Meeting Date: 1/10/12

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B/4BSA

Santa Clara All-America City 2001

Date: January 10, 2012

To: Mayor and Council for Information
Stadium Authority for Information

From: City Manager/Executive Director

Subject: ADDENDUM: Council Meeting Agenda Item 6.B. and Stadium Authority Agenda Item 4.B. Documents Related to Agenda Report

The following documents related to Council and Stadium Authority agendas are attached:

- Fourth Amendment to Ground Lease between City and Cedar Fair
- Quitclaim Deed
- Parking Agreement between City, Stadium Authority, StadCo, and Cedar Fair
- Easement Agreement between City, Stadium Authority, and StadCo

The staff report recommends approval of the Resolutions approving these documents.

Jennifer Sparacino
City Manager/Executive Director

Documents Related to this Report:

1) Fourth Amendment to Ground Lease between City and Cedar Fair
2) Quitclaim Deed
3) Parking Agreement between City, Stadium Authority, StadCo, and Cedar Fair
4) Easement Agreement between City, Stadium Authority, and StadCo

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POST MEETING MATERIAL

RECORD WITHOUT FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY:

Office of the City Attorney
City Of Santa Clara, California

AND WHEN RECORDED MAIL TO:

Richard E. Nosky, Jr.
City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA

THIS SPACE ABOVE FOR RECORDER'S USE

FOURTH AMENDMENT TO GROUND LEASE WITH FIRST REFUSAL PURCHASE RIGHTS

by and between

CITY OF SANTA CLARA,

LESSOR,

and

CEDAR FAIR SOUTHWEST INC.

LESSEE.

FOURTH AMENDMENT TO GROUND LEASE WITH RIGHT OF FIRST REFUSAL PURCHASE RIGHTS

THIS FOURTH AMENDMENT TO GROUND LEASE WITH RIGHT OF FIRST REFUSAL RIGHTS (this "**Fourth Amendment**") made this ___ day of January, 2012 (the "**Effective Date**"), is made between CEDAR FAIR SOUTHWEST INC., a Delaware corporation ("**Lessee**"), and THE CITY OF SANTA CLARA, a chartered California municipal corporation ("**Lessor**").

RECITALS

A. Lessee's predecessor in interest, Kings Entertainment Company, a North Carolina corporation ("**Original Lessee**") and The Redevelopment Agency of the City of Santa Clara ("**RDA**") were parties to that certain Ground Lease with First Refusal Purchase Rights dated as of June 1, 1989 (the "**Original Lease**") and recorded June 1, 1989 as Instrument No. 10131592 in the official records of Santa Clara County (the "**Official Records**"), as amended by that certain (i) First Amendment to Ground Lease with First Refusal Purchase Rights dated as of October 4, 1994 and recorded October 7, 1994 as Instrument No. 12678902 in the Official Records, (ii) Second Amendment to Ground Lease with First Refusal Purchase Rights dated as of March 18, 1997 and recorded March 25, 1997 as Instrument No. 13648418 in the Official Records, and (iii) Third Amendment to Ground Lease with First Refusal Purchase Rights dated as of May 25, 1999 and recorded July 8, 1999 as Instrument No. 14887081 in the Official Records (collectively, as amended, the "**Lease**") with respect to that certain land located in the Bayshore North Redevelopment Project Area as described on Exhibit A attached hereto (the "**Premises**"). All capitalized terms used but not defined herein shall have the meanings set forth in the Lease.

B. The RDA's interests as fee owner of the Premises and Lessor under the Lease were assigned to Lessor pursuant to (i) that certain Property Conveyance Agreement dated as of March 8, 2011, and recorded June 23, 2011 as Instrument No. 21216106 in the Official Records; (ii) that certain Assignment and Assumption Agreement dated as of March 8, 2011, and recorded June 23, 2011 as Instrument No. 21216108 in the Official Records; and (iii) that certain Grant Deed (4701 Great America Parkway) dated as of March 8, 2011, and recorded June 23, 2011 as Instrument No. 21216109 in the Official Records.

C. Original Lessee assigned all of its rights under the Lease to Paramount Parks, Inc. a Delaware corporation, which in turn is predecessor by name change to Lessee, which currently operates the assets and business comprising California's Great America (the "**Theme Park**") located on the Premises.

In consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENTS

1. LEASE TERM.

1.1 Extension of Term. Article II, subsection C [# 203] of the Original Lease is hereby amended adding to the last sentence thereof the following: "except as provided in Section 204 below".

1.2 Options to Renew. The following is hereby added as Article II, subsection d [§204]of the Lease:

(A) Options to Renew. Following expiration of the Extended Term on December 31, 2039, Lessee shall have three (3) successive options (each, an "**Extension Option**") to renew the Term. The "**First Extended Option Term**" (herein so called) will expire on the later of the date (the "**Initial Option Extension Term**"): (a) **December 31, 2054**, or (b) the expiration date of the initial term of any lease agreement (the "**Stadium Lease**"), between the City, the RDA, the Santa Clara Stadium Authority and/or other public agency on the one hand, as lessor, and Forty-Niners, Stadium, LLC (the "**Stadium Company**") or any affiliate thereof which owns or operates the San Francisco 49ers professional football team, as lessee, relating to the construction and operation of a stadium on property adjacent to the Premises (the "**Stadium**"). The "**Second Extended Option Term**" (herein so called) will expire on the tenth anniversary of the expiration of the Initial Option Extension Term. The "**Third Extended Option Term**" (herein so called) will expire on the tenth anniversary of the expiration of the Second Option Extension Term. The Initial Extension Option Term, the Second Extension Option term and the Third Extension Option Term are sometimes referred to herein collectively as the "**Extension Option Terms**", and each individually, as an "**Extension Options**"). Each Extension Options shall be exercisable only by written Exercise Notice (as defined below) delivered by Lessee to Lessor as provided below. Upon the proper exercise of an Extension Option, the Lease Term for the Premises then being leased by Lessee shall be extended for the applicable Extension Option Term.

(B) Extension Option Rent. The Basic Rent payable by Lessee during each Extension Option Term (the "**Option Basic Rent**") shall be equal to (a) for the Initial Extension Option Term, 107.5% percent of the then current Basic Rent, (b) for the Second Extension Option Term, 105% percent of the then current Basic Rent and (c) for the Third Extension Option Term, 105% percent of the then current Basic Rent. All other terms and conditions of the Lease shall apply throughout the Extension Option Terms; however, Lessee shall, in no event, have the option to extend the Lease Term beyond the Extension Option Terms described in this Section 204.

(C) Exercise of Extension Options. With respect to each Extension Option, if Lessee wishes to exercise such option, Lessee shall, on or before the date (the "**Exercise Date**") which is seven (7) months prior to the expiration of the

Extended Term or the current Extension Option Term, as applicable, exercise the option by delivering written notice ("**Exercise Notice**") thereof to Lessor. Lessee may only exercise each of the second and third Extension Options hereunder if it has timely and properly exercised its prior Extension Options.

Upon proper exercise of each Extension Option, Lessor and Lessee shall immediately execute an amendment to the Lease confirming the Option Basic Rent for the applicable Extension Option Term and the actual commencement date and expiration date of such Extension Option Term.

(D). Time is of the Essence. Time is of the essence with respect to each and every time period described in this Section 204."

2. RENT.

2.1 Basic Rent. Article III, subsections A.1 [§ 302] of the Original Lease is hereby modified to provide that, during an Extension Option Term, the Basic Rent will be deemed to refer to the Option Basic Rent as established for such period pursuant to Section 204 of the Lease.

2.2 Additional Rent. Article III, subsections B.1 [§ 305] of the Original Lease is hereby deleted and replaced with the following:

"Lessee shall pay unto Lessor, for each Lease Year of the Term, Additional Rent equal to the sum of: (a) five percent (5%) of the Annual Gross Revenues for such Lease Year in excess of $56,000,000 (the "**5% AGR Threshold**") to $100,000,000; plus (b) seven and one-half percent (7.5%) of the Annual Gross Revenues for such Lease Year in excess of $100,000,000 (the "**7.5% AGR Threshold**"; and together with the 5% AGR Threshold, the "**AGR Thresholds**").

"**Annual Gross Revenues**" means the gross revenues from the operation of the business conducted on the Property for a Lease Year, less the following, as determined in accordance with generally accepted accounting principles:

(a) The selling price of any merchandise returned by customers and accepted for full credit or (if Lessee gives less than full credit) the amount of any funds, discounts or allowances given for returned merchandise;

(b) Any sums or credits received by Lessee in settlement of claims for loss of or damage to merchandise or trade fixtures;

(c) Any sales taxes, use taxes, so-called luxury taxes, consumers' excise taxes, gross receipt taxes or other similar taxes now or hereafter imposed upon the sale of merchandise or services, even if such taxes are included in the "selling price" to the customer (i.e., not collected separately);

(d) The proceeds from any sale of fixtures, equipment or other property other than stock-in-trade;

(e) Refunds received from manufacturers or suppliers of returned merchandise;

(f) Amounts collected by Lessee from customers at the Property for delivery charges;

(g) The amount of discounts on sales to Lessee's employees (i.e., only amounts actually collected will be included in Annual Gross Revenues);

(h) Bad debts and/or bad checks not to exceed in the aggregate one percent (1%) of Annual Gross Revenues in any Lease Year and, if subsequently collected, such amounts shall be included in Annual Gross Revenues in the month and year in which they were collected;

(i) Gift certificates, or like vouchers, until such time as the same have been converted into a sale by redemption;

(j) The amount of installments, credit or layaway sales unless and until such sums or installments are actually received by Lessee at which time such amount shall be included in Annual Gross Revenues;

(k) The amount of service charges paid to credit card issuers not to exceed in the aggregate three percent (3%) of Lessee's Gross Receipts in any Lease Year;

(l) The amount of discounts on sales or non-cash donations to non-profit, charitable and/or religious organizations (i.e., only amounts actually collected from such organizations will be included in Annual Gross Revenues);

(m) Any portion of the gross receipts of concessionaires, licensees and subtenants operating on any portion of the Premises that is refunded to or retained by such concessionaires, concessionaires, licensees and/or subtenants;

(n) The amount of any tips or gratuities paid by Lessee's customers to Lessee's employees.

Commencing on January 1, 2020, thereafter on January 1, 2030 and thereafter on the January 1 of every fifth Lease Year during the Extended Term, and, should an Extension Option be exercised, commencing on January 1 of the 6th Lease Year of each Option Extension Term and thereafter on the January 1 of every fifth Lease Year during the Extension Option Term, (each such date, an "**Adjustment Date**"), each AGR Threshold will be adjusted by increasing each then applicable AGR Threshold to 115% of the then current AGR Threshold, provided Lessee has made the Minimum Park Capital Improvement Investment in the immediately preceding five Lease Years. For purposes of this Section 305, the Minimum Park Capital Improvement Investment shall mean Ten Million Dollars ($10,000,000).

If Lessee fails to make the Minimum Park Capital Improvement Investment by January 31, 2020, then no adjustments to the AGR Thresholds will be made for

the remaining Extended Term and for any Extension Options Terms. In the event that Lessee fails to make the Minimum Park Capital Improvement Investment in any subsequent five Lease Year period, the Lessee shall not be entitled to receive an adjustment to the AGR Threshold on the following applicable Adjustment Date, but its right to receive an adjustment to the AGR Threshold on the subsequent Adjustment Dates shall be as set forth in the preceding paragraph.

2.3 Certified Annual Statements. Notwithstanding anything to the contrary in Article III, subsection B.2.c [§ 309] of the Original Lease, the following firms constitute National Accounting Firms:

2.3.1 Deloitte Touche

2.3.2 Ernst Young

2.3.3 PriceWaterhouseCoopers

2.3.4 KPMG;

2.3.5 BDO;

2.3.6 Any national accounting firm having, at the time of delivery of the certified annual statement, a reputation and stature in the accounting community comparable to the foregoing firms reasonably approved by Lessor.

3. USE OF THE PROPERTY.

3.1 Use. Article IV, subsection A [§ 401] of the Original Lease is hereby deleted and replaced with the following:

"Lessee shall have the right to use the Property for the following purposes, and Lessee covenants and agrees to use the Property for the following purpose and for no other; for the operation of a major theme entertainment park similar to or better in scope and quality to that operating on the Property as of October 1, 2010. The use and operation of the Theme Park and the Improvements located on the Property as of the October 31, 2011 are deemed to comply with the foregoing use limitation.

3.2 Management of the Property; Name. Pursuant to Article IV, subsection B [§ 402] of the Original Lease, Lessor hereby approves the current name of the business "California's Great America".

3.3 Obligation to Refrain from Discrimination. Article IV, subsection C [§ 403] of the Original Lease is hereby deleted and replaced with the following:

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, source of income, national origin, ancestry, disability (actual or perceived), medical condition, age, marital

status, familial status, domestic partner status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, and any additional basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, as such provisions may be amended from time to time, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, and Lessee itself or any person claiming under or through it shall not establish or permit any such practice or practices of discrimination, or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee, or vendees of the Property.

3.4 Form of Discrimination Clauses. Article IV, subsection D [§ 404] of the Original Lease is hereby deleted and replaced with the following:

"Lessee shall refrain from restricting the rental, sale or lease of the Property, or any portion thereof, on the basis of race, color, religion, creed, source of income, national origin, ancestry, disability (actual or perceived), medical condition, age, marital status, familial status, domestic partner status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, and any additional basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, as such provisions may be amended from time to time. All such deeds, leases or contracts pertaining co the foregoing matters shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(A) In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, source of income, national origin, ancestry, disability (actual or perceived), medical condition, age, marital status, familial status, domestic partner status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, and any additional basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, as such provisions may be amended from time to time, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees,

subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(B) In leases: "The Lessee covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, source of income, national origin, ancestry, disability (actual or perceived), medical condition, age, marital status, familial status, domestic partner status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, and any additional basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, as such provisions may be amended from time to time, in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

(C) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, source of income, national origin, ancestry, disability (actual or perceived), medical condition, age, marital status, familial status, domestic partner status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, and any additional basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, as such provisions may be amended from time to time in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land." "

4. PARKING.

4.1 Parking. Article I, subsection D [§ 106] of the Original Lease is hereby deleted and replaced with the following:

> "[§ 106] Parking Areas. The Parking Areas consist of the Main Lot (as defined in Section 501 of the Lease) and any replacement parking areas Lessor provides to Lessee pursuant to Section 501 (in each case, exclusive of any improvements thereon). Whenever replacement parking spaces are designated after the Commencement Date, the parking spaces being replaced shall also be designated concurrently in writing by Lessor, in which case the designated replaced parking spaces shall no longer be part of the Parking Areas under this Lease or subject to the easements set forth herein. In the event that Lessor elects to provide replacement spaces, any costs related to creating the replacement spaces shall be the obligation of Lessor; the replacement spaces shall be no farther away from the main entrance to the Theme Park as the spaces being replaced; the size of the replacement spaces shall be standard size spaces (i.e. non-compact spaces); there shall be pedestrian access from such replacement spaces to the main entrance that does not require the crossing of a road or highway; provided, however, the use of the San Tomas Aquino Creek trail to access the replacement parking will not be considered to require crossing of a road or highway; and there shall be no negative impact on traffic flow or ingress or egress.

4.2 Main Lot. Article V, subsection A [§ 501] of the Original Lease is hereby deleted and replaced with the following:

> "(A) Main Lot Parking Easement. Lessor hereby grants to Lessee, as an appurtenance to its leasehold interest created herein, a perpetual, non-exclusive easement (the "**Main Lot Parking Easement**") over the area described on Exhibit B-1 and depicted on Exhibit B-2 attached hereto (the "**Main Lot**") (a) for parking of vehicles in connection with any uses of the Theme Park or the Main Lot authorized hereunder, (b) for uses ancillary to the operation of the Theme Park; and (c) for operation and management of the parking areas consistent with 4.2(E) below, provided that all such rights shall be exercised in a manner not inconsistent with any applicable provisions of the Parking Agreement and any Supplemental Parking Agreements (as such terms are defined in 4.2(F) below). Further, but without limitation on the provisions of 4(F) below, Lessor shall not grant any easements or other rights to any third party that are superior to those granted to Lessee under the Lease or the Fourth Amendment. Any such easements or rights granted to a third party shall not infringe upon or diminish the rights granted to Lessee, and all such rights shall be exercised in a manner consistent with any applicable provisions of the Parking Agreement and any Supplemental Parking Agreements. Lessor shall be the burdened party, and the Main Lot shall be the burdened parcel, under the Main Lot Parking Easement. Lessee shall be the benefitted party, and Lessee's leasehold estate created herein shall be the benefitted parcel, under the Main Lot Parking Easement. The existing Main Lot will be modified to accommodate parking for not less than 6,500

vehicles with a goal of providing parking for not less than 7,000 vehicles on a paved or concrete surface and certain additional improvements will be constructed thereon at no expense to Lessee ("Initial Main Lot Modification"). After completion of the Initial Main Lot Modification, the number of spaces available in the Main Lot shall be deemed to be adequate parking for the Theme Park and the minimum number of spaces to be provided by Lessor thereafter for all purposes hereunder. In the event Lessor reconfigures the Main Lot or any portion thereof after the Initial Main Lot Modification, such reconfiguration shall be at Lessor's sole cost and expense and will be done at such times as are reasonably approved by Lessee. Further, except as provided in this Amendment or any Supplemental Parking Agreement (as defined in 4.2(F) below) or if Lessee provides written consent, such reconfiguration (i) shall provide Lessee with at least the same number of spaces as existed after the Initial Main Lot Modification, (ii) shall not change traffic flow or ingress and egress for GA Tenant's use of the Main Lot, and (iii) shall ensure that all parking spaces are standard size space (i.e. non-compact spaces).

