

SEMELE GROUP INC  
Form SC TO-C  
July 29, 2004

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

**SCHEDULE TO**  
**Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934**

**Semele Group, Inc.**  
(Name of Subject Company (issuer))

**Gary D. Engle (Offeror and Affiliate of Issuer)**  
**James A. Coyne (Offeror and Affiliate of Issuer)**  
(Names of Filing Persons (identifying status as offeror, issuer or other person))

**COMMON STOCK, \$0.01 par value per share**  
(Title of Class of Securities)

**8166 18 201**  
(CUSIP Number of Class of Securities)

**James A. Coyne**  
**200 Nyala Farms**  
**Westport, CT 06880**  
**(203) 301-0555**  
(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

**Copy to:**

**Richard F. Langan, Jr., Esq.**  
**Nixon Peabody LLP**  
**437 Madison Avenue**  
**New York, New York 10022**  
**(212) 940-3000**

Calculation of Filing Fee

n/a	n/a
-----	-----

.. Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:

Form or Registration No.:

Filing Party:

Date Filed:

x Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

x third-party tender offer subject to Rule 14d-1.

.. issuer tender offer subject to Rule 13e-4.

.. going private transaction subject to Rule 13e-3.

.. amendment to Schedule 13D under Rule 13d-2.

Edgar Filing: SEMELE GROUP INC - Form SC TO-C

July 29, 2004

Dear Shareholder of Semele Group, Inc.:

Enclosed you will find information regarding an offer to purchase the outstanding shares of common stock of Semele Group, Inc. The offer is made by the undersigned. The offer expires on September 28, 2004 at 12:00 Midnight, New York City Time.

As you may know, on June 29, 2004, the requisite number of shareholders of Semele Group, Inc. voted to amend the Company's certificate of Incorporation, as amended, to effect a 1-for-4,001 reverse stock split followed immediately by a 4,001-for-1 forward stock split of the Company's outstanding common stock. As a result of the reverse split, each share of the Company's common stock held by a shareholder owning 4,000 or less shares immediately before the effective time of the reverse split was converted into the right to receive from the Company \$1.40 in cash, without interest.

The remaining Shareholders owning 4,001 or more shares prior to the reverse split own the same number of shares of common stock after completion of the split.

The reverse split, and related cash purchase by the Company of shares had the effect of taking the Company private.

The purpose of this letter is to inform the unaffiliated shareholders of the Company of Messrs. Gary D. Engle and James A. Coyne's commencement of a tender offer to purchase the remaining outstanding shares of common stock of the Company not otherwise owned by Messrs. Engle and Coyne or their affiliates at a purchase price of \$1.40 per share.

Please read the enclosed disclosure information that provides the necessary background and terms of the tender offer as required by the U.S. Securities and Exchange Commission.

If you elect to tender your shares, please follow the enclosed instructions with due care.

Sincerely yours,

/s/ Gary D. Engle  
Gary D. Engle

/s/ James A. Coyne  
James A. Coyne

**SIGNATURE**

After due inquiry and to the best of our knowledge and belief, we certify that the information set forth in this statement is true, complete and correct.

Date: July 29, 2004

/s/ James A. Coyne  
James A. Coyne, individually

/s/ Gary D. Engle

Gary D. Engle, individually

## EXHIBITS

Exhibit Number	Description
(a)(1)(i)	Semele Group Tender Offer Disclosure Statement
(a)(1)(ii)	Letter of Transmittal Semele
(a)(1)(iii)	Notice of Guarantee Delivery
(a)(1)(iv)	Semele Tender Offer Letter to Dealers
(a)(1)(v)	Letter to Dealers' Clients
(a)(1)(vi)	Semele W-9 Guidelines

