

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

OCEANEERING INTERNATIONAL, INC.,

Plaintiff,

Case No. 2023-016128-CA-01

v.

FESTIVAL FUN PARKS, LLC and
MS LEISURE COMPANY,

Defendants.

**FESTIVAL FUN PARKS, LLC’S ANSWER AND AFFIRMATIVE DEFENSES TO
COMPLAINT AND CROSSCLAIM AGAINST MS LEISURE COMPANY**

Defendant Festival Fun Parks, LLC (“Festival”) files its Answer and Affirmative Defenses to Plaintiff Oceaneering International, Inc.’s (“Plaintiff” or “Oceaneering”) Complaint (the “Complaint”).

1. Festival admits that Oceaneering filed this action seeking payment for services, materials, and labor provided at Miami Seaquarium but denies any liability to Oceaneering and denies all other allegations in Paragraph 1 of the Complaint.

PARTIES, JURISDICTION, AND VENUE

2. Festival admits that Oceaneering brings this action for damages that exceed \$50,000.00 but denies any liability to Oceaneering, denies that Oceaneering is entitled to damages, and denies all other allegations in Paragraph 2 of the Complaint.

3. Festival is without knowledge of and therefore denies the allegations in Paragraph 3 of the Complaint.

4. Festival admits that it is a Delaware limited liability company that was registered and authorized to transact business in the State of Florida at all times material to this action.

5. Festival is without knowledge of and therefore denies the allegations in Paragraph 5 of the Complaint.

6. Festival states that Paragraph 6 is a legal conclusion to which no response is required. To the extent a response is required, Festival admits that personal jurisdiction exists over Festival but is without knowledge regarding the remaining allegations in Paragraph 6 and therefore denies all other allegations in Paragraph 6 of the Complaint.

7. Festival states that Paragraph 7 is a legal conclusion to which no response is required. To the extent a response is required, Festival admits that venue is proper in this District but denies all other allegations in Paragraph 7 of the Complaint.

FACTUAL BACKGROUND

8. Festival is without knowledge of and therefore denies the allegations in Paragraph 8 of the Complaint.

9. Festival admits that it formerly owned and operated Miami Seaquarium in Miami-Dade County, Florida.

10. Festival admits that it entered into the certain Fixed Fee Agreement for Contractor's Services with Oceaneering. Festival states that the Fixed Fee Agreement referenced in Paragraph 10 of the Complaint speaks for itself and is the best evidence as to its terms and content. Festival denies all other allegations in Paragraph 10 of the Complaint.

11. Festival states that the Fixed Fee Agreement referenced in Paragraph 11 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival admits that Oceaneering agreed to provide services, material, and labor at Miami Seaquarium related to the replacement of a whale pool gate, but denies the remaining allegations in Paragraph 11 of the Complaint.

12. Festival states that the Fixed Fee Agreement referenced in Paragraph 12 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 12 of the Complaint.

13. Festival states that Change Order No. 1 referenced in Paragraph 13 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 13 of the Complaint.

14. Festival is without knowledge of and therefore denies the allegations in Paragraph 14 of the Complaint.

15. Festival states that the Closeout Letter referenced in Paragraph 15 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 15 of the Complaint.

16. Festival states that the Closeout Letter referenced in Paragraph 16 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 16 of the Complaint.

17. Festival states that Invoice No. OES0012-000007720 referenced in Paragraph 17 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 17 of the Complaint.

18. Festival is without knowledge of and therefore denies the allegations in Paragraph 18 of the Complaint.

ATTORNEYS' FEES AND COSTS

19. Festival is without knowledge of and therefore denies the allegations in Paragraph 19 of the Complaint.

20. Festival states that the Fixed Fee Agreement referenced in Paragraph 20 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival admits that Paragraph 20 of the Complaint accurately quotes the Fixed Fee Agreement, but denies that Oceaneering is entitled to attorney fees, costs, or any other relief from Festival.

**COUNT I – BREACH OF CONTRACT
AGAINST FESTIVAL FUN PARKS, LLC**

21. Festival incorporates its responses set forth in Paragraphs 1 to 20 as if fully set forth herein.

22. Festival states that the Fixed Fee Agreement referenced in Paragraph 22 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival admits the allegations in Paragraph 22 of the Complaint.

23. Festival states that the Fixed Fee Agreement referenced in Paragraph 23 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 23 of the Complaint.

24. Festival is without knowledge of and therefore denies the allegations in Paragraph 24 of the Complaint.

25. Festival denies the allegations in Paragraph 25 of the Complaint.

26. Festival states that Section 25 from the Fixed Fee Agreement referenced in Paragraph 26 of the Complaint speaks for itself and is the best evidence as to its terms and content. Thus, no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 26 of the Complaint.

27. Festival denies the allegations in Paragraph 27 of the Complaint.

28. Festival denies the allegations in Paragraph 28 of the Complaint.

Festival denies the allegations in the paragraph beginning “WHEREFORE” following Paragraph 28 of the Complaint, denies any liability to Oceaneering, and denies that Oceaneering is entitled to any of the relief requested in the WHEREFORE clause following Paragraph 28 of the Complaint.

COUNT II – UNJUST ENRICHMENT
AGAINST FESTIVAL FUN PARKS, LLC (ALTERNATIVE COUNT)

29. Festival incorporates its responses set forth in Paragraphs 1 to 20 as if fully set forth herein.

30. Festival admits that Oceaneering purports to plead an unjust enrichment claim as an alternative to Count I but denies any liability to Oceaneering and denies the allegations in Paragraph 30 of the Complaint.

31. Festival denies the allegations in Paragraph 31 of the Complaint.

32. Festival denies the allegations in Paragraph 32 of the Complaint.

33. Festival denies the allegations in Paragraph 33 of the Complaint.

34. Festival denies the allegations in Paragraph 34 of the Complaint.

Festival denies the allegations in the paragraph beginning “WHEREFORE” following Paragraph 34 of the Complaint, denies any liability to Oceaneering, and denies that Oceaneering

is entitled to any of the relief requested in the WHEREFORE clause following Paragraph 34 of the Complaint.

**COUNT III – BREACH OF CONTRACT
AGAINST MS LEISURE COMPANY**

35. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival incorporates its responses set forth in Paragraphs 1 to 20 as if fully set forth herein.

36. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival admits that it sold the Miami Seaquarium to MS Leisure Company.

37. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival states that the Asset Purchase Agreement referenced in Paragraph 37 of the Complaint speaks for itself and is the best evidence as to its terms and content. Festival denies all other allegations in Paragraph 37 of the Complaint.

38. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival states that the Asset Purchase Agreement and Fixed Fee Agreement referenced in Paragraph 38 of the Complaint speak for themselves and are the best evidence as to their terms and content. Festival denies all other allegations in Paragraph 38 of the Complaint.

39. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival states that the Asset Purchase Agreement referenced in Paragraph 39 of the Complaint speaks for itself and is the best evidence as to its terms and content. Festival denies all other allegations in Paragraph 39 of the Complaint.

40. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 40 of the Complaint.

41. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 41 of the Complaint.

42. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 42 of the Complaint.

43. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 43 of the Complaint.

This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in the paragraph beginning “WHEREFORE” following Paragraph 43 of the Complaint, denies any liability to Oceaneering, and denies that Oceaneering is entitled to any of the relief requested in the WHEREFORE clause following Paragraph 43 of the Complaint.

COUNT IV – UNJUST ENRICHMENT
AGAINST MS LEISURE COMPANY (ALTERNATIVE COUNT)

44. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival incorporates its responses set forth in Paragraphs 1 to 20 and 36 to 39 as if fully set forth herein.

45. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 45 of the Complaint.

46. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 46 of the Complaint.

47. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 47 of the Complaint.

48. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 48 of the Complaint.

49. This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in Paragraph 49 of the Complaint.

This claim is not directed at Festival and thus no response is required. To the extent a response is required, Festival denies the allegations in the paragraph beginning “WHEREFORE” following Paragraph 49 of the Complaint, denies any liability to Oceaneering, and denies that Oceaneering is entitled to any of the relief requested in the WHEREFORE clause following Paragraph 49 of the Complaint.

FESTIVAL’S AFFIRMATIVE DEFENSES

Festival pleads its Affirmative and Other Defenses, without assuming the burden of proof where it does not bear that burden, and without prejudice to its Answer, as follows:

FIRST DEFENSE

Oceaneering’s claims are barred by the doctrines of waiver and ratification because on December 2, 2021, Oceaneering expressly agreed to waive the prohibition on assignment in the Fixed Fee Agreement for Contractor’s Services (the “Fixed Fee Agreement”) pursuant to the Consent and Waiver. Specifically, Oceaneering consented in writing to Festival’s assignment of its rights under the Fixed Fee Agreement to MS Leisure Company. By consenting to the assignment, Oceaneering explicitly waived any claims it might have against Festival resulting from that assignment.

SECOND DEFENSE

Oceaneering’s claims are barred because on December 2, 2021, Oceaneering expressly agreed to waive the prohibition on assignment in the Fixed Fee Agreement for Contractor’s Services (the “Fixed Fee Agreement”) pursuant to the Consent and Waiver, and Oceaneering thus agreed to a novation and waived any further claim against Festival. Specifically,

Oceaneering consented in writing to Festival's assignment of its rights under the Fixed Fee Agreement to MS Leisure Company. By consenting to the assignment, Oceaneering explicitly agreed to a novation and waived any further claim against Festival.

THIRD DEFENSE

Oceaneering's claims are barred by the doctrine of estoppel. Oceaneering is estopped from recovering against Festival because it consented in writing to Festival's assignment of the Fixed Fee Agreement to MS Leisure Company. Festival relied on Oceaneering's express consent and waiver of any claims it might have against Festival. As a result, Festival was harmed when Oceaneering reneged on its express consent and waiver and brought this action against Festival.

FOURTH DEFENSE

Oceaneering's unjust enrichment claim (Count II) against Festival is barred by the doctrine of express contract/adequate remedy at law. Oceaneering expressly alleges that it entered into the Fixed Fee Agreement, dated May 10, 2021, with Festival. Because Oceaneering relies on the Fixed Fee Agreement for its first cause of action against Festival and claims that such contract controls the relationship with Festival, Oceaneering's unjust enrichment claim is barred.

FIFTH DEFENSE

Oceaneering's claims are barred, in whole or in part, by its failure to mitigate the alleged damages, including but not limited to Oceaneering's own failure to seek payment from MS Leisure Company. Oceaneering consented to MS Leisure Company's assumption of Festival's liabilities under the Fixed Fee Agreement, and, therefore, Oceaneering should have recovered its damages solely from MS Leisure Company.

SIXTH DEFENSE

Festival is entitled to a set-off against Oceaneering's damages to the extent that Oceaneering has or will settle with, obtain judgment against, or otherwise receive payment from any party or non-party.

RESERVATION

Festival hereby reserves its right to assert any other affirmative defenses that discovery or any changes in legal precedent reveals to be applicable so as to avoid waiver of the same.

CROSSCLAIM

Defendant, Cross-claimant Festival Fun Parks, LLC ("Festival") files its Crossclaim against MS Leisure Company ("MS Leisure"), and as grounds therefore states:

JURISDICTION AND VENUE

1. This is an action for contractual indemnification and breach of contract seeking damages in excess of \$50,000, exclusive of interest, costs, and attorneys' fees.
2. Festival is (and was at all material times hereto) a Delaware limited liability company that was registered and authorized to transact business in Florida.
3. Defendant MS Leisure Company is (and was at all material times hereto) a Florida corporation with its principal place of business in Miami-Dade County, Florida.
4. This Court has personal jurisdiction over MS Leisure because MS Leisure conducts business in Miami-Dade County, Florida; the acts giving rise to this crossclaim occurred in Miami-Dade County, Florida; and, in the parties' Asset Purchase Agreement (the "APA"), MS Leisure expressly consented to the nonexclusive jurisdiction of any court in which a third-party claim is brought against Festival. A true and correct copy of the APA is attached hereto as **Exhibit A**.¹

¹ The filed copy of the APA (and its Amendment) has been redacted to remove the financial terms from the agreement. An unredacted copy has been provided to counsel for all parties.

5. Venue is proper because the actions relating to the crossclaim arose in Miami-Dade County, Florida, and MS Leisure expressly consented in the APA to the nonexclusive jurisdiction of any court in which a third-party claim is brought against Festival.

FACTUAL BACKGROUND

6. On May 10, 2021, Festival and Oceaneering International, Inc. (“Oceaneering”) entered into the Fixed Fee Agreement for Contractor’s Services (the “Fixed Fee Agreement”).

7. Under the Fixed Fee Agreement, Oceaneering agreed to provide services, material, and labor at Miami Seaquarium relating to the replacement of a whale pool gate.

8. On or about August 16, 2021, while Oceaneering’s work was ongoing, Festival and MS Leisure entered into the APA.

9. Pursuant to the APA, MS Leisure acquired certain assets of Festival Fun Parks, including Miami Seaquarium.

10. Under the APA, MS Leisure was obligated to and did assume all of Festival’s liabilities relating to the Fixed Fee Agreement.

11. Specifically, under Section 2.4 of the APA, MS Leisure agreed to assume all liabilities of Festival Fun Parks related to the Business (as that term is defined in the Agreement). This included liabilities “under the Seller Contracts set forth on Schedule 4.17(a) of the Seller Disclosure Schedules [and] to the extent arising in any period from and after the Closing.”

12. The Fixed Fee Agreement was included among the Seller Contracts (as that term is defined in the APA) identified in Section 2.1 of the APA and listed on Schedule 4.17(a) of the Seller Disclosure Schedules to the APA.

13. MS Leisure’s obligations to assume any liabilities under the Fixed Fee Agreement were further confirmed by the portion of Section 2.4 of the APA stating, “[f]or the avoidance of

doubt, all outstanding executory obligations under the Seller Contracts set forth on Schedule 4.17(a) of the Seller Disclosure Schedules shall be Assumed Liabilities.”

14. Under the APA, MS Leisure agreed that the Fixed Fee Agreement (including all outstanding obligations thereunder) was assigned to, and assumed by, MS Leisure.

15. MS Leisure and Festival closed the sale of the Miami Seaquarium on March 3, 2022, as memorialized in the Amendment to the APA, a true and correct copy of which is attached hereto as **Exhibit B**.

16. On or around May 13, 2022, Oceaneering completed its work and sent out its final invoice.

17. Oceaneering claims that MS Leisure has not paid the invoice.

18. After Oceaneering asserted a claim against Festival, Festival promptly delivered written notice of the claim (and all other required information under the APA) to MS Leisure pursuant to the indemnification procedures of the APA.

19. MS Leisure, however, did not notify Festival of its receipt of the written notice and did not agree to indemnify Festival under the APA.

20. Festival has retained the undersigned law firm for representation in this matter and is obligated to pay it a reasonable fee for its services.

21. MS Leisure is responsible for costs and attorneys’ fees, among other expenses, incurred by Festival pursuant to the APA.

22. All conditions precedent to the institution of this action have occurred, been performed, or been excused.

COUNT I
BREACH OF CONTRACT

23. The allegations of Paragraphs 1 to 22 are incorporated by reference.

24. Festival and MS Leisure are parties to the APA.
25. The APA is a valid and enforceable contract.
26. Pursuant to the APA, MS Leisure agreed to assume Festival's liabilities under the Fixed Fee Agreement.
27. MS Leisure breached the APA by, among other things, failing to perform its duties under the Fixed Fee Agreement, failing to assume Festival's liabilities with respect to the Fixed Fee Agreement, and failing to pay the amounts that Oceaneering claims remain unpaid under the Fixed Fee Agreement.
28. Festival has been damaged as a direct and proximate result of MS Leisure's breach of contract.

WHEREFORE, Festival demands judgment against MS Leisure for compensatory damages (including costs and attorneys' fees expended as allowed under the APA), interest, costs, and such other relief as the Court deems just and proper.

COUNT II

CONTRACTUAL INDEMNITY

29. The allegations of Paragraphs 1 to 22 are incorporated by reference.
30. The APA is a valid and enforceable contract.
31. Pursuant to the APA, MS Leisure agreed to assume Festival's liabilities under the Fixed Fee Agreement.
32. Festival has been named a defendant in this action.
33. Oceaneering filed its Complaint against Festival because MS Leisure allegedly failed to pay the amounts due under the Fixed Fee Agreement, which MS Leisure agreed to do in the APA.
34. The APA provides that MS Leisure must indemnify Festival for any damages

arising out of MS Leisure's breach of the Fixed Fee Agreement. Specifically, Paragraph 8.5 of the APA provides, among other things:

Section 8.5 Indemnification by the Buyer. The Buyer shall save, defend, indemnify, and hold harmless the Seller and its Affiliates and the respective Representatives, successors and assigns of each of the foregoing (the "Seller Indemnified Parties") from and against any and all Losses asserted against, incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to:

- (a) any breach of any representation or warranty made by the Buyer contained in this Agreement or any Ancillary Agreement;
- (b) any breach of any covenant or agreement by the Buyer contained in this Agreement or any Ancillary Agreement; and
- (c) after the Closing, any Purchased Asset or any Assumed Liability.

31. Festival delivered a written notice regarding Oceaneering's claim to MS Leisure with reasonable promptness pursuant to the APA.

32. After receipt of the written notice, the APA required MS Leisure to provide notice disputing its liability. MS Leisure, however, has not provided notice disputing its liability.

33. Festival is without fault as to the causation of the alleged damages to Oceaneering, and Festival's alleged liability to Oceaneering is solely derivative of MS Leisure's actions. To the extent any liability is found herein, Oceaneering's alleged injuries and damages are the direct and proximate result of the fault of MS Leisure.

34. Festival is entitled to full indemnification for claims in the Complaint due to MS Leisure's failure to exercise due performance of the APA, including all costs, expenses, damages, and obligations for which Festival may be liable to Oceaneering.

35. Festival is exposed to ongoing damages as a result of MS Leisure's breach of its duties to Festival.

36. Festival has incurred damages and may be further damaged due to MS Leisure's breach of duty.

37. Under the APA, Festival is also entitled to recover its reasonable attorneys' fees.

Section 8.6 Procedures. (b) . . . The Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has failed to assume the defense thereof.

38. Accordingly, MS Leisure should bear all costs, expenses, damages, and obligations that Festival has paid or incurred (and may pay or incur in the future) resulting from the claims in the Complaint.

WHEREFORE, MS Leisure should bear all costs, expenses, damages, and obligations that Festival has paid or incurred (and may pay or incur in the future) resulting from the claims in the Complaint.

FESTIVAL'S PRAYER FOR RELIEF

WHEREFORE, Festival prays for judgment as follows:

- a. That Oceaneering take nothing by way of the Complaint;
- b. That the Court enter judgment that Festival is the prevailing party in this action against both Oceaneering and MS Leisure;
- c. That the Court award Festival all costs, expenses, and attorneys' fees that it is entitled to under Florida law; and
- d. That the Court award any and all other relief to which Festival may be entitled.

Date: June 15, 2023

Respectfully submitted,

SIDLEY AUSTIN LLP
1001 Brickell Bay Drive
Suite 900
Miami, FL 33131
Tel.: (305) 391-5100
Fax: (305) 391-5101

By: /s/ Ian M. Ross
Ian M. Ross
Florida Bar No. 091214
Email: iross@sidley.com

Attorney for Festival Fun Parks, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 15, 2023 a true and correct copy of the foregoing document was filed with the Clerk of the Court and served on all counsel of record using the Florida Courts eFiling Portal.

By: /s/ Ian M. Ross
IAN M. ROSS

EXHIBIT A

ASSET PURCHASE AGREEMENT

by and between

MS LEISURE COMPANY, as the Buyer,

DOLPHIN LEISURE, INC., as the Guarantor,

and

FESTIVAL FUN PARKS, LLC, as the Seller

AUGUST 16, 2021

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EXHIBITS

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of August 16, 2021, is made and entered into by and between (i) MS Leisure Company, a Florida corporation (the “Buyer”), and (ii) Festival Fun Parks, LLC, a Delaware limited liability company (the “Seller”). Dolphin, Leisure, Inc., a Florida corporation (“Guarantor”), joins this Agreement solely with respect to Section 2.9. The above parties are referred to collectively herein as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, the Seller is engaged in operating several different businesses throughout the United States;

WHEREAS, one of the Seller’s businesses is the business of operating the aquarium and visitor attraction located at the Principal Place of Business, more commonly known as “Miami Seaquarium” (the “Business”); and

WHEREAS, the Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, substantially all of the Seller’s assets used in connection with the Business, and in connection therewith the Buyer is willing to assume certain liabilities and obligations of the Seller relating thereto, all upon the terms and subject to the conditions set forth herein.

WHEREAS, as a material inducement to the Buyer to enter into this Agreement, and as an express condition precedent to the consummation of the Transactions, the Seller is agreeing to the non-competition and non-solicitation covenants set forth in Section 6.4.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

“Action” means any claim, action, suit, inquiry, or proceeding by or before any Governmental Authority, or any other arbitration, mediation, or similar proceeding.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“Agreement” has the meaning given to such term in the preamble hereof.

“Ancillary Agreements” means the Bill of Sale, the Assumption Agreement, the Assignment of Intellectual Property, all other agreements, documents, certificates and instruments, if any, required to be delivered by any Party pursuant to this Agreement, and any other agreements, documents, certificates or instruments entered into at or prior to Closing in connection with this Agreement or the Transactions.

“Animals” has the meaning given to such term in Section 4.10(c).

“Assignment of Intellectual Property” has the meaning given to such term in Section 3.1(b)(iii).

“Assumed Liabilities” has the meaning given to such term in Section 2.4.

“Assumption Agreement” has the meaning given to such term in Section 3.1(b)(ii).

“Balance Sheet” has the meaning given to such term in Section 4.5(b).

“Bill of Sale” has the meaning given to such term in Section 3.1(b)(i).

“Business” has the meaning given to such term in the Recitals.

“Business Data” means confidential information concerning exclusively the Business and all Personal Data (whether of employees, contractors, consultants, customers, consumers, or other Persons and whether in electronic or any other form or medium) and other data accessed, collected, used, processed, stored, shared, distributed, transferred, disclosed, destroyed, or disposed of by any of the IT Systems necessary in conducting the Business.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the State of Florida and Madrid, Spain.

“Business Records” means all books, records, ledgers and files or other similar information of the Seller (in any form or medium) used or held for exclusive use in connection with the Business, including all client lists, vendor lists, correspondence, client deliverables or other information provided by clients in the ordinary course of the Business, mailing lists, revenue records, invoices, advertising materials, brochures, records of operation, standard forms of documents, manuals of operations or business procedures, photographs, blueprints, research files and materials, data books, Intellectual Property disclosures and information, media materials and plates, accounting records and litigation files (but excluding the organizational documents and stock record books and corporate seal of the Seller).

“Buyer” has the meaning given to such term in the preamble hereof.

“Buyer Indemnified Parties” has the meaning given to such term in Section 8.2.

“Closing” has the meaning given to such term in Section 3.1(a).

“Closing Date” has the meaning given to such term in Section 3.1(a).

“Code” means the Internal Revenue Code of 1986, as amended.

“Company Products” means all products or service offerings of the Business that have been marketed, sold, or distributed exclusively in connection with the Business, including any such products or services that form the basis, in whole or in part, of any revenue or business projection delivered by the Seller, or provided by the Seller in connection with the negotiation of this Agreement.