The Main Lot Parking Easement will expire on the expiration or earlier termination of this Lease and Lessee shall execute any required quitclaim deed or other document necessary to remove any encumbrance on title to the Main Lot resulting from the Main Lot Parking Easement. Lessee acknowledges that the Main Lot Parking Easement does not include the property immediately adjacent to the Main Lot and the main entrance to the Theme Park commonly referred to as the Hetch Hetchy Right of Way for purposes of parking. Lessee shall be solely responsible for obtaining any agreements or approvals necessary from the City and County of San Francisco to use the Hetch Hetchy Right of Way for parking purposes, including payment of all costs attributable to such use. Notwithstanding the immediately preceding sentence, Lessor and Lessee acknowledge that Lessor's title to the Property includes a reservation of rights over the Hetch Hetchy Right of Way allowing certain uses of the Hetch Hetchy Right of Way, which rights are included in the Main Lot Parking Easement. Lessor shall defend, protect, and preserve the access right of way for ingress and egress from the Main Lot to the main entrance of the Theme Park. In the event that there is a disruption in the access right of way for ingress and egress between the Main Lot and the main entrance of the Theme Park, Lessee shall be entitled to terminate this Lease, provided that such right of termination must be exercised, if at all, by an unequivocal, written notice delivered to Lessor within twelve (12) months after such disruption occurs. Such termination shall be in addition to any other rights and remedies of Lessee with respect to Lessor's obligation to defend, protect and preserve the access right of way.

(B) Joint Parking Structure. Lessor may use up to the ten acres of the Main Lot shown on Exhibit E attached to the Original Lease (the "**Joint Parking Structure Site**") to construct a parking structure (the "**Joint Parking Structure**") and for the expansion of the City Convention Center, other governmental and public uses, and other uses approved by Lessee, provided that Lessor provides an easement for temporary and permanent replacement parking for all spaces

eliminated in the Main Lot as a result of such construction, and provided further, Lessor obtains Lessee's prior consent to such construction, which shall not be unreasonably withheld. Any construction of the Joint Parking Structure will be done at such times as are approved by the Lessee, and during such construction Lessor shall provide temporary or interim alternate parking to replace the parking spaces made unavailable by such construction, with such temporary or interim alternate parking subject to approval by Lessee, which will not be unreasonably withheld, conditioned or delayed if such spaces are the same distance or less from the main entrance to the Theme Park as the areas made unavailable by such construction. From and after the commencement of such construction, the Main Lot Easement will be deemed terminated with respect to the Joint Parking Structure Site, except for portions thereof over which Lessor provides for space for parking vehicles of visitors to the Theme Park.

(C) No Other Improvements. Lessor shall not otherwise construct or permit construction of, structures on the Main Lot, without Lessee's reasonable written approval, so long as Lessee, after any applicable notice and cure period, is not in default under Section 1211 of the Original Lease. Withholding of approval by Lessee shall be reasonable if the proposed construction would materially interfere with (i) ongoing park operations (including any interference due to the construction traffic or construction noise), (ii) access to the Main Lot from public roads and/or from the Premises, (iii) Lessee's rights under this Section 501 or (iv) the quiet enjoyment of the Premises. In the event that Lessee is in default under Section 1211 of the Original Lease or Lessor obtains Lessee's approval, Lessor may construct hotels or structures for other commercial uses in a segment of the Main Lot Parking Area (or sell or lease portions of the Main Lot Parking Area for such uses) but only if prior to the commencement of construction Lessor provides replacement parking for any parking spaces eliminated in the Main Lot Parking Area. In connection with making portions of the Main Lot Parking Area available for such uses, Lessor may enter into such agreements, contracts and consents, without the approval of the Lessee so long as Lessee is in default hereunder, provided, however, Lessor shall advise Lessee of any such agreements, contracts and consents which are contemplated 30 days in advance of their execution and shall provide copies of such proposed agreements, contracts and consents as soon as such documents are available. Any replacement parking provided in accordance with this Section shall be provided at no cost to Lessee and shall be no further from the main entrance of the Theme Park than the spaces removed.

(D) Accommodating Uses. To the extent consistent with any applicable provisions of the Parking Agreement, any Supplemental Parking Agreements and the Stadium Easement Agreement (as such terms are defined in 4.2(F) below), Lessor and Lessee agree to seek accommodating uses of the Main Lot for the needs of the Theme Park and other local needs, including the City Convention Center. No later than five (5) days after the Commencement Date and on January 1 of each year thereafter, Lessee will make available to officials of the City Convention Center its forecasts of daily attendance for the Lease Year and shall periodically update such attendance forecasts. Officials of the City Convention

Center will furnish Lessee with 30 calendar days notice of events which are anticipated to draw attendance at the City Convention Center requiring in excess of 500 parking spaces in the Main Lot ("Major Convention Events"). The City Convention Center shall not schedule Major Convention Events for a day on which daily attendance at the Theme Park, as shown by the attendance forecasts made available by Lessee, is forecasted to equal or exceed 25,000 patrons without the prior consent of Lessee. Based on the foregoing and discussions between Convention Center officials, Lessee and Lessor, Lessor and Lessee will seek to minimize any adverse effect on the available parking for the patrons of the respective facilities. Lessor shall obtain written commitments to observe the foregoing requirements throughout the Term hereof from the appropriate official of the City Convention Center.

Lessor shall cooperate with Lessee in obtaining rights for Lessee to use the Tasman Garage structure for Theme Park visitor parking on days when needed; provided, however, that any such rights may be subject to the rights of others to use the garage, including, without limitation, for parking for patrons and employees of the City Convention Center and the Stadium proposed to be developed to the east of the Main Lot. Prior to any Theme Park use of the Tasman Garage structure, Lessor or the owner of the Tasman Garage structure shall agree on operational issues related to Theme Park use of the garage including revenue collection and allocation of costs associated with use of the Tasman Garage structure.

(E) Main Lot Revenues and Expenses. Lessee shall be responsible for the management and operation of the Main Lot, except for the Joint Parking Structure, and shall pay all costs associated with the maintenance and operation thereof. With respect to the Joint Parking Structure, Lessee will not be responsible for maintenance and operation thereof; however, Lessee will contribute to the owner thereof the portion of the costs associated with the maintenance and operation of the Joint Parking Structure attributable or reasonably allocable to the portion of the Joint Parking Structure needed to meet the parking requirements hereunder (i.e., when added to the remaining spaces in the Main Lot total not less than 6,500). All revenues from Main Lot, shall be revenues (and Annual Gross Revenues) of Lessee, provided however with respect to the Joint Parking Structure, Lessee will be entitled to receive from the owner thereof an amount equal to all revenues of the Joint Parking Structure attributable or reasonably allocable to the use of the portion of the Joint Parking Structure by visitors to the Theme Park. All costs of operating the Main Lot, including possessory interest taxes, insurance, ordinary maintenance and repair, resurfacing and replacement and incidental costs associated therewith shall be costs of the Lessee. Costs of operating the Main Lot shall include a pro rata portion (based on the percentage of the applicable acreage used for the Theme Park) of the costs of any payments (whether rent or otherwise, but not including damage or liability resulting from any breach or default by Lessor) under those certain leases identified as (x) the City Lease (evidenced by Document No. 5281687 of the Official Records of Santa Clara County), as amended and (y) the South Ground

Lease (Document No. 8429354 of the Official Records of Santa Clara County) as amended. The rent for which Lessee is responsible under the City Lease after the expiration of the term of said City Lease (as amended through Land Lease Supplement No. 3) shall not exceed the amount due during the last year of such term (and then subsequently each following year) as increased by any increase in the Consumer Price Index from the prior year.

Lessor shall advise Lessee of the amounts and due dates for payments that will be administered by Lessor, but which relate to costs for which Lessee is responsible under this Section 501, by a written notice. Such notice may refer to one or more required payments. Such notice shall be delivered to Lessee not less than thirty (30) days before the payment referred to therein becomes due. Lessee shall pay the amount specified in the notice to Lessor not less than five (5) days before the payment by Lessor becomes due. If Lessor fails to notify Lessee of a payment at least thirty (30) days before payment by Lessor becomes due, Lessee shall pay to Lessor the amount specified in the notice within twenty-five (25) days after Lessee's receipt of the notice. In the event that Lessee fails to pay the amount specified in the notice at least five (5) days before payment by Lessor becomes due, or within twenty-five (25) days after Lessee's receipt of the notice, whichever occurs last, in addition to any other remedy provided by this Lease, Lessee shall pay Lessor the amount specified in the notice and interest on such amount at the annual rate of one percent (1%) above the Bank of America reference rate on the date payment by Lessee was due. Said Interest shall accrue from the date payment by Lessee was due until the amount specified in the notice is received by Lessor.

(F) Parking Agreement. Lessee acknowledges that (a) the Stadium is proposed to be developed and constructed in what was designated as the Overflow Parking Area in the Original Lease and (b) the successful operation of the Stadium will require that the Main Lot be available to Stadium Company, an affiliate of the San Francisco Forty Niners Limited, and Santa Clara Stadium Authority for parking use during days on which NFL games and other events are held in the Stadium. Attached hereto as Exhibit "C" is a copy of that certain Parking Agreement dated as of January ___, 2012 (the "**Parking Agreement**"), among Lessee, Lessor, Stadium Company and Santa Clara Stadium Authority, which Parking Agreement provides for, among other things, the elimination of the Overflow Parking Area for Theme Park parking purposes, the required parking capacity and the coordination of scheduling of Stadium Events (including NFL games) and the revenue and cost sharing associated therewith. The Parking Agreement contemplates the negotiation and entry into an Implementation Agreement (the "**Supplemental Parking Agreements**"), relating to such parking issues. Attached hereto as Exhibit "D" is a copy of that certain Easement Agreement dated January __, 2012 (the "**Stadium Easement Agreement**"), among Lessor, Stadium Company and Santa Clara Stadium Authority, pursuant to which Lessor grants to the Santa Clara Stadium Authority and Stadium Company non-exclusive easements over the Main Lot consistent with the Parking Agreement, the Lease and the Fourth Amendment. The easements and other rights in the Main Lot granted to GA Tenant hereunder, and the easements and

other rights granted to Stadium Company and Santa Clara Stadium Authority pursuant to the Stadium Easement Agreement are intended by City, as grantor, to be non-exclusive, and not to diminish or infringe upon one another. Lessee acknowledges and agrees that the easements over the Main Lot created pursuant to the Stadium Easement Agreement are not inconsistent with Lessee's rights under the Main Lot Parking Easement.

(G) Lessor agrees that it is in the best interest of the Theme Park and its ongoing operations that the location of the Theme Park be visible and easily identifiable from Great America Parkway and Tasman Drive. Lessor agrees to cooperate with Lessee in achieving such visibility by either retaining an open field of vision to the ticket plaza from the entrances to the Main Lot on Tasman Drive and Great America Parkway or installing signs located at the Main Lot entrances on Tasman Drive and Great America Parkway. Any signs installed will be at Lessee's sole cost and will be subject to all City zoning code requirements. Further, any signs installed under this section shall be in addition to any signs permitted under Article V, subsection C [§503] of the Original Lease.

4.2.1 Termination of Stadium Agreement. Notwithstanding Section 4.2 of this Fourth Amendment, if at any time, the Stadium Company or the Santa Clara Stadium Authority notifies Lessee that the Disposition and Development Agreement between the Santa Clara Stadium Authority and the Stadium Company has been terminated and that construction of the Stadium has been abandoned, then Section 5.2 of this Fourth Amendment is void and Article V, subsection A [§501] of the Lease shall be in full force and effect, Section 2.2 of this Fourth Amendment shall be void and Article III, subsection B [§305] of the Original Lease shall be in full force and effect, and Section 1.2 of this Fourth Amendment shall be void and shall be replaced by the following:

Options to Renew. Following expiration of the Extended Term on December 31, 2039, Lessee shall have one (1) option ("**Extension Option**") to renew the Term. for an additional fifteen (15) year period ("**Extension Term**"). The Basic Rent payable by Lessee during the Extension Term (the "**Option Basic Rent**") shall be equal to 110% percent of the then current Basic Rent. With respect to the Extension Option, if Lessee wishes to exercise such option, Lessee shall, on or before the date (the "**Exercise Date**") which is seven (7) months prior to the expiration of the Extended Term, as applicable, exercise the option by delivering written notice ("**Exercise Notice**") thereof to Lessor. Upon proper exercise of the Extension Option, Lessor and Lessee shall immediately execute an amendment to the Lease confirming the Option Basic Rent for the Extension Term and the actual commencement date and expiration date of such Extension Term.

5. SIGNS. Article V, subsection C [§ 503] of the Original Lease is hereby deleted and replaced with the following:

C. [§ 503] Signs. Lessee shall have full use and control of the variable message sign adjacent to the Bayshore Freeway south Of the Premises (subject to the terms of that certain agreement originally between the RDA and Paramount

Parks Inc dated June 10, 2002). Lessor owns said variable message sign and Lessee shall operate maintain, repair and replace the same in good condition and repair throughout the Lease. Lessor hereby grants to Lessee for the Term of this Lease full use and control of that certain sign easement and that certain "non-exclusive easement" for purposes of ingress and egress to said sign easement, all as more particularly described on Exhibit G of the Original Lease. Lessee shall also have the right to retain, install and maintain upon the Premises and Parking Areas signs advertising the business conducted thereon, subject to applicable laws.

6. ALTERATION OF IMPROVEMENTS.

6.1 Alteration of Improvements. Article VII, subsection D [§ 704] of the Original Lease is hereby amended by (a) deleting the date "April 30, 1985" and replacing it with "October 1, 2011" in each place it appears; and (b) clause (iii) will be modified as follows: ", and (iii) no Improvement with a replacement cost of more than $4,000,000 is razed without the prior consent of Lessor".

7. LEASEHOLD MORTGAGE/MORTGAGEE PROTECTIONS.

7.1 Fee Mortgagee. Lessor represents and warrants that the Lessor's fee interest in the Property is not subject to any deed of trust, mortgage, pledge or other instrument securing repayment obligations of Lessor or Lessor's predecessor in interest, i.e., the Agency. In addition:

7.1.1 Article III, subsection E [§ 312] of the Original Lease is hereby amended by deleting therefrom the following clause:

", provided that during any period when Lessor is required to pay a higher rata of interest under the TIAA Note as a result of a default thereunder, the rate of interest on delinquent rent shall be the rate of interest that TIAA charges Lessor."

7.1.2 Article IV, subsection F [§ 405] of the Original Lease is hereby amended by deleting therefrom the last full paragraph as follows:

"During the term of the TIAA Note, Lessee shall permit TIAA and each other institutional holder of any TIAA Note to visit and inspect the Property. Without limiting the foregoing, Lessee shall permit TIAA, or its agents, representatives or workers, to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same."

7.1.3 In addition to the amendment under Section 6 above, Article V, subsection E [§ 505] of the Original Lease is hereby amended by deleting therefrom the last two full paragraphs as follows:

"The above right of first refusal shall be subject and subordinate to the rights of any holders of any mortgage on the Premises, including TIAA.

"Any acquisition by Lessee hereunder shall-be subject to the terms of that certain Right of First Refusal granted by Lessor to Caz Development Company by an instrument dated June 4, 1983 and recorded June 5, 1985 in the Official Records of Santa Clara County, California."

7.1.4 Article VI, subsection B.1 [§ 603] of the Original Lease is hereby amended by deleting therefrom the penultimate paragraph as follows:

"Without limiting the provisions of Sections 603 through 610 (inclusive), Lessee shall also, during the term of the TIAA Note, pay all amounts, deliver all receipts, give all notices, perform all obligations and otherwise comply with the requirements with regard to impositions specified in Section 2.08 of the TIAA Deed of Trust."

7.1.5 Article VII, subsection C [§ 703] of the Original Lease is hereby amended by deleting therefrom the second paragraph and the last paragraph of as follows:

"Without limiting the provisions of Sections 703 and 704, Lessee shall also, during the term of the TIAA Note, maintain the Property, perform the obligations and otherwise comply with the requirements with respect to maintenance, repair and alterations as specified in Section 2.02 of the TIAA Deed of Trust.

"Without limiting the provisions of the foregoing paragraph, Lessee shall also, during the term of the TIAA Note:

1. Make the representations and warranties required by Section 2.25 of the TIAA Deed of Trust, provided that Lessee shall not be required to make any representations or warranties as to the occurrence or nonoccurrence of events prior to the period of Lessee's prior management of the Property (or during the term of Lessee's prior management unless such event was caused by Lessee).

2. Provide all notices required to be provided by Section 2.25 of the TIAA Deed of Trust.

3. Pay all costs, perform all obligations and otherwise comply with the requirements of Section 2.23 of the TIAA Deed of Trust, provided that Lessee shall not be responsible or liable with respect to any hazardous, toxic and/or contaminating substances deposited in or on the Property prior to the period of Lessee's prior management of the Property (or during the term of Lessee's prior management unless such deposit was caused by Lessee), including without limitation the cost of cleanup and removal."

7.1.6 Article X, subsection D [§ 1004] of the Original Lease is hereby amended by (a) deleting therefrom the following clause "Lessee, Lessor and City and TIAA and/or any Qualified Mortgagee" and replacing it with the following clause: "Lessee and Lessor", (b) deleting therefrom the second paragraph (including subparagraphs (1) through (5) thereunder) and the third paragraph, and (c) deleting the following from the final paragraph:

"Without limiting the provisions of Sections 1001 through 1005 (inclusive), Lessee shall also, during the term of the TIAA Note, maintain the insurance, make the payments, perform the obligations, and otherwise comply with the requirements with regard to insurance, and TIAA shall have the rights with respect thereto, as set forth in Sections 2.03, 2.04, 2.05, and 2.07(b) of the TIAA Deed of Trust."

7.1.7 Article X, subsection F [§ 1006] of the Original Lease is hereby amended by deleting therefrom the second paragraph and replacing it with the following:

"Provided, however, that within the period during which there is any mortgagee and/or holder of a security interest in the Assets (by Initial Lender and/or any additional or subsequent mortgagee and/or entities with a security interest in the Assets) such proceeds shall be made jointly payable to Initial Lender or such additional or subsequent holder of a security interest in the Assets, Lessee, and Lessor, and shall be disposed of jointly by the parties as a trust fund, and the improvements on the Property and Assets shall be restored or not, in accordance with subsections (i) through (v) below."