---

**EXHIBIT (a)(1)(i)**

**OFFER TO PURCHASE FOR CASH**

**ANY AND ALL OUTSTANDING SHARES OF COMMON STOCK**

**OF**

**SEMELE GROUP, INC.**

**AT \$1.40 PER SHARE OF COMMON STOCK**

**BY**

**GARY D. ENGLE**

**AND**

**JAMES A. COYNE**

**THIS OFFER TO PURCHASE AND WITHDRAWAL RIGHTS EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON TUESDAY, SEPTEMBER 28, 2004, UNLESS THIS OFFER IS EXTENDED AT THE DISCRETION OF MESSRS. GARY D. ENGLE AND JAMES A. COYNE.**

**THIS OFFER TO PURCHASE ANY AND ALL OUTSTANDING SHARES OF COMMON STOCK OF SEMELE GROUP, INC. IS BEING MADE PURSUANT TO THE TERMS OF AN AGREEMENT, DATED AS OF JANUARY 14, 2004, AMONG SEMELE GROUP, INC. AND MESSRS. GARY D. ENGLE AND JAMES A. COYNE. THIS OFFER TO PURCHASE MAY BE TERMINATED UPON, AMONG OTHER THINGS: (I) ANY INSTITUTED OR PENDING ACTION OR PROCEEDING BEFORE ANY DOMESTIC COURT, GOVERNMENT OR GOVERNMENTAL ENTITY, OTHER THAN BY THE COMPANY, A SHAREHOLDER OF THE COMPANY OR ANY PERSON AFFILIATED WITH THE COMPANY, (A) CHALLENGING OR SEEKING TO MAKE ILLEGAL, TO DELAY MATERIALLY OR OTHERWISE TO RESTRAIN OR PROHIBIT THE MAKING OF THIS OFFER TO PURCHASE, THE ACCEPTANCE FOR PAYMENT OF OR PAYMENT FOR SOME OF OR ALL THE SHARES BY US OR THE CONSUMMATION OF THE REVERSE STOCK SPLIT, (B) SEEKING TO PROHIBIT OR IMPOSE MATERIAL LIMITATIONS ON OUR ABILITY TO EFFECTIVELY EXERCISE FULL RIGHTS OF OWNERSHIP OF OUR SHARES OF COMMON STOCK OF THE COMPANY OR SEEKING TO PROHIBIT US FROM EFFECTIVELY CONTROLLING IN ANY MATERIAL RESPECT THE BUSINESS AND OPERATIONS OF THE COMPANY, (C) SEEKING TO REQUIRE DIVESTITURE OF ANY OF OUR SHARES OF COMMON STOCK OF THE COMPANY OR SEEKING TO OBTAIN FROM THE COMPANY OR US, BY REASON OF ANY OF THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT ANY DAMAGES THAT ARE MATERIAL TO US OR THE COMPANY, OR (D) THAT OTHERWISE, IN OUR REASONABLE JUDGMENT, IS LIKELY TO MATERIALLY ADVERSELY AFFECT US OR THE COMPANY, PROVIDED THAT, IN ANY SUCH CASE, WE SHALL HAVE USED OUR COMMERCIALLY REASONABLE EFFORTS TO DEFEAT OR HAVE VACATED SUCH ACTION OR PROCEEDING AND SHALL HAVE FAILED TO DO SO; (II) ANY ACTION TAKEN, OR ANY STATUTE, RULE, REGULATION, INJUNCTION, INTERPRETATION, JUDGMENT, ORDER OR DECREE ENACTED, ENFORCED, PROMULGATED, ISSUED OR DEEMED APPLICABLE TO US, THE COMPANY, THIS OFFER TO PURCHASE OR THE REVERSE STOCK SPLIT, BY ANY COURT, GOVERNMENT OR GOVERNMENTAL ENTITY; (III) THE COMPANY SHALL HAVE BREACHED OR FAILED TO PERFORM IN ANY MATERIAL RESPECT ANY OF ITS COVENANTS OR AGREEMENTS UNDER THE AGREEMENT WITH THE COMPANY, OR ANY OF THE REPRESENTATIONS AND WARRANTIES OF THE COMPANY SET FORTH IN THE**