“Confidential Information” has the meaning given to such term in Section 6.7.

“Contract” means any legally binding written or oral bond, debenture, guarantee, purchase or sales order, commitment, instrument, lease, contract, note, mortgage, indenture, arrangement, understanding, memorandum of understanding, agreement, undertaking, concession or franchise, or other obligation.

“Control,” including the terms “Controlled by” and “under common Control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by Contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Copyrights” has the meaning given to such term in the definition of “Intellectual Property.”

“Core Representations” has the meaning given to such term in Section 8.1.

“Data Room” means that certain “Project Triton” electronic data room maintained by Intralinks, an unmodifiable copy of which will be downloaded to a USB flash drive on the day prior to the date hereof and delivered to the Buyer and the Seller.

“De Minimis Threshold” has the meaning given to such term in Section 8.3.

“Deferred Purchase Price” has the meaning given to such term in Section 2.7(c).

“Deposit Amount” has the meaning given to such term in Section 2.7(a).

“DOL” has the meaning given to such term in Section 4.15(e).

“Employee” means each employee of the Seller employed exclusively in connection with the Business as of the date hereof.

“Employee Plans” means (i) all employee benefit plans as defined in Section 3(3) of ERISA, whether or not subject to ERISA, (ii) all other pension, retirement, group insurance, severance pay, deferred compensation, excess or supplemental benefit, vacation, stock, stock option or other equity-based compensation, phantom stock, fringe benefit and incentive plans, Contracts, schemes, programs, funds or commitments of any kind, and (iii) all other employee benefit plans, Contracts, schemes, programs, funds or commitments providing compensation or

other benefits, whether written or oral, formal or informal, qualified or nonqualified, funded or unfunded, and including any that have been frozen or terminated, which pertain to any current Employees or individual Independent Contractors of the Seller and (A) to which the Seller is a party or been bound, or (B) to which is sponsored, maintained or contributed by the Seller or under which the Seller otherwise has any liability or obligation or would reasonably be expected to have any liability or obligation.

“Encumbrance” means any charge, claim, limitation, condition, equitable interest, mortgage, lien, levy, option, pledge, security interest, easement, encroachment, right of first refusal, adverse claim or restriction of any kind, including any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental and Safety Laws” means any laws, ordinances, codes, regulations, and orders that relate to the protection of human health and safety, or the environment or are intended to assure the protection of the environment, or that classify, regulate, call for the remediation of, require reporting with respect to, or list or define air, water, groundwater, solid waste, hazardous or toxic substances, materials, wastes, pollutants or contaminants, or which are intended to assure the safety of employees.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person, whether or not incorporated, that together with the Seller would be deemed a “single employer” within the meaning of Section 4001(b)(i) of ERISA and/or Section 414 of the Code.

“Escrow Agent” means Citibank, N.A.

“Escrow Agreement” means that certain Escrow Agreement, dated as of the date hereof, by and among the Parties and the Escrow Agent and attached hereto as Exhibit E.

“Excluded Assets” has the meaning given to such term in Section 2.2.

“Excluded Liabilities” has the meaning given to such term in Section 2.5.

“Excluded Taxes” means any liability for: (a) Taxes of the Seller for any taxable period (other than Transfer Taxes arising as a result of the Transactions consummated under this Agreement); (b) Taxes imposed on the Business or relating to the Purchased Assets with respect to any Tax period ending on or prior to the Closing Date and for that portion of any Straddle Period ending on the Closing Date (in accordance with Section 6.14); (c) Taxes imposed on or with respect to the Excluded Assets; and (d) unpaid Taxes of Seller as a transferee, successor, by contract or otherwise.

“Financial Statements” has the meaning given to such term in Section 4.5(a).

“GAAP” means United States generally accepted accounting principles and practices as in effect on the date hereof.

“Governmental Authority” means any United States, European Union or other non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, bureau, ministry, agency or commission or any court, tribunal, or arbitral or judicial body (including any grand jury) or other legislative, executive or judicial government entity.

“Guarantee” has the meaning given to such term in Section 2.9.

“Guarantor” has the meaning given to such term in the preamble hereof.

“Hazardous Materials” means any toxic or hazardous substance, material, or waste or any pollutant or contaminant, or infectious or radioactive substance, material or waste defined in or regulated under any Environmental and Safety Laws, but excludes office and janitorial supplies in de minimis quantities properly and safely maintained in accordance with Environmental and Safety Laws.

“Key Employees” has the meaning given to such term in Section 6.4(c).

“Immediate Family” with respect to any specified Person, means such Person’s spouse, parents, children and siblings, nieces and nephews, including adoptive relationships and relationships through marriage, or any other relative of such Person that shares such Person’s home.

“Indemnification Basket” has the meaning given to such term in Section 8.3

“Indemnification Cap” has the meaning given to such term in Section 8.3.

“Indemnified Party” has the meaning given to such term in Section 8.6(a).

“Indemnifying Party” has the meaning given to such term in Section 8.6(a).

“Independent Contractor” means each independent contractor of the Seller engaged exclusively in connection with the Business as of the date hereof.

“Information Privacy and Security Laws” means all Laws or industry requirements concerning the privacy, protection, transfer, use, processing or security of Personal Data or other Business Data, including any applicable Laws concerning privacy policies and practices, call or electronic monitoring or recording or any outbound communications (including outbound calling and text messaging, telemarketing, and email marketing), use and processing of credit information and/or the processing of payment transactions.

“Insurance Policy” has the meaning given to such term in Section 4.18.

“Intellectual Property” means all intellectual property rights arising from or associated with the following, whether protected, created or arising under the Laws of the United States or any other jurisdiction: (a) trade names, trademarks and service marks (registered and unregistered), domain names and other Internet addresses or identifiers, trade dress and similar rights and applications (including intent to use applications) to register any of the foregoing (collectively,

“Marks”); (b) patents and patent applications (collectively, “Patents”); (c) copyrights (registered and unregistered) and applications for registration (collectively, “Copyrights”); (d) know-how, inventions, methods, processes, technical data, specifications, research and development information, technology, product roadmaps, customer lists and any other information, in each case to the extent any of the foregoing derives economic value (actual or potential) from not being generally known to other Persons who can obtain economic value from its disclosure or use, excluding any Copyrights or Patents that may cover or protect any of the foregoing (collectively, “Trade Secrets”); and (e) moral rights, publicity rights, database rights and any other proprietary or intellectual property rights of any kind or nature that do not comprise or are not protected by Marks, Patents, Copyrights or Trade Secrets.

“Interim Financial Statements” has the meaning given to such term in Section 4.5(a).

“Inventory” means all raw materials and supplies, finished goods, works-in-process, and similar items related to, used, or held for ultimate resale in connection with the Business.

“IRS” means the Internal Revenue Service.

“IT Systems” means all electronic data processing, information, record keeping, communications, telecommunications, platform and other computer systems (including all computer programs, software, databases, firmware, hardware, and related documentation) and Internet websites and related content, in each case owned by the Seller and/or used in the conduct of the Business.

“Knowledge of the Seller” means the actual knowledge of Bill Lentz, Roberto Ortiz, and John Reilly, Cristina Carro Werner and Jesus Fernandez Moran, after reasonable inquiry.

“Latest Balance Sheet Date” has the meaning given to such term in Section 4.5(a).

“Law” means any federal, state, local, or foreign statute, law, ordinance, regulation, rule, code, executive order, or Order of any Governmental Authority.

“Leased Real Property” means all real property leased, subleased or licensed to the Seller or which the Seller otherwise has a right or option to use or occupy, and related to, used or held for exclusive use in connection with the Business, together with all structures, equipment, facilities, fixtures, systems, improvements and items of property previously or hereafter located thereon, or attached or appurtenant thereto, and all easements, rights and appurtenances relating to the foregoing.

“Losses” has the meaning given to such term in Section 8.2.

“Marks” has the meaning given to such term in the definition of “Intellectual Property.”

“Material Adverse Effect” means any event, change, circumstance, occurrence, effect or state of facts that is materially adverse to the Business or; *provided*, that any event, change, circumstance, occurrence, effect or state of facts attributable to any of the following shall not constitute, and shall not be taken into account in determining whether there has been or will be, a Material Adverse Effect: (a) the announcement or pendency of this Agreement or the Transactions;

(b) the identity of, or the effects of any facts or circumstances relating to, the Buyer; (c) business or political conditions or conditions generally affecting the industry or segments therein in which the Business participates, the U.S. economy as a whole or the capital, credit or financial markets in general or the markets in which the Business operates; (d) compliance in any material respect with the terms of, or the taking of any action required by, this Agreement or approved in writing by the Buyer; (e) any action taken or statement made by the Buyer that results in the willful breach, violation or non-performance by the Buyer of any provision of this Agreement; (f) any change in accounting requirements or principles (including GAAP) or any change in applicable Laws or the interpretation or enforcement thereof by a Governmental Authority; (g) actions required to be taken under applicable Laws or Contracts in existence as of the date of this Agreement; (h) any acts of war (whether or not declared), armed hostilities, sabotage or terrorism occurring after the date of this Agreement or the continuation, escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement; (i) any natural disaster or any acts of terrorism, cyberterrorism, sabotage, military action, armed hostilities, war (whether or not declared), public health crisis, epidemic, pandemic or disease outbreak (including the COVID-19 virus) or any escalation or worsening thereof, whether or not occurring or commenced before or after the date of this Agreement; or (j) any failure by the Business to meet any projections, estimates or budgets for any period prior to, on or after the date of this Agreement (other than facts underlying such failure), except to the extent such event, change, circumstance, occurrence, effect or state of facts that arising from or related to the matters described in clauses (c) or (f) or (g) disproportionately affects the Business, as compared to other businesses operating in the industries and markets in which the Business operates.

“Material Contracts” has the meaning given to such term in Section 4.17(a).

“Minimum Operating Cash” has the meaning given to such term in Section 6.17.

“Order” means any writ, judgment, injunction, ruling, decree, determination, stipulation, award or similar order of any Governmental Authority (in each case, whether preliminary or final).

“Party” and “Parties” have the meaning given to such terms in the preamble hereof.

“Patents” has the meaning given to such term in the definition of “Intellectual Property.”

“Pending Asset” has the meaning given to such term in Section 2.6(a).

“Pension Plan” has the meaning given to such term in Section 4.15(b).

“Permits” has the meaning given to such term in Section 4.7(b).

“Permits and Other Approvals” has the meaning given to such term in Section 6.10.

“Permitted Encumbrance” means (a) statutory Encumbrances for Taxes that are not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings and for which adequate reserves have been established by the Seller; (b) Encumbrances to secure obligations to landlords, lessors or renters under leases or rental agreements; (c) liens arising under, deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or other social security or similar

programs mandated by Law; (d) Encumbrances in favor of carriers, repairers, servicers, bailees, warehousemen, mechanics, workers, and materialmen, to secure claims for labor, materials or supplies and other like Encumbrances, (e) zoning, entitlement, building and other land use regulations imposed by any Governmental Authority having jurisdiction over the leased real property used in the Business which are not violated by the current use and operation of the Leased Real Property; (d) covenants, conditions, restrictions, easements (including utility easements) and other similar matters of record affecting title to the Leased Real Property which do not materially impair the occupancy or use of the Leased Real Property for the purposes for which it is currently used or proposed to be used in connection with the Business; and (e) purchase money liens and liens securing rental payments under capital lease arrangements.

“Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

“Personal Data” means any information or data which on its own or in combination with any other piece of information or data allows the identification of a natural person, including a natural person’s name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver’s license number, passport number, credit card number, bank information, or customer or account number, biometric identifiers, log-in information, Internet Protocol addresses or other persistent device identifiers, or any other data that or any other piece of information that allows the identification of or contact with a natural person.

“Personal Property” means all machinery, equipment, furniture, furnishings, tools, office supplies, vehicles, computer hardware, and other tangible personal property owned or leased by the Seller that is used or held for exclusive use in connection with the Business.

“Personal Property Contracts” has the meaning given to such term in Section 4.10(a).

“Post-Closing Tax Period” has the meaning given to such term in Section 6.14.

“Pre-Closing Tax Period” has the meaning given to such term in Section 6.14.

“Principal Place of Business” means 4400 Rickenbacker Causeway, Miami, Florida 33149.

“Purchase Price” means [REDACTED] which amount will not be subject to any adjustments.

“Purchase Price Allocation” has the meaning given to such term in Section 3.2.

“Purchased Assets” has the meaning given to such term in Section 2.1.

“Related Party,” with respect to any specified Person, means (a) any Affiliate of such specified Person, or (b) any Immediate Family member of a Person.

“Representatives” has the meaning given to such term in Section 6.2.

“Restricted Period” means the period beginning on the Closing Date and ending on the date that is three (3) years following the Closing Date.

“Retention Period” has the meaning given to such term in Section 6.2.

“Return” means any return, declaration, report, statement, information statement and other document required to be filed with respect to Taxes.

“Second Installment” has the meaning given to such term in Section 2.7(b).

“Seller Certificate of Formation” has the meaning given to such term in Section 4.1.

“Seller” has the meaning given to such term in the preamble hereof.

“Seller Contract” means any Contract arising from or related to the Business or the Purchased Assets to which the Seller is a party, under which the Seller may have any rights or by which the Seller, the Business or any of the Purchased Assets may be bound, and all bids, quotations and proposals therefor.

“Seller Disclosure Schedules” has the meaning given to such term in the introductory paragraph of Article IV.

“Seller Indemnified Parties” has the meaning given to such term in Section 8.5.

“Seller Intellectual Property” has the meaning given to such term in Section 4.11(a).

“Seller Registered IP” has the meaning given to such term in Section 4.11(e).

“Straddle Period” means a Tax period starting prior to the Closing Date and ending after the Closing Date.

“Subsidiary” means, with respect to any Person, any other Person Controlled by such first Person, directly or indirectly, through one or more intermediaries.

“Taxes” means all federal, state, local, foreign and other net income, gross income, gross receipts, sales, ad valorem, transfer, franchise, profits, registration, license, lease, service, use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, unclaimed property, escheat, windfall profits, customs, duties, bulk sales or transfers, or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto.

“Third Party Claim” has the meaning given to such term in Section 8.6(a).

“Trade Secrets” has the meaning given to such term in the definition of “Intellectual Property.”

“Transactions” means all of the transactions contemplated by this Agreement and the Ancillary Agreements.

“Transferred Employees” has the meaning given to such term in Section 6.3.

“Welfare Plans” has the meaning given to such term in Section 4.15(e).

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, at the Closing, the Seller, in reliance on the representations and warranties and covenants of the Buyer contained herein, shall sell, assign, transfer, convey and deliver to the Buyer, and the Buyer, in reliance on the representations, warranties and covenants of the Seller contained herein, shall purchase from the Seller, all of the Seller’s right, title and interest, direct or indirect, in and to all assets, properties and rights of every nature, kind and description, whether tangible or intangible, real, personal or mixed, accrued or contingent (including goodwill), wherever located and whether now existing or hereafter acquired prior to the Closing Date, used or held for use in connection with the Business, as the same shall exist on the Closing Date, whether or not carried or reflected on or specifically referred to in the Seller’s books or financial statements or in the Schedules hereto, other than the Excluded Assets (collectively, the “Purchased Assets”), in each case (x) other than the Excluded Assets, and (y) free and clear of any Encumbrances (except for Permitted Encumbrances), including all of the Seller’s right, title and interest in and to the following:

(a) all Personal Property used solely in connection with the Business, including those items set forth on Schedule 4.10(a) of the Seller Disclosure Schedules;

(b) all Seller Intellectual Property used solely in connection with the Business, including such Seller Intellectual Property listed on Schedule 4.11 of the Seller Disclosure Schedules;

(c) all Seller Contracts set forth on Schedule 4.17(a) of the Seller Disclosure Schedules;

(d) the telephone and fax number(s) used by the Seller exclusively in connection with the Business;

(e) all Inventory;

(f) all Business Records;

(g) all Permits that by their terms or pursuant to applicable Law are capable of being sold, assigned, or transferred; and

(h) the goodwill and going concern value and other intangible assets, if any, arising from or related to the Business.

(i) all rights and claims related to the Transferred Employees from and after the Closing Date (other than with respect to any Employee Plan).

The Parties shall take the commercially reasonable and necessary steps and shall fully co-operate with each other in view of the transfer of the Purchased Assets from the Seller to the Buyer as set forth herein.

Section 2.2 Excluded Assets. Notwithstanding anything contained in Section 2.1 to the contrary, the Seller is not selling, assigning, transferring, conveying and delivering, and the Buyer is not purchasing, any other assets of the Seller not otherwise described in Section 2.1 (including specifically (a) any and all assets and items used in connection with any of the other businesses operated by Seller, and all bank accounts, cash and pre-Closing revenue whether collected or not by the Seller prior to Closing Date, and (b) the assets set forth on Schedule 2.2 of the Seller Disclosure Schedules), all of which shall be retained by the Seller (collectively, the “Excluded Assets”).

Section 2.3 Subsequently Assumed Seller Contracts. Notwithstanding the provisions of Section 2.1 or Section 2.2 or any other provision hereof, if after the Closing Date, either the Seller or the Buyer identifies a Contract exclusively related to the Business that existed as of the Closing Date, but which Contract was not identified as a Seller Contract on Schedule 4.17(a) of the Seller Disclosure Schedules, then such Party will so notify the other Party. In such case, the Buyer shall assume such Contract by providing written notice to the Seller, and the Seller will assign such Contract to the Buyer, in which event such Contract will be deemed a Purchased Asset hereunder; provided, however, that the Buyer shall not have any obligation to assume any such Contract to the extent that the Seller is in material breach thereof. In the event such Contract requires consent to assignment, the Seller agrees to use its commercially reasonable efforts to obtain such consent. Upon notification by the Buyer or Seller of any Contract that is subject to this Section 2.3, the Parties shall execute a separate instrument assigning such Contract to the Buyer, with the assignment of such Contract effective as of the earlier of (a) the Closing Date (in which case all amounts received or paid thereunder will be delivered to or paid by the Buyer, as applicable) or (b) the date such instrument is executed.

Section 2.4 Assumed Liabilities. In connection with the purchase and sale of the Purchased Assets pursuant to this Agreement, at the Closing, the Buyer shall assume all liabilities of the Seller exclusively related to the Business, including, in each case only those liabilities as set forth on the Disclosure Schedules, including liabilities (a) under the Purchased Assets, as may arise from and after the Closing, (b) related to any Pending Assets, as may arise from and after the Closing, and/or (c) under the Seller Contracts set forth on Schedule 4.17(a) of the Seller Disclosure Schedules, in respect of, and only to the extent arising in any period from and after the Closing (including, for the avoidance of doubt, but subject to Section 3.3, the applicable obligations in respect of pre-paid annual passes issued by the Business prior to the Closing) but only to the extent (with respect to this clause (d)) that (i) the Seller’s rights thereunder are effectively transferred to the Buyer, and (ii) such liabilities and obligations (A) do not arise from or relate to any breach by the Seller of any provision of any Seller Contract, and (B) do not arise from or relate to any event, circumstance or condition occurring or existing prior to the Closing Date that, with notice or lapse of time, would constitute or result in a breach of any Seller Contract (collectively, the “Assumed Liabilities”). For the avoidance of doubt, all outstanding executory obligations under the Seller Contracts set forth on Schedule 4.17(a) of the Seller Disclosure Schedules shall be Assumed Liabilities.

Section 2.5 Excluded Liabilities. Notwithstanding the provisions of Section 2.5 or any other provision of this Agreement, any Schedule or Exhibit hereto or any Ancillary Agreement to the contrary, except for the Assumed Liabilities, the Buyer shall not assume or be obligated to pay, perform, satisfy or otherwise discharge (and the Seller shall retain pay, perform, satisfy or otherwise discharge without recourse to the Buyer) any liabilities or obligations of the Seller of any kind, character or description whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, asserted or unasserted, matured or unmatured, and currently existing or hereinafter arising (the “Excluded Liabilities”), including, without limitation, the following:

(a) liabilities, obligations, debts or commitments of the Seller incident to, arising out of or incurred with respect to, this Agreement and the Transactions;

(b) all liabilities and obligations arising under the Purchased Assets in respect of any period on or prior to the Closing;

(c) all Excluded Taxes;

(d) any liability or obligation under any Environmental and Safety Laws arising as a result of, in connection with or otherwise related to any action or failure to act by the Seller;

(e) any liability arising in respect of or relating to Employees accrued prior to the Closing, including without limitation any liability or obligation such as employee practices, claims, vacation pay and sick pay (which shall be pro-rated as of the date of closing), or bonuses;

(f) any liability with respect to any Employee Plan;

(g) any liability arising from or related to any breach, failure to perform, product liability, customer returns, product recalls, product warranty, torts related to the performance of, violations of Law, infringements or indemnities under, guaranties pursuant to and overcharges or underpayments under, any Seller Contract prior to the Closing Date;

(h) any liability arising from or related to any compliance or noncompliance prior to the Closing Date with any Law applicable to the Seller, the Business, or the Purchased Assets;

(i) any liability arising from or related to any Action against the Seller, the Business or the Purchased Assets pending as of the Closing Date or based upon any action, event, circumstance or condition arising prior to the Closing Date (but not including any Action naming the Buyer or any of its Affiliates as a defendant in the existing Action by PETA against the Seller and the United States Department of Agriculture);

(j) any liability incurred by the Seller or any Person other than the Buyer arising out of or relating to the negotiation and preparation of this Agreement and the Ancillary Agreements (including fees and expenses payable to all attorneys and accountants, other

professional fees and expenses and bankers', brokers' or finders' fees for Persons not engaged by the Buyer);

(k) any liability relating to any Insurance Policy of the Seller;

(l) any liability arising from or related to businesses of the Seller other than the Business, including, but not limited to, business conducted directly with any Governmental Authority;

(m) any liability or obligation arising from, related to or in connection with the Seller's operation of the Business or the use of the real property owned, leased or used by the Seller or the Business, in each case prior to the Closing, related to: (i) environmental matters or presence, discharge or disposal of or exposure to Hazardous Materials related to any action or failure to act by the Seller, (ii) any Hazardous Materials located on, in, under such real property, (iii) the exposure to any Person (including the Business' Employees, guests, and occupants of such real property or properties adjacent to or in the vicinity of such real property) to any Hazardous Materials, even if the discovery of such exposure occurs after the Closing Date;

(n) any liability arising from or in connection with the payment or accrual any dividends, distributions or redemptions with respect to any security of the Seller;

(o) any liability or obligation relating to an Excluded Asset;

(p) any liability or obligation relating to or concerning any Related Party of the Seller; or

(q) any liability or obligation related to any service rendered prior to the Closing Date.

Section 2.6 Consents and Waivers; Further Assurances.