7.1.8 Article X, subsection F [§ 1006] of the Original Lease is hereby amended by:

(a) Deleting from subsection (iii) the following clause:

"within forty-five (45) days of the casualty prepare and deliver to Lessor and TIAA (and/or any Qualified Mortgagee) and BNY (and/or any additional or subsequent mortgagee and/or entities with a security interest in the Assets) a certification of costs and feasibility"

and replacing it with the following:

"within forty-five (45) days of the casualty prepare and deliver to Lessor and Initial Lender (and/or any additional or subsequent Leasehold Mortgage and/or entities with a security interest in the Assets) a certification of costs and feasibility";

(b) Deleting from subsection (iii) the following two sentences:

"In the event that Lessor and Lessee do not agree within ninety (90) days after such casualty that such continued operation is feasible, then this Lease shall terminate and expire ninety one (91) days after such casualty and such proceeds shall be paid two-thirds to TIAA and/or any Qualified Mortgagee (up to the amount then outstanding on the TIM Loan or other applicable loan) and one-third to BNY and/or any additional or subsequent mortgages or entities with a security interest in the Assets (up to the amount then outstanding on the applicable loan but not to exceed Twenty One Million Dollars ($21,000,000)). Lessee's subrogation rights under the Subrogation Agreement will apply to amounts paid to TIAA under this subsection."

and replacing them with the following:

"In the event that Lessor and Lessee do not agree within one hundred twenty (120) days after such casualty that such continued operation is feasible, then this Lease shall terminate and expire one hundred twenty (120) days after such casualty and such proceeds shall be paid to Initial Lender and/or any additional or subsequent mortgages or entities with a security interest in the Assets (up to the amount then outstanding on the applicable loans)."

(c) Deleting subsection (iv) thereof in its entirety and replacing it with the following:

"(iv) Notwithstanding subsections (i) and (ii) to the contrary, in the event of major damage or destruction to the improvements on the Property and Assets during the last five years of the Term, Lessee shall have the election to terminate this Lease provided Lessee complies with all of the following conditions:

1. Lessee gives Lessor, and Initial Lender (and/or any additional or subsequent Leasehold Mortgages and/or entities with a security interest in the Assets) notices of the damage or destruction within ten (10) days after the event causing such damage or destruction.

2. Lessee is not in continuing default under Section 1211 after receiving notice and an opportunity to cure.

3. Lessee clears and removes all debris from the Property, restores the Property to neat condition and delivers possession of the Property to Lessor and quitclaims all right, title and interest in the land and improvements and Assets.

4. Payment shall be made from any remaining insurance proceeds toward amounts due to Initial Lender (and/or any additional or subsequent Leasehold Mortgagee and/or entities with a security interest in the Assets) from Lessee.

5. Lessee pays to Lessor: (i) the present value of the Basic Rent and Additional Rent equal to the prior Lease Year's Additional Rent (discounted on the basis of a 10% per annum interest rate) due over the balance of the Term of the Lease, excluding any extension thereof, up to but not exceeding the amount of all business interruption insurance proceeds from such casualty.

In such case, Lessee shall be entitled to all remaining insurance proceeds from such casualty. "Major damage or destruction to the Improvements" as used in this section means such damage or destruction that the cost of restoration will exceed twenty-five percent (25%) of the cost to replace the Improvements and Assets in their entirety."

(d) Deleting subsection (v) thereof in its entirety and replacing it with the following:

"(v) If the improvements on the Property and Assets shall be damaged or destroyed by any cause which puts the improvements and Assets into a condition which is not lawful or commercially practicable to restore, then Lessee shall have the election to terminate this Lease provided Lessee complies with all of the following conditions:

1. Lessee gives Lessor and Initial Lender (and/or any additional or subsequent Leasehold Mortgages and/or entities with a security interest in the Assets) notices of the damage or destruction within ten (10) days after the event causing such damage or destruction.

2. Lessee is not in continuing default under Section 1211 after receiving notice and an opportunity to cure.

3. Lessee clears and removes all debris from the Property, restores the Property to neat condition and delivers possession of the Property to Lessor and quitclaims all right, title and interest in the land and improvements and Assets.

4. Payment shall be made from any remaining insurance proceeds toward amounts due to Initial Lender (and/or any additional or subsequent Leasehold Mortgagee and/or entities with a security interest in the Assets) from Lessee.

5. Lessee pays to Lessor: (i) the present value of the Basic Rent and Additional Rent equal to the prior Lease Year's Additional Rent (discounted on the basis of a 10% per annum interest rate) due over the balance of the Term of the Lease, excluding any extension thereof, up to but not exceeding the amount of all business interruption insurance proceeds from such casualty.

In such case, Lessee shall be entitled to all remaining insurance proceeds. For purposes of this subsection (v), it shall be deemed to be commercially practicable to repair or rebuild the improvements and Assets if the cost of such repair or rebuilding is less than 75% of the aggregate replacement cost of all of the improvements and Assets immediately prior to the damage or destruction.

7.1.9 Article X, subsection G [§ 1007] of the Original Lease is hereby amended by deleting therefrom the following clause:

"Immediately upon the happening of any casualty to or in connection with the improvements on the Property and Assets, or any part thereof, whether or not such casualty is covered by insurance, Lessee shall give prompt written notice thereof to Lessor, TIAA (and/or any Qualified Mortgagee), and BNY (and/or any

additional or subsequent mortgagee and/or entities with a security interest in the Assets)."

and replacing it with therefore the following:

"Immediately upon the happening of any casualty to or in connection with the improvements on the Property and Assets, or any part thereof, whether or not such casualty is covered by insurance, Lessee shall give prompt written notice thereof to Lessor and Initial Lender (and/or any additional or subsequent Leasehold Mortgagee and/or entities with a security interest in the Assets)."

7.1.10 Article XI, subsection C [§ 1103] of the Original Lease is hereby amended by deleting therefrom the following paragraph:

"In connection with any Substantial Taking, the award or awards payable to Lessor and Lessee therefor shall be first paid to TIAA and/or any Qualified Mortgagee, up to the amount then owed by Lessor to TIAA and/or such Qualified Mortgages. Such amounts shall first be paid out of the award otherwise due to Lessor, and the balance shall be paid from the award otherwise due to Lessee under Section 1102 or 1106, as the case may be, and Lessee's subrogation rights under the Subrogation Agreement shall apply to the amounts paid to TIAA but otherwise due to Lessee."

7.1.11 Article XI, subsection D [§ 1104] of the Original Lease is hereby amended by deleting therefrom the second and fourth sentences.

7.1.12 Article XII, subsection D [§ 1208] of the Original Lease is hereby amended by deleting from the last sentence thereof the following clause:

"; provided, however, so long as the TIAA Note is outstanding, the requirement to serve written notice of default and provide a period to cure such default shall not be a prerequisite to commencing an action for damages against issues."

7.1.13 Article XII, subsection E [§ 1209] of the Original Lease is hereby amended by deleting from the last sentence thereof the following clause:

"; provided, however, so long as the TIAA Note is outstanding, the requirement to serve written notice, of such default and provide a period to cure such default shall not be a prerequisite to commencing an action for specific performance against Lessee."

7.1.14 Article XII, subsection F [§ 1210] of the Original Lease is hereby amended by deleting from the following clause and paragraph:

"provided, however, so long as the TIAA Note is outstanding, the requirement to serve written notice of default and provide a period to cure such default shall not be a prerequisite to exercising the foregoing remedies.

"In addition to the foregoing remedies, Lessee shall, subject to its rights under the Attornment Agreement, recognize, honor and comply with the remedies provided for in Sections 2.11, 4.02 and 5.02 of the TIAA Deed of Trust, including without limitation the rights of TIAA to enter upon and take possession of the Property; to make additions, alterations and repairs to the Property, and to pay, purchase, contest or compromise encumbrances, claims, charges, liens and debts respecting the Property."

7.1.15 Article XII, subsection G [§ 1211] of the Original Lease is hereby amended by:

(a) Deleting therefrom the following clause: "other than when the TIAA Note is outstanding,"; and

(b) Deleting therefrom the second full paragraph (commencing with "So long as the TIAA Note is outstanding. . ."), including numbers subparagraph (1) through (16) thereunder, and the paragraph immediately following it (commencing with "So long as the TIAA Note is outstanding. . .").

7.1.16 Article XII, subsection H [§ 1212] of the Original Lease is hereby amended by deleting from both paragraphs thereof the following:

"; provided that during any period when Lessor is required to pay a higher rate of interest under the TIAA Note as a result of a default thereunder, the rate of interest hereunder shall be that which TIAA charges Lessor under the TIAA Loan Documents."

7.1.17 Article XIII, subsection A [§ 1301] of the Original Lease is hereby amended by deleting the second and third paragraphs thereof (including subparagraphs (1) through (4) under such third paragraph).

7.2 Mortgages

7.2.1 Mortgage of Leasehold Interest. Section 901 of the Lease is hereby deleted and the following substituted therefor:

"Notwithstanding Sections 610 and 802 of this Lease, at any time and from time to time during the Term of this Lease, for any purpose whatsoever, Lessee shall have the right to encumber its leasehold interest hereunder in the Property (but not the Lessor's fee simple estate) and its fee interest hereunder in the Assets by granting a mortgage, pledge, deed of trust, fixture filing, assignments rents and leases, sublease/sub-sub-leaseback, or other security interest (any such instruments being referred to herein collectively as a "**Leasehold Mortgage**") as security for any debt. As used herein, the term "**Leasehold Mortgagee**" means the holder of a Leasehold Mortgage under this Lease, including any mortgagee, beneficiary under a deed of trust conveying Lessee's leasehold interest under this Lease, sublessee under a sublease/sub-sub-leaseback financing or secured party under a security instrument, each of which constitutes a Leasehold Mortgage, and

any successor or assign of such party. Where used in this Lease, the phrases "leasehold mortgage," "leasehold mortgage or security interest," or words or phrases of similar meaning will be substituted with the phrase "Leasehold Mortgage," and the phrases "leasehold mortgagee," "leasehold mortgagee or holder of a security interest," "lender," "holder of any leasehold mortgage" or words or phrases of similar meaning will be substituted with the phrase "Leasehold Mortgagee." The foregoing rights of Lessee are subject to the following terms and conditions:

1. The aggregate principal face amount of all Leasehold Mortgages shall not exceed the depreciated net book value of the Assets determined, with respect to any particular Leasehold Mortgage, as of the date such Leasehold Mortgage is granted.

2. The Leasehold Mortgage shall cover no interest in any real property other than Lessee's interest in the Property (including, without limitation, the Permanent Parking Area) and Improvements and any subleases thereon. Any such Leasehold Mortgage shall be without subordination of the fee simple title of Lessor or others in and to the Property.

3. No such Leasehold Mortgage shall be binding upon Lessor in the enforcement of its rights and remedies herein and by law provided, unless and until a true and correct copy thereof has been delivered to Lessor together with written notice of the address of the Leasehold Mortgagee to which notices must be sent; and in the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon Lessor unless and until a true and correct copy thereof bearing the date and book and page of recordation together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Lessor.

4. No more than two (2) Leasehold Mortgages may be outstanding at any one time on all or any portion of the Property and the Improvements.

5. Any Leasehold Mortgage is to be given only to a responsible bona fide institutional lender. For the purposes hereof the term "**institutional lender**" shall consist of any one of the following lending institutions: a commercial, industrial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; an educational institution; a pension, retirement or welfare fund; a charity; an endowment fund or foundation, authorized to make loans in the State of California, and/or any publicly traded or private REIT,

private equity firm, or other entity with assets in excess of $2,000,000,000.

6. All rights acquired by a Leasehold Mortgagee under a Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restriction's set forth in this Lease, and to all rights of Lessor thereunder, none of which covenants, conditions and restrictions is or shall be waived by Lessor by reason of the giving of such Leasehold Mortgage or Lessor's consent thereto or to the Leasehold Mortgage and related loan documents effectuating the same. This Lease shall govern notwithstanding any conflicting provision of the Leasehold Mortgage and related loan documents. Notwithstanding any foreclosure of any such Leasehold Mortgage, Lessee shall remain liable for the payment of the rent reserved in this Lease and the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Lessee.

"Lessee shall not enter into any Leasehold Mortgage as permitted hereunder without the prior written approval of Lessor, which approval Lessor agrees to give if such Leasehold Mortgage complies with each and all of the terms and conditions referred to in subparagraphs 1 through 6, inclusive, of this Section 901.

"If Lessee encumbers its Leasehold Estate by way of a Leasehold Mortgage as permitted herein, and should Lessor be advised in writing of the name and address of the Leasehold Mortgagee, then this Lease shall not be terminated or cancelled on account of any default by Lessee in the performance of the terms, covenants or conditions hereof until Lessor shall have complied with the provisions of Section 902."

7.2.2 Rights and Obligations of Leasehold Mortgagees. Article IX, subsection B[§ 902] of the Original Lease is hereby deleted and the following substituted therefore:

"If Lessee or Lessee's successors or assigns, shall grant a Leasehold Mortgage in accordance with Section 901, then, as long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

1. No Encumbrance on Lessor's Fee Interest. No Leasehold Mortgage will encumber any interest in the Premises other than the leasehold interest of Lessee in the Premises and the Lessee's ownership of the Improvements.

2. New Lease. Notwithstanding any provision to the contrary set forth herein, if for any reason this Lease is terminated for any reason, and if at such time any Leasehold Mortgagee for which Lessor has received a Leasehold Mortgagee's Notice (as defined below) holds a security interest in the Lease so

terminated, then such Leasehold Mortgagee shall be entitled to receive a new lease for the Premises ("**New Lease**") for the remaining Term, wherein such Leasehold Mortgagee or its designee reasonably approved by Lessor will be lessee upon the same terms and conditions set forth herein, and Leasehold Mortgagee (or such designee, as applicable) shall have the same rights and obligations under such New Lease as if such Leasehold Mortgagee (or such designee, as applicable) had acquired the leasehold interest in the Premises through foreclosure of its Leasehold Mortgage; provided that, as a condition to such New Lease, such Leasehold Mortgage (or such designee, as applicable) cures any and all delinquent rent payments and other monetary default of Lessee under this Lease and commences to cure any other defaults. Such New Lease shall have the same relative priority as this Lease. No such termination of this Lease shall in any manner affect the rights of any Leasehold Mortgagee until all of the following events have occurred: (i) Lessor shall have notified such Leasehold Mortgagee in writing of the termination of this Lease and shall have offered such New Lease to such Leasehold Mortgagee, and (ii) such Leasehold Mortgagee shall have failed to accept in writing such offer of Lessor for a New Lease and to communicate such acceptance to Lessor within ninety (90) days after receipt of such written offer for a New Lease; or (iii) the events described in clauses (i) and (ii) above have occurred, but such Leasehold Mortgagee has failed within such ninety (90) day period to cure any and all delinquent rent payments and other monetary defaults of Lessee under this Lease and to commence to cure any other defaults.

3. Leasehold Mortgagee's Notice. Leasehold Mortgagee or Lessee will give to Lessor within ninety (90) days of the date of the Leasehold Mortgage, a notice ("**Leasehold Mortgagee's Notice**") specifying the name and address of the Leasehold Mortgagee. Following receipt of such Leasehold Mortgagee's Notice, Lessor will give to the Leasehold Mortgagee a copy of any and all notices from time to time given to Lessee by Lessor (including, without limitation, any notice of default) at the same time as and whenever any such notice will thereafter be required or permitted to be given by Lessor to Lessee under the Lease, addressed to such Leasehold Mortgagee at the address last furnished to Lessor. Any such notice given to a Leasehold Mortgagee shall be in writing and shall either be delivered to Leasehold Mortgagee personally, or deposited with an overnight carrier with confirmation of delivery receipt or in the United States mail, certified or registered mail, postage prepaid and addressed to Leasehold Mortgagee at the address provided to Lessor. Any notice which is so mailed shall be deemed to have been received by Leasehold Mortgagee the next business day, if delivered by overnight courier, or within seventy-two (72) hours after the same is deposited in the United States mails.

4. Lender Cure Rights. Without prejudice to its rights against Lessee, without payment of any additional sums then due to Lessor pursuant to the terms of this Lease and within the period and as otherwise provided herein, Leasehold Mortgagee will have the right, but not the obligation, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any

repairs and alterations, to do any other act or thing required or permitted of Lessee hereunder or which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof, to remedy any default of Lessee or cause the same to be remedied, to acquire Lessee's leasehold estate or to commence foreclosure or other appropriate proceedings. For such purposes Lessor and Lessee hereby authorize Leasehold Mortgagee upon 24 hours prior written notice to Lessor, to enter upon the Premises and to exercise any of Lessee's rights and powers under this Lease, and, subject to the provisions of this Lease, under the Leasehold Mortgage. Lessor will accept the timely and proper performance by the Leasehold Mortgagee of any covenant, condition or agreement on Lessee's part to be performed by Lessee hereunder.

5. No Lessor Remedy Prior to Lender's Failure to Cure. In the event of a default by Lessee, Lessor shall not be entitled to exercise any of its rights or pursue any of its remedies which arise by reason of such default until the following events have occurred:

(a) Written notice describing the default in reasonable detail shall have been given to all Leasehold Mortgagees for which Lessor has received a Leasehold Mortgagee's Notice.

(b) Such Leasehold Mortgagee shall have failed to cure any such default described in such notice that can be cured by the payment of money within thirty (30) days after such notice is given to the Leasehold Mortgagee; or if the default so described is in the performance of any other covenant or condition of this Lease which cannot be cured by the payment of money, then Leasehold Mortgagee shall have failed to cure such default within ninety (90) days after such notice is given; provided, however that if such cure requires Leasehold Mortgagee's entry upon the Premises and Leasehold Mortgagee is prevented by either Lessor or Lessee from entering upon the Premises, then Leasehold Mortgagee shall have ninety (90) days from the date (which date shall be not more than 270 days from the date on which such notice is given) Leasehold Mortgagee is permitted free and unrestricted entry upon the Premises within which to cure such default (after obtaining appointment of a receiver for the Premises or completing a foreclosure of the Leasehold Mortgage, if reasonably necessary in order for Leasehold Mortgagee or its agents to obtain access to the Premises); and further provided, however, that if the default is of such a nature that it cannot reasonably be cured within any such ninety (90) day period, then Leasehold Mortgagee shall have such additional time as is reasonably necessary to cure such default, provided that Leasehold Mortgagee has commenced the curing of such default within such ninety (90) day period, and thereafter has proceeded diligently to cure the same. Additionally, any default which in the nature thereof cannot be remedied by Leasehold Mortgagee shall be deemed remedied if within the periods provided by the preceding sentence, Leasehold Mortgagee shall have acquired the Lease through foreclosure or

commenced foreclosure or other appropriate proceedings in the nature thereof.

