be automatically null and void if HSC failed to satisfy any of the foregoing conditions, none of which HSC met.

As of the date of the filing of this Amended Demand, the Water Resort *still* remains incomplete, with further diminished waterpark rides and significantly expanded entry building and lodging facilities, which are not only unfinished, but have many construction defects. In the process, the Henrys and the Henry Group, including NPWH and HSC, have caused UPP

(including UPGP and IWD) to incur debt in the amount of \$48,500,000 and have increased the total cost of an incomplete Water Resort to over \$58,000,000—more than *twice* the original NTE Price (and construction budget) approved by UPP. This situation arises not only from HSC's breach of the Design-Build Contract, but also from the failures of the Henrys and the Henry Group, including NPWH and HSC to:

- honor their contractual and legal obligations to properly perform and provide the planning, design, construction management and development services; and
- complete and deliver an operational Water Resort in accordance with its original scope, on time, within budget, and without further contribution from IWD.

Currently, the date of delivery and the final cost to correct the defects, and to complete, deliver and open the Water Resort are unknown. The Henrys and the Henry Group's voting control over UPP and their failures to deliver the Water Resort have resulted in a breach of both contractual and legal duties that they owe to UPP, UPGP, and IWD. As a result of Gary's and Jeff's simultaneous and conflicting control of NPWH, UPGP and HSC (including their acquisition and control of WWW), and also Gary's position of authority as the Owner's Representative (and agent) of UPP under the Design-Build Contract with his own construction company, the Henrys have exposed UPP and the Water Resort to a significant and imminent risk of financial demise. As the managing officers, directors, and/or agents of UPGP and UPP, and all the while managing HSC, both Gary and Jeff owed heightened and special duties of obedience, care, disclosure and loyalty to UPP and IWD, yet they failed in their management of the expenditures of UPP's funds and in their duty to supervise HSC's performance of the Design-Build Contract. Such duties were not limited, waived, disclaimed or affected in any way by any provisions of the LP Agreement, the Shareholder Agreement, or the Design-Build Contract.

Additionally, HSC is an Affiliate and Related Party of both NPWH and the Henry Group (as defined in the LP Agreement). As such, HSC is bound by and remains subject to the contractual duties and obligations owed to UPP and IWD under the LP Agreement, including the obligation to timely deliver a properly designed and functional Water Resort and to do so without requiring IWD to commit to any additional funding (either directly by equity contribution, or indirectly by proportional repayment of any debt incurred) to cover cost overruns exceeding the approved construction budget of \$27,300,000.

The Henrys, NPWH, and complicit members of the Henry Group, including HSC, all breached their respective contractual and legal duties, collectively and individually, by committing the following acts:

1. Failure to prepare with any reasonable degree of care and accuracy an estimate for the cost to design and deliver the Water Resort for a price that was equal to the construction budget and NTE Price of \$27,300,000 by the delivery date of June 30, 2014;
2. Failure to prepare with any reasonable degree of care and accuracy an estimate for the cost to design and deliver the Water Resort that was equal to or within the revised NTE Price of \$58,000,000 by the revised delivery date of July 1, 2015;
3. Failure to check the accuracy of the estimates of the cost to design and deliver the Water Resort;
4. Failure to cause plans and specifications to be prepared and followed for the design and construction of the Water Resort that would result in its delivery for an amount within original construction budget and NTE Price of \$27,300,000, and the opening of the Water Resort by the original substantial completion date of June 30, 2014;

5. Failure to cause plans and specifications to be prepared and followed for the design and construction of the Water Resort that would result in its delivery under the Modification to the Design-Build Contract for an amount within the revised NTE Price of \$58,000,000, and the opening of the Water Resort by the revised final completion date of July 1, 2015;
6. Failure to cause HSC to require its design professionals to provide and seal accurate and sufficient plans and specifications for the Water Resort prior to and during construction;
7. Failure to cause HSC to require its design professionals to provide and seal accurate and sufficient revisions to such plans and specifications for the Water Resort prior to and during construction;
8. Failure to prepare a construction schedule for the timely delivery and opening of the Water Resort by either the original or the revised substantial completion date;
9. Failure to manage changes to the construction schedule to ensure the timely delivery and opening of the Water Resort by either the original or the revised substantial completion date;
10. Failure to cause a lodging facility and waterpark to be designed and built as originally represented to the Limited Partners;
11. Failure to cause the Water Resort and its expanded lodging facilities to be designed and built as represented to IWD in conjunction with UPP's incurring of additional debt financing;
12. Failure to implement procedures to maintain quality assurance and quality control over the construction of the Water Resort;
13. Failure to exercise rights under the Design-Build Contract with respect to the duty to comply, and/or to take action for the failure to comply, with requirements for requiring,

submitting, reviewing, approving and executing changes in the scope of, and budget for, the construction of the Water Resort;

14. Failure to keep proper and accurate accounting records for the Water Resort and the actual expenditures incurred on account of the Water Resort;
15. Failure to provide timely, regular and accurate accountings and financial reports to IWD and WWW, and to the Board of UPGP, so as to allow for the making of informed decisions with respect to the approval of changes and extensions, and the incurring of additional indebtedness;
16. Failure to timely deliver and open the Water Resort within the original construction budget of \$27,300,000 by the original substantial completion date of June 30, 2014 (as to which failure IWD has never released or modified its right as a Limited Partner to claim damages for breach of the original obligation to timely deliver and open the Water Resort within the approved construction budget of \$27,300,000 by the original substantial completion date of June 30, 2014);
17. Failure to timely deliver and open the Water Resort for the revised NTE Price of \$58,000,000 by the revised final completion date of July 1, 2015 (as to which failure UPP has expressly reserved the right to declare void the releases of HSC's liability, and to seek damages against HSC, for all costs in excess of the original construction budget);
18. Failure to cover cost overruns for the Water Resort above the NTE Price of \$27,300,000, rather attempting to make calls for additional contributions from IWD and WWW (prior to the Henrys' acquisition of WWW);
19. Abandoning contractual obligations for delivery and opening of the Water Resort by failing to provide IWD adequate assurance of UPP's ability to fulfill its financial

- obligations to others to pay its debts and to pay for the work and services of others after pronouncing the imminent insolvency of UPP;
20. Failing to enforce the rights of UPP under the Design-Build Contract;
 21. Failing to assess and collect liquidated damages that HSC owes to UPP under the Modification to the Design-Build Contract rather attempting to make calls for additional contributions from IWD;
 22. Mismanagement of the funds and assets of UPP;
 23. Misappropriating the funds and assets of UPP;
 24. Concealing from IWD the true extent of HSC's cost overruns by having HSC use funds that WMI borrowed in an undisclosed Related Party Transaction to cover some or all of the cost overruns, causing UPP to later divert UPP's funds to repay (and inducing IWD to consent to such repayment of) HSC's debt to WMI's lender, and engaging in this undisclosed Related Party Transaction despite the fact that it was actually the obligation of NPWH (and thus an obligation of the Henry Group) to enforce UPP's rights under the Design-Build Contract by holding HSC to the NTE Price and to HSC's promise to cover any cost overruns at its expense;
 25. Diverting UPP's funds originally budgeted for the IslandWalk Village, canal and entrance road as separate portions of the Initial Schlitterbahn Phase, which funds were instead used to cover HSC's cost overruns on the Water Resort portion of the Initial Schlitterbahn Phase without notice to or approval by IWD as a member of the UPGP Board;
 26. Diversion and/or commingling of UPP funds and third-party loan proceeds to cover HSC's cost overruns and other obligations that were the sole responsibility of NPWH and

the Henry Group to cover, while depleting the funds available to UPP to pay for other legitimate expenses incurred in the ordinary course of business of UPP;

27. Failure to comply with the warranty provisions of the Modification to the Design-Build Contract;
28. Failure to cause planning, design, construction management and development services to be performed and provided in a manner that would result in the delivery of the Water Resort on time, and within budget, under either the Design-Build Contract or the Modification to the Design-Build Contract;
29. Failure to inform IWD of changes to the scope of the Water Resort that were known or should have been known to be likely to cause the Water Resort to exceed the construction budget and delay the delivery and opening of the Water Resort;
30. Failure to inform IWD of expenditures of UPP funds that were known or should have been known to be likely to cause the Water Resort to exceed the construction budget and to prevent the timely delivery and opening of the Water Resort;
31. Failure to inform IWD of the accrual of unfunded financial commitments that were known or should have been known to be likely to cause UPP to become insolvent, the Water Resort to exceed the construction budget, and the timely delivery and opening of the Water Resort to be delayed;
32. Failure to inform IWD of the occurrence of events that were known or should have been known to result in delay to or the prevention of the timely delivery and opening of the Water Resort;
33. Failure to inform IWD of the true financial status of the cost for the delivery and opening of the Water Resort;

34. Failure to inform IWD of the true status of the schedule for the delivery and opening of the Water Resort;
35. Failure to inform IWD of the true status of changes to the schedule for the delivery and opening of the Water Resort;
36. Concealing from IWD the true financial status of the cost and the status of the schedule for the delivery and opening of the Water Resort;
37. Inducing IWD to consent to and support UPP's incurring of additional debt based upon false and/or reckless misrepresentations as to the true status of the cost and schedule for the delivery and opening of the Water Resort;
38. Inducing IWD to consent to increasing UPP's debt obligations upon false and/or reckless misrepresentations that HSC would complete the Water Resort ;
39. Concealing from IWD that the Henrys already had spent UPP's original construction budget funds to expand the Water Resort's lodging facilities without UPP's authorization; and
40. Inducing IWD to consent to and support the Henry's acquisition of WWW upon false and/or reckless misrepresentations that the voting control of UPP would be changed to give IWD equal voting rights to the combined voting rights of NPWH and WWW (the two Limited Partners that the Henrys came to control).