**AGREEMENT SHALL NOT BE TRUE AND CORRECT; OR (IV) A TENDER OFFER OR EXCHANGE OFFER FOR MORE THAN 50% OF THE ISSUED AND OUTSTANDING SHARES OF THE COMMON STOCK OF THE COMPANY SHALL HAVE BEEN MADE OR PUBLICLY PROPOSED BY A THIRD PARTY FOR A PRICE IN EXCESS OF \$1.40. THIS OFFER TO PURCHASE IS ALSO SUBJECT TO OTHER CONDITIONS CONTAINED IN THIS OFFER TO PURCHASE. SEE ARTICLE XII HEREIN, WHICH SETS FORTH IN FULL THE CONDITIONS TO THIS OFFER.**

**IMPORTANT**

Any shareholder desiring to tender all or any portion of such shareholder's Company Common Stock should either (i) complete and sign the accompanying Letter of Transmittal (or manually signed facsimile thereof) in accordance with the instructions thereto (including any required signature guarantees) and mail or deliver it together with the certificates evidencing tendered Company Common Stock, and any other required documents, to Mr. Coyne; (ii) follow the procedure for book-entry transfer described in Article III; or (iii) request such shareholder's broker, dealer, commercial bank, trust company or other nominee to effect the transaction for such shareholder. Any shareholder whose Company Common Stock is registered in the name of a broker, dealer, commercial bank, trust company or other nominee must contact such broker, dealer, commercial bank, trust company or other nominee if such shareholder desires to tender such Company Common Stock.

Any shareholder who desires to tender his, her or its shares of Company Common Stock and whose certificates for such shares are not immediately available, or who cannot comply with the procedure for book-entry transfer on a timely basis, may tender such shares by following the procedure for guaranteed delivery set forth in Article III.

Questions or requests for assistance may be directed to The Altman Group, Inc., as Information Agent for this Offer, at 1275 Valley Brook Avenue, Lyndhurst, New Jersey 07071, (866) 467-7699. Additional copies of this Offer to Purchase, Letter of Transmittal and related documents may be obtained from the Information Agent.

---

**TABLE OF CONTENTS**

-		-
-		-
-	<u>SUMMARY TERM SHEET</u>	1
-	<u>INTRODUCTION</u>	4
I.	<u>TERMS OF THE OFFER</u>	5
II.	<u>ACCEPTANCE FOR PAYMENT AND PAYMENT FOR COMPANY COMMON STOCK</u>	5
III.	<u>PROCEDURES FOR ACCEPTING THE OFFER AND TENDERING COMPANY COMMON STOCK</u>	6
IV.	<u>WITHDRAWAL RIGHTS</u>	9
V.	<u>CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF TENDERING SHARES</u>	10
VI.	<u>PRICE RANGE OF COMPANY COMMON STOCK</u>	11
VII.	<u>INFORMATION ABOUT THE COMPANY</u>	12
VIII.	<u>INFORMATION REGARDING THE PURCHASERS AND THE OFFERORS</u>	13
IX.	<u>FINANCING OF THE OFFER TO PURCHASE</u>	14
X.	<u>BACKGROUND: PAST TRANSACTIONS AND SIGNIFICANT CORPORATE EVENTS</u>	14
XI.	<u>PURPOSE OF THE OFFER</u>	16
XII.	<u>CONDITIONS OF THE OFFER</u>	16
XIII.	<u>CERTAIN LEGAL MATTERS AND REGULATORY APPROVAL</u>	17
XIV.	<u>FEES AND EXPENSES</u>	19
XV.	<u>MISCELLANEOUS</u>	20
	<u>APPENDIX A</u>	-
	<u>APPENDIX B</u>	-

#### SUMMARY TERM SHEET

This summary term sheet highlights some of the questions that you, as a shareholder of Semele Group, Inc. may have and our answers to those questions. To better understand this Offer to Purchase and for a complete description of the terms of this Offer to Purchase, you should read this entire Offer to Purchase and the accompanying Letter of Transmittal carefully. Questions or requests for assistance may be directed to The Altman Group, Inc., as Information Agent for this Offer, at 1275 Valley Brook Avenue, Lyndhurst, New Jersey 07071, (866) 467-7699.