(c) Lessor and Lessee agree that Leasehold Mortgagee may enter upon the Premises to cure any default of Lessee hereunder at all reasonable times upon 24 hours prior written notice to Lessor, and that neither Lessor nor Lessee shall in any way obstruct or limit Leasehold Mortgagee's right of entry upon the Premises. Nothing contained herein shall in any manner obligate Leasehold Mortgagee to cure any default of Lessee.

6. No Amendment with Lender Consent. Lessor and Lessee shall not voluntarily and materially modify, amend, or change the provisions of this Lease, without the prior written consent of a Leasehold Mortgagee for which Lessor has received a Leasehold Mortgagee's Notice, which consent shall not be unreasonably withheld, delayed or conditioned. Lessor and Lessee shall not agree to voluntarily terminate this Lease without the consent of a Leasehold Mortgagee for which Lessor has received a Leasehold Mortgagee's Notice unless the obligations to all Leasehold Mortgagees which are secured hereby have been paid in full.

7. No Lender Liability. No Leasehold Mortgagee which takes a security interest in the Leasehold Estate shall be liable to Lessor as an assignee of Lessee, unless, and until such time as, such Leasehold Mortgagee shall have acquired the rights of Lessee hereunder through foreclosure or other appropriate proceedings in the nature thereof, or by assignment in lieu of foreclosure, or as a result of any other action or remedy provided for by Leasehold Mortgagee's Leasehold Mortgage, or which may otherwise be provided by law; provided, however, that at such time, the Leasehold Mortgagee shall thereupon be liable for all obligations of Lessee, accrued and accruing thereafter. Any Leasehold Mortgagee which so acquires the Lease shall be entitled to further assign or transfer this Lease or sublet the Premises in the same manner as provided for herein. In the event such Leasehold Mortgagee has so acquired the rights of Lessee hereunder and such Leasehold Mortgagee assigns the Lease to a third party in the manner contemplated herein, and such assignee agrees in writing to pay and perform all of Lessee's obligations hereunder, then from and after the date of such assignee's written assumption of Lessee's obligations hereunder, Leasehold Mortgagee shall thenceforth be relieved of all liability under this Lease.

8. Lender Protection Agreement. Lessor and Lessee shall cooperate to include in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of implementing the "lender protection" provisions contained in this Lease and allowing such Leasehold Mortgagee reasonable means to protect or preserve such Leasehold Mortgagee's lien and security interest in the Lease on the occurrence of a default under the terms of this Lease. Lessor and Lessee shall execute and deliver (and acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment and any reasonable

subordination and non-disturbance agreement requested by any Leasehold Mortgagee; provided, however, that any such amendment and/or subordination and non-disturbance agreement shall not in any way affect the term of this Lease or rent under this Lease, nor otherwise in any material respect adversely affect any rights of Lessor under this Lease, create personal liability on the part of Lessor, or otherwise subject Lessor or Lessor's interest in the Premises to liability whatsoever for such loan.

9. Foreclosure. Leasehold Mortgagee shall have the right to exercise its remedies pursuant to its Leasehold Mortgage; and, to transfer, convey, and assign the Lease created hereby to any purchaser at any foreclosure sale, trustee's sale, or other sale held pursuant to such Leasehold Mortgage, and to acquire and succeed to the interest of Lessee hereunder by virtue of any such sale, without the consent of Lessor. Foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, will not require the consent of Lessor nor will it constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Lessor will recognize Leasehold Mortgagee, or any other purchaser at foreclosure sale, as Lessee hereunder."

10. Assignment Following Foreclosure. Following any foreclosure of a Leasehold Mortgage, or assignment of the leasehold interest under this Lease in lieu of such foreclosure, the new Lessee shall have the right to further assign the leasehold subject to the written consent of Lessor, which consent shall not be unreasonably withheld or delayed, provided such assignee demonstrate the financial and operational capability to manage and operate the Premises in accordance with this Lease, as measured against the Lessee as of the Effective Date of the Fourth Amendment.

11. Insurance and Condemnation Proceedings. Lessor will provide reasonable prior notice to each Leasehold Mortgagee of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Property and permit the Leasehold Mortgagees to participate therein.

12. Right to Pay Taxes and Senior Mortgage. Each Leasehold Mortgagee shall have the right (but not the obligation) to pay any taxes payable by Lessor with respect to the Property, and to cure any monetary or non-monetary default by Lessor under any mortgage, deed of trust or other encumbrance on fee interest in the Property which has priority over this Lease; and, if any Leasehold Mortgagee does effect any such payment or cure, Lessor agrees that it will reimburse such Leasehold Mortgagee for the amount thereof promptly following request by such Leasehold Mortgagee therefor.

13. Estoppel Statements. Lessor agrees from time to time, within a reasonable period following request by any Leasehold Mortgagee therefor, to provide to such Leasehold Mortgagee an estoppel statement in a reasonable format provided by such Leasehold Mortgagee, certifying as to the absence of any modification to, or default under, this Lease (or setting forth such modification or default, if applicable) and as to the status of payment of rent and other amounts by the Lessee thereunder.

7.2.3 Leases and Security Interest for Financing Equipment. Article IX, subsection D [§ 904] of the Original Lease is hereby deleted.

8. ASSIGNMENT. The third full paragraph of Article XII, subsection B [§ 802] of the Original Lease is hereby deleted and the following substituted therefore:

"Lessor hereby agrees to approve any conveyance, assignment, sublease or transfer otherwise prohibited hereunder by Lessee to any entity (a) which controls or is controlled by or is under common control with Lessee;, (b) resulting from a merger or consolidation with Lessee or (c) which acquires substantially all of the assets of Lessee, provided that the resulting Lessee entity is comparable to Lessee at the time of execution of this Lease with respect to financial capability and (through management agreements or otherwise) overall experience and competence to preserve, improve and operate the Theme Park and the conveyed, assigned, subleased or transferred obligations and the Property."

9. DEED TO IMPROVEMENTS. Concurrently herewith, Lessor will deliver to Lessee a grant deed, in the form attached hereto as Exhibit "D", conveying to all improvements on the Premises, consistent with Section 105.

10. MISCELLANEOUS.

10.1 Notices. For purposes of notices under the Lease, including Section 1301 thereof, notices to Lessee will be sent to the following address:

Cedar Fair, L.P
One Cedar Point Drive
Sandusky, Ohio 44870
Attention: Duffield Milkie, Esq.

With a copy of any default notice sent to:

Squire, Sanders & Dempsey (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114
Attention: Cipriano S. Beredo

10.2 References. All references to the "Lease" or "lease" appearing in this Fourth Amendment or in the Original Lease shall mean, collectively, the Lease as amended by this Fourth Amendment.

10.3 Severability. If any provision of this Fourth Amendment or the application of any provision of this Fourth Amendment to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Fourth Amendment or the application of that provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each provision of this Fourth Amendment will be valid and be enforced to the fullest extent permitted by applicable laws. Lessor shall use its best efforts to oppose any action that challenges the validity of the transactions contemplated under this Fourth Amendment.

10.4 Entire Agreement/Modification. This Fourth Amendment, together with the Original Lease and the attached Exhibits which are hereby incorporated into and made a part hereof, contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose. There have been no additional oral or written representations or agreements. Except for any subsequent amendments or modifications to the Lease made in accordance with the terms thereof, any agreement made after the date of this Fourth Amendment is ineffective to modify or amend the terms of this Fourth Amendment, in whole or in part, unless that agreement is in writing, is signed by the parties to this Fourth Amendment, and specifically states that such agreement modifies this Fourth Amendment.

10.5 Execution; Counterparts. Submission of this Fourth Amendment by either party to the other is not an offer to enter into this Fourth Amendment but rather is a solicitation for such an offer by the other party, and neither party shall be bound by this Fourth Amendment until it has been fully executed and delivered by both parties. This Fourth Amendment may be executed in any number of counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document.

10.6 Heirs and Successors. This Fourth Amendment shall be binding upon the heirs, legal representatives, successors and permitted assigns of the parties hereto.

10.7 Authority. Each party represents and warrants that the individual signing this Fourth Amendment on behalf of such party is duly authorized to execute and deliver this Fourth Amendment on behalf of said entity in accordance with the governing documents of such entity, and that upon full execution and delivery this Fourth Amendment is binding upon said entity in accordance with its terms.

10.8 Ratification. Except as modified by this Fourth Amendment, the Original Lease shall continue in full force and effect and Lessor and Lessee do hereby ratify and confirm all of the terms and provisions of the Lease, subject to the modifications contained herein. In the case of any inconsistency between the provisions of the Lease and this Fourth Amendment, the provisions of this Fourth Amendment shall govern and control.

10.9 Police Power. Lessee acknowledges that Lessor has entered into this Fourth Amendment in its proprietary capacity as the owner of the Property, and not in its governmental capacity. Nothing herein or in the Original Lease is intended to diminish or impair the authority or

police power of Lessor, acting in its governmental capacity, to enforce applicable laws, including, without limitation, Lessor's ordinances, rules, regulations and policies with respect to land use regulation or any other matter of health, safety and welfare.

Signatures appear on following page.

IN WITNESS WHEREOF, the parties have caused this Fourth Amendment to be executed as of the First Amendment Effective Date.

APPROVED AS TO FORM:

_____
RICHARD E. NOSKY, JR.
City Attorney

LESSOR:

THE CITY OF SANTA CLARA, CALIFORNIA,
a municipal corporation

_____
JAMIE L. MATTHEWS
Mayor

_____
JENNIFER SPARACINO
City Manager

Attest:

_____
ROD DIRIDON, JR.
City Clerk

LESSEE:

CEDAR FAIR SOUTHWEST INC. ,
a Delaware corporation

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

EXHIBIT B
MAIN LOT DESCRIPTION

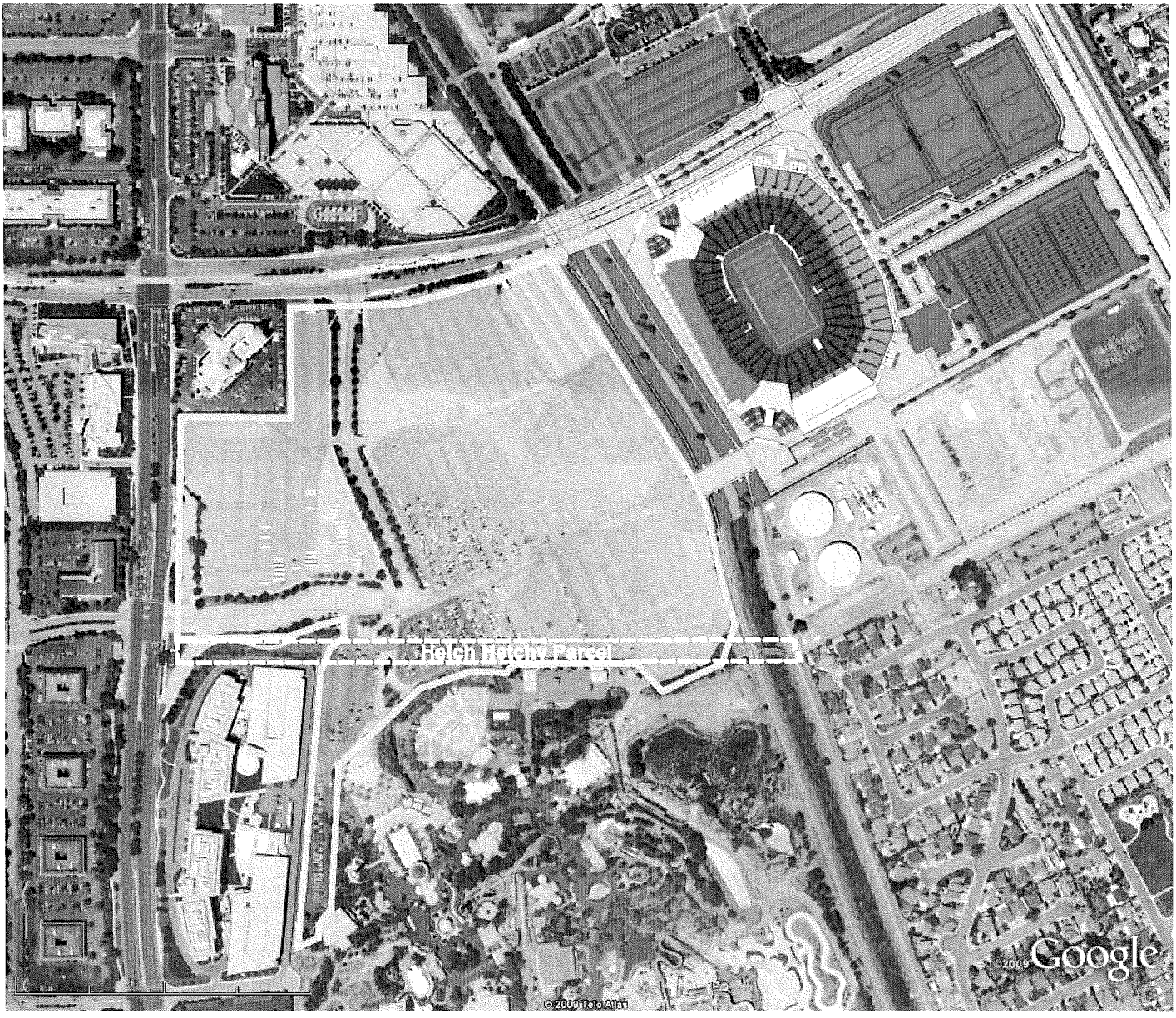


EXHIBIT C

PARKING AGREEMENT

[COPY ATTACHED]

EXHIBIT D

FORM OF DEED

RECORD WITHOUT FEE PURSUANT TO GOV'T CODE SECTION 6103

RECORDING REQUESTED BY

FIRST AMERICAN TITLE INSURANCE COMPANY
ESCROW #_____

AND WHEN RECORDED MAIL TO:
Cedar Fair, L.P.
One Cedar Point Drive
Sandusky, Ohio 44870
Attn: Duffield Milkie, Esq..

Documentary Transfer Tax is not of public record
and is shown on a separate sheet attached to this deed.

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, THE CITY OF SANTA CLARA, a chartered municipal corporation ("Grantor") hereby GRANT(S) to CEDAR FAIR SOUTHWEST, INC., a Delaware corporation ("**Grantee**"), the rights, title, and interest in all buildings, structures, rides, and improvements (including any construction work in progress), which buildings, structures, rides, and improvements are and shall remain real property, as well as all fixtures and improvements that may be deemed part of any such buildings, structures, rides, and improvements, now located on the real property located the City of Santa Clara, County of Santa Clara, State of California legally described on Exhibit A attached hereto.

As part of the foregoing grant, Grantor does hereby grant, bargain, sell, assign, set over, convey, and transfer unto Grantee all warranties and representations, whether express or implied, which the Grantor owns or has the right to claim as to the buildings, rides, and equipment included in that certain real property or interest therein of the Grantor conveyed to Grantee herein, including, without limitation, all warranties and representations, whether express or implied, as to condition and safety from the contractors, sellers, suppliers, or manufacturers thereof.

The Grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, source of income, national origin, ancestry, disability (actual or perceived), medical condition,

age, marital status, familial status, domestic partner status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, and any additional basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, as such provisions may be amended from time to time, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of January __, 2012.

GRANTOR:

CITY OF SANTA CLARA,
a municipal corporation

APPROVED AS TO FORM:

_____
RICHARD E. NOSKY, JR.
City Attorney

_____
JENNIFER SPARACINO
City Manager

ATTEST:

_____
ROD DIRIDON, JR.
City Clerk

EXHIBIT A

Legal Description of Property

A portion of Parcel B, as shown upon that certain Map entitled, "Parcel Map being a resubdivision of a portion of the lands of the Marriott Corporation successors by Merger to Fespar Enterprises, Inc. and Marriott Hotels, Inc. and lands of Dorcich Farms as shown on the record of survey recorded in Book 345 of Maps at pages 1 to 8 inclusive, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of County of Santa Clara, State of California, on May 29, 1985 in Book 543 of Maps, at pages 52 and 53, and described as follows:

Beginning at the northeasterly corner of said Parcel B as shown upon said Parcel Map; thence, from said Point of Beginning along the northerly line of said Parcel B, North 89 deg. 33' 00" West, 1593.63 feet, to a line common to Parcels A and B of said Map; thence, along said common line South 5 deg. 06' 02" West, 985.76 feet; thence, leaving said common line North 60 deg. 41' 22" East, 148.89 feet; thence, North 0 deg. 18' 47" East, 463.54 feet; thence, North 50 deg. 02' 10" East, 487.02 feet; thence, North 71 deg. 10' 24" East, 124.71 feet; thence, North 82 deg. 53' 18" East, 41.52 feet; thence, South 62 deg. 44' 53" East, 207.51 feet; thence, South 17 deg. 49' 11" East, 141.16 feet; thence, South 58 deg. 56' 42" East, 29.91 feet; thence, South 14 deg. 12' 01" East, 39.97 feet; thence, North 64 deg. 33' 36" East, 834.11 feet to the Point of Beginning.