To date, the Henrys and the Henry Group, including NPWH and HSC, have not only failed to meet the new date for final completion of the Water Resort, they also have failed and refused to cover the additional loans and the additional costs of completion to deliver the Water Resort without further contribution from IWD. The Henrys again have threatened bankruptcy of NPWH, WWW and UPP to avoid complying with their duty to deliver the Water Resort without

further contribution from IWD. Gary has admitted that the Henry Group's continuing failure to pay for the debt and costs incurred for the completion of the Water Resort jeopardizes the solvency of UPP, which is likely to result in dissolution of UPP and a default on its construction loans.

On December 18, 2015, IWD's counsel issued a letter to opposing counsel for the Henry Group, which attached hereto as Exhibit "B." This letter demanded that the Henry Group provide to IWD adequate assurance and evidence of their ability to perform their financial obligations to fund UPP's current and near future obligations in a timely manner, in order to ensure delivery of the completed Water Resort without additional funding from IWD. IWD's demand to provide adequate assurance allowed the Henry Group until close of business on December 23 to provide such assurance, and further stated that the Henry Group's failure to do so would be taken as a repudiation and breach of their obligations owed to IWD and UPP under the LP Agreement. IWD received no response to its demand. On December 29, AXYS, one of the lenders to UPP, questioned whether UPP would be timely making a \$200,000 installment payment that was due on December 26. This obligation was in addition to other past due debt obligations that UPP had not funded, totaling \$985,639.26. Gary later confirmed to AXYS that same day that a wire transfer of the payment would occur later that day. However, UPP's other substantial debt obligations still have not been satisfied or funded. UPP is now left on the verge of financial collapse as a result of the wrongful conduct of UPP, UPGP, NPWH, WWW, WMI, HSC and other responsible members of the Henry Group, who have repudiated (and/or are otherwise in breach of) the contractual obligations they assumed under the LP Agreement by failing to provide IWD adequate assurance of their ability to fulfill their financial obligations.

D. THE PERPETRATION OF FRAUD ON IWD

The Henrys and the Henry Group, including NPWH and HSC, not only committed breaches of the written contracts at issue, and the legal duties they owed to UPP and IWD, they also perpetrated a fraud on IWD, rather than enforce UPP's rights against HSC under the Design-Build Contract and the Modification to the Design-Build Contract. Specifically, the Respondents intentionally misrepresented their ability to fund and finally complete the Water Resort by July 1, 2015. Such misrepresentation induced IWD to consent to, and partially guarantee additional borrowing by UPP, to, in part, re-pay loans incurred by HSC in a Related Party Transaction with WMI, and to, in part, cover HSC's costs to complete the Water Resort.

Between early February, 2014 and February, 2015, Gary and Jeff made a series of false and/or reckless representations, and omissions of material facts, to the Limited Partners, including IWD, and to the construction lenders concerning each of the following:

- (i) when the Water Resort would be completed;
- (ii) whether the Water Resort still could be completed for the amount of the original construction budget without additional contributions or funding;
- (iii) whether the increased debt was needed only to fund future additions to the Water Resort, rather than to cover costs already incurred as a result of an unauthorized increase to the scope of the Water Resort lodging and entry building;
- (iv) the financial risk to UPP associated with the unauthorized use of funds borrowed from HSC's Related Party, WMI, to continue expanding the park without authorization;

- (v) the actual extent of the design prepared for the scope of the waterpark rides and lodging facilities authorized and included in the Water Resort's construction budget;
- (vi) whether and how cost overruns were being incurred and covered;
- (vii) the final cost and time for completion and delivery of the Water Resort; and
- (viii) the allocation of voting rights among the Limited Partners after the Henrys and the Henry Group purchased the interest of WWW.

These misrepresentations and omissions were made to induce IWD to approve a new NTE Price of \$58,026,983 to complete the Water Resort; to approve and guarantee in part additional debt of \$28,500,000 to finance the new NTE Price; to extend the final completion date to July 1, 2015; to approve of UPP's execution of the Modification to the Design-Build Contract; and to consent to UPP's use of the new, additional loan proceeds to re-pay HSC's debt to WMI and to cover HSC's costs to complete the Water Resort. IWD relied on these misrepresentations and omissions to take such actions.

The Henrys knew or had reason to know at the time they made their successive misrepresentations and omissions that their statements were false. Accordingly, the Henrys knew that any actions or inactions taken by their partners would be acting on inaccurate information and belief. The Henrys and the Henry Group, including NPWH and HSC failed to meet the July 1, 2015 deadline, overran the new NTE Price, and failed to make accommodations to repay the additional loans. So, despite the injection of \$28,500,000 of additional debt financing, the Henrys and the Henry Group, through their control of UPGP, NPWH and HSC, still have failed to deliver the Water Resort as promised, and continue to fail to honor the contractual obligations the Henry Group assumed to deliver the Water Resort without requiring

any additional contribution from IWD to cover HSC's overruns in excess of the original construction budget of \$27,300,000.

In fact, the costs incurred by the Henrys, HSC, and the Henry Group in the name of UPP to complete the Water Resort now exceed the initial construction budget by an *additional* \$30,000,000. The actions and false statements by the Henrys and the Henry Group have indeed jeopardized the continued solvency of UPP, including the value of the fully planned development of approximately 500 acres not just the 25.38 acre portion of it dedicated to the Water Resort. The looming loss includes the fair market value of (i) the Water Resort and the land on which it sits; (ii) all the rest of the IWD-contributed land that was to be used for the IslandWalk residential development; (iii) the remainder of \$100,000,000 in development incentives granted by government entities and available to be earned in part by the timely opening and operating of the Water Resort; (iv) increased interest charges continuing to be incurred on the UPP loans; (v) the lost operating revenues for the summers of 2014 and 2015; and (vi) loss of the UPP funds earmarked to cover additional portions and phases of the planned development, including IWD's costs incurred to develop the residential subdivision and get permitting for the Island Walk features. These losses could have been averted if the Henrys and the Henry Group had exercised its control of UPP to enforce UPP's rights against HSC under the Design-Build Contract and the Modification to the Design-Build Contract. Additionally, IWD is at risk of losing its investment, if NPWH, and other applicable members of the Henry Group are not promptly adjudged to be liable to fulfill the obligations they assumed to use the construction budget funds to deliver and open the Water Resort without further contribution from IWD.

E. STANDING OF IWD

IWD asserts its claims against UPP and UPGP derivatively, through and against UPP and UPGP as stakeholders, for the portion of the harm caused to UPP and UPGP that flows through to IWD as a result of the breach of the duties that Henrys and the Henry Group owed to UPP, UPGP, and IWD.

IWD has standing to pursue the claims in this arbitration, both as direct actions for damages incurred and which it will continue to incur, as a result of the debt incurred by or through UPP. Both UPGP and UPP are closely-held entities as that term is understood under the Texas Business Organizations Code. As a result, IWD is entitled to derivatively pursue claims through and against UPP, as a stakeholder, for and to the extent of the portion of the harm caused to UPP that flows to IWD. Additionally, IWD is entitled to derivatively pursue the claims of UPP because it would be futile to expect or demand UPP to pursue such claims. The futility of relying on UPGP to take any action is obvious because the Henrys and the Henry Group presently control two-thirds of the voting control of UPGP, and thus UPP. IWD cannot reasonably expect the Henrys to authorize claims against themselves for the harm they have caused to UPP (and IWD).