#### WHO IS OFFERING TO BUY MY SECURITIES?

- Mr. Gary D. Engle, the Company's Chief Executive Officer and Chairman of the Board, and Mr. James A. Coyne, the Company's President and Chief Operating Officer, are offering to purchase the remaining outstanding shares of common stock of the Company not owned by Messrs. Engle and Coyne or their affiliates at a purchase price of \$1.40 per share in cash and without interest.

#### IS THIS OFFERING RELATED TO THE GOING PRIVATE TRANSACTION?

- Yes, as you may be aware, on June 29, 2004, the requisite number of shareholders of the Company voted to amend the Company's Certificate of Incorporation, as amended, to effect a 1-for-4,001 reverse stock split followed immediately by a 4,001-for-1 forward stock split of the Company's outstanding common stock. On July 8, 2004, the Company filed the necessary amendments to its Certificate of Incorporation with the Secretary of State of the State of Delaware to effect the split. On July 9, 2004, the Company filed for termination of registration of Company Common Stock under the Securities and Exchange Act of 1934, as amended. As a result of the reverse split each share of the Company's Common Stock held by an unaffiliated shareholder owning 4,000 or less shares immediately before the effective time of the reverse split was converted into the right to receive from the Company \$1.40 in cash, without interest. Shareholders owning 4,001 or more shares prior to the reverse split own the same number of shares of Company Common Stock after completion of the split. The reverse split, and related cash purchase by the Company of shares had the effect of taking the Company private.

- Now that the going private transaction is complete, this Offer to Purchase provides liquidity to the remaining shareholders of the Company who are not affiliated with Messrs. Engle and Coyne. Pursuant to the terms and conditions of this Offer to Purchase, each unaffiliated shareholder may tender his, her or its Company Common Stock for the purchase price of \$1.40 per share, in cash and without interest. As a result, the unaffiliated shareholder who tenders his, her or its shares of Company Common Stock will receive the same \$1.40 purchase price that was provided to unaffiliated shareholders who owned 4,000 or less shares of Company Common Stock as a result of the stock split.

#### WHAT ARE THE MOST SIGNIFICANT CONDITIONS OF THIS OFFER?

- This Offer to Purchase may be terminated upon the occurrence of, among other things:

§ Any instituted or pending action or proceeding before any domestic court, government or governmental entity, other than by the Company, a shareholder of the Company or any person affiliated with the Company, (i) challenging or seeking to make illegal, to delay materially or otherwise to restrain or prohibit the making of this Offer to Purchase, the acceptance for payment of or payment for some of or all the shares by us or the consummation of the reverse stock split, (ii) seeking to prohibit or impose material limitations on our ability to effectively exercise full rights of ownership of our shares of common stock of the Company or seeking to prohibit us from effectively controlling in any material respect the business and operations of the Company, (iii) seeking to require divestiture of any of our shares of common stock of the Company or seeking to obtain from the Company or us, by reason of any of the transactions contemplated by our agreement with the Company, dated as of January 14, 2004, any damages that are material to us or the Company, or (iv) that otherwise, in our reasonable judgment, is likely to materially adversely affect us or the Company, provided that, in any such case, we shall have used our commercially reasonable efforts to defeat or have vacated such action or proceeding and shall have failed to do so.

§ Any action taken, or any statute, rule, regulation, injunction, interpretation, judgment, order or decree enacted, enforced, promulgated, issued or deemed applicable to us, the Company, this Offer to Purchase or the reverse stock split, by any court, government or governmental entity.

§ The Company shall have breached or failed to perform in any material respect any of its covenants or agreements under the agreement with the Company, or any of the representations and warranties of the Company set forth in such agreement shall not be true and correct.

§ A tender offer or exchange offer for more than 50% of the issued and outstanding shares of the common stock of the Company shall have been made or publicly proposed by a third party for a price in excess of \$1.40.

- This Offer is also subject to other termination conditions contained in this Offer to Purchase. See Article XII, which sets forth in full the termination conditions of this Offer.