RECORD WITHOUT FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY:

Office of the City Attorney
City Of Santa Clara, California

AND WHEN RECORDED MAIL TO:

Richard E. Nosky, City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QUITCLAIM DEED

The undersigned hereby declares: APN: 104-43-030
Documentary transfer tax is $0.00
☐ computed on full value of property conveyed, or
☐ computed on full value less value of liens and encumbrances remaining at the time of sale.
☐ Unincorporated area: _____ ☒ City of Santa Clara
☒ Conveyance to governmental agency. (R&T Code section 11922)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CEDAR FAIR, L.P. a Delaware limited partnership, and CEDAR FAIR SOUTHWEST, INC., a Delaware corporation

hereby QUITCLAIM, RELEASE and REMISE to

THE CITY OF SANTA CLARA, a chartered California municipal corporation

all of their right, title and interest in and to the following described real property in the County of Santa Clara, State of California (the "Real Property"),

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF;

including, but not limited to, any and all right, title and interest in and to the Real Property arising under or in connection with that certain Ground Lease with First Refusal Purchase Rights dated as of June 1, 1989 and recorded June 1, 1989 as Instrument No. 10131592 in the Official Records of Santa Clara County (the "Official Records"), as amended by that certain First Amendment to Ground Lease with First Refusal Purchase Rights dated as of October 4, 1994 and recorded October 7, 1994 as Instrument No. 12678902 in the Official Records, that certain Second Amendment to Ground Lease with First Refusal Purchase Rights dated as of March 18, 1997 and recorded March 25, 1997 as Instrument No. 13648418 in the Official Records, and that certain Third Amendment to Ground Lease with First Refusal Purchase Rights dated as of May 25, 1999 and recorded July 8, 1999 as Instrument No. 14887081 in the Official Records.

Date: _____ CEDAR FAIR, LP, a Delaware limited partnership

By: _____

Date: _____ CEDAR FAIR SOUTHWEST, INC, a Delaware corporation

By: _____

NOTARY ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (Seal)

NOTARY ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (Seal)

EXHIBIT A
LEGAL DESCRIPTION

The following described property situated in the City of Santa Clara, County of Santa Clara, State of California:

Parcel 4, as shown upon that certain Map entitled, "Parcel Map a portion of Lot 41, portion of Section 21, T. 6 S., R.1 W., M.D.B. & M., and a part of Ulistac Rancho", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on July 13, 1987 in Book 575 of Maps, at Page 44.

Assessor's Parcel No. 104-43-030

PARKING AGREEMENT

THIS PARKING AGREEMENT (this "**Agreement**") is made as of January 1, 2011 (the "**Effective Date**") among the SANTA CLARA STADIUM AUTHORITY ("**SCSA**"), FORTY NINERS STADIUM, LLC ("**Stadium Company**"), which is an affiliate of the San Francisco Forty Niners, Limited (the "**Team**"), CEDAR FAIR SOUTHWEST, INC., a Delaware limited liability company ("**GA Tenant**"), CEDAR FAIR, L.P., a Delaware limited partnership, which is included in the definition of GA Tenant for purposes of this Agreement, and THE CITY OF SANTA CLARA, a chartered California municipal corporation ("**City**").

RECITALS

A. The City, SCSA, Stadium Company and the Team are working cooperatively to develop a stadium (the "**Stadium**") in the Bayshore North Redevelopment Project Area on the south side of Tasman Drive at Centennial Boulevard, as generally depicted on Exhibit A (the "**Stadium Site**"). The Stadium Site is owned by the City and is proposed to be ground leased to SCSA for development of the Stadium. The Stadium will be developed and owned by SCSA, which is a joint powers authority composed of the City and its Redevelopment Agency and the Bayshore North Project Enhancement Authority. SCSA will lease the Stadium to Stadium Company, which will sublease the Stadium to the Team for use as its home stadium for NFL Games (as defined below), as generally described in the Disposition and Development Agreement between SCSA and Stadium Company dated December 13, 2011. The City, SCSA and Stadium Company are together referred to herein as the "**Stadium Parties**".

B. GA Tenant is the tenant under that certain Ground Lease with First Refusal Purchase Rights dated as of June 1, 1989 (the "**Original Lease**") and recorded June 1, 1989 as Instrument No. 10131592 in the official records of Santa Clara County (the "**Official Records**"), as amended by that certain (i) First Amendment to Ground Lease with First Refusal Purchase Rights dated as of October 4, 1994 and recorded October 7, 1994 as Instrument No. 12678902 in the Official Records, (ii) Second Amendment to Ground Lease with First Refusal Purchase Rights dated as of March 18, 1997 and recorded March 25, 1997 as Instrument No. 13648418 in the Official Records, and (iii) Third Amendment to Ground Lease with First Refusal Purchase Rights dated as of May 25, 1999 and recorded July 8, 1999 as Instrument No. 14887081 in the Official Records (collectively, as amended, the "**GA Lease**"), pursuant to which the City leases to GA Tenant certain property near the Stadium Site for use as the Great America theme park (the "**Theme Park**").

C. Under the terms of the GA Lease, the lessor committed to make available for the use of the GA Tenant 5,659 parking spaces in the so-called "Permanent Parking Area" and 2,441 parking spaces in the so-called "Overflow Parking Area" (together, the "**Parking Areas**"). The location of the Permanent Parking Area and the Overflow Parking Area were subject to change from time to time subject to standards set forth in the GA Lease. The GA Lease also provides that GA Tenant shall be responsible for the management and operation of the Parking Areas and all revenues from, and costs of operating the Parking Areas shall be revenues and costs of GA Tenant.

D. Pursuant to the GA Lease, the City's Redevelopment Agency, its predecessor in interest as lessor under the GA Lease, designated a portion of the Stadium Site as the Overflow

Parking Area and portions of the Main Lot (as defined below) as the Permanent Parking Area, although most of the areas designated were owned by the City and not its Redevelopment Agency. It is critical to the development of the Stadium, and to the Team's willingness to commit to play its home games in the Stadium, that parking be available for patrons of NFL Games in the adjacent parking lot now designated as the Permanent Parking Area, that there be certainty with respect to the amount of parking available in that lot, and that Stadium Company have control over, and the right to receive revenues from, the lot when used for parking for NFL Games played at the Stadium.

E. Pursuant to this Agreement, Stadium Company will purchase from GA Tenant certain parking rights (as described below) currently held by GA Tenant. Concurrently with the execution of this Agreement, GA Tenant is executing a Quitclaim Deed, pursuant to which it is terminating any rights it has, including any parking rights, with respect to the Stadium Site. Also, concurrently with the execution of this Agreement, GA Tenant and the City are entering into the Fourth Amendment to provide for the Amended Parking Rights in those portions of the Permanent Parking Area and Overflow Parking areas designated as the Main Lot on Exhibit A ("**Main Lot**") through a non-exclusive easement appurtenant to its leasehold interest. Except as otherwise specifically provided in this Agreement, GA Tenant will continue to manage and control the Main Lot as provided in the GA Lease.

F. This Agreement binds the parties to it to the terms set forth herein. The parties acknowledge to one another that it is in their mutual best interests to address specific procedures and logistics through a mutually acceptable additional agreement or agreements (the "**Implementation Agreement(s)**") implementing the terms and agreements set forth herein and that, following the effectiveness of this Agreement, they will work diligently and with best efforts to complete and execute the initial Implementation Agreement as promptly as practicable; provided, however, that a failure to execute Implementation Agreements will not invalidate or render unenforceable any provision of this Agreement.

In consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENTS

Section 1.

1.1 Main Lot Work.

(a) Concurrently with the construction of the Stadium, the following work (the "**Main Lot Work**") will be completed by the Stadium Parties, at no cost to GA Tenant:

(i) Reconfigure the Main Lot, including resurfacing, relocation of facilities as described in clause (ii) below, restriping, relocation of light fixtures and/or installation of new light fixtures, installation of new wayfinding and parking signage, which may, if permitted under City regulations, include sponsorship attributes, provided that such attributes do not create confusion as to the use of the Main Lot for patrons of GA Tenant, and restoration or replacement of any improvements in the Main Lot, such as the entry gate, to the extent reasonably

required in connection with such work. The Main Lot will, subject to the approval of GA Tenant and the City, to the extent required under the Amended Lease, be modified to accommodate parking for not less than 6,500 vehicles with a goal of providing parking for not less than 7,000 vehicles on a paved or concrete surface ("**Initial Main Lot Modification**"). After completion of the Initial Main Lot Modification, the number of spaces then available in the Main Lot shall be deemed to be the minimum number of spaces thereafter for all purposes hereunder. Notwithstanding anything in this Agreement to the contrary, to the extent and for the time period, if any, permitted under the Implementation Agreements, the number of spaces may be reduced to accommodate spaces for larger vehicles and other NFL game or other Stadium event related permanent or semi-permanent fixtures. If the Implementation Agreements do not permit any such reductions, then the Stadium Parties may make such reductions on a temporary basis for Dual Use Events; provided that the regular spaces are restored promptly after each Dual Use Event and no reductions are made in the GA Reserved Spaces (as defined below).

(ii) Relocate the substation that is currently located along Tasman Drive at San Tomas Aquino Creek and improve the area currently occupied by the substation to convert its use for parking as part of the Main Lot.

(iii) Any permanent improvements required per Section 2.3 to operate the Main Lot on a Dual Use Basis.

(iv) At the option of the Stadium Parties, the Main Lot Work may also include re-grading the eastern portion of the Main Lot to provide wheelchair access to the Stadium, installation of permanent stadium security stations, and trenching for Wi-Fi and camera and security equipment, and additional enhancements for the delivery of communication services, including a Distributive Antennae System.

(b) The Main Lot Work shall be performed by the Stadium Parties at no cost to GA Tenant pursuant to a work plan reasonably approved by GA Tenant, and shall be completed prior to the first NFL Game at the Stadium. The Main Lot Work, except for work in the Construction Area (as defined below), shall not be performed in the months of April through October, except with the approval of GA Tenant, which shall not be unreasonably withheld or delayed. The plans and specifications for the Main Lot Work shall be subject to reasonable and customary design review and the approval of GA Tenant for consistency with the requirements of this Agreement, which approval shall not be unreasonably withheld or delayed. While the Main Lot Work is under construction, the Stadium Parties shall cause GA Tenant to be named as an additional insured on the contractor's liability insurance.

(c) Following completion of the Main Lot Work, any further reconfiguration of the Main Lot shall require the reasonable approval of GA Tenant, SCSA and Stadium Company. Customary maintenance, repair and upkeep of the Main Lot shall be the responsibility of GA Tenant, and standards therefor shall be set forth in the Implementation Agreements. If, in any year, SCSA and Stadium Company use more than 3500 spaces in the Main Lot for more than 70 events, then SCSA and Stadium Company shall contribute to the maintenance, repair and upkeep for such year in an amount determined in good faith by the parties, based on relative usage of the Main Lot.

1.2 Construction.

(a) In construction of the Stadium and Main Lot Work, SCSA shall comply with all mitigation measures contained in the environmental impact report ("**EIR**") for the Stadium and other conditions of approval for the Stadium, including, without limitation, those relating to construction vehicle routing and dust control. SCSA will meet periodically (but no less than quarterly) with GA Tenant to keep GA Tenant generally apprised of Stadium and Main Lot construction activities and to coordinate such activities with GA Tenant operations.

(b) During construction of the Stadium, SCSA shall have the right to use that portion of the Main Lot identified on Exhibit B (the "**Construction Area**") for lay-down, storage, staging, ingress and egress and/or any other activities relating to construction of the Stadium; provided, however, that (i) use of the Construction Area shall be for a period not to exceed three (3) GA Tenant seasons, without the approval of GA Tenant, which shall not be unreasonably withheld or delayed, (ii) the City establish a secondary exit point from the Main Lot which is acceptable to GA Tenant in its reasonable discretion to be used on high capacity days at Great America; (iii) only non-combustible items are stored in the area designated in Exhibit B as "Fireworks Buffer Area" within the Construction Area and, during fireworks programs, no personnel or vehicles are permitted in the Fireworks Buffer Area, and (iv) the Construction Area may be expanded with the approval of GA Tenant. SCSA shall be responsible for constructing a fence and implementing other reasonable safety measures to separate the Construction Area from the parking areas in the Main Lot.

Section 2. Parking

2.1 Stadium Use of the Main Lot.

SCSA or Stadium Company, as applicable, will have the right to use the Main Lot as parking for patrons of the Stadium as set forth in this Section 2. SCSA or Stadium Company, as applicable, shall also have the right to use the Main Lot (exclusive of those portions of the Main Lot used as the GA Reserved Spaces during any Dual Use Event) for uses ancillary to the operation of the Stadium, including, without limitation, (i) the right to sell advertising and space for promotional displays and activities in the Main Lot during, and for a reasonable period before and after, any NFL football game ("NFL Games") or any other Dual Use Event or any Stadium Only Event, including, without limitation, concession stands and kiosks, signs, advertising and other promotional uses; provided that such promotional displays will be removed by SCSA or Stadium Company within a reasonable time following such event and will not be located on GA Reserved Spaces during any Dual Use Event (as defined in Section 2.3(c)), and (ii) ingress to and egress from the Stadium over and across the Main Lot. It is acknowledged that GA Tenant has the right to operate the Theme Park, including, but not limited to, concession stands/carts, picnic pavilion and related amenities, rides and other attractions and promotional uses, all within the "**Premises**" (as defined in the Amended Lease) and, to the extent authorized in the Amended Lease, in the GA Reserved Spaces, during and for a reasonable period before and after NFL Games and, subject to the approval of the Stadium Parties, which approval may only be withheld if the GA Tenant's planned use would unreasonably interfere with a previously planned event, during and for a reasonable period before and after Stadium Only Events.

2.2 Stadium Only Events.

For Stadium events ("**Stadium Only Events**") requiring use of the Main Lot held on days or at times when the Theme Park is not open to the general public or is only open for a private event or a special event related to Stadium events ("**Closed Times**"), SCSA or Stadium Company, as applicable, will have the right to operate the entire Main Lot as parking for patrons of such Stadium Only Events and shall have the right to receive all revenues generated by such operation of the Main Lot. SCSA or Stadium Company, as applicable, shall be responsible for all direct costs and expenses of operating the Main Lot for such Stadium Only Events.

2.3 Dual Use Events.

(a) For Dual Use Events (as defined below), SCSA or the Stadium Company, as applicable, and GA Tenant will each have the right to use the Main Lot as parking on a Dual Use Basis as set forth in this Section 2.3. The term "**Dual Use Events**" means all Stadium events that utilize the Main Lot and are scheduled in accordance with the requirements of Section 2.5 below, on days or at times when the Theme Park is scheduled to be open to the public (for clarity, days or times other than Closed Times). For clarity, Dual Use Events do not include events for which GA Tenant allows Stadium patrons to park in the Main Lot, but for which neither SCSA nor Stadium Company has requested that the event be designated a Dual Use Event. For all Dual Use Events (i) GA Tenant will be entitled to use and shall have the right to receive all net revenues from the GA Reserved Spaces and (ii) SCSA or Stadium Company, as applicable, will be entitled to use and shall have the right to receive all net revenues from all other spaces in the Main Lot, all in accordance with this Section 2.3.

(b) SCSA or Stadium Company, as applicable, shall operate (which may include subcontracting the operation of) the Main Lot for Dual Use Events in accordance with this Section 2.3 and shall be responsible for all direct costs and expenses of operating the Main Lot for such Dual Use Events, except that the GA Tenant shall be responsible for the direct costs of operating the GA Reserved Spaces, with undifferentiated direct costs allocated based on proportionate usage.

(c) When the Main Lot is operated in connection with a Dual Use Event (also referred to herein as "**Dual Use Basis**"), SCSA or Stadium Company, as applicable, will, by cones, barricades or other effective means reasonably approved by GA Tenant, segregate parking spaces (the "**GA Reserved Spaces**") in the area closest to GA Tenant's main entrance to be dedicated for the sole use of GA Tenant patrons. GA Reserved Spaces will be the amount determined in Section 2.5(e); provided, however, that (i) for each Dual Use Event that is an NFL Game, GA Reserved Spaces will not be more than 1,500 spaces (ii) for up to fifteen (15) Permitted Stadium Events (in addition to NFL Games) designated by or on behalf of SCSA or Stadium Company(**"Designated Dual Use Events"**), GA Reserved Spaces will not be more than 3500 spaces in the Main Lot, and (iii)for any other Dual Use Event, GA Reserved Spaces will be determined in accordance with Section 2.5(e).

(d) Operation of the Main Lot on a Dual Use Basis will: (i) facilitate access by GA Tenant patrons to the Theme Park unless otherwise permitted by GA Tenant in its sole discretion, (ii) provide reasonable assurance that patrons of Stadium events will not use the

GA Reserved Spaces without paying for admission to the Theme Park, and (iii) allow GA Tenant patrons to park in the GA Reserved Spaces. The specific procedures require detailed operational discussions and input from GA Tenant and its operating personnel and are intended to be addressed in the Implementation Agreements. Possible tools to achieve these goals include, but are not limited to:

- collection of GA Tenant admission charges and parking fees at the parking entrance, with the parking for GA Tenant patrons charged at a combined rate, so that no cars would be admitted to the GA Reserved Spaces on Dual Use Days without both (i) a season pass, a pre-purchased admission ticket or payment of a daily admission price, and (ii) a GA Tenant parking pass or payment of the GA Tenant daily parking rate. Any expanded kiosk and associated parking management infrastructure at the parking entrance required to implement this procedure shall be constructed at no cost to GA Tenant;

- provide separate entrance and exiting for the GA Reserved Spaces or provide access to the Main Lot through the GA Tenant entrance with separate lanes dedicated to GA Tenant patrons and Stadium parking.

2.4 Traffic Management.

(a) As described in the EIR, SCSA and other interested agencies will be developing a Transportation Management and Operations Plan ("**TMOP**") for the operation of the Stadium, and in connection therewith it is agreed that:

(i) One of the objectives of the TMOP will be to provide for the efficient access to and from GA Tenant at all Dual Use Event times;

(ii) GA Tenant will have the opportunity to participate in joint planning discussions with SCSA, City police department personnel, SCSA's project traffic engineers, and other interested parties during the development of the TMOP; and

(iii) During Dual Use Events, SCSA or Stadium Company, as applicable, at no expense to GA Tenant, will provide security personnel and uniformed police officers, as well as signage and dedicated traffic lanes to minimize congestion and eliminate confusion and to permit relative ease of access to the Main Lot for GA Tenant patrons, all in accordance with the approved TMOP. In addition, to the extent feasible without compromising operational security, SCSA and Stadium Company will provide GA Tenant with year round access to the security infrastructure installed by SCSA, Stadium Company or their designees in the Main Parking Lot or ingress and egress points thereto, provided that GA Tenant shall pay any incremental costs attributable thereto. GA Tenant shall provide SCSA and Stadium Company with point of sale parking information relating to their respective patrons, to the extent that GA Tenant gathers such information in the normal course of the Main Lot operations; provided that SCSA and Stadium Company shall pay any incremental costs attributable thereto.