(a) Nothing in this Agreement or the Ancillary Agreements shall be construed as an agreement to assign, transfer, or deliver any Seller Contract, Permit, or other Purchased Asset that by its terms or pursuant to applicable Law is not capable of being sold, assigned, transferred, or delivered without the notification, consent, or waiver of a third party or Governmental Authority unless and until such notification, consent, or waiver shall be given. The Seller shall use its commercially reasonable efforts, and the Buyer shall reasonably cooperate with the Seller, to effectuate, at the Buyer's sole cost and expense, such notifications or obtain such consents and waivers and to resolve the impediments to the sale, assignment, transfer, or delivery contemplated by this Agreement or the Ancillary Agreements and to effectuate, at the Buyer's sole cost and expense, all notifications or obtain all other consents and waivers necessary to convey to the Buyer all of the Purchased Assets. In the event any such consents or waivers are not obtained prior to the Closing, the Seller shall continue to use its commercially reasonable efforts to effectuate, at the Buyer's sole cost and expense, the relevant notification or obtain the relevant consents or waivers until such consents or waivers are obtained, and the Seller will cooperate with the Buyer in any lawful and economically feasible arrangement to provide that the Buyer shall receive the interest of the Seller in the benefits under any such Seller Contract, Permit, Right or other Purchased Asset (each, a "Pending Asset"), including performance by the Seller, if

economically feasible (and in any event, at the Buyer's sole cost and expense), as agent; *provided*, that the Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent the Buyer would have been responsible therefor hereunder if such consents or waivers had been obtained.

(b) From time to time following the Closing, the Seller and the Buyer shall execute, acknowledge, and deliver all such further conveyances, notices, assumptions, and releases and such other instruments, and shall take such further actions, as may be necessary or appropriate to assure fully to the Buyer all of the assets, properties, rights, titles, interests, estates, remedies, powers, and privileges intended to be conveyed to the Buyer under this Agreement and the Ancillary Agreements, and to assure fully to the Seller the assumption of the liabilities and obligations intended to be assumed by the Buyer pursuant to this Agreement and the Ancillary Agreements, and to otherwise make effective as promptly as practicable the Transactions.

Section 2.7 Purchase Price; Closing Payment. As full consideration for the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to the Buyer, as well as the non-competition and non-solicitation covenants set forth in Section 6.4, in addition to the Buyer's assumption of the Assumed Liabilities, the Seller shall be entitled to receive, on the terms and conditions set forth in this Agreement, an aggregate amount equal to the Purchase Price, payable as follows:

(a) an amount equal to [REDACTED] (the "Deposit Amount"), payable concurrently with the execution of this Agreement by the Buyer to the Escrow Agent by wire transfer in immediately available funds to the account or accounts designated in the Escrow Agreement; plus

(b) an amount equal to [REDACTED] (the "Second Installment"), payable concurrently with the Closing by the Buyer to the Seller by wire transfer in immediately available funds to the account or accounts designated by the Seller in writing; plus

(c) an amount equal to [REDACTED] (the "Deferred Purchase Price"), payable by the Buyer to the Seller on the dates and in the amounts set forth below by wire transfer in immediately available funds to the account or accounts designated by the Seller in writing to the Seller:

- (i) [REDACTED] on the date that is three (3) months after the Closing Date;
- (ii) [REDACTED] on the date that is six (6) months after the Closing Date;
- (iii) [REDACTED] on the date that is nine (9) months after the Closing Date; and
- (iv) [REDACTED] on the date that is twelve (12) months after the Closing Date.

Section 2.8 Withholding. The Buyer (or any other applicable withholding agent) shall be entitled to deduct and withhold from the consideration or other amounts otherwise payable pursuant to this Agreement to any Person such amounts as the Buyer (or such withholding agent) is required to deduct and withhold with respect to such payment under the Code, or any provision of state, local or foreign law, provided, however, that Buyer will provide written notice to Seller at least five (5) days prior to withholding any such amount, and will reasonably cooperate with the Seller to eliminate or reduce the amount of any such withholding. To the extent that amounts are so withheld, such withheld amounts shall be (a) paid to the appropriate taxing authority and (b) treated for all purposes of this Agreement as having been paid to the appropriate recipient in respect of which such deduction and withholding was made.

Section 2.9 Limited Guaranty. Guarantor hereby guarantees the payment when due of the Deferred Purchase Price owed by the Buyer to the Seller pursuant to Section 2.7(c) (the "Guarantee").

ARTICLE III CLOSING

Section 3.1 Closing.

(a) The sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the "Closing") at 10:00 a.m. Eastern Time on a date to be specified by the Parties, which shall be no later than five (5) Business Days after the satisfaction or waiver of each of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), or at such other time and/or date as the Buyer and the Seller may agree in writing, and conducted via the electronic exchange of signature pages between the Parties. The date on which the Closing takes place is referred to herein as the "Closing Date." The Closing shall be deemed completed as of 12:01 a.m., Eastern Time, on the Closing Date.

(b) Concurrently upon the execution of this Agreement, the Seller shall deliver, or cause to be delivered, to the Buyer the following documents, to be held in escrow by the Buyer until the Closing (except for item (v) below, which shall be delivered as of the Closing):

(i) a bill of sale for the Purchased Assets, in the form attached hereto as Exhibit A (the "Bill of Sale"), duly executed by the Seller and made effective upon the Closing;

(ii) a counterpart of the Assumption Agreement, in the form attached hereto as Exhibit B (the "Assumption Agreement"), duly executed by the Seller and made effective upon the Closing;

(iii) an instrument or instruments of assignment of Seller Intellectual Property, in the form or forms attached hereto as Exhibit C (the "Assignment of Intellectual Property"), duly executed by the Seller and made effective upon the Closing;

(iv) resolutions of the applicable governing body of the Seller adopting and approving this Agreement, the Ancillary Agreements and the Transactions;

(v) a certificate of good standing of the Seller from the Secretary of State of the State of Delaware dated within five (5) days prior to the Closing Date;

(vi) a certificate of non-foreign status described in Treasury Regulations Section 1.1445-2(b)(2), duly executed by the Seller and made effective as of the Closing; and

(vii) a certificate executed by an officer of the Seller in the form attached hereto as Exhibit D (the “Officers’ Certificate”) and confirming and certifying as to the accuracy and truthfulness of the Sellers’s representations and warranties contained in Article IV, and the performance by the Seller of its covenants set forth in this Agreement and the Ancillary Agreements, made effective as of the Closing. Notwithstanding the foregoing, the Seller shall execute and re-deliver such Officers’ Certificate at Closing as well.

(c) At the Closing, the Buyer shall deliver or cause to be delivered to the Seller the following:

(i) a counterpart of the Bill of Sale, duly executed by the Buyer; and

(ii) a counterpart of the Assumption Agreement, duly executed by the Buyer; and

(iii) a counterpart of the Assignment of Intellectual Property, duly executed by the Buyer;

(iv) an amount equal to the Minimum Operating Cash concurrently with the Closing by the by wire transfer in immediately available funds to the account or accounts designated by the Seller in writing; and

(v) the Second Installment in accordance with Section 2.7(b); and

(vi) a certificate executed by an officer of the Buyer in the form attached hereto as Exhibit D and confirming and certifying as to the accuracy and truthfulness of the Buyer’s representations and warranties contained in Article V, and the performance by the Buyer of its covenants set forth in this Agreement and the Ancillary Agreements. Notwithstanding the foregoing, the Buyer shall execute and re-deliver such Officers’ Certificate at Closing as well.

(d) The Seller agrees with respect to the Purchased Assets that:

(i) at the Closing, it shall deliver, or cause to be delivered to the Buyer all those Purchased Assets that, by their nature, are capable of being delivered by electronic means (including any data or other information relating to products and services sold by the Seller), to the e-mail address(es) set forth on Schedule 3.1(d)(i); and

(ii) at the Closing, it shall arrange for the delivery of any Purchased Assets that are not located at the Seller's Principal Place of Business to the Buyer via Federal Express (ground delivery) to the Seller's Principal Place of Business, and shall provide evidence of such arrangements in form and substance reasonably satisfactory to the Buyer.

The Parties understand and agree that all reasonable costs and expenses arising out of or relating to the necessary delivery (as mutually agreed by the Parties) of the Purchased Assets to the Principal Place of Business shall be borne exclusively by the Seller.

(e) At the Closing, the Buyer and the Seller shall issue a joint release instruction (in form and substance attached to the Escrow Agreement) to the Escrow Agent to cause the Escrow Agent to release the Deposit Amount to the Seller in accordance with Section 2.7(a) above.

Section 3.2 Purchase Price Allocation. The Buyer and the Seller agree to reasonably allocate (the "Purchase Price Allocation") the Purchase Price and the Assumed Liabilities among the Purchased Assets based upon the asset categories required by the Code in accordance with the methodology set forth on Schedule 3.2. For all United States Tax purposes, the Buyer and the Seller agree that the Transactions shall be reported in a manner consistent with the Purchase Price Allocation, and that none of them (nor any Affiliate thereof) shall take any position inconsistent therewith in any Return, in any refund claim, in any litigation, or otherwise. The Buyer shall prepare and deliver to the Seller IRS Form 8594 (or other forms required to be filed with any Governmental Authority), prepared in accordance with the methodology set forth on Schedule 3.2, within a reasonable period before the relevant filing due date for the Seller's review and approval (which approval shall not be unreasonably withheld or delayed). Each of the Buyer and the Seller agrees to cooperate and work in good faith to resolve any disputes which may arise in preparing IRS Form 8594. The Buyer and the Seller will promptly inform one another in writing of any challenge by any Governmental Authority to any allocation made pursuant to this Section 3.2 and agree to consult with and keep one another informed with respect to the status of, and any discussion, proposal or submission with respect to, such challenge; *provided, however*, the Party subject to any such challenge shall have the sole right to control the conduct of such challenge, including the settlement or compromise thereof.

Section 3.3 Prorations and Charges. The Parties shall prorate and apportion, on a per diem basis, as of the close of business the day before the Closing Date, (a) the real and personal property Taxes and assessments, both general and special, for the Purchased Assets, based upon the last available Tax statement, (b) rent owed under the lease of any Leased Real Property, (c) amounts owing for utilities and similar expenses, (d) amounts owed under any capital leases that are Seller Contracts, and (e) amounts owed under any annual Permits that are included in the Purchased Assets. For purposes of such proration, the Seller shall be responsible for the period ending on (and including) the day immediately prior to the Closing Date, and the Buyer shall be responsible for the period commencing on (and including) the Closing Date and thereafter. In addition, and notwithstanding the foregoing, (i) the aggregate dollar amount of all capital expenditures advanced or pre-paid by the Seller prior to the Closing for services, products, or other benefits to be received or realized by the Business after the Closing (all of which capital expenditures shall be reasonably defined by the Parties in good faith between the date hereof and

the Closing Date) shall be apportioned entirely to the Buyer, and (ii) within thirty (30) days following the Closing, the Parties shall measure and prorate the outstanding liabilities in respect of annual passes, with the Seller being responsible for the aggregate liability amount of all such annual passes that remain, by their terms, in full force and effect for more than eight (8) months following the Closing. Any amounts owed to the Seller or the Buyer, as applicable, under this Section 3.3, shall be paid by the Buyer or the Seller, as the case may be, to the other Party concurrently with the Second Installment or, if conclusively calculated after the Closing Date, the Deferred Purchase Price, in either case, by wire transfer in immediately available funds to the account or accounts designated by the other Party in writing.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the corresponding sections or subsections of the Seller Disclosure Schedules attached hereto (collectively, the “Seller Disclosure Schedules”), the Seller represents and warrants to the Buyer as of the date hereof and as of the Closing Date, as follows:

Section 4.1 Organization and Qualification. The Seller (a) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and (b) has all necessary power and authority to own, lease and operate the Purchased Assets and to carry on the Business as it is presently conducted. Neither the character of the Seller’s assets nor the nature of the Business requires the Seller to be qualified to do business as a foreign corporation in any jurisdiction outside those identified in Schedule 4.1 of the Seller Disclosure Schedules, except where the failure to be so qualified would not have a Material Adverse Effect, and the Seller is duly qualified as a foreign limited liability company and in good standing in each jurisdiction listed in Schedule 4.1 of the Seller Disclosure Schedules. The Seller has previously made available to the Buyer true and complete copies of the Seller’s Certificate of Formation (the “Seller Certificate of Formation”) and the Seller’s operating agreement, in each case as amended to the date of this Agreement, and each as so delivered is in full force and effect.

Section 4.2 Authority. The Seller has all requisite power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder, and to consummate the Transactions. The execution, delivery, and performance by the Seller of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by the Seller of the Transactions have been duly and validly authorized by all necessary action on the part of the Seller. This Agreement has been, and upon Seller’s execution each of the Ancillary Agreements to which the Seller will be a party, the Ancillary Agreements will be, duly executed, and delivered by the Seller. Assuming the due and valid authorization, execution, and delivery of this Agreement and the Ancillary Agreement by Buyer, this Agreement constitutes, and upon Seller’s execution each of the Ancillary Agreements to which the Seller will be a party, the Ancillary Agreements will constitute, the legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, subject only to the effect, if any, of (a) applicable bankruptcy and other similar laws affecting the rights of creditors generally, and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

Section 4.3 No Conflict; Required Filings and Consents.

(a) Except as set forth in Schedule 4.3 of the Seller Disclosure Schedules, the execution, delivery, and performance by the Seller of this Agreement and each of the Ancillary Agreements to which the Seller will be a party, and the consummation of the Transactions, do not and will not:

(i) conflict with or violate the Seller Certificate of Formation or the operating agreement of the Seller, or any other organizational documents of the Seller;

(ii) materially conflict with or violate any Law applicable to the Seller, the Business, or any of the Purchased Assets, or by which the Seller, the Business or any of the Purchased Assets may be bound or affected; or

(iii) result in any material breach of, constitute a material default (or an event that, with notice or lapse of time or both, would become a material default) under, require any consent of or notice to any Person pursuant to, give to others any right of termination, acceleration, or cancellation of, allow the imposition of any fees or penalties, give rise to any increased, guaranteed, accelerated, or additional rights or entitlements of any Person, or result in the creation of any Encumbrance on any of the Purchased Assets pursuant to any Material Contract to which the Seller is a party or by which the Seller, the Business or the Purchased Assets may be bound or affected.

(b) Except as set forth in Schedule 4.3(b) of the Seller Disclosure Schedules, the Seller is not required to file or obtain any Order or Permit of or with any Governmental Authority in connection with the execution, delivery and performance by the Seller of this Agreement and each of the Ancillary Agreements to which it will be a party or the consummation of the Transactions or in order to prevent the termination of any material right, privilege, license, or qualification of the Business or the Purchased Assets.

Section 4.4 Title to Assets; Sufficiency of Assets.

(a) The Seller has good and valid title to or a valid leasehold interest in (or other right to use) all of the Purchased Assets, free and clear of any Encumbrance, other than Permitted Encumbrances. The delivery to the Buyer of the Bill of Sale and other instruments of assignment, conveyance and transfer pursuant to this Agreement and the Ancillary Agreements will transfer to the Buyer good and valid title to or a valid leasehold interest in (or other right to use) all of the Purchased Assets, free and clear of any Encumbrance other than those Permitted Encumbrances identified on Schedule 4.4(a) of the Seller Disclosure Schedules.

(b) The Purchased Assets constitute all of the assets, properties, and rights necessary and sufficient for the conduct and operation of the Business as currently conducted.

Section 4.5 Financial Statements; No Undisclosed Liabilities.

(a) True and complete copies of the unaudited balance sheet of the Business as of fiscal year-end 2017, fiscal year-end 2018, December 31, 2019, and December 31,

2020 and the related statements of income of the Business for the fiscal years then ended, together with related notes and schedules thereto, (collectively referred to as the “Financial Statements”) and the unaudited balance sheet of the Business as of April 21, 2021 (the “Latest Balance Sheet Date”), and the related statements of income, together with related notes and schedules thereto (collectively referred to as the “Interim Financial Statements”), are attached as Schedule 4.5(a) of the Seller Disclosure Schedules. Each of the Financial Statements and the Interim Financial Statements (i) are correct and complete in all material respects and have been prepared in accordance with the books and records of the Business, (ii) have been prepared in accordance with GAAP, and (iii) fairly present, in all material respects, the financial position, results of operations of the Business as of the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein and subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments that will not, individually or in the aggregate, be material.

(b) Except as and to the extent adequately accrued or reserved against in the unaudited balance sheet of the Business as of December 31, 2020 (such balance sheet, together with all related notes and schedules thereto, the “Balance Sheet”), the Seller does not have any liability or obligation of any nature arising out of, relating to or affecting the Business, whether accrued, absolute, contingent or otherwise, whether known or unknown and whether or not required by GAAP to be reflected in a balance sheet of the Business or disclosed in the notes thereto, except for liabilities and obligations, incurred in the ordinary course of business since the date of the Balance Sheet, that are not, individually or in the aggregate, material to the Seller or the Business.

Section 4.6 Absence of Certain Changes or Events. Except as set forth on Schedule 4.6 of the Seller Disclosure Schedules, since December 31, 2020, the Seller has conducted the Business in all material respects in the ordinary course of business and, in each case, with respect to the Business and the Purchased Assets:

(a) there has not been a Material Adverse Effect;

(b) none of the Business or the Purchased Assets has suffered any loss, damage, destruction, or other casualty affecting any of the Purchased Assets, having a cost of [REDACTED] or more, regardless of whether or not covered by insurance, except for reasonable wear and tear;

(c) the Seller has not entered into, amended, or terminated any Material Contract, and, to the Knowledge of the Seller, there has not occurred any material default under any Material Contract to which the Seller is a party or by which it is, or any of the Purchased Assets are, bound;

(d) there has not occurred any increase in or modification of the compensation or benefits payable or to become payable by the Seller to any of its full-time and salaried Employees or Independent Contractors (other than increases in the base salaries or other wages of Employees who are not officers in an amount that does not exceed 10% of such base salaries or other wages), any new loans or extension of existing loans to any of its Employees or Independent Contractors (other than routine expense advances to Employees consistent with past

practice), and the Seller has not entered into any Contract, or amended any existing Contract, or other agreement, to grant or provide (nor has granted any) severance, acceleration of vesting or other similar benefits to any such Employees or Independent Contractors;

(e) there has not occurred any adoption, amendment or termination of any Employee Plan except in the ordinary course of business or as required by applicable Law;

(f) there has not occurred the execution of any employment agreements with the Employees or the extension of the term of any existing employment agreement with the Employees;

(g) the Seller has not incurred, created, or assumed any Encumbrance (other than Permitted Encumbrances) on any of the Purchased Assets;

(h) the Seller has not sold, disposed of, transferred or licensed to any Person any rights to any Seller Intellectual Property other than non-exclusive licenses granted by the Seller in the ordinary course of business; and

(i) there has not occurred any entry into any Contract by the Seller to do any of the things described in the preceding clauses (a) through (h) (other than negotiations and agreements with the Buyer and its representatives regarding the Transactions).

Section 4.7 Compliance with Law; Permits.

(a) The Seller has been and is in compliance in all material respects with all Laws applicable to the conduct or operation of the Business and the ownership or use of the Purchased Assets. Except as otherwise set forth in Schedule 4.7 of the Seller Disclosure Schedules, none of the Seller or, to the Knowledge of the Seller, any of its officers has received during the past three (3) years, any notice, Order, complaint, or other communication from any Governmental Authority or any other Person that the Seller is not in compliance with any such Laws. To the Seller's Knowledge, except as otherwise set forth in Schedule 4.7 of the Seller Disclosure Schedules, no investigation, or review by any Governmental Authority or any other Person with respect to the Seller is pending or threatened, nor within the last three (3) years has there been any such investigation or review.

(b) Schedule 4.7(b) of the Seller Disclosure Schedules sets forth a true and complete list of all material permits, licenses, franchises, approvals, certificates, certifications, consents, registrations, or authorizations of any Governmental Authority necessary for the operation of the Business as currently conducted (including, without limitation, with respect to the Animals) and required under applicable Laws (the "Permits"). The Seller has obtained and is in compliance in all material respects with all of the Permits. The Seller is not in material violation of or default (with or without notice or lapse of time or both) under any such Permits. All of the Permits are in full force and effect. Except as set forth on Schedule 4.7(b)(ii) of the Seller Disclosure Schedules, none of the Permits may be transferred in accordance with applicable Law and assigned to the Buyer.

(c) The Seller has retained all Business Records as required in all material respects by all applicable Laws, including regulations promulgated by any Governmental Authority, with respect to the Permits held by it.

Section 4.8 Litigation.

(a) Except as otherwise set forth in Schedule 4.8(a) of the Seller Disclosure Schedules, there is no Action pending or, to the Knowledge of the Seller, threatened in writing, in each case, as would be material to the Business or the Purchased Assets:

(i) against the Seller in connection with the Business or the Purchased Assets or the Seller's ownership or operation thereof;

(ii) to the Knowledge of the Seller, against any present Employee in such individual's capacity as such; or

(iii) seeking to prevent, hinder, modify, delay, or challenge any of the Transactions.

(b) Except as otherwise set forth in Schedule 4.8(a) of the Seller Disclosure Schedules, there is no outstanding or pending Order of, or, to the Knowledge of the Seller, investigation threatened in writing by, any Governmental Authority relating to the Business, the Purchased Assets, the Seller's ownership or operation thereof, or any of the Transactions.

(c) Except as otherwise set forth in Schedule 4.8(a) of the Seller Disclosure Schedules, there is no Action by the Seller pending against any other Person in connection with the Business or the Purchased Assets.

Section 4.9 Real Property.

(a) Schedule 4.9 of the Seller Disclosure Schedules sets forth a true and complete list of all Leased Real Property. The Seller has leasehold title to all Leased Real Property free and clear of all Encumbrances (except Permitted Encumbrances). To the Knowledge of Seller, no parcel of Leased Real Property is subject to any governmental Order to be sold or is being condemned, expropriated or otherwise taken by any public authority with or without payment of compensation therefor, nor has any such condemnation, expropriation or taking been proposed. All leases of Leased Real Property and all amendments and modifications thereto are in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity, and there exists no material default under any such lease by the Seller or to the Knowledge of Seller, any other party thereto, nor any event which, with notice or lapse of time or both, would constitute a material default thereunder by the Seller or any other party thereto. A true and correct copy of all leases with respect to any Leased Real Property and any and all amendments thereto have been furnished to the Buyer.

(b) Except as set forth on Schedule 4.9(b) of the Disclosure Schedules, the portions of the buildings located on each Leased Real Property that are used in the Business,

are each in good repair and condition, normal wear and tear excepted, and are in the aggregate sufficient to satisfy the Seller's current normal business activities as conducted thereon and, to the Knowledge of the Seller, there is no latent material defect in the improvements on any Leased Real Property, structural elements thereof, or the mechanical systems (including, but not limited to, all heating, ventilating, air conditioning, plumbing, electrical, utility and sprinkler systems) therein. Except as otherwise set forth in Schedule 4.9(b) of the Seller Disclosure Schedules, none of the Seller or any of its Affiliates has received written notice of any special assessment or pending improvement lien to be made by any Governmental Authority or any violations of building codes and/or zoning ordinances or other governmental regulations with respect to any Leased Real Property, in either case, which may affect any of the Leased Real Property in any material respect.

Section 4.10 Personal Property; Animals.

(a) Schedule 4.10(a) of the Seller Disclosure Schedules set forth a true and complete list of (i) all Personal Property owned or leased by the Seller or used in the Business having an original cost of [REDACTED] or more, and all vehicles owned or leased by the Seller or used in the Business regardless of cost, and (ii) each lease or other Contract (the "Personal Property Contracts") for an annual amount in excess of [REDACTED] and all vehicle leases regardless of amount, under which the Seller is the lessee of, or holds or operates, any Personal Property owned by a third Person.