F. CONDITIONS PRECEDENT

IWD has met all conditions precedent to pursuing its claims. IWD is not in breach of any material obligation under any of the written agreements involved in this dispute. Further, IWD has repeatedly placed NPWH, HSC, Gary and Jeff on notice of their failures, as well as the serious threat to the viability of the overall project resulting from significant unexplained cost overruns and corporate and financial mismanagement caused by them, individually and collectively. In addition to the notice and demand included in Exhibit "B," see also the notices

dated September 30, 2014 (from WWW's former investors); October 22, 2014 (from IWD); November 3, 2014 (from WWW's former investors); and, May 6, 2015 (from IWD), copies of which notices are attached hereto as Exhibit "C." Despite these prior notices and efforts by IWD to mediate and resolve the dispute, the Water Resort project remains incomplete and over budget by more than *\$30,000,000 dollars*. As noted previously, IWD's May 6, 2015 proposal to mediate with NPWH, HSC, Gary and Jeff was declined.

Finally, since HSC did not meet the conditions required to trigger a waiver of the claims listed in §4.3 of the AIA Modification Agreement, all of the claims referenced in §4.3 of the AIA Modification Agreement are actionable and hereby asserted against HSC pursuant to this Amended Demand.

III. CAUSES OF ACTION

A. ACCOUNTING

Both the Limited Partnership Agreement and the Design-Build Contract provide IWD, as well as UPP, with the right to demand separate and complete accountings from UPGP, UPP, NPWH, WMI, and HSC for the money received and spent on the design and construction of the Water Resort.

Moreover, IWD has the right of inspection of the books and records, and a general accounting from UPP as a limited partner, from UPGP as a shareholder, and from HSC because it is a Related Party to a limited partner engaged in a Related Transaction under the Limited Partnership Agreement.

Therefore, IWD seeks an order allowing it to perform a complete inspection of the books and records of UPP, UPGP, NPWH, WMI, and HSC; to perform a complete forensic accounting

of the financial records of UPP and UPGP, and of HSC both as to the money received and spent to design and construct the Water Resort and generally as to the funds it has received and spent since the date of the execution of the Design-Build Contract, February 18, 2013; and to the appointment of an auditor, as an awardable cost of arbitration, to conduct and complete a full accounting and audit of the financial records subject to inspection.

B. DECLARATORY JUDGMENT ACTION

IWD, for itself and for UPP, seeks a declaration of the written contracts at issue to declare the following:

- that the obligation to deliver and open the Water Resort without further funding from IWD constituted an obligation to fund the cost overruns incurred, and to be incurred, to construct and deliver an operational Water Resort, and such obligation is solely the obligation of the Henrys and the Henry Group, through the express contractual obligations assumed in the names of NPWH and HSC, and the Affiliates and Related Parties of NPWH as those terms are defined in the Limited Partnership Agreement;
- that the obligation to deliver and open the Water Resort without further funding from IWD constituted an obligation to use the construction budget funds first and foremost to construct and deliver an operational Water Resort as originally designed, rather than to use those funds to modify the Water Resort to include additional improvements that were to be included in later phases of the development, if at all, and that such obligation is solely the obligation of the Henrys and the Henry Group, through the express contractual obligations assumed in the names of NPWH and HSC, and the Affiliates and Related Parties of NPWH as those terms are defined in the Limited Partnership Agreement;
- that the Henrys and the Henry Group, through NPWH and HSC, and the Affiliates and Related Parties of NPWH as those terms are defined in the Limited Partnership Agreement, are repudiating and have repudiated their contractual obligations to design and build the Water Resort, and to pay for any and all cost overruns as necessary to deliver and open the Water Resort without further funding from IWD;
- that the unauthorized loan from WMI to HSC, and the repayment of that loan from construction financing, violated the LP Agreement as a prohibited Related Party Transaction that effectively resulted in UPP's payment of a Related Party's independent financial obligations as a fee or other remuneration, for which UPP had no legal responsibility; and

- that HSC is in breach of its contractual obligation under the Modification to the Design-Build Contract to achieve timely completion of the Water Resort, and is therefore liable to pay to UPP liquidated damages for delay according to the terms thereof.

C. BREACH OF THE LIMITED PARTNERSHIP AGREEMENT

NPWH, and its Affiliates and Related Parties, including HSC and WMI, breached the following express promises contained in the Limited Partnership Agreement, which provided part of the consideration for their ownership interest in UPP:

- To perform and provide the planning, design, construction management and development services necessary and appropriate for construction and opening of the Water Resort;
- To deliver and open an operational Water Resort without additional funding from IWD and to thus cover the entire cost of constructing the Water Resort, if any, that might exceed the initial budget approved by UPP and the NTE Price contained in the Design-Build Contract, of \$27,300,000; and
- To perform or provide all services for the Limited Partnership necessary to deliver and open the Water Resort without charging or receiving a fee or other remuneration.

Additionally, the Henrys and the Henry Group, including HSC, were Affiliates and Related Parties under the LP Agreement, who owed and breached the same contractual duties as NPWH.

These breaches have caused and are continuing to cause damage to IWD and UPP. Specifically, the cost overruns on an as yet incomplete Water Resort now exceed \$30,000,000, and jeopardize the solvency of UPP. Moreover, these breaches impair the value of UPP, including the value of the land that IWD contributed to it, and risk the loss of \$100,000,000 in incentives provided by government entities. Additionally, IWD is at risk of having to honor guarantees on its financed debt to UPP's lenders.

IWD seeks the following remedy for such harm from the Henrys and the Henry Group, including NPWH and HSC:

- Specific performance of the promises made by NPWH, including but not limited to, the promise to deliver and open an operational Water Resort without additional funding from IWD;
- Specific performance of the promise to cover only cost overruns that UPP was legally obligated to pay in excess of \$27,300,000 (of which there were none);
- Recovery of UPP funds diverted and used to pay HSC to make unauthorized expanded increases to the scope of the Water Resort hotel building;
- Recovery of the proceeds of the additional, outstanding loans incurred in the name of UPP and diverted and used without approval to cover HSC's cost overruns, for which UPP had no legal obligation to pay;
- Repayment of any and all funds improperly paid to WMI from the proceeds of UPP's construction financing rather than ensuring such funds were used to complete the Water Resort;
- Recovery of interest charges incurred on UPP's loan obligations beyond the required date for completion of the Water Resort;
- Indemnification to IWD in the event IWD is called upon to honor any guarantee provided to UPP's lenders;
- Recovery of any and all monetary damages of IWD directly, or through its interest in UPP for the losses caused and continuing to be caused to UPP as a result of the breach of the UPP Limited Partnership Agreement.

D. BREACH OF THE CONSTRUCTION CONTRACT AND THE MODIFICATION OF THE CONSTRUCTION CONTRACT

HSC owed a duty to deliver and open a completed and functional Water Resort without additional funding from IWD, and thus assumed the obligation to cover any and all cost overruns for which UPP was legally obligated in excess of \$27,300,000 in the design and construction of the Water Resort. HSC breached the Design-Build Contract by not covering its unexplained cost overruns itself, and not timely delivering a substantially completed and operational Water Resort. As a Related Party involved in a Related Party Transaction with UPP, HSC breach of the

Design-Build Contract also constitutes a breach of the Limited Partnership Agreement.

Therefore, IWD seeks on behalf of UPP the following remedy from HSC:

- Specific performance of the promises made to deliver and open an operational Water Resort without additional funding from IWD and to thus cover all of HSC's cost overruns that exceeded \$27,300,000, including outstanding loans incurred and loan proceeds diverted and used to cover HSC's cost overruns;
- Enforcement and recovery of any and all liquidated damages against HSC provided by the contracts for failing to deliver the Water Resort by the completion date of July 1, 2015;
- Recovery and repayment of any and all funds improperly paid to WMI from the construction financing obtained to pay HSC's cost overruns on the Water Resort project;
- Recovery of interest charges on outstanding loans beyond the required date for completion of the Water Resort; and
- Recovery of any and all monetary damage to IWD directly, or through its interest in UPP for the losses caused and continuing to be caused to UPP as a result of HSC's breach of the Design-Build Contract, and thus the Limited Partnership Agreement.