2.5 Event Scheduling.

Scheduling of events at the Stadium for which a Stadium Party intends to exercise a right under this Agreement to use of all or part of the Main Lot shall be consistent with the following:

(a) SCSA or the Stadium Company, as applicable, will have the right to schedule the following events **("Permitted Events")** in its sole discretion, without any approval by GA Tenant;

(i) Stadium Only Events;

(ii) NFL Games (which shall be Dual Use Events if the Theme Park is scheduled to be open and Stadium Only Events if played at Closed Times); provided, however, that (i) for so long as only one NFL team plays its home games in the Stadium, no more than five (5) NFL Games shall be scheduled on Sundays in September and October, and (ii) no NFL Games may be scheduled on a Saturday in August without GA Tenant's prior consent;

(iii) Events for which neither SCSA nor Stadium Company shall have any right to use the Main Lot for parking; and

(iv) Events that are scheduled to start at 5 p.m. or later on a Sunday, Monday, Tuesday, Wednesday or Thursday night (other than a Sunday, Monday, Tuesday, Wednesday or Thursday night that falls on (a) Memorial Day weekend or Labor Day weekend, (b) the week commencing the Sunday before the Fourth of July (or if the Fourth of July falls on a Sunday, the week following the Fourth of July), or (c) on the days described in Section 2.5(c)(i) and "black out days" expressly designated as such pursuant to Section 2.5 (c)(ii).

(v) Designated Dual Use Events scheduled at any time on (a) Monday, Tuesday Wednesday or Thursday prior to May 31 in any year, except for Memorial Day, (b) Monday, Tuesday, Wednesday, Thursday or Friday June 1 through June 10, or (c) on Monday, Tuesday, Wednesday or Thursday from August 16 through the end of GA Tenant's season in each year; provided that Designated Dual Use Events shall not be scheduled on days described in Section 2.5(c)(i) or "black out days" expressly designated as such pursuant to Section 2.5(c)(ii)..

(b) Subject to the requirements of Section 2.5(c), (d) and (e) below, SCSA or Stadium Company, as applicable, will have the right to schedule events that do not otherwise qualify as Permitted Events or Sole Discretion Events (as defined below) ("**Reasonable Discretion Events**"), and to utilize the Main Lot for parking on a Dual Use Basis in connection with such events, with the prior written approval of GA Tenant, not to be unreasonably withheld, conditioned or delayed, it being acknowledged that (i) it would not be unreasonable for GA Tenant to withhold its consent if GA Tenant had booked or could demonstrate that, consistent with past practice, it had a reasonable expectation of booking an event that would require the use of substantially all of the Main Lot and (ii) GA Tenant will not withhold or condition approval if SCSA or the Stadium Company, as applicable, demonstrates that adequate parking is available for patrons of the Reasonable Discretion Event taking into account that the GA Reserved Spaces, determined in accordance with Section 2.5(e) would not be available to Stadium patrons.

(c) Except for Permitted Events, SCSA or Stadium Company, as applicable, will have the right to schedule the following events ("**Sole Discretion Events**") only with the prior approval of GA Tenant, which approval GA Tenant may grant or withhold in its sole discretion:

(i) Events on (a) any Saturday or Sunday in June, July or August, (b) Memorial Day weekend, Labor Day weekend, the Fourth of July, or the day before and the day after Fourth of July or (c) Halloween or the day before and the day after Halloween;

(ii) Events occurring on up to five (5) weekdays in June, after June 10, July or August that GA Tenant may designate each year by notice to SCSA and Stadium Company delivered between January 1 and March 31 of that year, as "black-out days;" provided that GA Tenant may not, without the approval of SCSA or the Stadium Company, as applicable, designate as a black-out day any day on which SCSA or Stadium Company has previously scheduled an event in compliance with this Section 2.5.

The parties acknowledge and agree that GA Tenant may, in its sole discretion, condition its approval of any Sole Discretion Event on a provision of certain payment or on any other condition.

(d) For purposes of applying the principles set forth in this Section 2.5:

(i) GA Tenant, SCSA and Stadium Company will meet at least once annually in the first calendar quarter of each year to coordinate schedules ("**Annual Planning Meeting**");

(ii) With respect to the types of Stadium events that would normally be booked in advance of the Annual Planning Meeting for the year in which such Stadium event is to be held, SCSA or Stadium Company, as applicable, may rely on the latest available GA Tenant operating schedule unless otherwise notified by GA Tenant of any change in such operating schedule and will give written notice to GA Tenant for its reasonable approval prior to booking such event or events. (As an example, if an event expected to require the use of the Main Lot is being booked in November of 2012 for a weeknight in April 2014, and if, in 2012, GA Tenant is not open to the public during the week until after May 1, then the SCSA or the Stadium Company, as applicable, may book the event for April 15, 2014, provided that it gives advance written notice to GA Tenant of the booking and GA Tenant does not have a competing event or use booked for such proposed date. If SCSA or Stadium Company, as applicable, desires to book the same event for a weekend evening in June, then it can only do so with GA Tenant's sole discretion approval as provided above).

(iii) Prior to December 15 of each year, SCSA or Stadium Company, as applicable, will provide GA Tenant with (a) detailed information for the Stadium-related use of the Main Lot during the 12 month period ending on the preceding October 31, by day, and (b) a list by date and time of all events then scheduled for the Stadium for the following calendar year; provided that the parties acknowledge that the NFL Game schedule is generally not available until the Spring before the beginning of each football season. SCSA or

Stadium Company, as applicable, will provide updated event schedules to GA Tenant at least quarterly.

(e) Prior to January 1 of each year, GA Tenant will make available to Stadium Company and the stadium manager (provided that, if at any time one of them is a public agency, then such public agency shall designate an independent, non-public person or entity to receive and review on its behalf) (a) attendance and detailed parking information for GA Tenant's preceding season, by day and for the season, and (b) the estimated operating calendar for the upcoming season, including projected days and hours that GA Tenant will be scheduled to be open to the public and the portion of the Main Lot it believes to be reasonably required for each of the projected operating days, calculated in accordance with subsection (e)(i) below. Stadium Company and the stadium manager, and any other recipient designated in accordance with this paragraph, shall maintain the confidentiality of all of the attendance and parking information provided by GA Tenant, to the extent that such information is not otherwise publicly available, to the maximum extent permitted under law, and shall share such information only with their respective employees, agents, consultants or affiliates who are engaged in matters relating to this Agreement.

(i) SCSA or Stadium Company, as applicable, will provide GA Tenant with notice at least thirty (30) days prior to any Dual Use Event, which notice shall set forth the portion of the Main Lot it believes to be reasonably required for such event after taking into account availability in the Tasman garage and other parking and its estimate of the number of GA Reserved Spaces for such event ("**GA Reserved Space Estimate**"). GA Tenant shall notify SCSA or Stadium Company, as applicable, within five (5) days after receiving such notice, if, based on its estimated peak parking demand and subject to the required parking for any NFL Game or Designated Dual Use Event, it believes that it requires and is entitled to more GA Reserved Spaces than the number set forth in the GA Reserved Space Estimate. If GA so notifies SCSA or Stadium Company, as applicable, then GA Tenant and SCSA or Stadium Company, as applicable, will meet promptly and in good faith to resolve any discrepancy as to the correct number of GA Reserved Spaces. The number of GA Reserved Spaces shall be the number determined by multiplying GA Tenant's peak parking demand for a comparable day in the most recently available parking information by 110%. Peak parking demand shall be that number of spaces determined by multiplying the total number of parking admissions for a comparable day by 75%. Because calendar dates fall on different days each year, the parties will act reasonably in determining which day in one year is comparable to a day in the following year. For example, if, in 2012, a party is planning an event for Friday, June 19, 2015, it would be reasonable to use Friday, June 17, 2011, if that is the most recent parking information available, as the comparable day for purposes of this paragraph. If on June 17, 2011, GA Tenant had a total of 6000 parking admissions to the Main Lot, then, if the peak parking percentage were 75%, the GA Reserved Spaces for an event planned for June 19, 2015, would be 4950 spaces. Multi-year events may be planned using the most recent parking information available at the time the event is first considered.

(ii) SCSA, Stadium Company and GA Tenant will meet at least annually, at a mutually convenient time, for at least the first five (5) years, and thereafter at the request of either party, in order to assess the efficacy and fairness of the procedures and allocations set forth in the Implementation Agreements and, if there is demonstrable evidence that the peak

parking percentage is less than 75%, the peak parking percentage set forth in (i) above, and to negotiate in good faith any necessary amendments thereto.

(f) For non-recurring Dual Use events, SCSA or the Stadium Company, as applicable, will use commercially reasonable efforts to encourage the sponsor of such event to coordinate marketing efforts and to explore promotional and other opportunities with GA Tenant.

2.6 Stadium Parking on the GA Tenant Employee Lot.

(a) For Stadium Only Events (i.e., held at Closed Times), SCSA or Stadium Company, as applicable, will have the right to (i) operate the GA Tenant employee lot located at the rear of the theme park (the "**Employee Lot**") as parking in connection with such Stadium Only Events and (ii) receive all revenues generated by such operation of the Employee Lot. SCSA or Stadium Company, as applicable, shall be responsible for all direct costs and expenses of operating the Employee Lot for such Stadium Only Events. SCSA or Stadium Company agrees, at GA Tenant's request, to reserve up to 350 parking spaces in the Employee Lot for GA Tenant's employees at no charge in the event that the Park will be open for a private event or a special event related to the Stadium Only Event, in which case GA Tenant shall be responsible for all direct costs and expenses of operating the portion of the Employee Lot so reserved for its use.

(b) In addition, when GA Tenant is open to the public, SCSA or the Stadium Company, as applicable, shall have the right to use the Employee Lot as parking on a Dual Use Basis in connection with Stadium Events that are scheduled in accordance with the requirements of Section 2.5; provided that any such use of the Employee Lot shall be, subject to operational requirements that are acceptable to GA Tenant in its sole discretion, consistent with GA Tenant's use of the lot for employee parking.

2.7 Payment for Stadium Parking.

Stadium Company is purchasing from GA Tenant the parking rights described in this Agreement subject to the terms and conditions hereof for an aggregate purchase price of Twelve Million Five Hundred Thousand Dollars ($12,500,000) (the "Base Purchase Price"), with the possibility of an additional contingent purchase price of Five Million Dollars ($5,000,000), payable as follows:

(a) Stadium Company will pay to GA Tenant Three Million Five Hundred Thousand Dollars ($3,500,000) (the "**Deposit**") promptly following the last to occur of: (i) approval and execution by SCSA and the City, respectively, of this Agreement and the Fourth Amendment, (ii) recording of the Fourth Amendment, (iii) recording of both the Stadium Easement Agreement (as defined in the Fourth Amendment) and Stadium Company's lease of the Stadium, (iv) execution by GA Tenant of a general release, in form and substance satisfactory to the City, SCSA and Stadium Company of any and all claims, as of the date of the release, against any of them, or any of their respective affiliates arising out of or related to the Stadium, and (v) dismissal with prejudice of any such pending claims. The parties will use best efforts to complete all of the foregoing as soon as possible following the effective date of this Agreement, and, in all events, but subject to the following sentence, the Deposit shall be paid no later than September 1,

2012. If at any time, Stadium Company notifies GA Tenant that the Disposition and Development Agreement between the SCSA and Stadium Company has been terminated and the Stadium will not be constructed pursuant to that Agreement, then GA Tenant will promptly return to Stadium Company the full amount of the Deposit without interest, and this Agreement will be deemed to have been terminated. Concurrently with the dismissal of claims described in clause (v), the Stadium Parties shall deliver to GA Tenant a general release of any and all claims, as of the date of the release, against GA Tenant and its affiliates arising out of or related to such pending claims or related to the Stadium.

(b) Prior to the first NFL Game in the Stadium, Stadium Company will pay to GA Tenant Nine Million Dollars ($9,000,000) as the final payment of the Base Purchase Price hereunder. At such time such final payment is made under this Section 2.7(b), the Deposit shall be applied to the Purchase Price and shall become non-refundable.

(c) If another National Football League team commits to play its home NFL Games at the Stadium under a long-term arrangement in which the Stadium becomes the home field for such team, Stadium Company will pay to GA Tenant Five Million Dollars ($5,000,000) prior to the first game played at the Stadium under such long-term arrangement.

GA Tenant acknowledges that SCSA and Stadium Company may enter into arrangements for reimbursement of Stadium Company for amounts paid hereunder in respect of non-NFL events at the Stadium. GA Tenant shall have no rights to further payments as a result of any such arrangements.

Section 3. Miscellaneous.

3.1 Indemnity and Insurance

(a) Stadium Company and SCSA agree to defend, protect, indemnify and hold harmless GA Tenant and its affiliates, mortgagees, officers, employees, contractors and agents ("**GA Tenant Group**") from and against all claims and demands for loss or damage, including property damage, personal injury and wrongful death (collectively, "Claims") arising out of or in connection with the performance of any Main Lot Work by such Stadium Party.

(b) SCSA agrees to defend, protect, indemnify and hold harmless GA Tenant Group from and against any and all Claims arising out of or in connection with its use or occupancy of the Main Lot or breach of this Agreement; including, without limitation, operation of the Main Lot by SCSA on a Dual Use Basis, except to the extent such Claims arise out of the gross negligence, breach of this Agreement, or willful act or omission of the GA Tenant Group or GA Tenant.

(c) Stadium Company agrees to defend, protect, indemnify and hold harmless GA Tenant Group from and against any and all Claims arising out of or in connection with its use or occupancy of the Main Lot or breach of this Agreement, including, without limitation, operation of the Main Lot by Stadium Company on a Dual Use Basis, except to the extent such Claims arise out of the gross negligence, breach of this Agreement, or willful act or omission of GA Tenant Group.

(d) GA Tenant agrees to defend, protect, indemnify and hold harmless SCSA, Stadium Company, the City and the Team and their respective affiliates, officers, employees, contractors and agents from and against any and all Claims arising out of or in connection with GA Tenant's use or occupancy of the Main Lot or breach of this Agreement, except to the extent such Claims arise out of the gross negligence, breach of this Agreement, or willful act or omission of SCSA or Stadium Company, or their licensees, concessionaires, agents, servants, or employees.

(e) GA Tenant shall maintain commercial general liability insurance in accordance with the Amended Lease and shall include as additional insureds the Stadium Parties, the Team and any other person reasonably requested by SCSA or Stadium Company. SCSA shall maintain commercial general liability insurance in accordance with the lease of the Stadium Site to the SCSA, and Stadium Company shall maintain commercial general liability insurance in accordance with its lease of the Stadium, and each such policy of commercial general liability insurance shall include as additional insureds GA Tenant and any other person reasonably requested by GA Tenant.

3.2 Mediation

In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the Implementation Agreements or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all parties. If they do not reach such solution within a period of fifteen (15) calendar days, then, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure. Notwithstanding the foregoing, neither the completion of the fifteen (15) day period nor mediation shall be required prior to the parties seeking injunctive relief or other provisional remedies.

3.3 Good Faith Cooperation.

The parties will endeavor to (i) cooperate with each other in the implementation of the Agreement, including the negotiation of any Implementation Agreements and (ii) in good faith consider and negotiate modifications to this Agreement or any then effective Implementation Agreements to address operational issues that come to the attention of the parties in the course of implementing this Agreement and the Implementation Agreements. Stadium Company will, and will endeavor to cause its affiliates to, work in good faith to establish in connection with the negotiation of the Implementation Agreement(s) a promotional and marketing cooperation agreement with GA Tenant, and GA Tenant will work in good faith to establish such an agreement with Stadium Company and its designated affiliates which will set forth the specifics, logistics and consideration related to cross promotional and marketing opportunities, including but not limited to data base access, joint marketing, shared media opportunities, in stadium messaging, marquee and static signage, social media and web opportunities, player appearances etc.

3.4 Actions of the SCSA; GA Approval.

Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits the SCSA's approval, consent, or waiver, the written approval, consent, or waiver of the SCSA's Executive Director (or his/her respective designee) shall constitute the approval, consent, or waiver of the SCSA, respectively, without further authorization required from the governing board of the SCSA; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board as she/he deems it appropriate. The SCSA, or its Executive Director, may authorize a Stadium manager to act on behalf of the SCSA for any or all purposes under this Agreement. The Stadium Parties shall be entitled to rely on the actions of the General Manager of the Great America theme park for approvals required under this Agreement; provided, however, that the General Manager may seek such further advice or authorization from the executive management of GA Tenant as she/he deems appropriate.

3.5 Term.

This Agreement shall be effective from the date first set forth above, unless amended or terminated by written agreement of the parties. As between the Stadium Parties, this Agreement shall remain effective for the life of the Stadium unless amended or terminated by written agreement of the parties. The GA Tenant and the City shall not amend the terms of the GA Lease or the Amended Lease in any way as would affect the rights of the SCSA or the Stadium Company under this Agreement or the Amended Lease without the prior written consent of the SCSA or the Stadium Company.

3.6 Non-Liability of Officials.

No member, official, employee or agent of the SCSA or the City shall be personally liable to GA Tenant or Stadium Company, or any successor in interest, in the event of any default or breach by the SCSA or City for any amount which may become due to GA Tenant or successor or on any obligation under the terms of this Agreement, except to the extent that SCSA commits in a separate agreement to reimburse Stadium Company for the transfer of parking rights, as provided in Section 2.7.

3.7 State Law.

This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

3.8 Additional Acts.

The parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other party for purposes of consummating the transactions contemplated in this Agreement.

3.9 Validity of Agreement.

If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of

such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

3.10 Entire Agreement; Modification and Amendment.

This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of the parties.