**DO YOU HAVE FINANCIAL RESOURCES TO MAKE PAYMENT?**

- We have sufficient funds available to purchase all of the outstanding shares of common stock of the Company that we do not already own. Our obligation to purchase the shares is not conditioned upon our receipt of financing.

**HOW LONG DO I HAVE TO DECIDE WHETHER TO TENDER IN THIS OFFER?**

- You will have at least until 12:00 Midnight, New York City Time, on Tuesday, September 28, 2004, to tender your shares in this Offer to Purchase.

**CAN THE OFFER BE EXTENDED?**

- We may extend this Offer at our discretion.

**HOW DO I TENDER?**

- To tender your shares in this Offer to Purchase, you must complete and sign the accompanying Letter of Transmittal (or a manually signed facsimile of the Letter of Transmittal) in accordance with the instructions thereto and mail or deliver it together with your share certificates, and any other required documents, prior to the expiration of the Offer, to Mr. Coyne c/o Semele Group, Inc. at the address listed in the Letter of Transmittal. If your broker holds your shares of Company Common Stock for you in street name then you must instruct your broker to tender your shares on your behalf. If you cannot comply with these procedures, you still may be able to tender your shares by using the guaranteed delivery procedures described in Article III herein.

**UNTIL WHAT TIME CAN I WITHDRAW PREVIOUSLY TENDERED SHARES?**

- You may withdraw previously tendered shares any time prior to the expiration of this Offer to Purchase (or such later date as may apply if we extend this Offer). See Article IV herein.

**HOW DO I WITHDRAW PREVIOUSLY TENDERED SHARES?**

- To withdraw previously tendered shares, you must deliver a written or facsimile notice of withdrawal with the required information to the Company while you still have the right to withdraw. If you tendered shares by giving instructions to a broker or bank, you must instruct the broker or bank to arrange the withdrawal of your shares. See Article IV herein.

**WHAT DOES THE BOARD OF DIRECTORS OF SEMELE GROUP, INC. THINK OF THIS OFFER?**

- The special committee of the Company's Board of Directors authorized and approved the agreement among the Company and Messrs. Engle and Coyne that provides the framework of the going private transaction and the terms of this Offer to Purchase. This agreement is attached to this Offer to Purchase as Appendix A.

**WHAT ARE THE FEDERAL INCOME TAX CONSEQUENCES OF TENDERING SHARES?**

- In general, based upon existing federal income tax law, if you receive cash in exchange for your shares of common stock as a result of this Offer to Purchase, you will recognize a capital gain or loss in an amount equal to the difference between the amount of cash you receive and your adjusted basis in the surrendered shares. The treatment of the gain or loss as short-term or long-term capital gain or loss depends on the period you held your shares of Company Common Stock. **WE STRONGLY RECOMMEND THAT SHAREHOLDERS CONSULT THEIR OWN TAX ADVISORS AS TO THE FEDERAL, STATE, LOCAL AND FOREIGN TAX EFFECTS OF THE SPLIT IN LIGHT OF THEIR INDIVIDUAL CIRCUMSTANCES.** See Article V herein.

**IF I DECIDE NOT TO TENDER, HOW WILL THIS OFFER AFFECT MY SHARES?**

- If you decide not to tender your Company Common Stock, you will remain a shareholder of the Company.

**WITH WHOM MAY I TALK TO IF I HAVE QUESTIONS ABOUT THIS OFFER?**

Edgar Filing: SEMELE GROUP INC - Form SC TO-C

- If you have any questions about this Offer, please contact our Information Agent, The Altman Group, Inc., 1275 Valley Brook Avenue, Lyndhurst, NJ 07071, (866) 467-7699.
-

## INTRODUCTION

### **To All Unaffiliated Holders of Common Stock of Semele Group, Inc.:**

On May 5, 2003, we submitted a proposal to the Company, to acquire substantially all of the Company's outstanding shares of common stock not already owned by us for \$1.20 per share. The Company has not received any additional offers to purchase its assets, business, or shares since our initial offer. The Company's board of directors formed a special committee consisting of its independent directors and it granted the special committee the authority to evaluate and negotiate our proposal on behalf of the entire board. Following negotiations with the special committee, we agreed to increase the purchase price to \$1.40 per share, provided that the Company first split the stock to reduce the number of holders that we would have to contact regarding this Offer to Purchase and ensuring that the Company would not be subject to the reporting obligations imposed by the Securities and Exchange Act of 1934, as amended, regardless of the outcome of this Offer to Purchase.