E. BREACH OF FIDUCIARY DUTIES

The Henrys owed duties of obedience, care, disclosure and loyalty to IWD and UPP, which they breached. These breaches have caused harm by causing UPP to pay for and/or incur debt obligations totaling over \$30,000,000 in unexplained cost overruns, for which UPP had no legal liability, and without delivering a substantially completed and operational Water Resort without further funding from IWD. IWD seeks the following remedies against the Henrys for the harm they caused by such breaches of duty:

- Specific performance of the promises made to deliver and open an operational Water Resort without additional funding from IWD;
- Specific performance of the promise to cover only cost overruns that UPP was legally obligated to pay in excess of \$27,300,000 (of which there were none);
- Recovery of UPP funds diverted and used to pay HSC to make unauthorized expanded increases to the scope of the Water Resort hotel building;

- Recovery of UPP funds used to cover, directly or indirectly, any of HSC's cost overruns that exceeded the original construction budget and NTE Price of \$27,300,000;
- Recovery of the proceeds of outstanding loans incurred and loan proceeds diverted and used to cover HSC's cost overruns on the Water Resort project;
- Repayment of any and all funds improperly paid to WMI from UPP's additional construction financing to pay HSC's cost overruns on the Water Resort project;
- An emergency order prohibiting NPWH and WWW, or any member of the Henry Group from exercising any right afforded to them as a UPP Limited Partner or a shareholder in UPGP, and prohibiting them from participating in the management or control of either UPP or UPGP, including but not limited to, any voting right, or rights of membership on a board of directors, unless or until the promises made by NPWH as consideration for its limited partnership interest, and assumed by all of them, have been fully performed;
- Disgorgement of all other benefits received or to be received by the Henrys, or the Henry Group, including NPWH, HSC and Schlitterbahn Beach Resort Management, LLC, from their participation in UPP, including but not limited to, the funds they received from UPP for the Water Resort, and any revenues received and to be received by them from the operation of the incomplete Water Resort;
- Repayment of all UPP funds commingled with funds controlled by the Henrys and/or the Henry Group, and/or diverted for the use and benefit of the Henrys and/or the Henry Group;
- Recovery of interest charges incurred on UPP's loan obligations beyond the required date for completion of the Water Resort;
- Indemnification to IWD in the event IWD is called to honor any guarantee provided to UPP's lenders; and
- Recovery of any and all monetary damage to IWD directly, or through its interest in UPP for the losses caused and continuing to be caused to UPP as a result of the breach of the UPP Limited Partnership Agreement.

F. COMMON LAW AND STATUTORY FRAUD

As a result of the false misrepresentations of fact the Henrys made to IWD, IWD has incurred damages by approving additional debts and encumbrances on UPP property. Such misrepresentations were committed knowingly by the Henrys. Such conduct constitutes common law intentional misrepresentation, and/or fraud, in addition to negligent

misrepresentation. It also constitutes a violation of Section 27.01 of the Texas Business and Commerce Code.

Therefore, IWD seeks the following remedies from the Henrys and HSC:

- An emergency order prohibiting them from causing NPWH and WWW, or any member of the Henry Group to exercise any right afforded to a UPP Limited Partner or a shareholder in UPGP, and prohibiting them from participating in the management or control of either UPP or UPGP, including but not limited to, any voting right, or rights of membership on a board of directors, unless or until the promises made by NPWH as consideration for its limited partnership interest, and assumed by all of them, have been fully performed;
- Recovery of all statutory damages allowed under Section 27.01 of the Texas Business and Commerce Code, including but not limited to, enhanced damages, expert witness costs, and reasonable and necessary attorney fees; and
- Recovery of exemplary or punitive damages in an amount that this may tribunal may appropriate based on the conduct at issue, and the harm it caused.

G. FRAUDULENT TRANSFERS

IWD has reason to believe that money distributed to the Henrys and the Henry Group, including HSC and WMI, from the original capital contributions, and the proceeds of UPP's loans, have not been used to complete the construction of the Water Resort, but have instead been transferred and used for the benefit of other persons and entities compromising the Henry Group, including entities listed on Exhibit "A" to this Amended Demand. Such transfers constitute fraudulent transfers and violate Chapter 24 of the Texas Business and Commerce Code. Therefore, IWD seeks the following remedies from the Henrys and the Henry Group, including HSC and WMI:

- An emergency order allowing a full accounting and tracing of all funds transferred among and spent by the Henrys, NPWH, HSC, and all other entities listed on Exhibit "A" since February 18, 2013;
- Recovery from the all of the persons and entities comprising the Henry Group any and all funds traced to such persons or entities from the original capital contributions and the

proceeds of UPP's loans meant to cover the costs to complete and deliver an operational Water Resort, up to the sum of \$58,000,000;

- Repayment of any and all funds improperly diverted and used to repay WMI from the proceeds of UPP's second tranche of construction financing for HSC's use of WMI's Frost loan proceeds rather than for the completion of the Water Resort;
- An order attaching any and all assets acquired or maintained by any of the persons and entities comprising the Henry Group with the UPP's funds from the original capital contributions or the proceeds of UPP's loans;
- Recovery of interest charges incurred on UPP's loan obligations beyond the required date for completion of the Water Resort;
- Recovery of any and all monetary damage to IWD directly, or through its interest in UPP for the losses caused and continuing to be caused to UPP as a result of the fraudulent transfer of UPP's funds, including but not limited to, actual damages, enhanced damages, expert witness costs, and reasonable and necessary attorney fees;
- An emergency order prohibiting any member of the Henry Group from exercising or causing NPWH and WWW to exercise any right afforded to them as a UPP Limited Partner or a shareholder in UPGP, and prohibiting them from participating in the management or control of either UPP or UPGP, including but not limited to, any voting right, or rights of membership on a board of directors, unless or until the promises made by NPWH as consideration for its limited partnership interest, and assumed by all of them, have been fully performed; and
- Recovery of punitive damages in an amount not less than \$10,000,000, to ensure that the Henry Group does not repeat its transgressions against other investors in any future Schlitterbahn development.

H. AIDING AND ABETTING, AND CONSPIRACY

In their respective positions as officers, directors, and/or agents of UPP or UPGP, and of HSC, both Gary and Jeff aided and abetted each other's breach of the duties of obedience, care, disclosure and loyalty that they separately owed to IWD and UPP. Such conduct was committed with knowledge of the existence of such duties. This conduct contributed to and caused harm by causing UPP to incur over \$30,000,000 in unexplained cost overruns without delivering a completed operational Water Resort.

Additionally, both Gary and Jeff knew of the falsity of the misrepresentations made to IWD to obtain the additional time and loan proceeds in 2014, and each conspired with the other to commit the fraud upon IWD.

IWD seeks the following remedies from both Gary Henry and Jeff Henry for the harm caused their misconduct:

- Specific performance of the promises made by NPWH and assumed by them as consideration for its interest in UPP, including but not limited to, the promise to deliver and open an operational Water Resort without additional funding from IWD;
- Specific performance of the promise to cover all of HSC's cost overruns that exceeded \$27,300,000;
- Recovery of UPP funds diverted and used to pay HSC to make unauthorized expanded increases to the scope of the Water Resort hotel building;
- Recovery of the proceeds of outstanding loans incurred in the name of UPP and diverted and used without approval to cover HSC's cost overruns, for which UPP had no legal obligation to pay;
- Repayment of any and all funds improperly paid to WMI from the construction financing obtained to complete the Water Resort;
- Recovery of interest charges incurred on UPP's loan obligations beyond the required date for completion of the Water Resort;
- An emergency order prohibiting NPWH and WWW, or any member of the Henry Group from exercising any right afforded to them as a UPP Limited Partner or a shareholder in UPGP, and prohibiting them from participating in the management or control of either UPP or UPGP, including but not limited to, any voting right, or rights of membership on a board of directors, unless or until the promises made by NPWH as consideration for its limited partnership interest, and assumed by all of them, have been fully performed;
- Disgorgement of all other benefits received or to be received by the Henrys, or the Henry Group, including NPWH, HSC and Schlitterbahn Beach Resort Management, LLC, from their participation in UPP, including but not limited to, the funds received from UPP to construct the Water Resort, and revenues received and to be received from the operation of the Water Resort;

- Repayment of all UPP funds commingled with funds controlled by the Henrys and/or the Henry Group, and/or diverted for the use and benefit of the Henrys and/or the Henry Group;
- Indemnification to IWD in the event IWD is called to honor any guarantee provided to either lending bank;
- Recovery of any and all monetary damage to IWD directly, or through its interest in UPP for the losses caused and continuing to be caused to UPP as a result of the breach of the Limited Partnership Agreement; and
- Recovery of punitive damages in an amount not less than \$10,000,000, to ensure that the Henry Group does not repeat its transgressions against other investors in any future Schlitterbahn development.

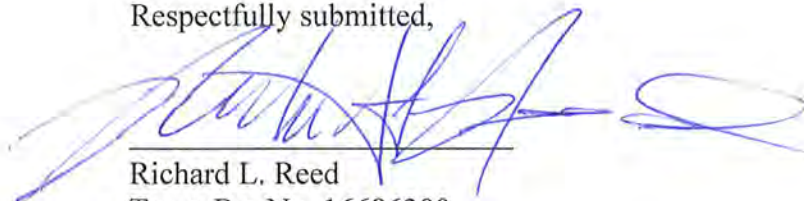
IV. ATTORNEY FEES

To the extent allowed by Chapter 37 (Declaratory Judgments) and 38 (Attorney Fees) of the Texas Civil Practice and Remedies Code, for breach of the duties owed to IWD under written contracts at issue, IWD also seeks recovery of the reasonable and necessary attorney fees incurred to prosecute this action. Additionally, and alternatively, IWD seeks recovery of attorney fees under Section 27.01 of the Texas Business and Commerce Code.