3.11 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties to this Agreement. This Agreement is intended to create covenants running with the land that will be appurtenant to and binding upon the GA Tenant's interest under the GA Lease, including as amended by the Fourth Amendment, and on the City's interest in the Stadium Site. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

3.12 Time of the Essence.

Time is of the essence in the performance of all duties and obligations under this Agreement.

3.13 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

3.14 Notices, Demands and Communication.

(a) All notices, consents, directions, approvals, instructions, requests and other communications given to a Party under this Agreement shall be given in writing to such Party at the address set forth below (except that notices under Section 2.5(e) shall only be required to be sent to the General Manager of the Great America Theme Park, the stadium manager and the Chief Financial Officer of Stadium Company, or such other persons as are designated in accordance with this paragraph or under the Implementation Agreements) , or at such other address as such Party shall designate by written notice to the other Party to this Agreement and may be (i) sent by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services) or (iii) sent by facsimile (with confirmation of such notice) to the Party entitled thereto. Such notices shall be deemed to be duly given or made (1) three (3) Business Days after posting if mailed as provided, (2) when delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day, or (3) in the case of facsimile (with confirmation of such notice), when sent, so long as it was received during normal business hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next

succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties to whom notice hereunder must be given, by delivering to the other Party five (5) days' notice thereof setting forth the address(es) for each such additional party.

SCSA:

Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Jennifer Sparacino, Executive Director

with copies to:

Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Richard E. Nosky, Jr., Authority General Counsel

Stadium Company:

Forty Niners Stadium, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attention: John Edward York, President

with copies to:

Forty Niners Stadium, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attention: Larry MacNeil, CFO

and

Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
Attention: Harry O'Brien

GA Tenant

Cedar Fair, L.P.,
One Cedar Point Drive,
Sandusky, Ohio 44870
Attention: Duffield Milkie, Esq.,

with a copy to

Squire, Sanders & Dempsey (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114
Attention: Cipriano S. Beredo

3.15 Great America Parkway.

For as long as GA Tenant is operating the Theme Park under a name that includes the phrase "Great America", the street name "Great America Parkway" will remain the same.

[SIGNATURES ON FOLLOWING PAGES]

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

CITY:

THE CITY OF SANTA CLARA, CALIFORNIA,
a California municipal corporation

By: _____
Name: JENNIFER SPARACINO
Its: City Manager

Attest:

ROD DIRIDON, JR.
City Clerk

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
Stadium Authority Counsel

SCSA:

SANTA CLARA STADIUM AUTHORITY
a Joint Exercise of Powers Entity, created through Government Code sections 6500 *et seq.*

By: _____
Name: JENNIFER SPARACINO
Its: Executive Director

Attest:

ROD DIRIDON, JR.
Secretary

STADIUM COMPANY:

FORTY NINERS STADIUM, LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

GA TENANT:

CEDAR FAIR, LP,
a Delaware limited partnership

By: _____
Name: _____
Its: _____

CEDAR FAIR SOUTHWEST, INC.
a Delaware limited liability company

By: _____
Name: _____
Its: _____

EXHIBIT A

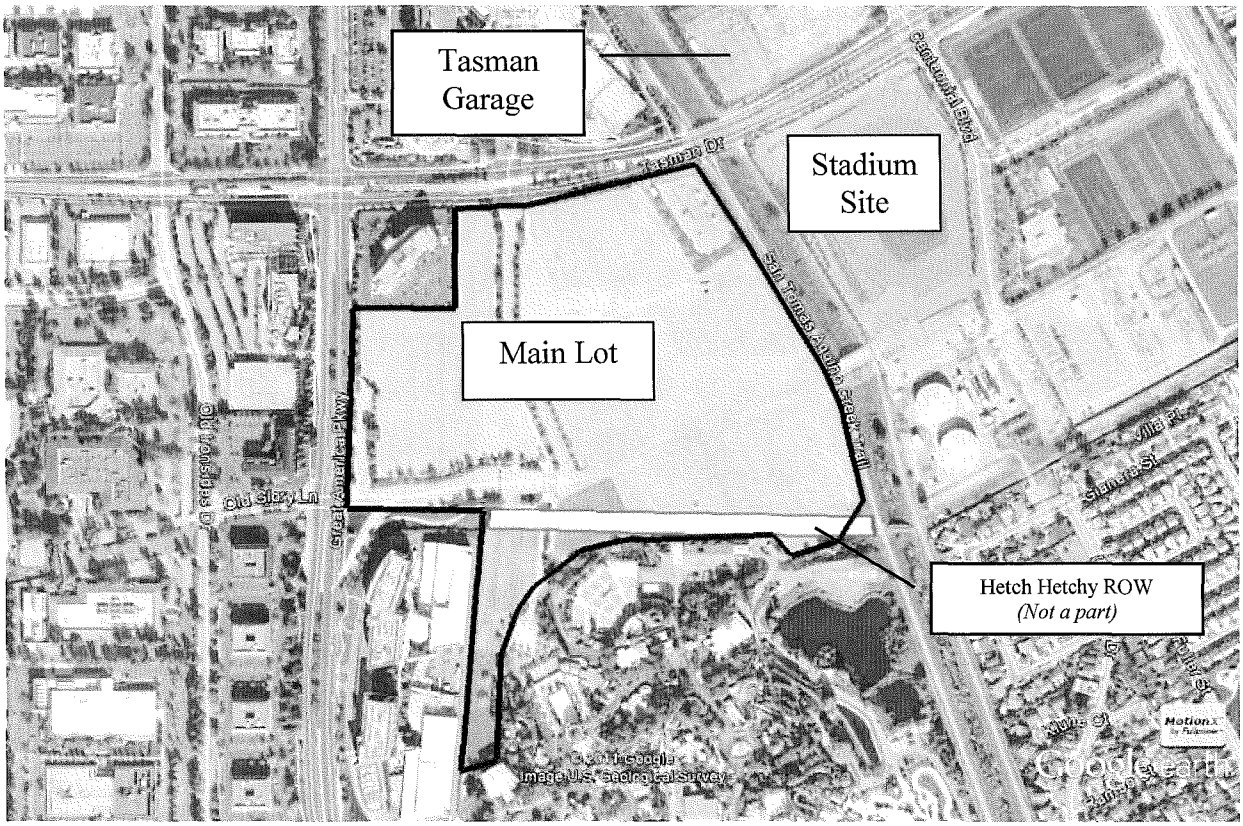
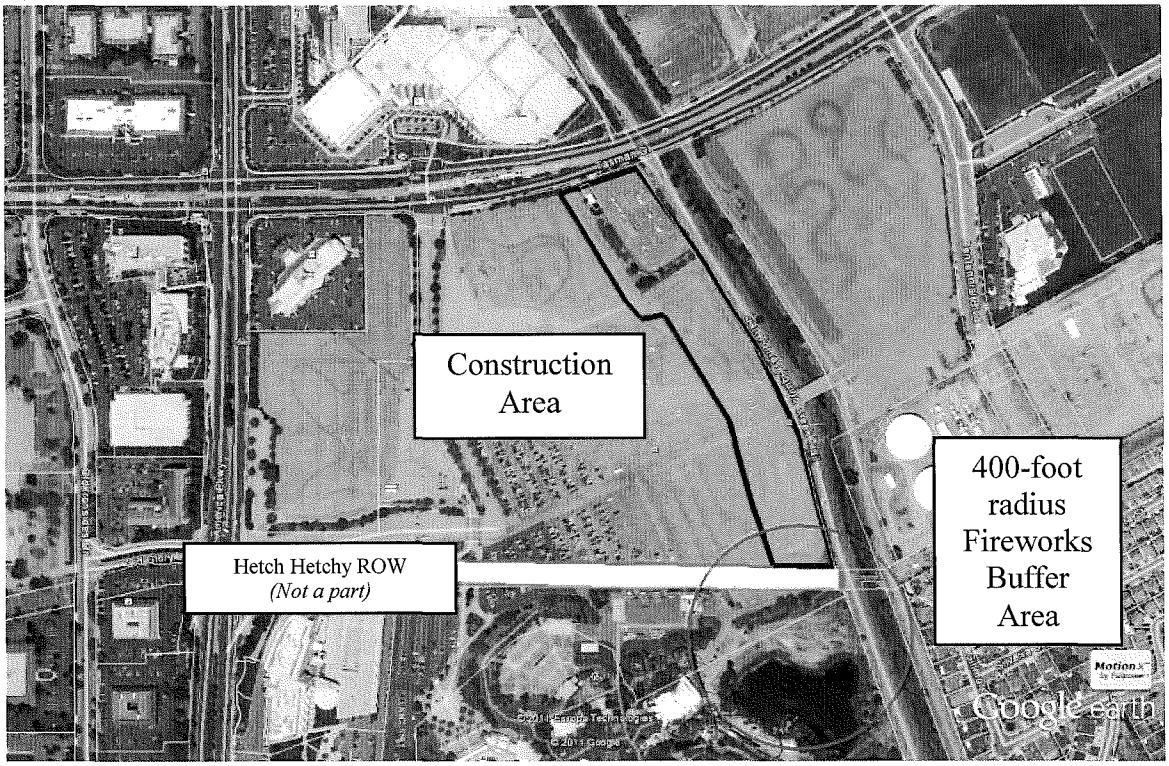

Tasman Garage
Stadium Site
Main Lot
Hetch Hetchy ROW
(Not a part)
Tasman Dr
Old Ironsides Dr
Old Glory Ln
Great America Pkwy
Image U.S. Geological Survey
Google Earth

EXHIBIT B


Construction Area
400-foot radius Fireworks Buffer Area
Hetch Hetchy ROW
(Not a part)
Google earth

RECORD WITHOUT FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY:

Office of the City Attorney
City Of Santa Clara, California

AND WHEN RECORDED MAIL TO:

Richard E. Nosky
City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA

THIS SPACE ABOVE FOR RECORDER'S USE

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "**Agreement**") is made and entered into as of January 1, 2012, by and among THE CITY OF SANTA CLARA, a chartered California municipal corporation ("**City**"), SANTA CLARA STADIUM AUTHORITY ("**SCSA**") and FORTY NINERS STADIUM, LLC ("**Stadium Company**"), which is an affiliate of the San Francisco Forty Niners, Limited (the "**Team**").

RECITALS

A The City, SCSA, Stadium Company and the Team, are working cooperatively to develop a stadium (the "**Stadium**") in the Bayshore North Redevelopment Project Area on the south side of Tasman Drive at Centennial Boulevard, as generally depicted on Exhibit A (the "**Stadium Site**"). The Stadium Site is owned by the City and is proposed to be ground leased to SCSA for development of the Stadium. The Stadium will be developed and owned by SCSA, which is a joint powers authority composed of the City, its Redevelopment Agency and the Bayshore North Project Enhancement Authority. SCSA will lease the Stadium to Stadium Company, which will sublease the Stadium to the Team for use as its home stadium for NFL Games and related uses, as generally described in the Disposition and Development Agreement between SCSA and Stadium Company dated December 13, 2011 (the "**DDA**").

B. Certain land in the immediate vicinity of the Stadium Site is leased to CEDAR FAIR SOUTHWEST, INC., a Delaware corporation (the "**GA Tenant**"), pursuant to that certain Ground Lease with First Refusal Purchase Rights dated as of June 1, 1989 (the "**Original Lease**") and recorded June 1, 1989 as Instrument No. 10131592 in the Official Records of Santa Clara County (the "**Official Records**"), as amended by that certain First Amendment to Ground Lease with First Refusal Purchase Rights dated as of October 4, 1994 and recorded October 7, 1994 as

Instrument No. 12678902 in the Official Records, that certain Second Amendment to Ground Lease with First Refusal Purchase Rights dated as of March 18, 1997 and recorded March 25, 1997 as Instrument No. 13648418 in the Official Records, and that certain Third Amendment to Ground Lease with First Refusal Purchase Rights dated as of May 25, 1999 and recorded July 8, 1999 as Instrument No. 14887081 in the Official Records (collectively, as so amended, the "**GA Lease**"), upon which land the GA Tenant operates the Great America Theme Park.

C. City and GA Tenant are concurrently entering into a Fourth Amendment to Ground Lease with First Refusal Purchase Rights (the "**Fourth Amendment**"), and City, SCSA, Stadium Company and GA Tenant are concurrently entering into a Parking Agreement (the "**Parking Agreement**") that together will (i) terminate all rights of GA Tenant, including any parking rights, with respect to the Stadium Site; (ii) provide for modifications to the parking rights of GA Tenant in the areas described in Exhibit B hereto (the "**Parking Parcels**"); (iii) grant to GA Tenant a non-exclusive easement for parking appurtenant to its leasehold interest; and (iv) provide for the shared use of the certain of the Parking Parcels for parking for patrons of GA Tenant and the Stadium in a cooperative manner.

D. The parties to this Agreement have agreed to enter into this Easement Agreement to document the grant to SCSA and Stadium Company of certain easements and related rights, as more particularly described herein, and to set forth the rights and obligations of the parties with respect to such easements and rights.

NOW, THEREFORE, in consideration for the mutual covenants and promises of the parties contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GENERAL PROVISIONS.

1.1. Dominant And Servient Parcels. The easements described and granted herein are declared to burden the Parking Parcels and benefit the Stadium Site (collectively, the "**Parcels**" and each individually, a "**Parcel**"). Until such time as the City has entered into a lease of the Stadium Site to SCSA and SCSA has entered into a lease of the Stadium Site to Stadium Company, all as generally contemplated by the DDA (the "**Lease Date**"), the easements described and granted herein are also granted to and in favor of SCSA and Stadium Company as easements in gross. The burdens and benefits of the covenants and restrictions contained herein shall run with the land and bind the Parcels, the respective owners thereof and their successors and assigns (the "**Owners**"). It is intended that the covenants, agreements, promises and duties of the parties hereunder shall be construed as covenants and not as conditions, and that, to the fullest extent legally possible, during the term of this Agreement, all such covenants shall run with the land and/or constitute equitable servitudes as between the land of the covenantor, as the servient tenement, and the land of the covenantee, as the dominant tenement. Each of the easements, covenants, conditions and restrictions contained herein shall be appurtenant to the land benefitted thereby and shall not be separated or conveyed separately from the land to which such easement is appurtenant (and prior to the Lease Date, neither SCSA nor Stadium Company may convey any interest in the easements or rights hereby granted), and any purported attempt to do so in violation of this Agreement shall be void.

1.2. Easements Irrevocable and Perpetual. Except to the extent specified otherwise in this Agreement, the easements granted herein shall be perpetual, non-exclusive and irrevocable. As of the Lease Date, the easements granted in gross to SCSA hereunder shall become appurtenances to the lease between City and SCSA (the "**Ground Lease**") and the easements granted in gross to Stadium Company hereunder shall become appurtenances to the lease between SCSA and Stadium Company (the "**Stadium Lease**"), and shall not thereafter terminate until such time as the Ground Lease and/or the Stadium Lease, as the case may be, expires or is otherwise terminated; *provided, however*, that if either the Ground Lease or the Stadium Lease terminates under circumstances in which a mortgagee or other person is entitled to enter into a new lease with City or SCSA on substantially the same terms as the terminated lease (a "**New Lease**"), then the easements granted hereunder shall not terminate but shall be deemed appurtenant to such New Lease.

1.3. General. For purposes of this Agreement, any reference to a Parcel shall be deemed to include the buildings and other improvements from time to time existing thereon ("**Improvements**"), and every easement granted in favor of, or for the use and benefit of, a particular Parcel shall be deemed to have also been granted for the use and benefit of any such Improvements, including, without limitation, Improvements which during the term of a ground lease of a Parcel are owned by the ground lessee. Any reference to the Owner of a Parcel shall be deemed to include as well the lessee of such Parcel pursuant to a ground lease or master lease of such Parcel during the term of such ground or master lease, and under any circumstances where an Owner is required to take an action, or provide consent, hereunder, such duties and rights may be delegated to a ground or master lessee during the term of a ground or master lease, by notice to the other parties. The grant of an easement herein shall not limit the right of the party granting such easement to make any use of its Parcel which is neither prohibited hereby, nor inconsistent with the rights herein granted.

1.4. Consistency with Parking Agreement. The easements and other rights granted hereunder, and the rights granted to GA Tenant with respect to the Parking Parcels pursuant to the GA Lease (including the easements and rights contained in the Fourth Amendment), are intended by City, as grantor, to be non-exclusive, and not to diminish or infringe upon one another.

2. EASEMENTS. City, in its capacity as owner of the Parking Parcels, hereby declares, establishes, grants and conveys to City, in its capacity as owner of the Stadium Site, and to SCSA and Stadium Company, on the terms and conditions contained in this Agreement (including, but not limited to, the provisions of Section 1.4 above), the easements set forth in Sections 2.1 through 2.8 below. All rights under such easements shall be exercised in a manner not inconsistent with any applicable provisions of the Parking Agreement, including any Implementation Agreements entered into from time to time pursuant to the Parking Agreement.

2.1. Parking Easements. A perpetual, non-exclusive easement consisting of the right to park motor vehicles (of any size, including buses and trucks) in connection with any uses on the Stadium Site authorized by the Ground Lease and/or the Stadium Lease (including any New Lease that replaces either) and any uses of the Parking Parcels authorized hereuneder, including the right of reasonable vehicular and pedestrian ingress and egress to, through and from such parking spaces over and across the Parking Parcels, including, but not limited to, the right to improve, maintain, repair, and operate the Parking Parcels.

2.2. Access Easement. A perpetual, non-exclusive easement for pedestrian ingress and egress over, across and through the Parking Parcels to and from the Stadium Site (including, without limitation, by way of bridges now or in the future crossing San Tomas Aquino Creek between the Stadium Site and the Parking Parcels), together with the right to install and maintain security stations, gates, fences or similar barriers in appropriate locations, to limit and control public access to the Stadium.

2.3. Signage Rights. A perpetual, non-exclusive easement consisting of the right, to install and maintain within the Parking Parcels, identifying and wayfinding signage, which may, if permitted under City regulations, include sponsorship attributes, together with the right to install and maintain promotional displays, including advertising and other signage relating to activities occurring in the Stadium or the Parking Parcels.