On August 4, 2003, the special committee engaged Duff & Phelps, LLC, an independent investment banking firm, to assist the special committee and to render an opinion regarding the fairness of the going private transaction and the proposed tender offer. Founded in 1932, Duff & Phelps is one of the leading middle market investment banking and independent financial advisory firms in the United States. Duff & Phelps has significant expertise and experience in fairness opinions, business valuations, solvency opinions, structuring ESOP/ERISA transactions, and buy-side and sell-side merger and acquisition advisory services. Headquartered in Chicago, Duff & Phelps has offices in New York, Los Angeles, and Seattle. Each year, Duff & Phelps renders approximately 400 opinions, including fairness opinions, business valuation opinions, solvency opinions, tax-related financial opinions, and other financial opinions.

The special committee asked Duff & Phelps to, among other things, render an opinion, from a financial point of view, of the fairness of the price offered to shareholders in the split and the fairness of the price issued in this Offer to Purchase. Duff & Phelps delivered an opinion to the special committee that the \$1.40 per share to be received by the shareholders being cashed-out as a result of the split is fair to such shareholders from a financial point of view and the \$1.40 to be received if you tender your shares in this Offer to Purchase is fair from a financial point of view.

The full text of the written opinion of Duff & Phelps is attached to this Offer to Purchase as Appendix B.

The \$1.40 per share cash consideration represents a 54% premium over the \$0.91 per share closing price for the Company Common Stock on May 2, 2003, the last day of trading prior to the Company announcing that it had received the proposal from us to acquire all of its outstanding shares, a 13% premium over the \$1.24 average trading price for the 12-month period prior to announcing that the Company had received the proposal from us, a 54% premium over the 1-week average trading price for the Company Common Stock for the 1-week period prior to announcing that it had received the proposal from us, and a 51% premium over the 1-month average trading price for the Company Common Stock for the 1-month period prior to announcing that it had received the proposal from us. The closing price for the Company Common Stock on April 30, 2004 was \$1.05 per share. On July 9, 2004, the Company filed for termination of registration of Company Common Stock under the Securities and Exchange Act of 1934, as amended. The closing price of the Company Common Stock on July 12, 2004 was \$1.26 per share. Further, the repurchase of shares as a result of the reverse split will not involve commissions or other transaction fees that would be charged if you sold shares on the open market.

As you may be aware, on June 29, 2004, the requisite number of shareholders of the Company voted to amend the Company's Certificate of Incorporation, as amended, to effect a 1-for-4,001 reverse stock split followed immediately by a 4,001-for-1 forward stock split of the Company's outstanding common stock. On July 8, 2004, the Company filed the necessary amendments to its Certificate of Incorporation with the Secretary of State of the State of Delaware to effect the split. On July 9, 2004, the Company filed for termination of registration of Company Common Stock under the Securities and Exchange Act of 1934, as amended. As a result of the reverse split, each share of the Company's Common Stock held by a shareholder owning 4,000 or less shares immediately before the effective time of the reverse split was converted into the right to receive from the Company \$1.40 in cash, without interest. Currently, you own the same number of shares that you owned prior to the reverse split.

The reverse split, and related cash purchase by the Company of shares had the effect of taking the Company private. On July 9, 2004, the Company filed for termination of registration of Company Common Stock under the Securities and Exchange Act of 1934, as amended. Once the termination becomes effective, the Company will avoid the expenses associated with being registered under the Securities and Exchange Act of 1934. The reverse stock split approved by the shareholders of the Company on June 29, 2004, only involved the purchase of the shares of the Company Common Stock held by unaffiliated shareholders holding 4,000 or less shares of the Company Common Stock and thus you did not have the opportunity to have your shares redeemed by the Company. We desire to offer all remaining unaffiliated shareholders the opportunity to liquidate their shares of Company Common Stock for the same \$1.40 purchase price that was provided to unaffiliated shareholders who owned 4,000 or less shares of Company Common Stock pursuant to the stock split.