V. PRAYER

Claimant, IslandWalk Development, LLC, hereby respectfully request that Respondents be required upon due notice to submit to hearing before a duly constituted panel of arbitrators, and that a decision and award of damages be issued in favor of Claimant for damages and other equitable and just relief to which Claimants may be justly entitled.

Respectfully submitted,



Richard L. Reed
Texas Bar No. 16686300
Ed Hubbard
Texas Bar No. 10131700
Richard C. McSwain
Texas Bar No. 24002588
Matt Talley
Texas Bar No. 24067896
COATS | ROSE, PC
1020 NE Loop 410, Suite 800
San Antonio, Texas 78209
210 224-7098 Telephone
210 212-5698 Facsimile

**ATTORNEYS FOR CLAIMANTS,
ISLANDWALK DEVELOPMENT, LLC**

Entities Included in the Henry Group

Arrowhead Minerals, Inc.
Bad-Schloss, Inc.
Convertible Structures, Inc.
Enterprize Management, Inc.
Faber, Henry and Associates, Inc.
Galpark, LLC
Galveston Waterpark Management, Inc.
Garden Villa Homeowners Association, Inc.
Golden Seal Investments, Inc.
Henry Condo I, Ltd.
Henry, Schooley & Associates, L.L.C.
Henry-Glas, Ltd.
Hospitality and Visitors Association
Hotel Waterpark, GP, LLC
JRPS, LLC
Landa Resort, Inc.
Liberty Partnership, Ltd.
NB Development, Inc.
NB Henry Group Partners, Ltd.
North Padre WPH GP, LLC
Pop-Eye Olive-Oyl, LLC
Schlitterbahn Beach Resort Management, LLC
Schlitterbahn Np Water Resort Management, LLC
SPI BRWP Holdings, LLC
Torrey Street Mini-Storage, Inc.
Water Ride Concepts, Inc.
Waterpark Management, Inc.



December 18, 2015

Norton Rose Fulbright US LLP
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
United States

Via USPS and Email

Jerry Galow, Esq.
Galow & Smith
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Dear Mr. Galow:

This letter is written on behalf of Island Walk Development, LLC ("IWD") and is directed to your clients, North Padre Water Park Holdings, LP ("NPWH") and NPWH's Affiliates and Related Parties, all of whom are included in the so-called "Henry Group." The capitalized terms in this letter have the same meanings assigned to them in the limited partnership agreement of Upper Padre Partners, LP ("UPP"). Under such definitions, NPWH's Affiliates and Related Parties include UPP's general partner, Upper Padre GP, Inc. ("UPGP"), Henry & Sons Construction ("HSC"), Wind, Water and Wave, LLC ("WWW"), Bad Schloss, Inc., Schlitterbahn NP Water Resort Management, LLC, Water Park Management, Inc., Gary Henry, Jeff Henry, and other Henry family members and other entities they own and control, all of whom are members of the "Henry Group." Under the terms of the UPP limited partnership agreement, the entities and persons who are members of the Henry Group are as responsible as NPWH itself to fulfill NPWH's obligations to UPP and IWD.

This letter is a demand for evidence of adequate assurance from NPWH and the Henry Group, to demonstrate that they have the ability to perform, and will perform, their contractually assumed financial obligations to Upper Padre Partners, LP ("UPP") and IWD, as a limited partner in UPP. Specifically, NPWH, and the Henry Group, are all contractually obligated to bear all costs in excess of the \$27.3 million construction budget for the substantial completion of the Water Resort Portion of the Initial Schlitterbahn Phase without further funding by IWD (as described in Section 4.05(a) of the UPP limited partnership agreement; and as further described as Phase 1a items for the Schlitterbahn Water Resort in Corpus Christi, Texas in Exhibit 4 to the UPP limited partnership agreement; and as agreed to and described in Section 4.4.3.1 of the AIA Construction Contract between UPP and HSC and the Construction Budget attached to that contract). Although The Henry Group caused UPP's originally funded \$27.3 million construction budget for the Water Resort to be exhausted, as well as the subsequent depletion of all additional debt financing provided to UPP to complete the construction of the Water Resort, the Henry Group's contractual obligation to develop and deliver the Water Resort without further funding by IWD remains in effect and has not been fulfilled.

It is apparent that UPP is presently faced with current and past due payment obligations totaling at least \$985,639.26, and other obligations are soon to become due in the months to come. These obligations include UPP's payment of \$200,000 on the construction loan held by Axys Capital, due on or before December 26, 2015. This is reflected in a "Cash Flow Update," which IWD received from Gary Henry on December 7, 2015. These payment obligations all are attributable to the Water Resort, which remains incomplete to this day. Upon sending the Cash Flow Update to IWD, Gary Henry stated, "Clearly UPP faces insolvency within the next month if funds are not provided from the partners." However, as explained above and as also explained

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Exhibit B

Jerry Galow, Esq.
December 18, 2015
Page 2

^NORTON ROSE FULBRIGHT

on December 8, 2015 by IWD's principal, Mr. Paul Schexnaider, IWD has no obligation to fund UPP's obligations for the Water Resort.

Gary Henry and Jeff Henry, as members of the Henry Group and as representatives of NPWH and its Affiliates and Related Parties, including HSC, have not responded to IWD's written notice to say that they will cause UPP to meet its financial obligations. Therefore, all indications are that The Henry Group — which holds a controlling interest over UPP, UPGP, NPWH, HSC, Wind Water & Wave, LLC ("WWW"), Bad Schloss, Inc., Schlitterbahn NP Water Resort Management, LLC, and other entities owned and controlled within the Henry Group — intends to allow UPP to default on its current and future financial obligations, exposing UPP to foreclosure and impairment of UPP's holdings.

Given the imminent due date for payment on the Axys Capital loan of December 26, 2015, IWD hereby demands evidence be provided to the IWD by no later than close of business, 5:00 o'clock P.M., on Tuesday, December 22, 2015 of an adequate assurance from The Henry Group that UPP's current and near future obligations will be funded and fulfilled in a timely manner. Your failure to provide such adequate assurance shall be taken as a repudiation and breach of your obligations owed to IWD and UPP under the UPP limited partnership agreement.

Very truly yours,



R. G. Converse

RGC/jc

cc: Paul Schexnaider (via email)

Aaron Huffman (via email)

Richard Reed, Esq. (via email)

WIND, WATER, & WAVES, LLC
4418 OCEAN DRIVE
CORPUS CHRISTI, TEXAS 78412

Telephone: 361-851-0811

Fax: 361-851-8122

September 30, 2014

Upper Padre Partners, L.P.
381 East Austin St.
New Braunfels, Texas 78130

Upper Padre GP, Inc.
381 East Austin Street
New Braunfels, Texas 78130

Island Walk Development, LLC
14650 Compass Street, Suite #1
Corpus Christi, Texas 78418-6232

North Padre Water Park Holdings, Ltd
381 East Austin St
New Braunfels, Texas 78130

Dear Limited and General Partners:

The lack of substantive progress toward a resolution of the problems confronting the Upper Padre Partners L.P. (the "Partnership") prompts Wind, Water & Waves LLC ("WWW"), a limited partner in the partnership and a shareholder in Upper Padre GP Inc., the General Partner of the Partnership ("General Partner") to write this letter.

The development and construction of the North Padre Island resort and water park is seriously behind schedule and massively over budget. Henry & Sons Construction, Inc., ("Henry Construction"), the design builder pursuant to a construction contract with the Partnership, has significantly expanded the scope of the project without proper approval of the Partnership, and therefore has and incurred costs far in excess of the "not to exceed" price set forth in the contract. Henry Construction has not submitted any change orders to document the additional work or increased costs. Indeed, it appears that Henry Construction concealed the cost overruns and misled the Partnership about the actual expenditures on the waterpark for many months. Nor has Henry Construction provided a firm figure for the amount of additional expenditures still required to complete the project.

Over the past weeks, there have been numerous discussions and communications concerning these issues among the partners and between the representatives of the General Partner and Henry Construction and Jeff and Gary Henry. To date these efforts have not produced a tangible plan for an equitable path forward that would facilitate completion of the facility on financial terms consistent with the parties original intent and provide a prospect for a long term financial and operational success of the resort and waterpark.