(b) All of the Personal Property has been maintained in all material respects in accordance with past practice and generally accepted industry practice. Each item of the Personal Property is in all material respects in good operating condition and repair, ordinary wear and tear excepted, and is adequate for the uses to which it is being put. All leased Personal Property is, in all material respects, in the condition required of such property by the terms of the lease applicable thereto.

(c) Schedule 4.10(c) of the Seller Disclosure Schedules sets forth a complete and accurate list (excepting de minimis deviations on account of (i) animal births and deaths in the ordinary course of business, and (ii) small fish and birds that are not regularly inventoried) of all animals (including, for the sake of clarity, all marine mammals), as of the date set forth on such list, owned or cared for by the Seller or otherwise loaned to the Seller for use in the Business (each, an "Animal" and collectively, the "Animals"), including, as applicable, to the Knowledge of the Seller, the type of animal, their respective ages, names, the time during which they have been owned or cared for by the Seller or otherwise used in the Business. To the Knowledge of the Seller, except as set forth on Schedule 4.10(c) of the Seller Disclosure Schedules, (i) none of the Animals was obtained or procured in violation of any Laws, including, without limitation, through any "gray" market or by other illicit means; and (ii) any and all Persons from which the Seller obtained or procured such Animals was fully licensed and held all required Permits for the ownership, transfer, and transportation of such Animals at the time such Animals were procured. In addition, (A) all Animals owned by the Seller are owned free and clear of any Encumbrances, except for Permitted Encumbrances; (B) all Animals are maintained in, and work under, reasonably clean and humane conditions and are provided with regular medical care and checkups, in each case, in accordance with industry standards and applicable regulatory requirements; (C) none of such Animals have, during the past three (3) years while in the Seller's possession, been cared for in any manner by any Person, including, without limitation, any

employee of the Seller, any customer or any other Person, in each case, in any material respect in breach or violation of industry standards and applicable regulatory requirements, and, none of such Animals has ever caused material harm or injury to any human; (D) the Seller is not, nor has it been during the past three (3) years, in material violation of any Laws regarding the care, feeding, housing or use or treatment of any of such Animals, and the Seller has not received any notice of any violation of any Law from any Governmental Authority or industry regulatory or accreditation body or organization; and (E) the Seller is a fully-accredited member in good standing of the Alliance of Marine Mammal Parks and Aquariums and the American Humane Association. Neither the execution nor delivery of this Agreement or the consummation of the Transactions will impair the Seller's ownership of such Animals prior to the Closing and at the Closing the Buyer will obtain good and valid title to all animals owned by Seller, free and clear of any Encumbrances, except for Permitted Encumbrances.

Section 4.11 Intellectual Property.

(a) Schedule 4.11 of the Seller Disclosure Schedules sets forth a true and complete list of all material Intellectual Property used by, owned (in whole or in part) by, or exclusively licensed to, the Seller that is used or held for exclusive use in connection with the Business, including the design, development, manufacture, use, import, sale, licensing or other exploitation of Company Products (the "Seller Intellectual Property"), including any pending applications to register any of the Seller Intellectual Property, identifying for each, as applicable, whether it is owned by or exclusively licensed to the Seller. The Seller Intellectual Property set forth on Schedule 4.11 of the Seller Disclosure Schedules reflects all the Seller Intellectual Property that is, or has been, used exclusively in connection with the Business.

(b) No registered Mark identified on Schedule 4.11 of the Seller Disclosure Schedules is now involved in any opposition or cancellation proceeding and, to the Knowledge of the Seller, no such proceeding is or has been threatened with respect to any of such Marks. No Patent identified on Schedule 4.11 of the Seller Disclosure Schedules has been or is now involved in any interference, reissue or reexamination proceeding and, to the Knowledge of the Seller, no such proceeding is or has been threatened with respect thereto any of such Patents.

(c) Except as set forth on Schedule 4.11 of the Seller Disclosure Schedules, the Seller owns, free and clear of any and all Encumbrances, all of the Seller Registered IP and domain name registrations disclosed by Seller therein. Without limiting the foregoing, to the Knowledge of the Seller, any and all Intellectual Property used or held for exclusive use in connection with the Business that was developed, written, conceived, compiled, discovered or otherwise created in whole or in part by any Employee, consultant or contractor of the Seller on behalf of, for the benefit of, or in any way in connection with services provided to the Seller, is exclusively owned by the Seller. The Seller has not received any notice or claim challenging its ownership of any of the Seller Intellectual Property, nor, to the Knowledge of the Seller, is there a reasonable basis for any claim that it does not so own any of the Seller Intellectual Property.

(d) To the Knowledge of the Seller, the Seller has taken all reasonable steps in accordance with standard industry practices to protect its rights in the Seller Intellectual Property and at all times has maintained the confidentiality of all information that constitutes or constituted a Trade Secret included therein.

(e) To the Knowledge of the Seller, all registered Marks, issued Patents and registered Copyrights identified on Schedule 4.11 of the Seller Disclosure Schedules (“Seller Registered IP”) are valid and subsisting and enforceable, and the Seller has not received any written notice or claim challenging the validity or enforceability of any Seller Registered IP or alleging any misuse of such Seller Registered IP.

(f) To the Knowledge of the Seller, neither the activities or operations of the Business nor any of the Seller’s activities or operations in connection with the Business have infringed upon, misappropriated, violated, diluted or constituted the unauthorized use of, any Intellectual Property of any third party, and the Seller has not received any written notice or claim asserting or suggesting that any such infringement, misappropriation, violation, dilution or unauthorized use is or may be occurring or has or may have occurred, nor to the Knowledge of the Seller, is there a reasonable basis therefor.

(g) Upon the consummation of the Closing, the Buyer shall succeed to all of the Seller’s rights and interest in or under all Seller Intellectual Property that is necessary for the conduct of the Business as currently and proposed to be conducted, and all of the Seller’s rights under all Seller Intellectual Property shall be utilizable by the Buyer to the same extent as by the Seller prior to the Closing.

Section 4.12 Inventory. All Inventory was acquired and has been maintained in accordance with the regular business practices of the Seller, consists of new and unused items of a quality and quantity substantially all of which is usable or saleable in the ordinary course of business, and is valued at prices equal to the lower of cost or realizable value and in accordance with GAAP applied on a basis consistent with the Financial Statements, with adequate provisions or adjustments for excess inventory, slow-moving inventory, spoilage and inventory obsolescence and shrinkage. All Inventory consists of products of quality and quantity commercially usable and saleable at not substantially less than market price in the ordinary course of business, except for any items of obsolete material or material below standard quality, substantially all of which have been written down to realizable market value, or for which adequate reserves have been provided.

Section 4.13 Employees.

(a) Schedule 4.13 of the Seller Disclosure Schedules sets forth the following: a true, complete and accurate list of each Employee (other than Bill Lentz) as of August 12, 2021, his or her dates of hire, position and title (if any), current rate of compensation (identifying bonuses, commissions, incentive compensation and equity-based compensation, if any, separately), whether such Employee is hourly or salaried, whether such Employee is exempt or non-exempt, the number of such Employee’s accrued sick days and vacation days, whether such Employee is absent from active employment and, if so, the date such Employee became inactive, the reason for such inactive status, and, if applicable, the anticipated date of return to active employment. Except as set forth on Schedule 4.13 of the Seller Disclosure Schedules, the Seller does not have any unsatisfied liability to any previously terminated Employee of the Seller. The Seller has delivered to the Buyer all written employee handbooks, policies, programs and arrangements applicable to the Employees of the Seller. No Employee listed on Schedule 4.13 of the Seller Disclosure Schedules has received any bonus or increase in compensation since

December 31, 2020, except in the ordinary course of business, nor since such date has there been any promise orally or in writing to any such Employee of any bonus or increase in compensation.

(b) No Key Employee has informed the Seller, in writing, of any plans to terminate his or her employment by the Business, as a result of the transactions contemplated hereby, or otherwise.

(c) All Employees are “employees at will” or otherwise employed or engaged such that the Seller may lawfully terminate the Seller’s employment with such Employee at any time, with or without cause, without creating any material cause of action against the Seller or otherwise giving rise to any liability of the Seller for wrongful discharge, breach of contract or tort or any other similar cause at law or in equity as a result of such termination. A complete and correct copy of any form of non-competition, non-solicitation, proprietary rights, or confidentiality Contract currently in force with any of the Employees, and any material variances therefrom, has been delivered to Buyer.

(d) To the Knowledge of the Seller, each Person currently or, in the last three (3) years, formerly retained as an Independent Contractor by the Seller qualifies or qualified as an Independent Contractor and not as an employee of the Seller under the Code and all applicable Laws. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall cause the Seller to be in Breach of any Contract with any Employee or cause the Seller to be liable to pay any severance or other amount to any Employee. The Seller has not made any commitment to any of the Employees in respect of any possible employment or other engagement, or increases in compensation, by the Buyer following the Closing.

Section 4.14 Labor Matters.

(a) Except as otherwise set forth in Schedule 4.14(a) of the Seller Disclosure Schedules, no charge or complaint of employment discrimination, harassment or retaliation, or other similar charge or complaint has been made against the Seller during the last three (3) years, or is pending or, to the Knowledge of the Seller, threatened.

(b) The Seller is not a party to or bound by any collective bargaining Contract applicable to any Employees. To the Knowledge of the Seller, no organizational effort is presently being made or threatened by or on behalf of any labor union with respect to the Employees. The Seller is not engaged in any unfair labor practice with respect to its Employees and to the Knowledge of the Seller, there is (i) no unfair labor practice allegation, charge or complaint pending against the Seller or, to the Knowledge of the Seller, threatened against the Seller before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining Contract is so pending against the Seller, or to the Knowledge of the Seller, so threatened, (ii) no strike, concerted slow down or concerted work stoppage pending against the Seller or, to the Knowledge of the Seller, threatened against the Seller, and (iii) no union representation question, petition or proceeding pending with respect to the Employees.

(c) The Seller has complied in all material respects with all applicable Laws relating to labor, labor relations or employment, including any provisions thereof relating to equal employment opportunity, wages, benefits, employment withholdings and deductions, hours, overtime regulation, classification of employees, classification of Independent Contractors, employee safety, immigration control, personnel files, drug testing, termination pay, vacation pay, sick pay, PTO, fringe benefits, WARN Act, anti-discrimination, anti-retaliation, anti-harassment, workers' compensation, anti-kickback, collective bargaining and the payment or accrual of the same, and all Taxes, insurance and all other costs and expenses applicable thereto, and the Seller is not liable for any arrearage, or any Taxes, costs or penalties for failure to comply with any of the foregoing. To the Knowledge of the Seller, the Seller will not incur any liabilities, penalties or other charges under the Worker's Adjustment and Retraining Notification Act or any similar state law as the result of the consummation of the Transactions.

Section 4.15 Employee Benefit Plans.

(a) All Employee Plans are listed in Schedule 4.15(a) of the Seller Disclosure Schedules.

(b) With respect to each material Employee Plan, the Seller has made available to the Buyer true and complete copies of (i) the governing plan document, all amendments thereto, (ii) the most recent summary plan description (as currently in effect) and any summary of material modification, and (iii) all material non-routine correspondence received from any governmental authority regarding any Employee Plan within the past three years.

(c) Each Employee Plan has been administered in compliance, in all material respects, with its terms and with ERISA and all other applicable Laws (including Section 409A of the Code). There are no Actions (other than routine, non-contested Actions for benefits) pending or threatened against the Seller or against any administrator or fiduciary of such Employee Plans, which could result in any material liability to the Seller or the Buyer.

(d) With respect to each Employee Plan intended to qualify under Section 401(a) of the Code: (i) the IRS has issued a favorable determination letter or opinion letter upon which the Seller is entitled to rely under IRS pronouncements, that such Employee Plan is qualified under Section 401(a) of the Code and the related trusts are exempt from federal income tax under Section 501(a) of the Code; and (ii) no action or, to the Knowledge of the Seller, omission occurred with respect to any such Employee Plan since the date of its most recent determination letter or opinion letter which would reasonably be expected to adversely affect its qualification.

(e) No Employee Plan is or was within in the past six years, and neither the Seller nor any ERISA Affiliate has any liability or obligation under any (i) defined benefit pension plan subject to Section 412 of the Code and/or Title IV of ERISA; (ii) a multi-employer plan as described in Section 4001(a)(3) of ERISA; (iii) a multiple employer plan as described in Section 413(c) of the Code and/or (iv) a "multiple employer welfare arrangement," as defined in Section 3(40)(A) of ERISA.

(f) Neither the Seller nor any ERISA Affiliate of the Seller have engaged in any transaction in connection with which any of them would be subject either to a civil penalty assessed pursuant to Section 502 of ERISA or a tax imposed by Section 4975 of the Code. The execution and performance of this Agreement will not involve any non-exempt “prohibited transaction” within the meaning of Section 406 of ERISA or Section 4975 of the Code.

(g) The Seller and each ERISA Affiliate has complied with (i) the notice and continuation coverage requirements, and all other requirements, of Section 4980B of the Code and Parts 6 and 7 of Title I of ERISA, and the regulations thereunder, and (ii) the minimum essential coverage and affordability requirements of the Patient Protection and Affordable Care Act of 2010, as amended, in each case, with respect to each Employee Plan that is a group health plan.

(h) The execution and performance of this Agreement will not (i) constitute a stated triggering event under any Employee Plan or Contract that will result in any payment (whether of severance pay or otherwise) becoming due to any Employee or Independent Contractor, (ii) accelerate the time of payment or vesting or increase the amount of compensation due to any Employee or Independent Contractor, (iii) cause any individual who is employed by or otherwise performing services in connection with the Business to accrue or receive additional benefits, service or accelerated rights to payment of benefits, or (iv) directly or indirectly cause the Seller to transfer or set aside any assets to fund or otherwise provide benefits for any individual who performs or has performed services for the Seller in connection with the Business.

(i) The Seller does not provide, nor has it at any time provided, with respect to Employees and former employees of the Seller that provided services to the Business, coverage under any Employee Plan (including, without limitation, life insurance, disability, medical, dental, prescription drugs, or accidental death or dismemberment) to any of their retirees, other than any continuation or conversion coverage which any such retiree may have purchased at his or her own expense.

(j) The Transactions will not be the direct or indirect cause of any amount paid or payable by the Seller being classified as an excess parachute payment under Section 280G of the Code.

Section 4.16 Taxes.

(a) The Seller has duly filed all income and other material Returns relating the Purchased Assets and Business required or due to be filed (with regard to applicable extensions) on or prior to the Closing Date. All such Returns are complete and accurate in all material respects and have been prepared in compliance with all applicable Laws. No issue relating to Taxes with respect to the Purchased Assets or the Business has been raised by a taxing authority during any pending audit or examination, and no issue relating to Taxes with respect to the Purchased Assets or the Business was raised by a taxing authority in any completed audit or examination, that reasonably can be expected to recur in a later taxable period. All Taxes due and owing by the Seller with respect to the Purchased Assets or the Business have been paid (whether or not shown on any Tax Return and whether or not any Tax Return was required). The Seller is not currently the beneficiary of an extension of time within which to file any Tax Return, except

for an extension to file its 2020 Tax Return. The Seller does not have any liability for the Taxes of any Person (i) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law), (ii) as a transferee or successor, (iii) by Contract, or (iv) otherwise (excluding in each case any Contract or arrangement entered into in the ordinary course of business and not primarily related to Taxes). The Seller is not a party to or bound by any Tax allocation or Tax sharing agreement with any Person.

(b) There are no Encumbrances on any of the Purchased Assets that arose in connection with any failure (or alleged failure) to pay any Tax other than Permitted Encumbrances.

(c) The Seller has withheld all required amounts from its Employees, agents, contractors, customers, and nonresidents relating the Purchased Assets and Business and remitted such amounts to the proper agencies.

(d) No claim has ever been made by any taxing authority in any jurisdiction in which the Seller does not file Tax Returns that the Seller is or may be subject to taxation by, or required to file a Return in, that jurisdiction with exclusive respect to the Purchased Assets or the Business.

(e) There is no dispute or claim concerning any Tax liability of the Seller with respect to the Purchased Assets or the Business either (i) claimed or raised by any taxing authority in writing, or (ii) to the Knowledge of the Seller, based upon personal contact with any agent of such taxing authority.

(f) The Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency with respect to the Purchased Assets or the Business which waiver or extension is still in effect and no request for any such waiver or extension is currently pending.

(g) The Seller is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

Section 4.17 Material Contracts.

(a) The Contracts listed on Schedule 4.17(a) of the Seller Disclosure Schedules constitute all of the material Contracts of the Seller that relate exclusively to the Business or by which the Purchased Assets or the Assumed Liabilities are bound or affected in any respect, which list shall include, all of the following (collectively the “Material Contracts”):

(i) any broker, distributor, dealer, manufacturer’s representative, franchise, agency, continuing sales or purchase, sales promotion, sales representative, market research, marketing, consulting or advertising Contract providing for payments in excess of [REDACTED] per year (other than the sell-side advising contract with Genesis Capital);

(ii) any employment or consulting Contract, or any other type of Contract with any Employee or Independent Contractor providing for payments in excess

of [REDACTED] per year that is not immediately terminable by the Seller without cost or liability, and/or any Contract requiring it to make a payment to any Employee or Independent Contractor on account of the any of the Transactions or any Contract that is entered into in connection with any of the Transactions;

(iii) any Contract related to the Business that limits, or purports to limit, the ability of the Seller to compete in any line of business or with any Person or in any geographic area or during any period of time, or that restricts the right of the Seller to sell to or purchase from any Person or to hire any Person, or that grants the other party or any third Person “most favored nation” status or any type of special discount rights;

(iv) any Contract pursuant to which the Seller is the lessee or lessor of, or holds, uses, or makes available for use to any Person (other than the Seller), any real property;

(v) any Personal Property Contract providing for payments in excess of [REDACTED] per year;

(vi) any Contract relating in whole or in part to any Seller Intellectual Property excluding licenses to use off-the-shelf software, hardware or other technology that is generally available on standard terms to the public, including open source software licenses;

(vii) any Contract relating to any design, development, manufacture and/or distribution of any Company Products for or at the direction of any third party providing for payments in excess of [REDACTED] per year;

(viii) any warranty for Company Products manufactured or sold by the Seller, other than standard warranties of the Seller included in the packaging of such products;

(ix) any continuing Contract for the purchase, sale or license of materials, supplies, equipment, services, Intellectual Property or other assets involving in the case of any such Contract more than [REDACTED] over the life of the Contract (excluding licenses to use off-the-shelf software, hardware or other technology that is generally available on standard terms to the public, including open source software licenses);

(x) any Contract for capital expenditures in excess of [REDACTED] in the aggregate; and

(xi) any settlement Contract affecting the Purchased Assets; and

(xii) any Contract related to the Business with any Governmental Authority.

(b) Each Material Contract is a legal, valid and binding agreement and is in full force and effect, enforceable against the Seller in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar laws affecting the rights of

creditors generally, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. None of the Seller or, to the Knowledge of the Seller, any other party is in material breach or violation of, or (with or without notice or lapse of time or both) material default under, any Material Contract, nor has the Seller received any written claim of any such material breach, violation or default. The Seller has delivered or made available to the Buyer true and complete copies of all Material Contracts, including any amendments thereto.

Section 4.18 Insurance Policies. The Seller has been covered during the past six (6) years by insurance in scope and amount customary and reasonable for the Business. The Seller has delivered to the Buyer complete and correct copies of all policies and binders of insurance relating to the Business (each of which are listed on Schedule 4.18 of the Seller Disclosure Schedules), including property, general liability, casualty, product liability, life, health, accident, workers' compensation, disability insurance, bonding arrangements and umbrella insurance policies, maintained as of the date hereof by the Seller (collectively, the "Insurance Policies"), together with descriptions of all "self-insurance" programs. All of the Insurance Policies are in full force. None of the Insurance Policies will be Purchased Assets and transfer to the Buyer in connection with the Transactions.

Section 4.19 Affiliate Interests; Transactions and Conflicts of Interest.

(a) Except as set forth on Schedule 4.19(a) of the Seller Disclosure Schedules, to the Knowledge of the Seller, no Related Party of the Seller: (i) owns, directly or indirectly, any equity or other financial or voting interest in any material competitor, supplier, licensor, lessor, distributor, independent contractor or customer of the Business, except for ownership of not more than 5% of the voting power of or economic interest in such Person; (ii) owns or has owned, directly or indirectly, or has or has had any financial interest in any property (real or personal, tangible or intangible) used in the Business; (iii) has or has had a financial interest in any transaction with the Business or with the Seller involving the Business or any of the Purchased Assets, other than business dealings or transactions conducted in the ordinary course of business at prevailing market prices and on prevailing market terms; or (iv) is an Employee.

(b) Except for this Agreement and the Ancillary Agreements, there are no agreements related to the Business between the Seller and any Related Party, or any advances or other amounts owing to the Seller by such Related Party related to the Business.

(c) None of the Seller or, to the Knowledge of the Seller, any officer, manager, or Employee of the Seller has, directly or indirectly, given or agreed to give any money, gift or similar benefit to any official or employee of any Governmental Authority that (i) would reasonably be expected to subject the Seller to any damage, fine, or penalty in any Action, or (ii) if not continued in the future, would be reasonably likely to have a Material Adverse Effect.

Section 4.20 Customers and Suppliers.

(a) Schedule 4.20(a) of the Seller Disclosure Schedules sets forth a true and complete list of (i) the names of the top ten (10) customers of the Business during the twelve (12) months ended December 31, 2020 and (ii) the amount for which each such customer was

invoiced during such period. The Seller has not received any written notice that any of such customers (A) has ceased or substantially reduced, or will cease or substantially reduce, use of the Seller's products or services, or (B) has sought, or is seeking, to reduce the price it will pay for such products or services. None of such customers has sought, or is seeking, a rebate, or reduction in billed or unbilled charges. In the past twelve (12) months, to the Knowledge of the Seller, none of such customers has ever initiated a quality review or other similar inquiry with respect to the services of the Seller.

(b) Schedule 4.20(b) of the Seller Disclosure Schedules sets forth a true and complete list of (i) the top ten (10) suppliers of the Business, during the twelve (12) months ended December 31, 2020, in each case identifying the amount for which each such supplier invoiced the Seller during such period. The Seller has not received any written notice that there has been any adverse change in the price of such supplies or services provided by any such supplier. To the Knowledge of the Seller, no such supplier has otherwise threatened to stop selling supplies or services to the Business as a result of the consummation of the Transactions. In the past twelve (12) months, no such supplier has threatened to cease supplying products or services to the Seller in connection with the Business.

Section 4.21 Brokers and Finders. Except for certain broker fees owed to Genesis Capital, none of the Seller or any of its Affiliates has incurred any liability for any brokerage fees, commissions or finders' fees to any broker or finder employed or engaged thereby in connection with the Transactions for which the Seller, the Buyer or any of their respective Affiliates would be liable.