We hereby offer to purchase your shares of Company Common Stock that are issued and outstanding, for \$1.40 per share, in cash and without interest, upon the terms and subject to the conditions set forth in this Offer to Purchase and any amendments or supplements hereto or thereto.

## Edgar Filing: SEMELE GROUP INC - Form SC TO-C

This Offer to Purchase is being made pursuant to an agreement we entered into with the Company on January 14, 2004 that contemplated the going private transaction as well as this Offer to Purchase.

THIS OFFER TO PURCHASE AND THE RELATED LETTER OF TRANSMITTAL CONTAIN IMPORTANT INFORMATION WHICH YOU SHOULD READ BEFORE MAKING ANY DECISION WITH RESPECT TO THIS OFFER TO PURCHASE.

### **I. TERMS OF THIS OFFER**

We are offering to purchase approximately 204,459 shares of Company Common Stock for the purchase price of \$1.40 per share, in cash and without interest. This Offer to Purchase expires on September 28, 2004, unless extended at our discretion. Upon the terms and subject to the conditions of such extension of this Offer to Purchase (including if this Offer is extended or amended, the terms and conditions of such extension or amendment), we will accept for payment, purchase and pay for all Company Common Stock validly tendered (and not withdrawn in accordance with Article IV) on or prior to the expiration of this Offer to Purchase.

### **II. ACCEPTANCE FOR PAYMENT AND PAYMENT FOR COMPANY COMMON STOCK**

Upon the terms and subject to the conditions of this Offer to Purchase (including, if this Offer to Purchase is extended or amended, the terms and conditions of any such extension or amendment), we will accept for payment all Company Common Stock validly tendered (and not properly withdrawn in accordance with Article IV) prior to the expiration of this Offer to Purchase. We shall pay for all Company Common Stock validly tendered and not withdrawn promptly following the acceptance of such Company Common Stock for payment pursuant to this Offer to Purchase. Notwithstanding the immediately preceding sentence and subject to applicable rules and regulations of the U.S. Securities and Exchange Commission, we expressly reserve the right to delay payment for Company Common Stock in order to comply in whole or in part with applicable laws.

In all cases, payment for Company Common Stock tendered and accepted for payment pursuant to this Offer to Purchase will be made only after timely receipt by Mr. Coyne of (i) the certificates evidencing such Company Common Stock (or a confirmation of a book-entry transfer of such shares into our account at the Depository Trust Company, also known as the Book-Entry Transfer Facility) pursuant to the procedures set forth in Article III; (ii) the Letter of Transmittal (or a manually signed facsimile thereof), properly completed and duly executed (including any required signature guarantees), or in the case of a book-entry transfer, an Agent's Message in lieu of the Letter of Transmittal; and (iii) any other documents required under the Letter of Transmittal. An Agent's Message is a message transmitted electronically by the Book-Entry Transfer Facility to, and received by us and that forms a part of a confirmation of the book-entry transfer. The Agent's Message states that the Book-Entry Transfer Facility has received express acknowledgment from the participant in the Book-Entry Transfer Facility tendering the shares, that such participant has received and agrees to be bound by the terms of the Letter of Transmittal and that we may enforce such agreement against the participant.

For purposes of this Offer to Purchase, we will be deemed to have accepted for payment (and thereby purchased) Company Common Stock validly tendered and not properly withdrawn as, if and when we give oral or written notice to you of our acceptance for payment of such Company Common Stock pursuant to this Offer to Purchase. Upon the terms and subject to the conditions of this Offer to Purchase, we will make payment for Company Common Stock accepted for payment pursuant to this Offer to Purchase to you if your Company Common Stock has been accepted for payment.