WWW believes there are only two options to avoid a legal and financial quagmire that will be costly and damaging to all involved.

1. The first option is to work with the existing lender to satisfy the terms of its offer of additional financing. IBC has offered to make available additional credit of \$15M. The principal terms of this option would include the following:
 - a. To provide equity in conjunction with such new debt, Henry Construction would agree to leave \$10MM in the project until completion and release of any and all liens against the project. The term "completion" as used herein is further defined in paragraph (b.) below.
 - b. The project shall be deemed complete when all portions of the park, the resort and related facilities, including all work beyond the original scope of the project that was begun by Henry Construction without proper approval, have been completed, are operating and totally functional, and all costs related to the construction of the park, the resort and related facilities have been paid. A partial listing of the items of work that must be completed will be shown in an Attachment which will be developed before execution of the revised Agreement. The Attachment will be only a partial clarification of remaining work required for the project to be considered complete, and will not to be construed as the final work list. Some of the items that will be on the list are included in the original scope of work for the project, and the rest are items of work that have been started but not completed.
 - c. Upon final completion and release of any and all liens against the project, each of the partners of the Partnership would contribute their pro rata portion of an additional \$4MM in equity which would then allow Henry Construction to withdraw \$4MM of its funds remaining in the project.
 - d. If total costs for the Development Budget were to exceed the new amount of \$52MM, and if the total costs for the new portion of the Development Budget that is included in the new "not to exceed" price (to be determined as a proportion of the Development Budget) is exceeded or if additional funds were required to discharge liens filed against the project, such additional costs and obligations ("Excess Costs") would be the sole obligation of Henry Construction, except as noted in paragraph (e.) below.
 - e. Up to \$4MM of Excess Costs may be recouped through a future preferred distribution from the Partnership, payable from excess cash flow above the original pro-forma Partnership income. Additional details of such a preferred distribution remain to be negotiated.
 - f. Grant funds can only be used or credited toward expenditures permitted under the grant and may not be used to fund costs for other work.

The bank's offer of additional financing requires that the Partnership provide the bank with accurate records of all incurred and committed costs to date, a revised and firm "not to exceed" price for completion of the modified project and required change orders and other contract documentation supporting the change in

scope and cost. After weeks of discussion, Henry Construction has failed to provide to the Partnership the financial and project records needed to pursue this opportunity to obtain additional financing from the bank, even though such documentation is required under the construction contract. As a result, WWW believes that first option may soon no longer be viable.

2. The second option is to arrange a sale of the WWW equity in the Partnership and the release of the personal guaranties provided by WWW members to the bank. WWW has outlined a proposal for such a sale in a letter to the Henrys dated September 15, 2014, and this offer remains on the table.

Absent some timely and substantive action by Henry Construction, Jeff Henry and Gary Henry to participate in one of the paths outlined above, WWW will expect the General Partner to take all necessary action to protect the legal rights and interests of the Partnership.

In that regard, please be advised that it is our view that the Partnership has no obligation under the construction contract to bear any of the unauthorized expenditures made by Henry Construction. Further, and in addition to the breach of contract by Henry Construction, it is our view that Gary Henry's direct involvement in the activities of Henry Construction, at the same time as he served as an officer and director of the General Partner and as Owner's Representative under the construction contract, raises serious questions of conflict of interest and breach of fiduciary duty.

Wind, Water, & Waves, LLC
By its sole manager, Wind, Water & Waves
Management, LLC

By: 
Name: Willard H. Hammonds, II

cc: Mr. Paul Schexnaider
14650 Compass Street, Suite #1
Corpus Christi, Texas 78418-6232

cc: Mr. Robert G. Converse
Fulbright & Jaworski, LLP
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255

cc: Henry & Sons, Construction, Inc.
3150 III 35 South
New Braunfels, Texas 78130

cc: Mr. Gary Henry
381 East Austin St.
New Braunfels, Texas 78130

cc: Mr. Jeff Henry
381 East Austin Street
New Braunfels, Texas 78130

ISLANDWALK DEVELOPMENT, LLC

14650 COMPASS ST SUITE 1

CORPUS CHRISTI, TX 78418

PHONE 361-949-7611

FAX 361-949-7151

North Padre Water Park Holdings, LTD

ATTN: Gary Henry

381 East Austin St

New Braunfels, Texas 78130

Dear Gary:

Wind, Water and Waves' letter of September 30, 2014 concerned resolution of contract issues relating to HSC's design, construction, cost and opening of the facilities. That letter contained a proposal to avoid legal and financial difficulties associated with HSC's performance. The letter also furthered communication relative to the buyout of WWW proposed by Jeff Henry. This letter does not address the content of that letter other than to acknowledge its subject matter.

I want to bring to your attention that a significant portion of the NPWH partnership contribution has not been realized by UPP in the manner and within the time frame agreed upon. This is a material breach of the Partnership Agreement. NPWH guaranteed the completion and opening of the agreed upon facilities and this was not achieved as provided in the HSC contract, the UPP Limited Partnership Agreement or the IBC Loan Agreement. Additionally, NPWH has the responsibility to perform and provide the planning, design, construction management and development services for the initial and all other phases of the resort for UPP.

NPWH did not fulfill its guarantee to complete and open the agreed upon facilities. I am asking that NPWH take steps in the next week to ten days that will lead to mitigating the damages related to this failure and rectifying this situation in a manner that equitably compensates the partnership. The reason for this time frame rests on the realization that UPP's incentive package and next year's operations are at risk and this would further damage the partnership. We cannot be asked to knowingly disregard the risk associated with allowing inaction to result in the loss of incentives or of next year's operating results. As the designated owner's representative in the HSC contract, it is important that you give that contract your timely attention.

I need to point out that as early as March 1, 2014 and as late as May 1, 2014, we were advised that the park and building including changes would be within or below budget. In addition, public announcements were made that the park would open by June. The first indication that the budget representation might not be accurate was in the May 7, 2014 board meeting. The indication was that there may be an overrun but that it would be close. Following that May 7th meeting, I attempted to ascertain where cost was relative to budget and to the cost to complete. I asked that an analysis be made showing the original budget with adds and subtracts based on items of work that could be costed. This resulted in Rev. #4, a large spread sheet, which reflected costs as of June 11, 2014 and the cost to complete. The near \$19 million cost to complete shown in Rev. #4 as a final cost far exceeded anything represented in the May 7th board meeting.

Rev. #4 became the basis for the IBC Bank presentation intended to secure approximately \$19 million of additional funding. IBC was assured by HSC that care had been taken to ensure that this would

complete all of the current design. This was also the assurance the partnership received when questioning Rev. #4 and I thought it was intended that the proposed additional funding request required by Rev. #4 would be a change order revision of the \$27,300,000 not to exceed, time is of the essence contract with HSC. In all of this, UPP looks to NPWH and not HSC to fulfill its equity obligations.

Based on Rev. #4 and HSC's representations, the UPP partners agreed to provide the additional \$6 million guarantee for the \$15 million of new IBC lending. It was discussed and I believed agreed upon that HSC would leave \$4 million of their receivables in the project until completion to satisfy IBC's equity requirement. Once complete, the three UPP partners were to fund HSC one-third each of the \$4 million. This was subsequently retracted by HSC.

It remains my belief that making contract changes per the Rev. #4 document ended discussion about changes in scope even though there are questions as to what changes were procedurally approved. HSC was to provide UPP with appropriate, after-the-fact change orders and design criteria to update their contract. This has not happened and HSC advised that they would not request change orders.

It now comes to my attention that there is not a defined project plan being executed. I do not know what is included or excluded from what we thought was being built. In addition, I am advised that the Rev. #4 amounts do not cover the cost of delivering the park and the buildings. Currently, HSC is continuing to make changes on a near-daily basis in total disregard for the partnership. HSC surely understands that they are spending their money absent approved change orders. NPWH has the obligation to control HSC's actions and deliver the project on time and within budget.

I would like to assist you in securing the \$15 million of funding from IBC as soon as possible. While there are probably many issues to be dealt with, none rise to the level of increased risk associated with failure to secure the incentives and meet the opening this spring by putting the IBC loan in place. I encourage you to focus on only those sources of funds needed to complete the facilities.

I want to be clear that my offer to assist with securing funding and moving the project forward under no condition should be considered a waiver or release of rights or an acceptance of the performance tendered to date. To be clear, the NPWH equity requirements have not been met and HSC has not performed as contracted. This must be corrected.

I have tried to highlight the issues that if left unresolved lead directly to costly and damaging circumstances. There are other issues that must also be addressed. All of us know and understand that you have an interest in both HSC and UPP. What must now follow is that the interest of UPP be given unbiased protection.