Section 4.22 IT Systems; Privacy and Security. The Seller has implemented and maintained and is and has been, to the Knowledge of the Seller, in material compliance with, an information security program that includes administrative, technical and physical safeguards for its IT Systems (including those provided to the Seller by third parties) to protect against reasonably anticipated threats or hazards to the privacy, security, integrity and/or confidentiality of the Purchased Assets and which provide protections that are equivalent to those required by applicable Information Privacy and Security Laws. To the Knowledge of the Seller, there has been no material breach of the security of any IT Systems or unauthorized access, use, processing, transfer, alteration, modification, loss, compromise, or disclosure of any Personal Data or other Business Data for which notification to individuals, Governmental Authorities or other Persons is required under any applicable Information Privacy and Security Laws or which would constitute a material breach of any terms or conditions of any Contracts to which the Seller is a party. To the Knowledge of the Seller, all databases comprising Business Data were created and/or compiled by the Seller in accordance with applicable Information Privacy and Security Laws in all material respects.

Section 4.23 Environmental Matters.

(a) The Purchased Assets are in compliance in all material respects with applicable Environmental and Safety Laws. All Hazardous Materials generated by the Seller in connection with the Purchased Assets have been disposed of in accordance in all material respects with all Environmental and Safety Laws.

(b) Except as set forth on Section 4.2 of the Seller Disclosure Schedules, no notices, administrative actions, claims, written communications or suits are pending or, to the Knowledge of the Seller, threatened relating to an actual or alleged material violation of or liability or potential liability under any applicable Environmental and Safety Laws by or related to the Seller with respect to the Purchased Assets.

(c) To the Knowledge of the Seller, there have not been during the Seller's operation of the Business, and are not now, except as set forth on Schedule 4.23 of the Disclosure Schedules, any underground tanks or underground improvements at, on, or under the Leased Real Property.

(d) The Leased Real Property and the Seller's and the Business' uses and activities therein are in compliance in all material respects with all Environmental and Safety Laws.

(e) The Seller has all material Permits which are required with respect to the Purchased Assets under applicable Environmental and Safety Laws. The Seller has delivered to the Buyer true and complete copies of all such material Permits.

(f) There are no and have not been any Hazardous Materials used, generated, treated, stored, transported, disposed of or handled on, under or about the Leased Real Property by the Seller, in material violation of or which would reasonably be expected to give rise to a material liability or obligation under Environmental and Safety Laws.

(g) The Seller has delivered to the Buyer true and complete copies of all environmental Phase I Environmental Site Assessment reports and other material environmental investigations, studies, audits, tests, reviews or other analyses in the possession or reasonable control of the Seller in relation to the Leased Real Property or Purchased Assets.

Section 4.24 Restrictions on Business Activities. There is no Contract, judgment, injunction, order or decree binding upon the Seller that has or would reasonably be expected to have, whether before or after consummation of the Transactions, the effect of prohibiting or impairing any current business practice of the Seller in connection with the Business, or the conduct of Business by the Seller as currently conducted.

Section 4.25 NO OTHER REPRESENTATIONS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS Article IV, THE DISCLOSURE SCHEDULES AND IN THE ANCILLARY AGREEMENTS, NEITHER THE SELLER NOR ANY OTHER PERSON MAKES ANY REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SELLER, THE BUSINESS, THE PURCHASED ASSETS, OR THE OPERATIONS, ASSETS, EQUITY INTERESTS, LIABILITIES, CONDITION (FINANCIAL OR OTHERWISE), OR PROSPECTS THEREOF. OTHER THAN WITH RESPECT TO CLAIMS FOR FRAUD, NONE OF WHICH ARE WAIVED HEREBY, THE BUYER HEREBY EXPRESSLY WAIVES ANY CLAIMS AND CAUSES OF ACTION FOR ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE, IN EACH CASE RELATING TO THE ACCURACY,

COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) HERETOFORE FURNISHED TO BUYER OR ANY OF ITS AFFILIATES, EXCEPT AS SET FORTH IN THIS ARTICLE IV, THE DISCLOSURE SCHEDULES AND THE ANCILLARY DOCUMENTS. WITHOUT LIMITING THE FOREGOING, NONE OF THE SELLER OR ANY OTHER PERSON IS MAKING ANY REPRESENTATION OR WARRANTY TO BUYER WITH RESPECT TO ANY FINANCIAL PROJECTION OR FORECAST RELATING TO THE SELLER, OR THE BUSINESS, OPERATIONS, ASSETS, LIABILITIES OR CONDITION (FINANCIAL OR OTHERWISE) OR PROSPECTS OF THE SELLER OR THE BUSINESS.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer hereby represents and warrants to the Seller as of the date hereof and as of the Closing Date, as follows:

Section 5.1 Organization. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

Section 5.2 Authority. The Buyer has full corporation power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder, and to consummate the Transactions. The execution, delivery, and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by the Buyer of the Transactions have been duly and validly authorized by all necessary corporate action. This Agreement has been, and upon Buyer's execution of each of the Ancillary Agreements to which the Buyer will be a party, each Ancillary Agreement will be, duly and validly executed and delivered by the Buyer. Assuming the due and valid authorization, execution, and delivery of this Agreement and the Ancillary Agreement by Seller, this Agreement constitutes, and upon Buyer's execution of each of the Ancillary Agreements to which the Buyer will be a party, each Ancillary Agreement will constitute, the legal, valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their respective terms, subject only to the effect, if any, of (a) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

Section 5.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery, and performance by the Buyer and the Guarantor of this Agreement and each of the Ancillary Agreements to which the Buyer and the Guarantor will be a party, and the consummation of the Transactions, do not and will not:

(i) conflict with or violate the Articles of Incorporation or Bylaws or any other organizational documents of the Buyer or the Guarantor;

(ii) conflict with or violate any Law applicable to the Buyer or the Guarantor; or

(iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, or require any consent of any Person pursuant to, any Contract to which the Buyer or the Guarantor is a party.

(b) The Buyer and the Guarantor are not required to file, seek, or obtain any Order or Permit of or with any Governmental Authority in connection with the execution, delivery and performance by the Buyer or the Guarantor of this Agreement and each of the Ancillary Agreements to which it will be party or the consummation of the Transactions.

Section 5.4 Brokers and Finders. None of the Buyer or any of its Affiliates has incurred any liability for any brokerage fees, commissions or finders' fees to any broker or finder employed or engaged thereby in connection with the Transactions for which the Seller, the Buyer or any of their respective Affiliates would be liable.

Section 5.5 Due Diligence. The Buyer has completed such investigations of the Seller as it deems necessary and appropriate, and, to the knowledge of the Buyer, has received all of the information that it has requested from the Seller in connection with the execution and delivery of this Agreement and the consummation of the Transactions.

Section 5.6 Sufficiency of Funds. At the Closing and at such time each portion of the Deferred Purchase Price is payable, each of the Buyer and Guarantor will have sufficient cash on hand or other sources of immediately available funds to enable it to pay the Purchase Price and any expenses incurred by the Buyer or the Guarantor, as applicable, in connection with the Transactions.

Section 5.7 Solvency. Immediately after giving effect to the Transactions, the Buyer and the Guarantor shall (a) be able to pay its debts as they become due; (b) own property which has a fair saleable value greater than the amounts required to pay its debts as and when they become due (including a reasonable estimate of the amount of all contingent liabilities); and (c) has adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the Transactions with the intent to hinder, delay, or defraud either present or future creditors of Buyer or the Seller.

Section 5.8 Litigation. There are no Actions pending or expressly threatened in writing against the Buyer or the Guarantor, at law or in equity, before or by any Governmental Authority which would reasonably be expected to affect the legality, validity, or enforceability of this Agreement or the consummation of the Transactions.

Section 5.9 Animals. At least one Affiliate of the Buyer is, a fully-accredited member in good standing of the Alliance of Marine Mammal Parks and Aquariums with demonstrated experience in the care of animals, including with respect to the maintenance of clean and humane conditions and provision of regular medical care and checkups in compliance with all applicable Laws. The Buyer is not now aware of any valid reason that will not be the case at Closing.

ARTICLE VI COVENANTS

Section 6.1 Interim Operating Covenants.

(a) Affirmative Covenants. From and after the date hereof through the earlier of the termination of this Agreement or the Closing, except (y) as required by Legal Requirement, or (z) as otherwise consented to by the Buyer in writing (which shall not unreasonably be withheld, conditioned or delayed), the Seller shall use commercially reasonable efforts to (i) operate the Business, the Purchased Assets and the Leased Real Property, in the ordinary course of business and in compliance in all material respects with all Laws; (ii) preserve its business organization, keep available the services of its Employees and preserve its relationships with suppliers, customers and others having business dealings with it in all material respects; (iii) maintain the Purchased Assets and the Leased Real Property in substantially the same repair, order and condition as on the date hereof, except for reasonable wear and tear and except for the repair of any item which is not Seller's obligation to maintain pursuant to the Leased Real Property leases; and (iv) perform and comply in all material respects with the Seller Contracts and Permits.

(b) Negative Covenants. Without limiting the foregoing, from and after the date hereof through the earlier of the termination of this Agreement or the Closing, except (y) as required by Law, , or (z) as otherwise consented to by the Buyer in writing (which shall not unreasonably be withheld, conditioned or delayed), the Seller shall not:

(i) enter into, modify, or amend, or terminate, or assign any Material Contract, or waive, release or assign any rights or claims thereunder, or intentionally violate any term of any such Material Contract;

(ii) sell, assign, transfer, lease, license or grant an Encumbrance (other than a Permitted Encumbrance) on any of the Purchased Assets other than sales of Inventory in the ordinary course of business;

(iii) abandon, modify, fail to renew, waive, terminate or let lapse any Permit that is required by applicable Law or material to the operation of the Business;

(iv) (A) enter into any settlement or release with respect to any Action relating to the Business; provided that this clause (A) shall not in any way limit the Seller's rights to enter into settlements or releases following the Closing that do not affect the Purchased Assets in any material manner, (B) commence any Action relating to the Business that would reasonably be expected to affect the Business in any material manner; or (C) waive, cancel, compromise or release any rights or claims of material value relating to the Business;

(v) enter into any transactions with any Related Party of the Seller;
or

(vi) (A) grant any increase, or announce any increase, in the wages, salaries, compensation, bonuses, incentives, retirement, or other benefits payable to any

Employee and/or Independent Contractor, except in the ordinary course of business, or (B) make any other changes in employment terms for any Employee and/or Independent Contractor outside the ordinary course of business.

Section 6.2 Covenants Regarding Information. In order to facilitate the resolution of any claims made by or against or incurred by the Buyer after the Closing or for any other reasonable purpose, for a period of seven (7) years following the Closing or the earlier expiration of the applicable statute of limitations (as applicable, the “Retention Period”), the Seller shall use commercially reasonable efforts to: (a) retain all books, documents, information, data, files and other records of the Seller that relate to the Business, the Purchased Assets or the Assumed Liabilities for periods prior to the Closing and which shall not otherwise have been delivered to the Buyer; (b) upon reasonable advance written notice, afford the Buyer and its officers, managers, principals, employees, advisors, auditors, agents, bankers and other representatives (collectively, “Representatives”) reasonably sufficient access (including for inspection and copying, at the Buyer’s expense), during normal business hours, to such books, documents, information, data, files and other records, including in connection with claims, proceedings, actions, investigations, audits and other regulatory or legal proceedings involving or relating to the Business, the Purchased Assets or the Assumed Liabilities; and (c) furnish the Buyer and its Representatives reasonable assistance, at the Buyer’s sole cost and expense, including access to personnel, in connection with any such claims and other proceedings. The Seller shall permit, promptly upon reasonable advance written request, the Buyer and its Representatives to use original copies of any such records for purposes of litigation; *provided*, that such records shall promptly be returned to the Seller following such use. During the Retention Period, the Seller shall not destroy any such books and records without providing the Buyer with written notice detailing the contents of such books and records and providing the Buyer with the reasonable opportunity to obtain such books and records.

Section 6.3 Employment Matters.

(a) Transferred Employees. The Buyer shall offer employment, effective on the Closing Date, to all Employees (including those who are absent due to vacation, family leave, disability leave, or any other approved leave of absence) without loss of seniority: (i) providing for base compensation rates no less than the base compensation rates in effect of the Employees immediately prior to the Closing; (ii) providing for other material benefits, compensation opportunities, and other terms and conditions of employment that are substantially similar, in the aggregate, to those in effect immediately prior to the date of this Agreement (the Employees who accept such employment and commence employment with the Buyer on the Closing Date, the “Transferred Employees”); provided, however, that the Transferred Employees shall not include any of the Employees hired by the Seller after the date of this Agreement with base compensation in excess of [REDACTED] without the Buyer’s prior written consent. The offers of employment shall be communicated to the Employees in a form to be proposed by the Buyer and agreed to in advance in writing by the Seller. The Buyer agrees that, for a period of at least twelve (12) months following the Closing, the Buyer shall continue the employment of the Transferred Employees uninterrupted without diminution in compensation rates, hours of work (for non-exempt employees), or material benefits and perquisites. Notwithstanding the foregoing, nothing herein shall limit the Buyer’s ability to terminate a Transferred Employee for cause. This Section 6.3 shall be binding upon and inure solely to the benefit of each of the Parties and the

Parties acknowledge and agree that the terms set forth in this Section 6.3 shall not create any right in any Transferred Employee or any other Person to any continued employment with the Buyer or compensation or benefits of any nature or kind whatsoever. Prior to Closing, the Seller and its Affiliates will not take any action that could reasonably be expected to impair or otherwise interfere in any way with the Buyer's ability to hire any Employee. Notwithstanding anything to the contrary in this Section 6.3, the Parties agree and acknowledge that Bill Lentz will not be a Transferred Employee and will remain employed by the Seller after the Closing.

(b) Employment Transition Provisions. The Seller shall terminate the employment of each Person, who is offered employment by the Buyer, effective concurrently with the Closing in compliance with applicable Law, any Employee Plan, any employment agreements, and all other requirements related to any Employees. Effective as of the Closing, the Transferred Employees shall cease active participation in the Employee Plans except as otherwise required by applicable Law. On the Closing Date, or as soon as reasonably practicable thereafter but in a manner that is consistent with the Seller's historical payroll practices and applicable Laws, the Seller shall pay each such Transferred Employee, and shall be solely responsible for, all accrued wages, salary, commission, bonuses and other employee compensation payments and fringe benefits (including all vacations, holidays, sick days and earned leave) and any other compensation or fringe benefits that the Seller is obligated to pay, pursuant to any Employee Plans or applicable Law for all periods on or prior to the Closing Date. The Seller shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or prior to the Closing Date or otherwise which claims are under any Employee Plan or the Seller's ERISA Affiliate's employee benefit plans. The Seller also shall remain solely responsible for all worker's compensation claims of any current or former employees of the Business which relate to events occurring on or prior to the Closing Date or otherwise relate to service with the Seller or their ERISA Affiliates.

Section 6.4 Non-Competition; Non-Solicitation.

(a) During the period beginning on the Closing Date and ending on the date that is five (5) years following the Closing Date, the Seller shall not, directly or indirectly, whether as owner, partner, investor, consultant, agent, employee, director, advisor, co-venturer or otherwise engage in the business of owning or operating a marine mammal park in the State of Florida.

(b) During the Restricted Period, the Seller shall not, directly or indirectly, whether as owner, partner, investor, consultant, agent, employee, director, advisor, co-venturer or otherwise engage in the business of owning or operating any standalone water parks, aquariums, or zoos within a 100-mile radius around the Principal Place of Business; *provided, however*, that this Section 6.4(b) shall not apply to, or otherwise prevent or prohibit, the Seller's ownership or operation of any water parks, aquariums, or zoos which are acquired by the Seller as part of a transaction involving any other business not subject to the non-compete covenants contained in Section 6.4(a) or this Section 6.4(b).

(c) During the Restricted Period, the Seller will not, and will not assist any other Person to, (i) hire or solicit for hiring any (A) Transferred Employee set forth on Schedule 6.4(b) who is such at any time during the Restricted Period and/or who was such at any time within the six (6) month period preceding the beginning of the Restricted Period, or (B) any employee of the Buyer (such individuals included in (A) and (B), the “Key Employees”).

(d) During the Restricted Period, the Seller will not, directly or indirectly, solicit or encourage any customer or supplier of the Business to terminate or diminish its relationship with the Business; *provided*, that these restrictions shall (i) apply only with respect to those Persons who are or have been a customer or supplier of the Business at any time within the twelve (12) month period prior to the Closing Date, and (ii) not restrict the Seller from engaging in any communications with any such customer or supplier so long as such communication is not competitive with the Business in violation of Section 6.4(c).

(e) The Seller acknowledges that it has carefully read and considered all the terms and conditions of this Agreement, including the restraints imposed upon it pursuant to this Section 6.4. The Seller agrees without reservation that (i) each of the restraints contained in this Section 6.4 is reasonably necessary for the reasonable and proper protection of the goodwill, Confidential Information and other legitimate interests of the Business given the Seller’s knowledge of the Business, the nature and type of business performed by the Seller, the broad geographic scope of the Seller’s business interests and pursuits, and all other facts and circumstances, and (ii) each and every one of these restraints is reasonable with respect to subject matter, length of time and geographic area. The Seller further agrees that it will never assert, or permit to be asserted on its behalf, in any forum, any position contrary to the foregoing. The Seller further acknowledges that, were it, he or she to breach any of the covenants contained in this Section 6.4, the damage to the Buyer would be irreparable. The Seller therefore agrees that the Buyer shall be entitled to enforce this Agreement and, in addition to any other remedies available to it, shall be entitled to seek preliminary and permanent injunctive relief against any breach or threatened breach by the Seller of any of said covenants, without having to post bond, together with reasonable and documented out-of-pocket attorney’s fees incurred in enforcing its rights hereunder. The Seller further agrees that in the event that any provision of this Section 6.4 is determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by Law.

Section 6.5 Payment of Liabilities. The Seller shall pay or otherwise satisfy in full all of the Excluded Liabilities.

Section 6.6 Bulk Transfer Laws. The Buyer hereby waives compliance by the Seller with any applicable bulk sale or bulk transfer Laws of any jurisdiction in connection with the sale of the Purchased Assets to the Buyer (other than any obligations with respect to the application of the proceeds therefrom). The Seller agrees that any and all liabilities that may be asserted by third parties against the Buyer as a result of the Seller’s noncompliance with any such Law shall be Excluded Liabilities.

Section 6.7 Confidentiality. During the Restricted Period, the Seller shall not, and shall cause its Affiliates and the respective Representatives of each of the Seller and its Affiliates not to, use for its or their own benefit or divulge or convey to any third party, any Confidential Information; *provided, however*, that such Persons may furnish such portion (and only such portion) of the Confidential Information as such Person reasonably determines such Person is legally obligated to disclose if: (i) such Person receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, civil investigative demand or Order issued by a Governmental Authority; (ii) to the extent not inconsistent with such request, such Person notifies the Buyer of the existence, terms and circumstances surrounding such request and consults with the Buyer on the advisability of taking steps available under applicable Law to resist or narrow such request; (iii) such Person exercises its commercially reasonable efforts to obtain an Order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information; and (iv) disclosure of such Confidential Information is required to prevent such Person from being held in contempt or becoming subject to any other penalty under applicable Law. For the purposes of this Agreement, “Confidential Information” consists of all information and data of any type and in any form directly relating to the Business (including Intellectual Property, customer and supplier lists, pricing information, marketing plans, market studies, client development plans, business acquisition plans and all other information or data), the Purchased Assets, the Transactions or the Animals, including, but not limited to, Animal care, training, licensing, regulation, identity, health and well-being, except for data or information that is or becomes generally available to the public other than as a result of a breach of this Section 6.7.

Section 6.8 Access. From the date hereof until the earlier Closing or termination of this Agreement, the Buyer and its officers, employees, attorneys, and agents (or those of its Affiliates) shall, upon reasonable advance written notice to the Seller, and in the presence of an authorized representative of the Seller, be entitled to inspect the Seller’s properties, books, documents and records relating to the Business, Purchased Assets and Leased Real Property and to make copies of the same, at such times as the parties shall mutually determine and in a such a manner that does not unreasonably interfere with the Business, and the Seller agrees to furnish all such information relating to the Business, Purchased Assets and Leased Real Property as the Buyer may reasonably request, all subject to the reasonable confidentiality undertakings by the Buyer as requested by the Seller; *provided, however*, under no circumstances shall the Buyer or any of its officers, employees, attorneys or agents (or those of its Affiliates) be permitted to conduct any materially invasive environmental testing or sampling of any environmental media or building material on or at any of the Seller’s properties including the Leased Real Property. Notwithstanding the foregoing, the Buyer shall be permitted, at its sole cost and expense, to conduct a Phase I environmental study of the Seller’s properties used in the Business. Additionally, the Seller shall permit the Buyer to inspect and conduct a physical inspection of the Business and a physical inventory of its Animals upon reasonable advance notice to the Seller, no more than seven (7) days prior to the Closing and in accordance with reasonable medical guidelines for the Animals. If this Agreement is terminated prior to the Closing, then within ten (10) days after being so requested by the Seller, the Buyer shall at its election return or destroy at its sole cost and expense all Confidential Information delivered to the Buyer by or on behalf of the Seller in connection with this Section 6.8. Any destruction of such materials shall be confirmed by the Buyer in writing.

Section 6.9 Competing Transactions. From the date hereof until the Closing or the earlier termination of this Agreement if terminated earlier, the Seller agrees that it shall not, and shall cause its Representatives not to, directly or indirectly, solicit, initiate, facilitate or encourage any inquiry, indication of interest, proposal or offer from any other Person, engage in discussions or negotiations with any other Person or furnish to any other Person any information, in each case, concerning (i) an acquisition of any equity securities or limited liability company interests of the Seller, (ii) any merger, stock sale, share exchange, tender offer, business combination, consolidation, joint venture, restructuring, reorganization, spin-off, split-off or other alternative transaction involving the Seller with or into any Person other than the Buyer (in the case of (i) and (ii), the restrictions hereunder apply only insofar as the direct or indirect result of such transaction(s) would be to prevent, make impossible or materially impede the timely consummation of the Transactions hereunder on the terms set forth herein), (iii) any sale or transfer of any of the assets or liabilities of the Seller relating to the Business to any Person other than the Buyer, or (iv) any other agreement, understanding or transaction, which would be reasonably expected to prevent or materially impede, interfere with or delay the entering into, execution or consummation of the Transactions (in each case, a “Competing Transaction”). The Seller shall, and shall cause its Representatives, to cause any pending discussions or negotiations with any other Person regarding a Competing Transaction to be ceased immediately. The Seller shall notify the Buyer promptly in writing (and in any event by no later than the second (2nd) Business Day after the Seller’s or any of its Representatives’ receipt thereof) if any offer or proposal regarding a Competing Transaction is made, and shall inform the Buyer in writing on a prompt and current basis of the details of any such Competing Transaction and any such terms of the Competing Transaction and the identity or the Person who submitted the Competing Transaction. The parties hereby agree that any violation of this Section 6.9 by any Representative shall be deemed a breach by the Seller.