2.4. Utility Easement. A perpetual, non-exclusive easement consisting of the right to use the land underlying the Parking Parcels for the purpose of installing therein and thereon, laterally and vertically, all pipes, lines, wires, mains, ducts, conduits, vents and other related equipment and facilities for utility service (hereinafter collectively referred to as "**utility facilities**") reasonably necessary to provide all required utilities, together with a right of pedestrian and vehicular ingress, egress and access for inspection, maintenance, repair, alteration, reconstruction, replacement and use of such utility facilities.

2.5. Ancillary Improvements. A perpetual non-exclusive easement for the placement of light fixtures, landscaping, entry and exit gates, trash receptacles, rest rooms and other improvements ancillary to the operation of the Parking Parcels (including, but not limited to, temporary placement of concession stands and kiosks, signs, advertising and promotional displays, and other temporary improvements implementing or relating to specific events occurring in the Stadium or within the Parking Parcels) in areas reasonably designated for such improvements from time to time, together with a right of pedestrian and vehicular ingress, egress and access for inspection, maintenance, repair, alteration, reconstruction, replacement and use of such to such improvements.

2.6. Roads and Driveways. A perpetual, non-exclusive easement consisting of a right to excavate, construct, install, repair, replace, maintain and use roads, driveways, sidewalks and pedestrian areas for vehicular (including truck) and pedestrian ingress and egress to and from the public streets.

2.7. Construction Staging. A temporary, non-exclusive easement in, on and over the Parking Parcels consisting of a right of access to, and use of, the Parking Parcels for purposes of construction staging related to the construction of the Stadium, including, but not limited to, lay-down, storage, staging, parking of construction vehicles, truck and other vehicles and/or any other activities relating to construction of the Stadium.

2.8. Ancillary Uses. A perpetual, non-exclusive easement for other uses ancillary to the operation of the Stadium on the Stadium Site, to the extent provided in or consistent with the Ground Lease and the Stadium Lease, including, but not limited to, the right to sell advertising and space for promotional displays and activities within the Parking Parcels during, and for a reasonable period before and after, events occurring within the Stadium.

3. RULES AND REGULATIONS

SCSA and Stadium Company will have the right from time to time, to the extent not inconsistent with the Parking Agreement, to promulgate reasonable rules and regulations regarding the use of parking, including, but not limited to, rules and regulations controlling the flow of traffic to and from various parking areas, the angle and direction of parking and the like. SCSA and Stadium Company shall have the right, to the extent not inconsistent with applicable provisions of the Parking Agreement, to designate certain portions of the Parking Parcels as reserved parking for particular users or groups of users (including the right to establish different parking rates for unreserved and reserved parking), or to forbid parking by particular users or groups of users in specified locations, including the right to designate specific parking spaces for use by vehicles exhibiting handicap parking placards. SCSA and Stadium Company shall have the right (but shall have no obligation) to tow vehicles parking without permission in reserved parking areas.

4. TERM, EARLY TERMINATION.

This Agreement is intended to create easements that are irrevocable, as to SCSA, during the term of the Ground Lease (or any New Lease that replaces the Ground Lease), and irrevocable as to Stadium Company, during the term of the Stadium Lease (or any New Lease that replaces the Stadium Lease). If no Ground Lease has been entered into by the "Outside Closing Date" specified in the DDA, as such date may be extended pursuant to the terms of the DDA or by agreement of the parties thereto, the easements hereby granted to SCSA shall terminate. If no Stadium Lease has been entered into by the Outside Closing Date specified in the DDA, as such date may be extended pursuant to the terms of the DDA or by agreement of the parties thereto (the "**Stadium Lease Outside Date**"), the easements hereby granted to Stadium Company shall terminate.

5. CONSIDERATION.

In consideration of the easements hereby granted, Stadium Company agrees to pay to City the sum of Two Hundred Fifty Thousand Dollars ($250,000.00). Such payment shall be made as a condition to recordation of this instrument, and the recordation hereof shall evidence receipt by City of such amount. If no Stadium Lease has been entered into by the Outside Closing Date, City shall promptly refund such payment to Stadium Company.

6. INDEMNIFICATION.

6.1. SCSA agrees to defend, protect, indemnify and hold harmless City and Stadium Company, and their respective officers, employees, contractors, agents, affiliates and mortgagees, from and against all claims and demands for loss or damage, including property damage, personal injury and wrongful death (collectively, "Claims") arising out of or in connection with its use or occupancy of the Parking Parcels, except to the extent such Claims arise out of the gross negligence or willful act or omission of the indemnified party.

6.2. Stadium Company agrees to defend, protect, indemnify and hold harmless City and SCSA, and their respective officers, employees, contractors, agents, affiliates and mortgagees, from and against all Claims arising out of or in connection with Stadium Company's use or

occupancy of the Parking Parcels, except to the extent such Claims arise out of the gross negligence or willful act or omission of the indemnified party.

7. INSURANCE.

7.1. Prior to the Lease Date, neither SCSA nor Stadium Company will make use of the easements granted herein without first obtaining (and thereafter maintaining), commercial general liability insurance covering the use of the Parking Parcels and the easements and other rights (including, but not limited to, parking rights) granted herein, and naming City (and to the extent specified in the Parking Agreement, the GA Tenant), to the extent of their respective interests hereunder, as additional insureds thereunder. Each such commercial general liability insurance policy shall have a combined single limit of coverage of not less than $2,000,000 for any one accident or occurrence. Following the Lease Date, SCSA shall maintain commercial general liability insurance in accordance with the Ground Lease, and Stadium Company shall maintain commercial general liability insurance in accordance with the Stadium Lease. All such policies shall be issued by insurance companies licensed to do business in California, and certificates or other evidence of the existence of the insurance required hereby shall be given by any party to any other party requesting such evidence.

7.2. In addition, SCSA and Stadium Company will maintain such additional policies of insurance, including workers' compensation insurance, as may be required under the terms of the Ground Lease and the Stadium Lease, respectively, or as may be required by the terms of the Parking Agreement.

8. NO DEDICATION.

Nothing contained in this Agreement, and no use of the easements granted herein shall be deemed to be, or to result in, any gift or dedication of any portion of the Parking Parcels or any other portion of any Parcel to the general public or for any public purpose.

9. DEFAULT.

In the event of a breach or threatened breach of any restriction or other provision of this Agreement, any party may prosecute any proceedings at law or in equity to enjoin such breach or threatened breach and, as the exclusive remedies for such breach or threatened breach, obtain an injunction or recover damages for any such breach; *provided* that no party shall be deemed to be in default under this Agreement until it has received written notice of such default and has failed to cure the same within thirty (30) days after receipt of such notice, or such longer period of time as may be reasonably necessary in order to cure the particular default, so long as such party commences the cure of such default within such thirty (30) day period and thereafter diligently prosecutes it to completion. Under no circumstances shall the default by any party with respect to the performance of any obligation hereunder result in the termination of this easement or the rights of any party hereunder, and the sole remedies of a party alleging a breach or default by another party shall be an action to recover damages or for an injunction or other equitable relief.

10. MORTGAGEE PROTECTION.

The breach of any restriction or other provision of this Agreement shall not defeat or render invalid or unenforceable the lien of any bona fide mortgage or deed of trust or other security instrument which secures a loan made by a bona fide lender (each, a "**Mortgagee**"), in good faith and for value, to any party to this Agreement, but the Easements and all other restrictions and other provisions of this Agreement shall be binding upon and effective against any owner whose title is acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. Any Mortgagee shall, by giving a written request to City, SCSA and/or Stadium Company, be entitled to receive a copy of any written notice of any default given by such party or parties under this Agreement to the extent such default or alleged default has occurred with respect to the interest encumbered by such Mortgagee's security instrument. In the event of any default by any party under this Agreement, any Mortgagee holding a security interest in the easements and parking rights of either SCSA or Stadium Company shall have the right, but not the obligation, to pay any and all of the amounts due from such party under this Agreement and do any other act or thing required of such party under this Agreement, upon ten (10) business days' prior written notice to the parties, or such longer period of time as may be reasonably necessary in order to cure the particular default, so long as such Mortgagee commences the cure of such default within such ten (10) business day period and diligently prosecutes it to completion.

11. NOTICES.

11.1. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, with charges prepaid for next business day delivery, or mailed by first class, certified United States mail, postage prepaid, addressed to the parties hereto at their respective addresses listed in this Section, or such subsequent addresses as a party may have specified hereunder.

11.2. Notices, demands or requests given in accordance with Section 11.1 shall be deemed to have been properly given upon personal delivery, or on the third business day following deposit with the U.S. Postal Service, or on the next business day following deposit with such courier service.

11.3. Any party shall have the right from time to time to change its address for notices, demands and requests, provided such new address shall be within the United States of America.

11.4. As of the date hereof, the notice addresses of the parties are as follows:

If to City:
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Jennifer Sparacino, City Manager

with a copy to:
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Richard E. Nosky, Jr., City Attorney

If to SCSA:	Santa Clara Stadium Authority 1500 Warburton Avenue Santa Clara, CA 95050 Attn: Jennifer Sparacino, Executive Director
with a copy to:	Santa Clara Stadium Authority 1500 Warburton Avenue Santa Clara, CA 95050 Attn: Richard E. Nosky, Jr., General Counsel
If to Stadium Company:	Forty Niners Stadium, LLC 4949 Centennial Boulevard Santa Clara, CA 95054 Attn: John Edward York, President
with copies to:	Forty Niners Stadium, LLC 4949 Centennial Boulevard Santa Clara, CA 95054 Attn: Larry MacNeil, CFO and Coblentz, Patch, Duffy & Bass LLP One Ferry Building, Suite 200 San Francisco, CA 94111 Attn: Harry O'Brien

12. GENERAL PROVISIONS.

12.1. Modification. This Agreement shall not be terminated without the written agreement of all of the parties, and may not be changed, modified or amended in whole or in part without the written agreement of all of the parties whose interests are or may be adversely affected by such amendment, change or modification.

12.2. No Merger. The easements and other rights created herein shall not be extinguished by merger should any one person or entity now or hereafter own more than one of the Parcels. City hereby declares that the reference to and description of "easements" herein shall not be affected by a merger of estates, but shall constitute a special restriction as to the affected Property that runs with the land. If City transfers title to any Parcel to a third party such that all of the Parcels are no longer under common ownership, the rights specified in this Agreement shall be deemed to constitute valid and binding easements wherein the Stadium Site is the dominant tenement and the Parking Parcels are the servient tenements.

12.3. Attorneys' Fees. If any party brings an action or proceeding for damages for an alleged breach of any provision of this Agreement, or to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to reasonable attorneys' fee:; and court costs.

12.4. Relationship of Parties. Nothing in this Agreement shall be deemed or construed to create or establish any relationship of partnership, joint venture, agency, or any similar relationship between the parties.

12.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

12.6. Entire Agreement. The terms of this Agreement are. intended by the parties as the final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement.

12.7. Interpretation. The headings of the sections and subsections of' this Agreement are for convenience of reference only and shall not be used to interpret any term or provision hereof.

12.8. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent allowed by law.

12.9. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12.10. Exhibits. Exhibits A through B attached to this Agreement are hereby incorporated in this Agreement by this reference.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below, effective as of the day and year first above written.

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

Attest:

ROD DIRIDON, JR.
City Clerk

CITY:

THE CITY OF SANTA CLARA, CALIFORNIA,
a California municipal corporation

By: _____
Name: JENNIFER SPARACINO
Its: City Manager

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
Stadium Authority Counsel

Attest:

ROD DIRIDON, JR.
Secretary

SCSA:

SANTA CLARA STADIUM AUTHORITY,
a Joint Exercise of Powers Entity, created through Government Code sections 6500 *et seq.*

By: _____
Name: JENNIFER SPARACINO
Its: Executive Director

STADIUM COMPANY:

FORTY NINERS STADIUM, LLC,
a California limited liability company

By: _____
Name: LARRY MACNEIL
Its: CFO

Exhibit A

Legal Description of Stadium Site

The following described property situated in the City of Santa Clara, County of Santa Clara, State of California:

Parcel 4, as shown upon that certain Map entitled, "Parcel Map a portion of Lot 41, portion of Section 21, T. 6 S., R.1 W., M.D.B. & M., and a part of Ulistac Rancho", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on July 13, 1987 in Book 575 of Maps, at Page 44.

Assessor's Parcel No. 104-43-030

Exhibit B

Legal Description of Parking Parcels

1/10/12

6B/4B SA

GREAT AMERICA LEASE AMENDMENT AND PARKING AGREEMENT

January 10, 2012
Staff Presentation

Great America Lease Term

- Lease between City and Cedar Fair currently expires December 31, 2039
- Term pursuant to Lease Amendment
  - Cedar Fair has three options to extend lease beyond 2039
    - First Option Period expires – December 31, 2054 or the expiration date of the Stadium Lease
    - Second Option Period expires – 10 years after first Option Period
    - Third Option Period expires – 10 years after second Option Period

Basic Rent

- Basic rent is currently $5.3 million annually with no escalator throughout the remaining term of the Lease
- Basic Rent Under Lease Amendment
  - Basic Rent for the First Option Period (2040-2054) will be $5.7 million (7.5% increase)
  - Basic Rent for the Second Option Period (2055-2064) will be $5.98 million (5% increase)
  - Basic Rent for the Third Option Period (2065-2074) will be $6.3 million (5% increase)

Participation Rent

- Currently City receives 5% of annual gross revenues that exceed $56 million and 7.5% of annual gross revenues that exceed $100 million
- Lease Amendment Participation Rent
  - Annual Gross Revenue Thresholds will increase by 15% in:
    - 2020
    - 2030
    - Every five years thereafter

Participation Rent (continued)

- Increases in Annual Gross Revenue Thresholds will only occur if Cedar Fair spends at least $10 million on capital improvements in the five years preceding each increase.
- If Cedar Fair fails to spend $10 million in the five years prior to January 31,2020 then there will not be any subsequent increases in the Annual Gross Revenue Thresholds.

Parking Requirements

- Current Lease requires City to make available to Cedar Fair 8,100 parking spaces
- Lease Amendment reduces the required parking spaces to 6,500 with a goal of 7,000 depending upon renovation in the main parking lot
- Cedar Fair is releasing all rights it has to the Overflow Lot (the Stadium Site)
- Cedar Fair agrees to allow use of the main lot for Stadium parking pursuant to parking agreement

Other Amendments

- Anti-discrimination language updated to reflect current law
- Mortgagee protection provisions updated to conform to current lending standards
- References to previous City financing deleted

Other Amendments

- If the Stadium Project does not proceed:
  - Parking rights under Cedar Fair Lease will revert to existing lease (including use of overflow lot)
  - Changes in participation rent will not be implemented
  - Term extensions will not be available to Cedar Fair except that Cedar Fair will have one option to extend Lease term from 2039 to 2054 with a 10% basic rent increase

Parking Agreement

- Parking Agreement parties:
  - City
  - Stadium Authority
  - Cedar Fair
  - Forty Niners Stadium, LLC (StadCo)

Parking Agreement

- Parking Agreement allows use of the Main Lot for Stadium Events under certain conditions
- Stadium Authority or StadCo (depending upon the event) will receive revenue from Stadium event parking and will pay costs of operating parking areas used for Stadium event parking
- Cedar Fair will receive revenue from Theme Park Parking and will pay costs of operating parking areas used for Theme Park parking

Parking Agreement

- Main Lot Reconfiguration
  - The main lot will be reconfigured to create at least 6,500 spaces with a goal of 7,000 spaces
  - Main lot reconfiguration will occur during construction of the Stadium
  - Portions of the main lot may also be used for construction staging for the Stadium during Stadium construction

Parking Agreement

- Stadium Use of Main Lot
  - SCSA or StadCo can use the Main lot without obtaining consent of Cedar Fair for:
    - Events held when theme park is not open to the public
    - NFL Games
    - Events that are scheduled to start after 5:00 pm on weeknights other than holiday weeknights
    - Dual Use Events weekdays prior to June 10th and after August 16 except for holidays

Parking Agreement

- Cedar Fair has sole discretion to consent to use of the main lot for Stadium Events on:
  - Weekends in June, July and August
  - Memorial Day, Fourth of July, Labor Day and Halloween
  - Up to five other days designated by Cedar Fair each year

Parking Agreement

- Scheduling of all other Stadium events requiring use of the Main Lot are subject to Cedar Fair's reasonable discretionary approval

Parking Agreement

- Parking Spaces Available to Stadium Events when Theme Park is open (Dual Use Events)
  - For NFL games Stadium will have use of all parking spaces other than 1,500 spaces
  - For up to 15 designated Non-NFL events, Stadium will have use of all parking except for 3,500 spaces
  - For other Non-NFL events, available Stadium parking spaces will be determined based on Theme Park historic parking needs at similar time in prior years.

Parking Agreement

- Cedar Fair to receive $12.5 million from StadCo for providing parking rights to the Stadium:
  - Receipt of initial deposit of $3.5 million is dependent upon, among other conditions, Cedar Fair dismissing its pending litigation against the City regarding the Stadium EIR

Parking Easement

- City, as owner of the main lot, is granting the Stadium Authority and StadCo a parking easement that corresponds to the rights granted under the Parking Agreement
- Easement will be granted in consideration for StadCo paying to the City $250,000 as an advance payment of public safety costs

Staff Recommendation

- That the **Council** adopt a resolution to approve:
  - The Fourth Amendment to the Theme Park Ground Lease with Cedar Fair
  - The Parking Agreement with Cedar Fair, the City, the Stadium Authority, and the Forty Niners Stadium, LLC to allow use of Cedar Fair's main parking lot for stadium events
  - Granting an easement to the Stadium Authority and StadCo in consideration for StadCo paying to the City $250,000 as an advance payment of public safety costs
  - Acceptance of a Quitclaim Deed from Cedar Fair Southwest regarding its interest in certain property

Staff Recommendation

- That the **Stadium Authority** adopt a resolution to approve the Parking Agreement with Cedar Fair, the City, the Stadium Authority, and the Forty Niners Stadium, LLC to allow use of Cedar Fair's main parking lot for stadium events and approving the Grant of Easement from the City granting the Stadium Authority a nonexclusive easement over certain parking areas.