Given that we were at this same point twelve months ago and HSC did not take appropriate steps to ensure that the park opened timely makes it mandatory that NPWH avoid a repeat of this failure.

Failure to secure funding, with the partners' guarantees and agreement for added equity coupled with the \$15 million IBC term sheet, being available would have to be judged as knowingly disregarding material risk to the group's assets. I am available at any time to do all that I can to bring this to a successful and equitable conclusion. If steps are not taken to move forward by November 10, 2014, IWD will consider that as NPWH's acknowledgment that it will not or cannot fulfill its guarantee.

Sincerely,

Paul Schexnailder, Manager

Cc: Upper Padre Partners, LP
381 East Austin St.
New Braunfels, Texas 78130

Wind, Water and Waves, LLC
4418 Ocean Drive
Corpus Christi, Texas 78412

Upper Padre GP, Inc.
381 East Austin Street
New Braunfels, Texas 78130

OPY

WIND, WATER, & WAVES, LLC
4418 OCEAN DRIVE
CORPUS CHRISTI, TEXAS 78412

Telephone: 361-851-0811

Fax: 361-851-8122

November 3, 2014

Upper Padre GP Inc.
381 East Austin St.
New Braunfels, Texas 78130
Attn: Mr. Paul Schexnaider

Henry & Sons Construction, Inc.,
381 East Austin St.
New Braunfels, Texas 78130
Attn: Mr. Gary Henry & Mr. Jeff Henry

North Padre Waterpark Holdings, Ltd.
381 East Austin St.
New Braunfels, Texas 78130
Attn: Mr. Gary Henry and Mr. Jeff Henry

Mr. Gary Henry
c/o Henry & Sons Construction, Inc.
381 East Austin St.
New Braunfels, Texas 78130

To the Addressees listed above:

Wind Water & Waves, LLC, ("WWW"), sends you this correspondence in its capacity as a shareholder of Upper Padre GP Inc., (hereafter "GP, Inc. " or "General Partner"), and also in its capacity as a limited partner in Upper Padre Partners L.P. (the "Partnership"). WWW invested a total of \$9,000,000.00 in order to purchase its 30% limited partnership interest and a total of 3,600 shares of common stock of GP, Inc. The purpose of this letter is to advise you of WWW's concerns relating to the substantial cost overruns and significant delays associated with construction of the initial phase of the North Padre Island resort and water park owned by the Partnership (the "Project").

These problems pose an imminent threat to the viability of the Project. Liens have been recently filed against the project and key suppliers are refusing to provide further services. WWW believes these problems are the direct result of reckless and willful misconduct and bad faith actions of Henry & Sons Construction, Inc., ("Henry Construction"), North Padre Waterpark Holdings Ltd., ("NPWH"), Jeff Henry and Gary Henry. Henry Construction, NPWH, Jeff Henry and Gary Henry are sometimes hereinafter referred to collectively as the "Henry Parties."

WWW believes that Henry Construction, the design-builder for the project, has knowingly and intentionally breached its contract with the Partnership by deliberately and grossly exceeding both the scope of authorized work and the budgeted costs (the "not to exceed" price), as approved by the Partners under the Limited Partnership Agreement of the Partnership

(the "Partnership Agreement"), and as incorporated into the design build construction contract entered into by the Partnership and Henry Construction. As recently as two months ago, the Henry Parties indicated that the cost overruns would be approximately \$19,000,000. Now, current estimates suggest that the expenditures will exceed the original \$27,300,000 budget by over \$30,000,000. Based on the previous representations by the Henry Parties regarding costs, an unknown but substantial amount of expenditures beyond that figure may be required to render the facility (as modified without the Partnership's approval) fully operational.

WWW further believes that for many months the Henry Parties knowingly concealed and conspired to conceal the magnitude of these cost overruns from the General Partner and the Partnership. It appears to WWW that on several occasions Jeff Henry made knowingly false and misleading statements about the status of work and costs on the Project to representatives and members of WWW, and to agents and officers of the General Partner and the Partnership.

WWW believes that Gary Henry, individually, while acting in the capacity of President of the General Partner, and as the Partnership's designated Owner Representative under the construction contract, willfully and intentionally violated his fiduciary duties of care, loyalty and good faith by knowingly assisting Henry Construction in intentionally breaching the construction contract. WWW also believes that Gary Henry conspired with Jeff Henry, NPWH and Henry Construction to defraud the Partnership, and the other Partners of the Partnership, including WWW, by providing false and misleading information about the cost of the project to the other directors and officers of the General Partner and to the other partners of the Partnership. For months, Henry Construction, Jeff Henry and Gary Henry, in violation of both contractual and fiduciary duties, have refused to provide the General Partner or the Partnership with financial and accounting records documenting expenditures on the Project, despite repeated requests to do so.

In addition, and not surprisingly for a project which has ballooned in scope and cost, the project remains unfinished several months after the completion date specified in the construction contract. As a result, the prime summer season for waterpark activity has come and gone with practically no revenue received by the Partnership. It is now the first of November, five months after the June 30, 2014 date by which Henry Construction contractually promised to complete the project. Additional substantial delays in completion now appear likely to result from Henry Construction's failure to perform its contractual obligations. If Henry Construction fails to complete the work necessary to open the critical phases of the project for commercial operation by the beginning of March 2015, the Partnership stand to lose many millions of dollars in tax and other incentives.

The Partnership has performed its obligations under the construction contract. The Partnership's original cash equity capital, largely provided by WWW, and its original \$18,000,000 credit facility, obtained in reliance on the representations of Henry Construction, NPWH, Jeff Henry and Gary Henry concerning the cost of construction of the project, has been exhausted. We understand that Henry Construction, NPWH, Jeff Henry and Gary Henry have demanded that additional capital contributions be made by the existing Partners, including WWW, and that the Partners agree to guarantee additional debt, in order to pay Henry Construction the entire amount of cost overruns incurred to date. WWW will not agree to

provide a blank check to Henry Construction in order to pay for these large and unauthorized expenditures or for the as yet undetermined final costs to complete the project.

The conduct of the Henry Parties to date and their current demands are unacceptable. The Partners have no obligation under the Partnership Agreement to contribute additional capital to the Partnership to cover these extravagant and unauthorized cost overruns by Henry Construction. NPWH, an entity controlled by Jeff Henry and Gary Henry, and an affiliate of Henry Construction agreed, as its initial capital contribution to the Partnership, to develop and deliver the initial phase of the resort and water park, in the form approved by the Partnership, "without additional funds from the other Partners." (See Section 4.05 of the Partnership Agreement).

Further, Section 8.07 of the Partnership Agreement requires that any change to the scope of the initial phase of the Project, including any modification to "the list of included features of the Initial Schlitterbahn Phase" as set forth in Exhibit 4 to the Partnership Agreement, must be approved by prior unanimous written consent of the Partners. The Partners have not consented to these modifications or increase in budget. Absent such approval, neither the General Partner, nor any officer or agent of the General Partner or other person purporting to act on behalf of the Partnership, had or has any authority to accept the unauthorized work on behalf of the Partnership or to obligate the Partnership to pay Henry Construction for costs in excess of the initial budget approved by the Partners. Under the Partnership Agreement, as between the partners of the Partnership, such costs are the *sole obligation of NPWH* as its initial capital contribution. Failure to deliver the agreed upon initial phase of the Project for the initial agreed budget is a default in NPWH's obligation to pay its initial capital contribution required in order obtain the rights and interests of a partner in the Partnership.

Nor does the Partnership have a contractual obligation to pay for these astonishing and unauthorized cost overruns by Henry Construction under the design build construction agreement between the Partnership and Henry Construction (the "Construction Contract"). The Construction Contract requires that any alteration to the initial scope of work or change in cost must be approved via written change order or construction directive duly approved by the Partnership as Owner. The Partnership has not executed or delivered any written change orders or construction directives. Nor has Henry Construction submitted for the Partnership's consideration any written change orders reflecting the changed scope of work or additional costs. It is our understanding that Henry Construction, under the direction of Jeff Henry, is continuing to unilaterally expand the scope of the project, even after having been told repeatedly not to do so. Any and all unilateral changes in scope by Henry Construction are not, and have not, been authorized or approved by the Partnership, and all costs associated with such unauthorized and unapproved work is at the sole risk of Henry Construction, and/or the Henry Parties.

Henry Construction cannot credibly claim ignorance or misunderstanding in this regard. Henry Construction is an affiliate of Jeff Henry, Gary Henry and of NPWH. All of these persons and entities were thus fully aware of the terms of the Partnership's governing documents. Both Jeff Henry and Gary Henry personally participated in the negotiation and drafting of the Partnership Agreement on behalf of NPWH and also in the negotiation and drafting of the governing documents of the General Partner, including the Shareholders' Agreement. Gary

Henry signed the Partnership Agreement and the Shareholders' Agreement of the General Partner, on behalf of NPWH.