Section 6.10 Consents and Filings. The Buyer shall use commercially reasonable efforts, and the Seller shall use commercially reasonable efforts to fully cooperate with Buyer in its efforts, to take, or cause to be taken, all appropriate action to do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the Transactions as promptly as practicable, including to (a) obtain from Governmental Authorities and other Persons all consents, approvals, authorizations, qualifications and Orders as are necessary to consummate the Transactions (including those set forth in Schedule 4.3(b) of the Seller Disclosure Schedules and described under Section 7.1 and Section 7.2 (collectively, the “Permits and Other Approvals”), and (b) have vacated, lifted, reversed or overturned any Order or other action (whether temporary, preliminary or permanent) that is then in effect and that enjoins, restrains, conditions, makes illegal or otherwise restricts or prohibits the consummation of the Transactions. In furtherance and not in limitation of the foregoing, the Seller shall permit the Buyer to participate in the defense and settlement of any claim, suit, or cause of action relating to this Agreement or the Transactions, and the Seller shall not settle or compromise any such claim, suit or cause of action without the Buyer’s written consent. The Parties agree that all costs required to be incurred in connection with the Permits and Other Approvals shall be borne exclusively by Buyer; *provided*, that the Seller shall be solely responsible for its own costs and expenses incurred in connection with its covenant to use commercially reasonable efforts to cooperate with the Buyer under this Section 6.10. Notwithstanding anything herein to the contrary, the Buyer shall not be required by this Section 6.10 to take or agree to undertake any action, including entering into any consent decree, hold separate order or other arrangement, that would (i) require the divestiture of

any material assets of the Buyer or any of its Affiliates or any portion of the Business or the Purchased Assets, or (ii) limit the Buyer's freedom of action with respect to, or its ability to consolidate and control, the Business or the Purchased Assets or any of the Buyer's or its Affiliates' other assets or businesses.

Section 6.11 Public Announcements. None of the Parties or their respective Affiliates shall issue or make any press release or other public statement with respect to the Transactions without the written consent of the other Party. Each Party agrees to consult with the other Party before issuing, and provide the other Party the opportunity to review and comment upon, any press release or other public statement with respect to the Transactions, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law. Notwithstanding the foregoing, each Party may discuss the Transactions (including any economic or other material terms hereof) with its employees, investors, managers, equity holders, advisors, or financing sources.

Section 6.12 Accounts and Correspondence.

(a) The Seller covenants and agrees that it shall use all commercially reasonable efforts to promptly forward to the Buyer any mail (physical, electronic or otherwise), facsimile or telephone inquiries of actual or potential clients, customers, suppliers and vendors of or relating to the Business, including customer orders.

(b) All payments and reimbursements received by the Seller in connection with or arising out of the Purchased Assets or the Assumed Liabilities (including the Pending Assets) after the Closing shall be held by the Seller in trust for the benefit of the Buyer and, not later than three (3) Business Days after receipt by the Seller of any such payment or reimbursement, the Seller shall (i) notify the Buyer of the receipt of such payment or reimbursement, and (ii) pay over to the Buyer the amount of such payment or reimbursement without right of set-off.

Section 6.13 Notifications.

(a) The Seller shall give prompt written notice to the Buyer and the Buyer shall give prompt written notice to the Seller, as the case may be, of (i) the occurrence or non-occurrence of any event of which is likely to cause any representation or warranty of the Seller or the Buyer, as the case may be, to be untrue or inaccurate at the Closing Date such that the conditions to closing set forth in Article VII would fail to be satisfied, and (ii) any failure by the Seller or the Buyer, as the case may be, to materially comply with or materially satisfy any covenant or other agreement to be complied with by it hereunder such that the conditions to closing set forth in Article VII would fail to be satisfied; *provided, however*, that the delivery of any notice pursuant to this Section 6.13(a) shall not limit or otherwise affect any remedies available to the Buyer or the Seller, as the case may be.

(b) The Seller shall give prompt written notice to the Buyer of any notice or other material communication received by the Seller from any third party, subsequent to the date of this Agreement and prior to the Closing Date, regarding any Third Party Consent that is or may be required in connection with the Transactions; *provided, however*, that the delivery of notice

pursuant to this Section 6.13(b) shall not limit or otherwise affect the remedies available hereunder to the Buyer.

(c) The Seller and the Buyer shall promptly advise the other in writing of any Action commenced after the date hereof against such party or its Affiliates or Representatives relating to this Agreement or the Transactions and shall keep the other party reasonably informed regarding any such Action.

Section 6.14 Tax Allocation. All property Taxes and similar ad valorem obligations levied with respect to the Purchased Assets for a taxable period that includes (but does not end on) the Closing Date shall be apportioned between the Seller, on the one hand, and the Buyer, on the other hand, as of the Closing Date based on the number of days of such taxable period included in the period through and including the day immediately prior to the Closing Date (“Pre-Closing Tax Period”) and the number of days of such taxable period included in the period commencing on the Closing Date (“Post-Closing Tax Period”). The Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and the Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. All Taxes (other than property Taxes and similar ad valorem obligations) allocable to the Pre-Closing Tax Period shall be computed as if such taxable period ended as of the close of business on the Closing Date. Within a reasonable period, each of the Seller and the Buyer shall present a statement to the other setting forth the amount of reimbursement to which it is entitled under this Section 6.14, together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the Party owing it to the other Party within ten (10) days after delivery of such statement. Any payment required under this Section 6.14 and not made within ten (10) days after delivery of the statement shall bear interest at the rate per annum determined, from time to time, under the provisions of Section 6621(a)(2) of the Code for each day until paid. With respect to Taxes described in this Section 6.14, the Seller shall timely file all Returns due before the Closing Date with respect to such Taxes and the Buyer shall prepare and timely file all Returns due after the Closing Date with respect to such Taxes.

Section 6.15 Pre-Closing Licensure of the Buyer. In no event shall this Agreement be interpreted to be an offer or agreement by the Seller to sell any species of animal to the Buyer unless and until the Buyer certifies or otherwise reasonably demonstrates that it is fully licensed and insured to take title to any such species in accordance with all applicable Laws. The Buyer understands and acknowledges that certain licenses and approvals, in addition to those described as conditions precedent to Closing under Section 7.1 and Section 7.2, will be required in order for the Buyer to lawfully possess and exhibit the full wildlife and fish collection of the Business, including transfers of permits related to individual species or individual animals, substantially all of which are specifically noted on Schedule 4.3(b) of the Disclosure Schedules. Prior to Closing, the Buyer will make use commercially reasonable efforts to procure all such other licenses and regulatory approvals. Should the Closing occur prior to the time when such other licenses and approvals have been obtained by the Buyer, the Buyer and the Seller shall cooperate in good faith to develop a commercially reasonable solution satisfactory to regulators, which may involve the Seller temporarily maintaining title to and possession of the affected Animals, at the sole expense of the Buyer, until such other licenses and approvals have been obtained. The Buyer shall pay the Seller not less than monthly for all reasonable expenses, including, but not limited

to, reasonable employee (consisting of direct employee costs related to the provision of such services) and out-of-pocket vendor and service costs incurred by the Seller following the Closing in relation to such affected animals, if any, following presentation of detailed invoices for such expenses. The Seller's obligation to assist the Buyer shall not extend beyond twelve (12) months following the Closing Date. Any costs and expenses or other liabilities expressly assumed by or otherwise the responsibility of the Buyer under this Section 6.15 shall be considered Assumed Liabilities for all purposes under this Agreement.

Section 6.16 Transition of Excluded Assets. From and after the date hereof until the earlier of the Closing or the termination of this Agreement, the Seller will use commercially reasonable efforts to facilitate assist the Buyer in understanding the nature of the Excluded Assets that are necessary to the operation of the Business following the Closing in order for the Buyer to acquire or otherwise establish similar assets in advance of the Closing so the Buyer can operate the Business from and after the Closing Date. To the extent feasible and commercially reasonable, the Seller and the Buyer shall enter into an agreement with respect to transition services if the Buyer is unable to establish and implement all systems it reasonably deems necessary to conduct the Business immediately following the Closing. The terms of any transition services shall be agreed between the Parties in good faith.

Section 6.17 Minimum Operating Cash. At the Closing, the Seller shall cause an amount of freely usable cash equal to at least [REDACTED] (the "Minimum Operating Cash") to remain in the Business for the post-Closing operation of the Business.

ARTICLE VII CONDITIONS PRECEDENT

Section 7.1 Conditions Precedent to Obligations of the Seller and the Buyer. The Parties' obligations to consummate the Transactions are subject to the satisfaction or waiver in writing at or prior to Closing of the following conditions:

(a) The Parties shall have obtained written consent to the assignment of the ground lease for the Principal Place of Business from Miami-Dade County (or any other applicable Governmental Authority), in form and substance reasonably satisfactory to the Buyer, without (1) any material modification to (A) the length of the term of the ground lease, or (B) the amount of rent payable thereunder, or (2) any requirement of the payment of any material amount of fees or penalties, either individually or in the aggregate, regardless of when payable, in connection with the transfer thereof.

(b) The Buyer shall have obtained, in form and substance reasonably satisfactory to the Seller and the Buyer:

(i) written approval to consummate the Transactions from the Animal and Plant Health Inspection Service of the United States Department of Agriculture pursuant to the applicable regulations promulgated under the U.S. Animal Welfare Act; and

(ii) a Florida Class III exhibition permit from the Florida Fish and Wildlife Conservation Commission.

(c) No Order issued by any court of competent jurisdiction preventing the consummation of the Transactions shall be in effect, nor shall there be any pending or threatened Action by any Governmental Authority, or any Law enacted, entered or enforced that challenges, seeks to restrain or prevent the consummation of the Transactions.

ARTICLE VIII INDEMNIFICATION

Section 8.1 Survival of Representations and Warranties. Except in the case of fraud by the Seller or the Buyer in the making of the representations and warranties set forth in Article IV (and the Disclosure Schedules) or Article V, respectively, or the Ancillary Agreements, the representations and warranties of the Seller and the Buyer contained in this Agreement and the Ancillary Agreements shall be continuing and survive the Closing until the later of (a) twelve (12) months following the Closing Date, or (b) December 31, 2022; *provided, however*, that all of the representations and warranties set forth in Sections 4.1 (Organization and Qualification), 4.2 (Authority), 4.4(a) (Title to Assets), and 4.21 (Brokers and Finders) (collectively, the “Core Representations”) shall survive until the expiration of the applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof). Neither the Seller nor the Buyer shall have any liability whatsoever with respect to any such representations and warranties unless a claim is made hereunder prior to the expiration of the survival period for such representation and warranty, in which case such representation and warranty shall survive as to such claim until such claim has been finally resolved.

Section 8.2 Indemnification by the Seller. The Seller shall save, defend, indemnify and hold harmless the Buyer and its Affiliates and the respective Representatives, successors and assigns of each of the foregoing (the “Buyer Indemnified Parties”) from and against any and all losses, damages, liabilities, claims, awards, judgments, penalties, reasonable and documented out of pocket costs and expenses (including reasonable attorneys’ fees, costs and other out-of-pocket expenses incurred in investigating, prosecuting, preparing or defending the foregoing) (collectively, “Losses”), asserted against, incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to:

(a) any breach of any representation or warranty made by the Seller contained in this Agreement or any Ancillary Agreement, regardless of when such breach occurs and regardless of whether the breach is of any representation or warranty made (i) as of the date of this Agreement or any Ancillary Agreement, or (ii) as of the Closing under this Agreement or any Ancillary Agreement;

(b) any breach of any covenant or agreement by the Seller contained in this Agreement or any Ancillary Agreement, regardless of whether any such breach occurs prior to or following the Closing;

(c) any claims for compensation and other employee benefits (including, but not limited to, severance pay, disability benefits, health, workers' compensation, and death benefits) (A) accruing at any time with respect to persons who were employed in the Business and do not become employees of the Buyer or its Affiliates after the Closing and (B)

accruing prior to the date a person who was employed in the Business and becomes an employee of the Buyer or its Affiliates after the Closing, and related costs and liabilities;

(d) any Contract not assumed by the Buyer pursuant to Section 2.1(c) or Section 2.3;

(e) any Excluded Liability; and

(f) any Excluded Taxes.

Section 8.3 Limitations on Indemnification by the Seller. Notwithstanding anything contained herein to the contrary, (a) the Seller shall not be obligated to indemnify the Buyer Indemnified Parties under Section 8.2(a) (i) for any individual claim or series of related claims arising from the same or similar set of facts or circumstances which is less than [REDACTED] (the “De Minimis Threshold”), and (ii) unless and until the aggregate dollar amount of Losses for all claims made under Section 8.2(a) meeting the De Minimis Threshold exceeds [REDACTED] (the “Indemnification Basket”), in which case the Seller shall be liable solely for the amount of all Losses incurred by the Buyer Indemnified Parties in excess of the Indemnification Basket, and (b) the indemnification obligations of the Seller under Section 8.2(a) shall not exceed an amount equal to [REDACTED] (the “Indemnification Cap”); provided, however, that the Indemnification Basket and the Indemnification Cap shall not apply to any claims for indemnification relating to any breach of any of the Core Representations or fraud by the Seller in the making of the representations and warranties set forth in set forth in Article IV or the Ancillary Agreements. In addition, except in the case of fraud by the Seller in the making of the representations and warranties set forth in set forth in Article IV or the Ancillary Agreements, the indemnification obligations of the Seller under (A) Section 8.2(a), solely with respect to Core Representations, or (B) Section 8.2(b) shall not exceed the Purchase Price actually paid by the Buyer to, or on behalf of, the Seller and/or its Affiliates pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, the Buyer shall not be entitled to indemnification for Losses attributable to Taxes: (i) resulting from transactions or actions taken by Buyer or any of its Affiliates beginning after the Closing, or (ii) imposed with respect to taxable period or portion thereof beginning after the Closing Date. The amount of any Losses for which indemnification is provided for under this Article VIII (without giving effect to limitations) shall be calculated net of any insurance proceeds, if any, actually received by the Indemnified Party from third parties with respect to such Losses, in each case, net of the present value of any increases in premiums, any costs of collection, or deductibles resulting from such Third Party Claim and incurred as of the time of such indemnification.

Section 8.4 Limitation as to Certain Losses. Notwithstanding the foregoing, no Party shall be entitled to indemnification for any Losses relating to indirect damages, lost profits, amounts recoverable on a multiple of earnings, or punitive damages except for punitive damages payable to a third party.

Section 8.5 Indemnification by the Buyer. The Buyer shall save, defend, indemnify, and hold harmless the Seller and its Affiliates and the respective Representatives, successors and assigns of each of the foregoing (the “Seller Indemnified Parties”) from and against

any and all Losses asserted against, incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to:

(a) any breach of any representation or warranty made by the Buyer contained in this Agreement or any Ancillary Agreement;

(b) any breach of any covenant or agreement by the Buyer contained in this Agreement or any Ancillary Agreement; and

(c) after the Closing, any Purchased Asset or any Assumed Liability.

Section 8.6 Procedures.

(a) In order for a party (the “Indemnified Party”) to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a Loss or a claim or demand made by any Person against the Indemnified Party (a “Third Party Claim”), such Indemnified Party shall deliver notice thereof to the party against whom indemnity is sought (the “Indemnifying Party”) with reasonable promptness after receipt by such Indemnified Party of written notice of the Third Party Claim and shall provide the Indemnifying Party with such information with respect thereto as the Indemnifying Party may reasonably request. The failure to provide such notice, however, shall not release the Indemnifying Party from any of its obligations under this Article VIII except to the extent that the Indemnifying Party is materially prejudiced by such failure.

(b) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party against any and all Losses that may result from a Third Party Claim pursuant to the terms of this Agreement, the Indemnifying Party shall have the right, upon written notice to the Indemnified Party within fifteen (15) Business Days of receipt of notice from the Indemnified Party of the commencement of such Third Party Claim, to assume the defense thereof at the expense of the Indemnifying Party (which expenses shall not be applied against any indemnity limitation herein) with counsel selected by the Indemnifying Party and satisfactory to the Indemnified Party. The Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has failed to assume the defense thereof. If the Indemnifying Party does not expressly elect to assume the defense of such Third Party Claim within the time period and otherwise in accordance with the first sentence of this Section 8.6(b), the Indemnified Party shall have the sole right to assume the defense of and to settle such Third Party Claim. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless (i) the employment of such counsel shall have been specifically authorized in writing by the Indemnifying Party or (ii) the named parties to the Third Party Claim (including any impleaded parties) include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party reasonably determines that representation by counsel to the Indemnifying Party of both the Indemnifying Party and such Indemnified Party may present such counsel with a conflict of interest. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnified Party shall, at the Indemnifying Party’s expense, cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all

witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, enter into any settlement or compromise or consent to the entry of any judgment with respect to such Third Party Claim if such settlement, compromise, or judgment (A) involves a finding or admission of wrongdoing, (B) does not include an unconditional written release by the claimant or plaintiff of the Indemnified Party from all liability in respect of such Third Party Claim, or (C) imposes equitable remedies or any obligation on the Indemnified Party other than solely the payment of money damages for which the Indemnified Party will be indemnified hereunder.

(c) The indemnification required hereunder in respect of a Third Party Claim shall be made by prompt payment by the Indemnifying Party of the amount of actual Losses in connection therewith following the final non-appealable adjudication of such Third Party Claim.

(d) The Indemnified Party shall use commercially reasonable efforts to mitigate any Losses indemnifiable under this Agreement; *provided*, for the avoidance of doubt that the Indemnifying Party shall not be entitled to require that any action be made or brought against any other Person before action is brought or claim is made against it hereunder by the Indemnified Party; *provided, further*, that no failure to mitigate such Losses shall in any way reduce the liability of any Indemnifying Party pursuant to its indemnification obligations hereunder.

(e) In the event any Indemnified Party should have a claim against any Indemnifying Party hereunder that does not involve a Third Party Claim being asserted against or sought to be collected from such Indemnified Party, the Indemnified Party shall deliver notice of such claim with reasonable promptness to the Indemnifying Party. The failure to provide such notice, however, shall not release the Indemnifying Party from any of its obligations under this Article VIII except to the extent that the Indemnifying Party is materially prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or liability that it may have to the Indemnified Party or otherwise. If the Indemnifying Party does not notify the Indemnified Party within twenty (20) Business Days following its receipt of such notice that the Indemnifying Party disputes its liability to the Indemnified Party hereunder, such claim specified by the Indemnified Party in such notice shall be conclusively deemed a liability of the Indemnifying Party hereunder, and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand. If the Indemnifying Party agrees that it has an indemnification obligation but asserts that it is obligated to pay a lesser amount than that claimed by the Indemnified Party, the Indemnifying Party shall pay such lesser amount promptly to the Indemnified Party, without prejudice to or waiver of the Indemnified Party's claim for the difference.

Notwithstanding the provisions of Section 10.9, and assuming proper jurisdiction with respect to the Indemnified Party against which the subject Action is brought, each Indemnifying Party hereby consents to the nonexclusive jurisdiction of any court in which an Action in respect of a Third Party Claim is brought against any Indemnified Party for purposes of any claim that an Indemnified Party may have under this Agreement with respect to such Action or the matters alleged therein and agrees that process may be served on each Indemnifying Party with respect to such claim anywhere.

Payment of claims shall be made by the Indemnifying Party to the Indemnified Party within five (5) Business Days of the full and final resolution of such claims and shall thereafter bear interest at a rate of 8% per annum until paid.

Section 8.7 Exclusive Remedy. The rights of the Buyer Indemnified Parties and the Seller Indemnified Parties set forth in this Article VIII are, absent fraud or willful misrepresentation, and except as set forth in Section 6.4 and Section 10.11, exclusive and in lieu of any other rights and remedies under this Agreement or under any Ancillary Agreement and, absent fraud, the remedies in this Section 8.7 constitute the sole and exclusive remedies for recovery against the Seller or the Buyer, as the case may be, and any of their respective Affiliates.

ARTICLE IX TERMINATION

Section 9.1 Termination of Agreement. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the Seller and the Buyer.
- (b) by the Seller or the Buyer, by written notice to the other party,
 - (i) if the Closing has not taken place on or before February 15, 2022 or such later date as the Parties may agree upon in writing (such date, as may be extended, the “Outside Closing Date”); *provided*, that if the Closing has not occurred by the Outside Closing Date because of a failure of the conditions set forth in Section 7.1(a) and Section 7.1(b) to be satisfied for any reason that is not caused by, or in the control of, either of the Parties, the Outside Closing Date shall be automatically extended for three consecutive thirty (30) day periods, after which, in the absence of written denials or approvals of the consents required in Section 7.1 and Section 7.2, the Parties will work in good faith to determine the whether to continue to pursue such consents or to terminate this Agreement; *provided further*, that the right to terminate this Agreement pursuant to this Section 9.1(b)(i) shall not be available to any party whose breach of any provision of this Agreement in any material respect results in the failure of the Closing to be consummated by such time.
 - (ii) there shall be any Law that makes consummation of the Transactions illegal or otherwise prohibited; or
 - (iii) any Governmental Authority shall have issued an Order permanently restraining or enjoining the Transactions, and such Order shall have become final and non-appealable.
- (c) By the Buyer, by written notice to the Seller, if there shall have occurred a Material Adverse Effect.

Section 9.2 Effect of Termination. In the event of the termination of this Agreement in accordance with Section 9.1, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto; *provided*, that (a) Article I, Section 6.7,

Section 6.11, this Article IX, and Article X (other than Section 10.11) shall survive any such termination, and (b) nothing herein shall relieve any party to this Agreement from liability for the willful and material breach of any provision hereof prior to termination. Additionally, within three (3) Business Days following the termination of this Agreement in accordance with Section 9.1, the Buyer and the Seller shall issue a joint release instruction to the Escrow Agent to cause the Escrow Agent to release the Deposit Amount to the Buyer.

ARTICLE X GENERAL PROVISIONS

Section 10.1 Fees; Expenses and Transfer Taxes.

(a) All fees and expenses incurred in connection with or related to this Agreement, the Ancillary Agreements and the Transactions shall be paid by the Party incurring such fees or expenses; *provided*, that no such fees and expenses payable by the Seller shall be paid from any assets otherwise transferable to the Buyer pursuant hereto.

(b) All Transfer Taxes resulting from the Transactions shall be borne by the Buyer. The Buyer will file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, the Seller will, and will cause its Affiliates to, join in the execution of any such Tax Returns and other documentation. “Transfer Tax” means any Tax imposed on the transferor or transferee of property by any taxing jurisdiction by reason of the transfer, or any Tax that becomes a lien on the property transferred by reason of the transfer, including any stamp duty, sales, use or excise Tax, real estate transfer taxes or Taxes of a similar nature, including any interest, penalties or additions to Tax that become payable with respect to such Tax.

Section 10.2 Amendment and Modification. This Agreement may not be amended, modified, or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each Party.

Section 10.3 Waiver. No failure or delay of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of any Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

Section 10.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally or by email with proof of delivery, (b) on the first (1st) Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier, provided signature is obtained, or (c) on the earlier of confirmed receipt or the fifth (5th) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage

prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

(i) if to the Buyer, to:

MS Leisure Company
9600 N. Ocean Shore Blvd,
St. Augustine, FL 32080
Attention: Travis Burke
E-mail: tburke@thedolphinco.com

with a copy
(which shall not constitute notice) to:

Greenberg Traurig, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Attention: Mark J. Kelson
E-mail: kelsonm@gtlaw.com

(ii) if to the Seller, to:

Festival Fun Parks, LLC
285 East Waterfront Drive, Suite 150,
Homestead, PA 15120
Attention: Javier Carbajo Dominguez,
Cristina Carro Werner, Alejandro Diez
Barturen, and John Reilly
E-mail: JCarbajo@grpr.com,
CCarro@grpr.com, adiezb@grpr.com, and
john.reilly@PalaceEntertainment.com

with a copy
(which shall not constitute notice) to:

McDermott Will & Emery, LLP
333 SE 2nd Avenue, Suite 4500
Miami, FL 33131-4336
Attention: Gabriel Valdes
Email: glvaldes@mwe.com

Section 10.5 Interpretation. When a reference is made in this Agreement to a Section, Article or Exhibit such reference shall be to a Section, Article, or Exhibit of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. In addition, unless the express context otherwise requires:

(a) the word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified;

(b) the words “hereof,” “herein,” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(c) terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa;

(d) the terms “Dollars” and “\$” mean United States Dollars;

(e) references herein to any Person shall include, as applicable, such Person’s heirs, executors, personal representatives, administrators, successors and assigns; *provided, however*, that nothing contained in this clause (e) is intended to authorize any assignment or transfer not otherwise permitted by this Agreement;

(f) references herein to any Contract (including this Agreement) mean such Contract as amended, supplemented or modified from time to time in accordance with the terms thereof;

(g) with respect to the determination of any period of time, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”;

(h) references herein to any Law or any Permit mean such Law or Permit as amended, modified, codified, reenacted, supplemented or superseded in whole or in part, and in effect from time to time;

(i) references herein to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder;

(j) the word “or” shall be disjunctive but not exclusive;

(k) With respect to any Person, “ordinary course of business” shall mean the ordinary course of such Person’s business consistent with past practice;

(l) if the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day;

(m) when reference is made to information that has been “made available,” “provided” or “delivered” (or other similar terms) to the Buyer or its Representatives that shall mean that such information was included in the Data Room at least one (1) day prior to the date of this Agreement; and

(n) any information set forth in one section of the Seller Disclosure Schedules will be deemed to apply to other sections of the Seller Disclosure Schedules to which its relevance is reasonably apparent from the face of such disclosure (notwithstanding the omission of a reference or cross-reference thereto).

Section 10.6 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) and the Ancillary Agreements constitute the entire agreement and supersede all prior written and oral agreements with respect to the subject matter hereof and thereof.

Section 10.7 No Third-Party Beneficiaries. Except as provided in Article VIII, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the Parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

Section 10.8 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the internal, substantive laws of the State of Delaware, without giving effect to the conflict of laws principles that would apply the Law of any other state.

Section 10.9 Submission to Jurisdiction. Each of the Parties irrevocably agrees that any Action arising out of or relating to this Agreement brought by the other Party or its successors or assigns shall be brought and determined in any state or federal court sitting in Wilmington, Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such Action; *provided*, that a final judgment in any such Action may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party irrevocably and unconditionally agrees not to assert (a) any objection which it may ever have to the laying of venue of any such Action in any federal or state court located in the State of Delaware, (b) any claim that any such Action brought in any such court has been brought in an inconvenient forum, and (c) any claim that such court does not have jurisdiction with respect to such Action. Each Party irrevocably consents to the service of process in any such Action in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for notices provided for herein.

Section 10.10 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of Law or otherwise, by any Party without the prior written consent of the other Parties, and any such assignment without such prior written consent shall be null and void; *provided, however*, that either Party may assign this Agreement to any Affiliate of such Party without the prior consent of the other Party; *provided, further*, that no assignment shall limit the assignor's obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 10.11 Enforcement; Equitable Remedies. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any State or federal court sitting in Miami, Florida (or, if such court lacks subject matter jurisdiction, in any appropriate Florida State court), this being in addition to any other remedy to which such Party is entitled at Law or in equity. Each of the Parties hereby further waives (a) any defense in any action for specific performance that a remedy at Law would

be adequate, and (b) any requirement under any Law to post security as a prerequisite to obtaining equitable relief.

Section 10.12 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 10.13 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS.

Section 10.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

Section 10.15 Electronically Transmitted Signature. This Agreement may be executed by email or PDF signature and an email or PDF signature shall constitute an original for all purposes.

Section 10.16 No Set-Off. Neither Party shall have any right of set-off, retention, or other similar rights with respect to (a) any amounts received pursuant to this Agreement or any Ancillary Agreement; or (b) any other amounts claimed to be owed to the other Party or any member of its Group arising out of this Agreement or any Ancillary Agreement.

Section 10.17 No Presumption Against Drafting Party. Each of the Buyer and the Seller acknowledges that each Party has been represented by counsel in connection with this Agreement and the Transactions. Accordingly, any rule of Law or any legal decision that would require interpretation of any claimed ambiguity in this Agreement against the drafting Party has no application and is expressly waived.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, each of the Buyer and the Seller have caused this Agreement to be executed as of the date first written above either in their individual capacity or by their respective officers thereunto duly authorized, as applicable.

BUYER:

MS LEISURE COMPANY

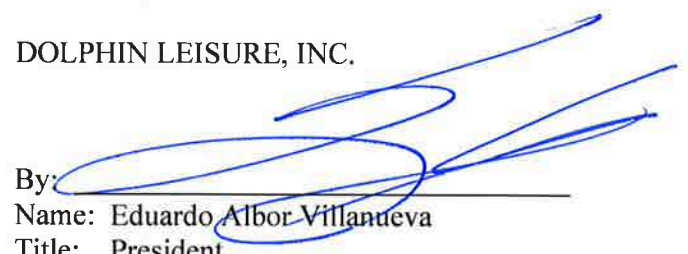
By: 

Name: Eduardo Albor

Title: President

GUARANTOR:

DOLPHIN LEISURE, INC.

By: 

Name: Eduardo Albor Villanueva

Title: President

SELLER:

FESTIVAL FUN PARKS, LLC

By: _____

Name:

Title

IN WITNESS WHEREOF, each of the Buyer and the Seller have caused this Agreement to be executed as of the date first written above either in their individual capacity or by their respective officers thereunto duly authorized, as applicable.

BUYER:

MS LEISURE COMPANY

By: _____
Name: _____
Title: _____

GUARANTOR:

DOLPHIN LEISURE, INC.

By: _____
Name: _____
Title: _____

SELLER:

FESTIVAL FUN PARKS, LLC

By:  _____
Name: John T. Reilly
Title: Chief Operating Officer

EXHIBIT A

Bill of Sale

Exhibit A-1

BILL OF SALE

This Bill of Sale, dated as of August 16, 2021, is executed and delivered by Festival Fun Parks, LLC, a Delaware limited liability company (the “Seller”), in connection with that certain Asset Purchase Agreement, dated as of August 16, 2021 (the “Purchase Agreement”), by and among the Seller, MS Leisure Company, a Florida corporation (the “Buyer”), and Dolphin Leisure, Inc.

WHEREAS, subject to the terms and conditions of the Purchase Agreement, the Seller has agreed to sell, assign, transfer, convey and deliver to the Buyer the Purchased Assets.

Now, therefore, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Seller undertakes as follows:

1. Subject to the terms and conditions of the Purchase Agreement and effective as of 12:01 a.m., Eastern Time, on the Closing Date, the Seller hereby sells, transfers, conveys, assigns and delivers to the Buyer all of the Seller’s right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances, other than Permitted Encumbrances, to have and to hold the Purchased Assets, unto and for the use and benefit of the Buyer, its successors and assigns forever.

2. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Purchase Agreement.

3. For the avoidance of doubt, the Seller acknowledges and agrees that the terms of the Purchase Agreement shall not be amended, modified or superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

4. The Buyer acknowledges that the Seller makes no representation or warranty with respect to the assets being conveyed hereby except as specifically set forth in the Purchase Agreement.

5. This Bill of Sale shall be governed by the laws of the State of Delaware without regard to principles of conflicts of laws.

6. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement. This Bill of Sale may be executed by facsimile, electronic mail or PDF signature and a facsimile or PDF signature (an “Electronic Delivery”) and shall have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto shall reexecute original forms thereof and deliver them to all other Parties. No Party hereto or to any such agreement or instrument shall raise (a) the use of Electronic Delivery to deliver a signature or (b) the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery, as a defense to the formation of a contract, and each such Party forever waives any such defense, except to the extent such defense related to lack of

authenticity.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Bill of Sale has been duly executed by the Seller
on the date first written above.

FESTIVAL FUN PARKS, LLC

By: _____

Name:

Title:

Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) is made as of August 16, 2021, by and between Festival Fun Parks, LLC, a Delaware limited liability company (“Assignor”) and MS Leisure Company, Inc., a Florida corporation (“Assignee”). Assignor and Assignee are sometimes referred to herein each as a “Party” and collectively as the “Parties.” This Agreement is being entered into in connection with that certain Asset Purchase Agreement made as of the date hereof (the “Purchase Agreement”), by and among Assignee, Assignor and Dolphin Leisure, Inc. Capitalized terms used but not otherwise defined herein have the respective meanings ascribed to such terms in the Purchase Agreement.

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to assume from Assignor all of Assignor’s rights, title, and interest, direct or indirect, in and to the Purchased Assets from and after the Closing Date.

NOW, THEREFORE, in consideration of the mutual promises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set follows:

1. Assignment. Subject to the terms of this Agreement and the Purchase Agreement and effective as of 12:01 a.m., Eastern Time, on the Closing Date, Assignor hereby grants, assigns, transfers and conveys to Assignee, its successors and assigns, all of Assignor’s rights, title, and interest, direct or indirect, in and to the Purchased Assets.

2. Assumption. Subject to the terms of this Agreement and the Purchase Agreement and effective as of 12:01 a.m., Eastern Time, on the Closing Date, Assignee accepts the foregoing assignment and assumes the Assumed Liabilities. Notwithstanding anything herein to the contrary, Assignee is not assuming any of the Excluded Liabilities.

3. Governing Law; Venue. This Agreement and any and all matters arising directly or indirectly herefrom shall be construed in accordance with the laws of the State of Delaware without giving effect to principles of conflicts of laws. Both Parties consent to the exclusive jurisdiction of all state and federal courts of record situated in the State of Delaware.

4. Successors and Assigns; Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors in interest and assigns. Nothing contained in this Agreement shall be deemed to confer upon any person, other than the Parties and their respective successors and permitted assigns, any rights, remedies, claims, causes of action or obligations under, or by reason of this Agreement.

5. Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, bear the signatures of all Parties reflected hereon as signatories, it being understood and agreed that all Parties need not sign the same counterpart. An executed copy of this Agreement to the extent delivered by means of a facsimile, Portable Document Format (PDF), Joint Photographic Experts Group (JPG) file or otherwise via electronic mail shall be treated in all manner and respects as an executed original Agreement or

instrument and shall be considered to have the same binding legal effect as if it were the original signed version of this Agreement delivered in person. Any party that delivers such a signature page agrees to later deliver an original counterpart to any party that requests it.

6 Further Assurances. Assignor and Assignee agree to take all further actions and execute, acknowledge and deliver all further instruments and documents that are reasonably necessary to carry out the purposes hereof.

[signature page follows]

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption Agreement to be executed as of the day, month and year first above written.

ASSIGNOR:

FESTIVAL FUN PARKS, LLC

By:_____

Name:

Title:

ASSIGNEE:

MS LEISURE COMPANY

By:_____

Name:

Title:

Assignment of Intellectual Property

Exhibit C-1

INTELLECTUAL PROPERTY ASSIGNMENT

This Intellectual Property Assignment (“Assignment”) is effective as of August 16, 2021 (the “Effective Date”), by and between Festival Fun Parks, LLC, a Delaware limited liability company (“Assignor”), and MS Leisure Company, a Florida corporation (“Assignee”). Capitalized terms used but not otherwise defined herein shall have the meaning set forth in that certain Asset Purchase Agreement (the “Asset Purchase Agreement”), dated as of August 16, 2021, by and among Assignor, Assignee and Dolphin Leisure, Inc.

RECITALS

WHEREAS, pursuant to the Asset Purchase Agreement, Assignor has agreed to sell, and Assignee has agreed to purchase, the Purchased Assets, including, but not limited to, all of Assignor’s rights, title and interest in and to all Seller Intellectual Property.

WHEREAS, Assignee is desirous of acquiring all rights, title and interest in and to the Seller Intellectual Property.

WHEREAS, Assignor is willing to assign to Assignee all rights, title and interest in and to the Seller Intellectual Property.

NOW THEREFORE, for good and adequate consideration, the receipt and sufficiency of which is hereby acknowledged:

1. Assignment. Assignor hereby assigns, sell, transfers, conveys, and delivers to Assignee, irrevocably and throughout the world, all rights, title and interest in and to the Seller Intellectual Property, including, without limitation, the Seller Intellectual Property set forth on Exhibit A hereto, together with all common law rights thereto and any and all goodwill in connection therewith, including all immunities and covenants not to sue related to such Seller Intellectual Property, all causes of action, enforcement rights and remedies in respect of such Seller Intellectual Property, including all rights to pursue damages, injunctive relief and other remedies for past, current and future infringement of such Seller Intellectual Property, and all rights to collect royalties under such Seller Intellectual Property (regardless of whether or not such claims and causes of action have been asserted by Assignor) and all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds (regardless of whether such rights are currently exercisable) to the extent related to such Seller Intellectual Property.

2. Domain Names. Assignor agrees to cooperate with Assignee in order to effectuate the transfer of registrations for the domain names set forth on Exhibit A (the “Domain Names”) in a timely manner, and each party is hereby expressly permitted and authorized to provide a copy of this Assignment to any such registrar as necessary to accomplish such transfer. Following the execution of this Assignment, Assignor shall immediately cease using or controlling the Domain Names for any purpose, including, without limitation, as a domain name, a trademark, or as a part of any email address. Further, within a reasonable time following the Effective Date hereof, Assignor shall (i) execute or otherwise complete the applicable registrant name change agreement

or other forms required by the applicable Internet domain name registrar for each of the Domain Names (the “Registering Authority”) to transfer such Domain Names to Assignee, (ii) submit or file such registrant name change agreements or other forms to or with the Registering Authority in accordance with the policies and rules of the Registering Authority, and (iii) take any and all further actions in accordance with the policies and rules of the Registering Authority as required to transfer such Domain Names to Assignee on an expedited basis.

3. Assistance; Assurances. Assignor will assist Assignee as reasonably necessary to secure, perfect, maintain or evidence the rights hereby transferred, including, without limitation, the execution of any other assignments or documents that may be necessary to evidence Assignee’s ownership of the Seller Intellectual Property in the US Patent and Trademark Office or the corresponding entities or agencies in any applicable foreign countries. All fees and expenses incurred in connection with or related to this Assignment shall be paid in accordance with the terms of the Asset Purchase Agreement.

4. Miscellaneous. This Assignment shall be governed by the governing law provision of the Asset Purchase Agreement. In the event of a conflict between the provisions herein and the terms and conditions of the Asset Purchase Agreement, the terms and conditions of the Asset Purchase Agreement shall govern. Notwithstanding any other provision of this Assignment to the contrary, nothing contained in this Assignment shall in any way supersede, merge with, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge or in any way affect the provisions set forth in the Asset Purchase Agreement nor shall this Assignment reduce, expand or enlarge any remedies under the Asset Purchase Agreement. This Assignment may not be supplemented, altered or modified in any manner except by a writing signed by the parties hereto. This Assignment may be executed in any number of counterparts by the parties hereto, each of which when so executed and delivered shall be deemed an original and all of which counterparts taken together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, this Assignment has been executed by the duly authorized representatives of the parties the day and year first above written.

ASSIGNOR:

FESTIVAL FUN PARKS, LLC

By: _____

Name:

Title:

ASSIGNEE:

MS LEISURE COMPANY

By: _____

Name:

Title:

Exhibit A

Trademarks

Mark	Country / State	Filing Date	Registration Date / Reg. No.	Expiration Date
Miami Seaquarium	United States	June 13, 1963	June 30, 1964 / 0772473	June 30, 2024
Miami Seaquarium	United States	March 04, 2004	August 02, 2005 / 2980590	August 04, 2025
Seaquarium	United States	November 09, 1989	June 18, 1991 / 1648383	June 18, 2031
Seaquarium	Canada	August 16, 1965	April 01, 1966 / TMA144661	April 01, 2026
Seaquarium	Puerto Rico	October 30, 1991	October 30, 1991 / PR 7836	November 01, 2021

Domain Names

1. Seaquarium.com
2. MiamiSeaquarium.com
3. miamiseaquarium.biz
4. miamiseaquarium.info
5. Sequariumres.com
6. Seaquarium.info
7. seaquariumpay.com

Officers' Certificate

Exhibit D-1

" = "1" "" ""

CLOSING CERTIFICATE
OF
FESTIVAL FUN PARKS, LLC

_____, 2021

This Closing Certificate is delivered pursuant to Section 3.1(b)(vii) of that certain Asset Purchase Agreement (the “Agreement”), dated as of August 16, 2021, by and among MS Leisure Company, a Florida corporation, Festival Fun Parks, LLC, a Delaware limited liability company (the “Seller”), and Dolphin, Leisure, Inc., a Florida corporation, which joins the Agreement solely with respect to Section 2.9 therein. Capitalized terms used but not defined herein are defined in the Agreement.

As of the date hereof, the Seller hereby confirms and certifies the accuracy and truthfulness of the Seller’s representations and warranties contained in Article IV of the Agreement, and the performance by Seller of its covenants set forth in the Agreement and the Ancillary Agreements.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Closing Certificate effective as of the date set forth above.

SELLER

FESTIVAL FUN PARKS, LLC

By: _____

Name: John T. Reilly

Title: Chief Operating Officer

CLOSING CERTIFICATE

OF

MS LEISURE COMPANY

_____, 2021

This Closing Certificate is delivered pursuant to Section 3.1(c)(vi) of that certain Asset Purchase Agreement (the “Agreement”), dated as of August 16, 2021, by and among MS Leisure Company, a Florida corporation (the “Buyer”), Festival Fun Parks, LLC, a Delaware limited liability company, and Dolphin, Leisure, Inc., a Florida corporation, which joins the Agreement solely with respect to Section 2.9 therein. Capitalized terms used but not defined herein are defined in the Agreement.

As of the date hereof, the Buyer hereby confirms and certifies the accuracy and truthfulness of the Buyer’s representations and warranties contained in Article V of the Agreement, and the performance by the Buyer of its covenants set forth in the Agreement and the Ancillary Agreements.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Closing Certificate effective as of the date set forth above.

BUYER:

MS LEISURE COMPANY

By: _____

Name:

Title:

Escrow Agreement

Exhibit E-1

" = "1" "" ""

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”) is made and entered into as of August 16, 2021, by (i) MS Leisure Company (“Buyer”), (ii) Festival Fun Parks, LLC (“Seller”), and (iii) Citibank, N.A. (the “Escrow Agent”). Buyer and Seller may be referred to herein, collectively, as the “Parties,” and each as a “Party”). Capitalized terms not defined herein shall have the meanings assigned to them in that certain Asset Purchase Agreement, dated as of the date hereof (as amended, modified, supplemented or restated from time to time, the “Purchase Agreement”), by and among Buyer, Seller, and Dolphin Leisure, Inc., as the Guarantor.

WHEREAS, pursuant to the terms of the Purchase Agreement, Buyer has agreed with the other parties to the Purchase Agreement to deposit with the Escrow Agent [REDACTED] (the “Escrow Amount”), in order to provide a security deposit for certain payments required to be made pursuant to the Purchase Agreement. The Parties wish such deposit to be subject to the terms and conditions set forth herein and in the Purchase Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Appointment. The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions set forth herein.

2. Escrow Funds.

(a) Simultaneous with the execution and delivery of this Agreement, Buyer shall deposit with the Escrow Agent the Escrow Amount by wire transfer of immediately available funds. Escrow Agent shall confirm to both Buyer and Seller the receipt of the Escrow Funds on the date such funds are received. The Escrow Agent shall treat (i) the Escrow Amount, together with all products and proceeds thereof, including all interest, dividends, gains and other income (collectively, the “Escrow Earnings,” together with the Escrow Amount, the “Escrow Funds”) earned with respect thereto, which shall be deposited in an account pursuant to Section 3 below (the “Escrow Account”), in accordance with the terms and conditions of this Agreement.

(b) For greater certainty, the Escrow Earnings shall be retained by the Escrow Agent and reinvested in the respective Escrow Account to which they are attributable and shall become part of such respective Escrow Funds, and shall be disbursed as part of such Escrow Funds to which they are attributable in accordance with the terms and conditions of this Agreement.

3. Investment of Escrow Funds.

(a) Unless otherwise instructed in a joint writing by Buyer and the Seller, the Escrow Agent shall hold each Escrow Fund in a separate “noninterest-bearing deposit account” insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Escrow Funds shall at all times remain available for distribution in accordance with Section 4 below. The Escrow Agent shall send an account statement for each Escrow Account to each of the Parties on a monthly basis reflecting activity in the Escrow Account for the preceding month.

(b) Receipt and deposit of the Escrow Funds into the respective Escrow Account shall be confirmed by the Escrow Agent as soon as practicable by account statement, and any discrepancies in any such account statement shall be noted by the Parties to the Escrow Agent as promptly as practicable after receipt thereof.

(c) The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions of this Agreement. The Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

4. Disposition and Termination of the Escrow Funds.

(a) Escrow Funds. The Parties shall act in accordance with, and the Escrow Agent shall hold and release the Escrow Funds as provided in, this Section 4(a) as follows:

(i) Upon receipt of a Joint Release Instruction with respect to the Escrow Funds, the Escrow Agent shall promptly, but in any event within two (2) Business Days after receipt of such Joint Release Instruction, disburse all or part of the Escrow Funds in accordance with such Joint Release Instruction.

(ii) If at any time either of the Parties receives a Final Determination (as defined herein), then upon receipt by the Escrow Agent of a copy of such Final Determination from any Party (which Final Determination shall also be promptly delivered by such Party to the other Party), the Escrow Agent shall on the fifth (5th) Business Day following receipt by the Escrow Agent of the Final Determination, disburse all or part of the Escrow Funds (but only to the extent funds are available in the Escrow Funds) in accordance with such Final Determination. Subject to the terms of this Section 4(a), the Escrow Agent will act on such Final Determination without further inquiry.

(iii) All payments of any part of the Escrow Funds to Buyer or the Seller, or their designees, as the case may be, shall be made by wire transfer of immediately available funds as set forth in writing by the Joint Release Instruction, or Final Determination, as applicable.

(iv) Any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of any funds on deposit in the Escrow Account under the terms of this Agreement must be in writing, executed by an authorized signer of the applicable Party or Parties as set forth on Exhibit A-1 with respect to Seller, and Exhibit A-2 with respect to Buyer (collectively, the “Authorized Individuals”), annexed hereto and delivered to the Escrow Agent attached to an e-mail sent to the e-mail address of the Escrow Agent set forth in Section 11 below. In the event a Joint Release Instruction is delivered to the Escrow Agent, whether in writing, by electronic mail (“e-mail”) or otherwise, the Escrow Agent is authorized to seek confirmation of such instruction by telephone call back to the Authorized Individuals, and the Escrow Agent may rely upon the confirmations of anyone purporting to be an Authorized Individual. To ensure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the

verification it receives, it will not execute the instruction until all such issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing, executed by an authorized signer of the applicable Party set forth on Exhibits A-1 and/or A-2 actually received and acknowledged by the Escrow Agent.