Further, any claim by Henry Construction that it is entitled to rely on representations of Gary Henry, in the capacity as President of the GP or as the Partnership's Owner Representative under the Construction Contract, indicating the Partnership's approval of Henry Construction's unauthorized activities raises serious questions concerning conflict of interest and breach of fiduciary duty by Gary Henry. At the time of Henry Construction's breach of the Construction Contract, Gary Henry was President and a director of the General Partner and as such he owed a fiduciary duty of loyalty to the General Partner, which in turn is charged with acting in accordance with the terms of the Partnership Agreement and with protecting the interests of the Partnership. As a direct agent of the Partnership as Owner's Representative under the construction contract, Gary Henry personally owes a similar duty directly to the Partnership. As a director and officer of the General Partner, and as an agent of the Partnership, Gary Henry has an obligation to act in a manner consistent with the governing documents of the Partnership, and must exercise his authority as an officer and director of the General Partner in a manner free from conflicts of interest arising from his other personal and business relationships and financial interests. Henry Construction had actual knowledge of Gary Henry's fiduciary obligations, and of the terms of the Construction Contract and the Partnership Agreement. Therefore, Henry Construction was fully aware that the large scale changes to the scope of the initial phase of the project and the associated enormous cost overruns were not properly approved by the Partnership. WWW believes that Gary Henry has acted recklessly and with willful disregard for the interest of the Partnership. WWW further believes that Henry Construction, NPWH, and Jeff Henry have conspired to defraud the Partnership and to aid and abet Gary Henry in his knowing and intentional violations of his fiduciary duties to the General Partner and the Partnership.

In view of Gary Henry's involvement in both the management of the General Partner of the Partnership and his financial and personal interest in the business activities of NPWH and Henry Construction, WWW believes that a serious and disabling conflict of interest presently exists which precludes either Gary Henry or Jeff Henry from fulfilling the fiduciary duties of a director or officer of the General Partner until such time as the present issues between Henry Construction and the Partnership are resolved. Further WWW believes that unless and until the Partnership and the Henry Parties, resolve the problems arising from Henry Construction's unauthorized overbuild and overspend, NPWH is in default of its obligations to deliver its initial capital contribution to the Partnership and accordingly is not presently a partner in the Partnership nor entitled to exercise any rights as a partner in the Partnership.

Prior efforts by the Partnership to seek a negotiated arrangement which would enable the project to be completed, and additional bank financing obtained, have resulted in no constructive response from the Henry Parties (even though the bank has indicated its willingness to participate in such a resolution). At this time, WWW will not agree to provide any additional equity to the Partnership or approve any additional debt without (i) a full accounting of expenditures to date and (ii) such additional legal covenants and assurances and security from Henry Construction, NPWH, Jeff Henry and Gary Henry as may be necessary in order to insure that any future dealings will be in compliance with fiduciary and legal obligations in all respects.

By Monday, November 10, 2014, unless WWW receives either (i) a meaningful proposal from the Henry Parties for resolution of the present impasse regarding procurement of additional funds to complete the project, with such proposal being substantially as set forth in our previous letter dated September 30, 2014, or (ii) a credible commitment by the Henry Parties to purchase the WWW interest in the Partnership on terms substantially as noted in our counter to Jeff Henry's Offer letter dated September 15, 2014, WWW will retain counsel on its behalf to institute legal action to assert all of its legal and equitable rights and remedies against Gary Henry, Jeff Henry, Henry Construction and NPWH. While WWW would prefer to reach agreement on procuring additional funding to complete the project, if we are unable to do so, WWW continues to be willing to sell its interest in UPP to the other partners if they are interested in purchasing it, thereby increasing their control of the Partnership and allowing them to complete the project under less restrictive terms.

Sincerely,

Wind Water Waves, LLC

By: 
Willard Hammonds, II, President

**ISLANDWALK DEVELOPMENT, LLC
14650 COMPASS ST, SUITE 1
CORPUS CHRISTI, TX 78418**

May 6, 2015

Jeff Henry, President of Upper Padre GP, Inc.
Directors of Upper Padre GP, Inc.
381 East Austin St.
New Braunfels, Texas 78130

North Padre Waterpark Holdings Ltd.
Jeff Henry, President
381 East Austin St.
New Braunfels, Texas 78130

Re: Formal Request for Pre-Arbitration Mediation

Dear Jeff:

As a limited partner of Upper Padre Partners, LP (“the Partnership”) and a shareholder of Upper Padre GP, Inc. (“UPGP”), the general partner of the Partnership, IslandWalk Development, LLC (“IWD”), hereby serves you with notice of numerous ongoing and material issues related to the construction of the North Padre Island water park owned by the Partnership. These issues are serious and require immediate attention and resolution.

Background

In late 2014, Wind, Water and Waves (“WWW”) and IWD placed North Padre Waterpark Holdings (“NPWH”), Gary Henry, and Jeff Henry on formal notice that they would hold NPWH responsible for the cost of the unauthorized expansion of the water park and related facilities. The letters mentioned above are attached and incorporated by reference, and are as follows:

1. A September 30, 2014 letter from WWW;
2. An October 22, 2014 email from IWD; and
3. A November 3, 2014 letter from WWW.

These letters describe additional serious issues that, as of this date, remain unresolved.

Issues Requiring Immediate Attention

These issues include, but are not limited to, the following:

1. NPWH failed to develop and deliver without additional funds from the other Partners the Initial Schlitterbahn Phase which it agreed to do in the partnership agreement of the Partnership.
2. NPWH's flagrant and persistent failure to comply with contract requirements for executing changes in the scope of, and budget for, the construction.
3. NPWH's gross failure to keep proper and accurate accounting records of project funding and expenditures and failure to provide timely, regular and accurate accounting reports to the Partners so as to allow for the making of informed decisions.
4. NPWH's failure to deliver and open the water park and related facilities for the NTE contract sum of \$27,300,000 and by the "Time is of the Essence" delivery date of June 30, 2014, each of which constitutes a material breach of the Partnership Agreement.
4. NPWH's failure to perform and/or supervise the design, engineering and construction management of the water park and related facilities in a manner that resulted in the delivery of the water park and related facilities on time, within budget, and in accordance with the requirements of the Partnership Agreement, the AIA Design Build Agreement and the AIA Modification Agreement.
5. The material breach by the Owner's Representative under the AIA Design Build Agreement as modified by the AIA Modification Agreement of its fiduciary duty to the general and limited partners of the Partnership.
6. NPWH's misappropriation of the \$2,700,000 budget item, allocated to the Island Walk Canal and Village work contained in the Development Plan, to pay for the park and the building.
7. NPWH's improper treatment of the 4A incentive grant funds.
8. NPWH's failure to honor its agreement to modify the Partnership Agreement regarding partnership voting so that any board action would require a vote of all partners.

Furthermore, the misrepresentations by NPWH and its representatives about the true status of the construction of and plans for the project improperly induced the agreement to and

the signing of both the AIA Modification Agreement and the Partnership's loan documentation by IWD.

Request for Pre-Arbitration Mediation

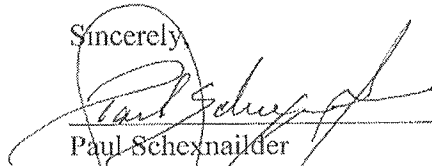
Each of these issues constitute material breaches of the Partnership Agreement; have caused and continue to cause legally compensable damages; and are ripe and appropriate for arbitration as provided for in the Partnership Agreement.

However, in the interests of all involved, as well as the best interest of our community, we hereby propose that the parties engage immediately in a Pre-Arbitration Mediation in an effort to keep the project moving forward to resolve the outstanding claims described in this letter.

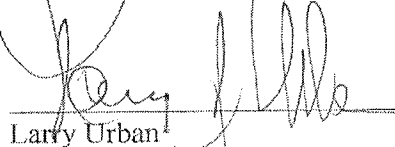
Time is of the Essence

As time continues to be of the essence, your immediate attention is requested and we would ask that you respond to the mediation proposal no later than **5:00 p.m., Friday, May 8, 2015.**

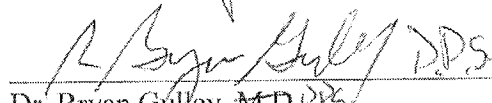
Sincerely,



Paul Schexnailder
President, IslandWalk Development, LLC



Larry Urban
Member Manager, IslandWalk Development, LLC



Dr. Bryan Gulley, M.D.
Member Manager, IslandWalk Development, LLC