(b) Certain Definitions.

(i) “Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York, New York.

(ii) “Final Determination” means a final non-appealable order or judgment of any court of competent jurisdiction which in each case will be issued together with (A) a certificate of the prevailing Party to the effect that such order or judgment is a final and non-appealable order or judgment, as applicable, of such court of competent jurisdiction having proper authority, and (B) the written payment instructions of the prevailing Party.

(iii) “Joint Release Instruction” means the joint written instruction, substantially in the form attached as Annex I, executed by an Authorized Individual of each of Seller and Buyer, to the Escrow Agent directing the Escrow Agent to disburse all or a portion of the Escrow Funds, as applicable.

(iv) “Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental authority or any department, agency or political subdivision thereof.

5. Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, which shall be deemed purely ministerial in nature, and no other duties, including, but not limited to, any fiduciary duties, shall be implied. The Escrow Agent has no knowledge of, nor any requirement to comply with, the terms and conditions of any other agreement, instrument or document between the Parties, in connection herewith, if any, including without limitation the Purchase Agreement, nor shall the Escrow Agent be required to determine if any Person has complied with any such agreements, nor shall any additional obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. Notwithstanding the terms of any other agreement between the Parties, the terms and conditions of this Agreement will control the actions of Escrow Agent. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any Joint Release Instruction or Final Determination furnished to it hereunder and believed by it to be genuine and to have been signed and presented by the proper Party or Parties. Concurrent with the execution of this Agreement, Buyer and Seller shall deliver to the Escrow Agent authorized signers’ forms in the form of Exhibit A-1 and Exhibit A-2 attached hereto. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request; provided, however, that the Escrow Agent may not act upon instruction by either Buyer or Seller alone where joint written instruction is required as provided hereunder. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Escrow Funds. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which,

in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until (i) it shall be given a Joint Release Instruction which eliminates such conflict or (ii) it shall be directed in a Final Determination. The Escrow Agent may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets or any action or nonaction based on such declaratory judgment. The Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder. The Escrow Agent will not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that the Escrow Agent's fraud, willful misconduct or gross negligence was the cause of any direct loss to either Party. To the extent practicable, the Parties agree to pursue any redress or recourse in connection with any dispute (other than with respect to a dispute involving the Escrow Agent) without making the Escrow Agent a party to the same. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for any special, indirect, punitive, incidental or consequential losses or damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such losses or damages and regardless of the form of action.

6. Resignation and Removal of Escrow Agent. The Escrow Agent (a) may resign and be discharged from its duties or obligations hereunder by giving thirty (30) calendar days advance notice in writing of such resignation to the Parties specifying a date when such resignation shall take effect or (b) may be removed, with or without cause, by Seller and Buyer at any time by providing written notice to the Escrow Agent. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent's line of business may be transferred, shall be the Escrow Agent under this Agreement without further act. The Escrow Agent's sole responsibility after such thirty (30) day notice period expires or after receipt of written notice of removal shall be to hold and safeguard the Escrow Funds (without any obligation to reinvest the same) and to deliver the same (i) to a substitute or successor escrow agent pursuant to a joint written designation from the Parties, (ii) as set forth in a Joint Release Instruction or (iii) in accordance with the directions of a Final Determination, at which time of delivery Escrow Agent's obligations hereunder shall cease and terminate. In the event the Escrow Agent resigns, if the Parties have failed to appoint a successor escrow agent prior to the expiration of 30 calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of such a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the Parties hereto.

7. Fees and Expenses. All fees and expenses of the Escrow Agent are described in Schedule 1 attached hereto and one-half of such fees and expenses shall be paid by Buyer and one-half of such fees and expenses shall be paid by Seller. The fees agreed upon for the services to be rendered hereunder are intended as full compensation for the Escrow Agent services as contemplated by this Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of the Escrow Agreement, or any material modification hereof, or if any material

controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to the Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated for such extraordinary services and reimbursed for all reasonable and documented out-of-pocket costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event, half of which shall be paid by Buyer and half of which shall be paid by Seller.

8. Indemnity. Buyer and Seller shall jointly and severally indemnify, defend and hold harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, officers, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, actions, suits, proceedings, litigation, investigations, costs or expenses (including the reasonable fees and expenses of one outside counsel and experts and their staffs and all reasonable expense of document location, duplication and shipment) (collectively "Escrow Agent Losses") arising out of or in connection with (a) the Escrow Agent's execution and performance of this Agreement, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnitee, except to the extent that such Escrow Agent Losses, as adjudicated by a court of competent jurisdiction, have been caused by the fraud, gross negligence or willful misconduct of this Agreement by Escrow Agent or any such Indemnitee, or (b) the Escrow Agent following any instructions or other directions from Buyer or Seller, except to the extent that the Escrow Agent following any such instruction or direction is expressly forbidden by the terms hereof. The Parties hereto acknowledge that the foregoing indemnities shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement. Notwithstanding anything to the contrary herein, Buyer and Seller agree, solely as between themselves, that any obligation for indemnification under this Section 8 (or for reasonable fees and expenses of the Escrow Agent described in Section 7) shall be borne by the Party or Parties determined by a court of competent jurisdiction to be responsible for causing the loss, damage, liability, cost or expense against which the Escrow Agent is entitled to indemnification or, if no such determination is made, then one-half by Buyer and one-half by Seller. The provisions of this Section 8 shall survive the resignation or removal of the Escrow Agent and the termination of this Agreement.

9. Tax Matters.

(a) A properly completed and valid IRS Form W-9 or applicable IRS Form W-8 (or, in each case, any successor form) for the Buyer and Seller shall be provided to the Escrow Agent prior to execution of this Agreement. The Escrow Agent acknowledges that such documentation has been received by the Escrow Agent prior to the establishment of the Escrow Account.

(b) The Parties agree that the Escrow Funds (together with any earnings thereon, if any) shall be treated for all tax purposes as owned by the Buyer, and the Escrow Earnings shall be reported as having been earned by the Buyer, whether or not such interest or income was disbursed during the calendar year. The Escrow Agent shall prepare and file all tax filings in a manner consistent with the foregoing on IRS Form 1099 (or other applicable form). The Escrow Agent shall timely prepare and timely file all appropriate tax or other information reporting with respect to the Escrow Funds as are required by applicable law. The Escrow Agent

shall timely withhold any taxes required to be withheld by applicable law, including but not limited to required withholding in the absence of proper tax documentation, and shall timely remit such taxes to the appropriate authorities.

(c) The Escrow Agent, its affiliates, and its employees are not in the business of providing tax or legal advice to any taxpayer outside of Citigroup, Inc. and its affiliates. The Escrow Agreement and any amendments or attachments are not intended or written to be used, and cannot be used or relied upon, by any such taxpayer or for the purpose of avoiding tax penalties. Any such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

10. Covenant of Escrow Agent. The Escrow Agent hereby agrees and covenants with Buyer and Seller that it shall perform all of its obligations under this Agreement and shall not deliver custody or possession of any of the Escrow Funds to anyone except pursuant to the express terms of this Agreement or as otherwise required by law.

11. Notices. All notices, requests, demands and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) on the day of transmission if sent by e-mail to the e-mail address given below with a signed PDF attachment, and written confirmation of receipt is obtained promptly after completion of the transmission, (iv) by overnight delivery with a reputable national overnight delivery service, or (v) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given three (3) Business Days after the date such notice is deposited in the United States Mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes.

if to Buyer, then to:

MS Leisure Company
9600 N. Ocean Shore Blvd,
St. Augustine, FL 32080
Attention: Travis Burke
E-mail: tburke@thedolphinco.com

with a copy to (which shall not constitute notice):

Greenberg Traurig, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Attention: Mark J. Kelson
E-mail: kelsonm@gtlaw.com

if to Seller, then to:

Festival Fun Parks, LLC
285 East Waterfront Drive, Suite 150
Homestead, PA 15120
Attention: Javier Carbajo Dominguez, Cristina Carro Werner, Alejandro Diez
Barturen, and John Reilly
E-mail: JCarbajo@grpr.com, CCarro@grpr.com, adiezb@grpr.com, and
john.reilly@PalaceEntertainment.com

with a copy to (which shall not constitute notice):

McDermott Will & Emery, LLP
333 SE 2nd Avenue, Suite 4500
Miami, FL 33131-4336
Attention: Gabriel Valdes
Email: glvaldes@mwe.com

or, if to the Escrow Agent, then to:

Citibank, N. A.
388 Greenwich Street, 29th Floor
New York, NY 10013
Attention: Kerry McDonough
E-mail: kerry.mcdonough@citi.com
Facsimile: (212) 783-7131

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to the foregoing clause (iii) or (v) of this Section 11, such communications shall be deemed to have been given on the date received by the Escrow Agent. In the event that the Escrow Agent, in its reasonable discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate.

12. Termination. This Agreement shall terminate on the first to occur of (a) the distribution of all of the amounts in the Escrow Funds in accordance with this Agreement or (b) delivery to the Escrow Agent of a written notice of termination executed jointly by Buyer and Seller after which this Agreement shall be of no further force and effect.

13. Miscellaneous. The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by Buyer, Seller, and the Escrow Agent. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any party, except as provided in Sections 6 and 16, without the prior consent of the other parties. This Agreement shall be governed by and construed under the laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rules that would cause the application of the laws of any other jurisdiction. Each party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the exclusive jurisdiction of the any state or federal court located in Wilmington, Delaware. The parties hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding

arising or relating to this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by facsimile or electronic transmission in portable document format (.pdf), and such facsimile or .pdf will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. The Parties represent, warrant and covenant that each document, notice, instruction or request provided by such Party to the Escrow Agent shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or any funds escrowed hereunder.

14. Compliance with Court Orders. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties hereto or to any other Person, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

15. Further Assurances. Following the date hereof, each party shall deliver to the other parties such further information and documents and shall execute and deliver to the other parties such further instruments and agreements as any other party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other party the benefits hereof.

16. Assignment. Neither Seller nor Buyer shall assign this Agreement without the prior written consent of the other party. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and acknowledged by the Escrow Agent. To comply with Federal law including USA Patriot Act requirements, assignees shall provide to the Escrow Agent a properly completed and valid IRS Form W-9 or applicable IRS Form W-8 (or, in each case, any successor form) and such other forms and documentation that the Escrow Agent may request to verify identification and authorization to act and become a Party to this Agreement. In no event shall the Escrow Agent be obligated hereunder to (x) make any payments from the Escrow Funds directly to any assignee of either Party of any rights under this Agreement, or (y) obey any written instructions delivered pursuant

hereto from any assignee of any rights under this Agreement, unless, in the case of clauses (x) and (y), such assignee has become a Party to this Agreement.

17. Force Majeure. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control, including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

18. Compliance with Federal Law. To help the U.S. Government fight the funding of terrorism and money laundering activities and to comply with Federal law requiring financial institutions to obtain, verify and record information on the source of funds deposited to an account, the Parties agree to provide the Escrow Agent with the name, address, taxpayer identification number, and remitting bank for all Parties depositing funds at Citibank pursuant to the terms and conditions of this Agreement. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity.

18. Use of Citibank Name. No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "Citibank" by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Escrow Agent.

19. Publication; Disclosure. By executing this Agreement, the Parties and the Escrow Agent acknowledge that this Agreement (including all related attachments) contains certain information that is sensitive and confidential in nature and agree that such information needs to be protected from improper disclosure, including the publication or dissemination of this Escrow Agreement and related information to individuals or entities not a party to this Agreement. The Parties further agree to take reasonable measures to mitigate any risks associated with the publication or disclosure of this Agreement and information contained therein. If any Party becomes aware of any threatened or actual unauthorized disclosure, publication or use of this Escrow Agreement, that Party shall promptly notify in writing the other Parties and the Escrow Agent and shall be liable for any unauthorized release or disclosure.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date set forth above.

BUYER:

MS LEISURE COMPANY

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date set forth above.

SELLER:

FESTIVAL FUN PARKS, LLC

By: _____

Name: John T. Reilly

Title: Chief Operating Officer

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date set forth above.

ESCROW AGENT:

CITIBANK, N.A.

BY: _____

NAME: _____

TITLE: _____

ANNEX I

Form of Joint Release Instruction

[DATE]

Citibank, N.A.
388 Greenwich Street, 29th Floor
New York, NY 10013
Attention: Kerry McDonough

Ladies and Gentlemen:

Reference is hereby made to that certain Escrow Agreement (the “Agreement”), dated as of August 16, 2021, by and among Buyer, Seller, and the Escrow Agent. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 4(a)(i) of the Agreement, you are hereby directed to disburse funds held in the Escrow Account, as follows:

(i) [the amount(s) to be disbursed],

(ii) [the date of disbursement and]

(iii) [the recipient(s) of the disbursement together with wire instructions therefore]

BUYER:

MS LEISURE COMPANY

By: _____
Name: _____
Title: _____

SELLER:

FESTIVAL FUN PARKS, LLC

By: _____
Name: _____
Title: _____

SCHEDULE 1

ESCROW AGENT FEE PROPOSAL

Prepared for:

**Project Triton Escrow
Citibank, N.A., Escrow Agent**

Acceptance Fee

WAIVED

To cover the acceptance of the Escrow Agency appointment, the study of the Escrow Agreement, and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group:

Administration Fee

WAIVED

The annual administration fee covers maintenance of the Escrow Account including safekeeping of assets in the escrow account, normal administrative functions of the Escrow Agent, including maintenance of the Escrow Agent's records, follow-up of the Escrow Agreement's provisions, and any other safekeeping duties required by the Escrow Agent under the terms of the Escrow Agreement. Fee is based on Escrow Amount being deposited in a non-interest bearing deposit account of Citibank, N.A., with a duration of at least a year, FDIC insured to the applicable limits.

1099 Tax Preparation Fee

WAIVED

To cover preparation of Form 1099-INT or any other applicable form for the applicable escrow party for each calendar year:

Transaction Fees

WAIVED

To cover all required disbursements from escrow account, including disbursements made via check and/or wire transfers, payments to all parties as designated by client, fees associated with postage and overnight delivery charges incurred by the Escrow Agent as required under the terms and conditions of the Escrow Agreement:

Other Fees

Material amendments to the Agreement: additional fee(s), if any, to be discussed at time of amendment.

TERMS AND CONDITIONS: The above schedule of fees does not include charges for out-of-pocket expenses or for any services of an extraordinary nature that we or our legal counsel may be called upon from time to time to perform in either an agency or fiduciary capacity, nor does it include the fees of our legal counsel. Fees are also subject to satisfactory review of the documentation, and we reserve the right to modify them should the characteristics of the transaction change. Our participation in this program is subject to internal approval of the third party depositing monies into the escrow account. The Acceptance Fee, if any, is payable upon execution of the documents. Should this schedule of fees be accepted and agreed upon and work commenced on this program but subsequently halted and the program is not brought to market, the Acceptance Fee and legal fees incurred, if any, will still be payable in full.

EXHIBIT A-1

Certificate as to Seller Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Seller and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of Seller. The below listed persons (must list at least two individuals) have also been designated Authorized Individuals and may be notified by Citibank N.A. prior to the release of Escrow Funds from the escrow account(s) unless an original "Standing or Predefined Instruction" letter is on file with the Escrow Agent.

Authorized Representative #1

John T. Reilly

Name

Signature

Manager and Chief Operating Officer

Title

Phone

Authorized Representative #2

Jesus Fernandez Moran

Name

Signature

Manager

Title

Phone

Authorized Representative #3

Thomas Johnson

Name

Signature

Secretary

Title

Phone

Authorized Representative #4

Name

Signature

Title

Phone

EXHIBIT A-2

Certificate as to Buyer Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Buyer and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of Buyer. The below listed persons (must list at least two individuals) have also been designated Authorized Individuals and may be notified by Citibank N.A. prior to the release of Escrow Funds from the escrow account(s) unless an original "Standing or Predefined Instruction" letter is on file with the Escrow Agent.

Authorized Representative #1

Name

Signature

Title

Phone

Authorized Representative #2

Name

Signature

Title

Phone

Authorized Representative #3

Name

Signature

Title

Phone

Authorized Representative #4

Name

Signature

Title

Phone

EXHIBIT B

AMENDMENT TO ASSET PURCHASE AGREEMENT

This **AMENDMENT TO ASSET PURCHASE AGREEMENT** (the “Amendment”), is made as of March 3, 2022 (the “Effective Date”) by and among MS Leisure Company, a Florida corporation (the “Buyer”), Festival Fun Parks, LLC, a Delaware limited liability company (the “Seller”), and Dolphin, Leisure, Inc., a Florida corporation (the “Guarantor”). The Buyer, the Seller, and the Guarantor are sometimes hereinafter referred to individually as a “Party” and together as “Parties.”

RECITALS

WHEREAS, the Parties are party to that certain Asset Purchase Agreement dated as of August 16, 2021 (the “Purchase Agreement”); and

WHEREAS, the Parties desire to amend Purchase Agreement on the terms and conditions set forth herein.

NOW THEREFORE, BE IT RESOLVED, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to become legally bound, agree as follows.

AGREEMENT

1. Capitalized Terms. Each capitalized term appearing but not defined herein shall have the meaning ascribed thereto in the Purchase Agreement.

2. Amendments.

(a) Section 2.7 of the Purchase Agreement is hereby amended and restated in its entirety as follows:

“Section 2.7 Purchase Price; Closing Payment. As full consideration for the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to the Buyer, as well as the non-competition and non-solicitation covenants set forth in Section 6.4, in addition to the Buyer’s assumption of the Assumed Liabilities, the Seller shall be entitled to receive, on the terms and conditions set forth in this Agreement, an aggregate amount equal to the Purchase Price, payable as follows:

(a) an amount equal to [REDACTED] (the “Deposit Amount”), payable concurrently with the execution of this Agreement by the Buyer to the Escrow Agent by wire transfer in immediately available funds to the account or accounts designated in the Escrow Agreement; plus

- (b) an amount equal to [REDACTED] (the “Second Installment”), payable concurrently with the Closing by the Buyer to the Seller by wire transfer in immediately available funds to the account or accounts designated by the Seller in writing; plus
- (c) an amount equal to [REDACTED] (the “Deferred Purchase Price”), payable by the Buyer to the Seller on the dates and in the amounts set forth below by wire transfer in immediately available funds to the account or accounts designated by the Seller in writing to the Seller:
 - (i) [REDACTED] on the date that is three (3) months after the Closing Date;
 - (ii) [REDACTED] on the date that is six (6) months after the Closing Date; and
 - (iii) [REDACTED] on the date that is nine (9) months after the Closing Date.”

(b) The following provision is added as a new Section 6.18 of the Purchase Agreement:

“Section 6.18 Keep Well. The Buyer and the Guarantor covenant and agree, from and after the Closing, to remain solvent and in good financial health until such time that all obligations with respect to the Deferred Purchase Price have been satisfied in full (the “Satisfaction Date”). In furtherance of the foregoing, the Buyer agrees to:

- (a) deposit all of its month-end earnings (net of actual maintenance capex related to the Business (“Maintenance Capex”)) before interest, taxes, depreciation, and amortization generated by the Business (“EBITDA”) from and after the Closing in a segregated bank account from other Buyer operating accounts (the “Segregated Account”); and
- (b) Maintain all accrued funds deposited in the Segregated Account in immediately available cash or cash equivalents convertible on demand into immediately available cash until the Satisfaction Date; it being understood and acknowledged by the Buyer that no funds deposited in the Segregated Account may be drawn, accessed, or otherwise used (including as collateral for other obligations) by the Buyer at any time prior to the Satisfaction Date unless, and

in such case, only to the extent, that the total dollar amount in the Segregated Account exceeds the outstanding Deferred Purchase Price obligations at the time of such draw, access, or other use.

For purposes of this Section 6.18: (i) EBITDA shall be calculated consistently with the Seller's historic practices and policies with respect to the Business and in particular, with respect to expenses, which shall remain consistent with the Business's 2021 levels (excluding any new management fees), and (ii) Maintenance Capex shall include only those maintenance capital expenditures of the Business up to a maximum amount of (A) [REDACTED] until the first tranche of the Deferred Purchase Price is satisfied, and (B) [REDACTED] until the remainder of the Deferred Purchase Price is satisfied; any Capex Maintenance expenditures in excess of the foregoing caps, or other non-maintenance related capital expenditures of any kind shall be funded from external resources and/or otherwise excluded from the calculation of EBITDA (i.e., not serve to reduce earnings for purposes of such calculation).

3. Miscellaneous.

(a) This Amendment shall be governed by the internal laws of the State of Delaware as to all matters, including but not limited to matters of validity, construction, effect, and performance.

(b) On and after the date hereof, each reference in the Purchase Agreement to "this Agreement" or word of like import shall mean and be deemed to be a reference to the Purchase Agreement as amended hereby.

(c) Except as amended and modified hereby, the Purchase Agreement is in all respects ratified and confirmed as of the date hereof, and the terms, covenants and agreements therein shall remain in full force and effect. In the event of any inconsistency or conflict between this Amendment and Purchase Agreement, this Amendment shall control.

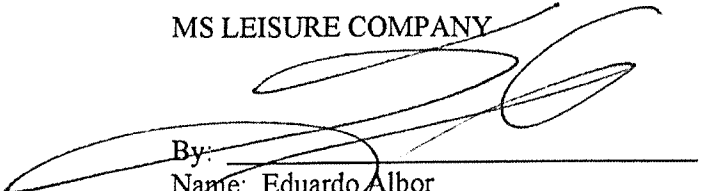
(d) This Amendment may be executed in two or more counterparts (including by means of telecopied or PDF signature pages), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterpart signatures need not be on the same page and shall be deemed effective upon receipt.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the date first written above by their respective managers or officers thereunto duly authorized.

BUYER:

MS LEISURE COMPANY

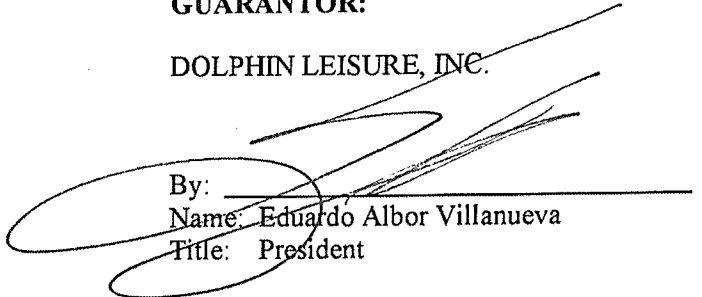
By: 

Name: Eduardo Albor

Title: President

GUARANTOR:

DOLPHIN LEISURE, INC.

By: 

Name: Eduardo Albor Villanueva

Title: President

SELLER:

FESTIVAL FUN PARKS, LLC

By: _____

Name: John T. Reilly

Title: Chief Operating Officer

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the date first written above by their respective managers or officers thereunto duly authorized.

BUYER:

MS LEISURE COMPANY

By: _____

Name: Eduardo Albor Villanueva

Title: President

GUARANTOR:

DOLPHIN LEISURE, INC.

By: _____

Name: Eduardo Albor Villanueva

Title: President

SELLER:

FESTIVAL FUN PARKS, LLC

By: John T. Reilly

Name: John T. Reilly

Title: Chief Operating Officer