UNDER NO CIRCUMSTANCES WILL INTEREST ON THE PURCHASE PRICE FOR COMPANY COMMON STOCK BE PAID, REGARDLESS OF ANY DELAY IN MAKING SUCH PAYMENT.

If any shares of tendered Company Common Stock are not accepted for payment for any reason pursuant to the terms and conditions of this Offer to Purchase, or if share certificates are submitted evidencing more Company Common Stock than are tendered, share certificates evidencing unpurchased Company Common Stock will be returned, without expense to the tendering shareholder (or, in the case of shares tendered by book-entry transfer of such shares into our account at the Book-Entry Transfer Facility, pursuant to the procedures set forth in Article III, such shares shall be credited to an account maintained with the Book-Entry Transfer Facility), as promptly as practicable following the expiration or termination of this Offer to Purchase.

### **III. PROCEDURES FOR ACCEPTING THIS OFFER AND TENDERING COMPANY COMMON STOCK.**

*Valid Tender of Company Stock.* In order for a holder of Company Common Stock validly to tender Company Common Stock pursuant to this Offer to Purchase, (i) the Letter of Transmittal (or a manually signed facsimile thereof), properly completed and duly executed (including any required signature guarantees), and the share certificates evidencing tendered Company Common Stock must be received by Mr. Coyne c/o Semele Group, Inc. at such address prior to the expiration of this Offer to Purchase; (ii) the shares of Company Common Stock must be delivered pursuant to the procedures for book-entry transfer described below (and confirmation of the book-entry transfer, including an Agent's Message if the tendering shareholder has not delivered a Letter of Transmittal), prior to the expiration of the Offer; or (iii) the tendering

## Edgar Filing: SEMELE GROUP INC - Form SC TO-C

shareholder must comply with the guaranteed delivery procedures set forth below.

THE METHOD OF DELIVERY OF SHARE CERTIFICATES AND ALL OTHER REQUIRED DOCUMENTS, INCLUDING DELIVERY THROUGH THE BOOK-ENTRY TRANSFER FACILITY, IS AT THE OPTION AND RISK OF THE TENDERING SHAREHOLDER, AND THE DELIVERY WILL BE DEEMED MADE ONLY WHEN ACTUALLY RECEIVED BY MR. COYNE. IF DELIVERY IS BY MAIL, REGISTERED MAIL WITH RETURN RECEIPT REQUESTED, PROPERLY INSURED, IS RECOMMENDED. IN ALL CASES, SUFFICIENT TIME SHOULD BE ALLOWED TO ENSURE TIMELY DELIVERY.

*Book Entry Delivery.* We will establish accounts with respect to the Company Common Stock at the Book-Entry Transfer Facility for purposes of the Offer within two (2) business days after the date of this Offer to Purchase. Any financial institution that is a participant in the system of the Book-Entry Transfer Facility may make a book-entry delivery of Company Common Stock by causing the Book-Entry Transfer Facility to transfer such Company Common Stock into our account at the Book-Entry Transfer Facility in accordance with the Book-Entry Transfer Facility's procedures for such transfer. However, although delivery of Company Common Stock may be effected through book-entry transfer at the Book-Entry Transfer Facility, the Letter of Transmittal (or a manually signed facsimile thereof), properly completed and duly executed (including any signature guarantees), together with any required signature guarantees, or an Agent's Message in lieu of the Letter of Transmittal, and any other required documents, must in any case, be received by us prior to the expiration of the Offer to Purchase, or the tendering shareholder must comply with the guaranteed delivery procedures described below. DELIVERY OF DOCUMENTS TO A BOOK-ENTRY FACILITY IN ACCORDANCE WITH SUCH BOOK-ENTRY TRANSFER FACILITY'S PROCEDURES DOES NOT CONSTITUTE DELIVERY TO US.

*Signature Guarantees.* Signatures on all Letters of Transmittal must be guaranteed by an Eligible Institution. An Eligible Institution is a financial institution which is a member of the Security Transfer Agent Medallion Signature Program, the New York Stock Exchange Medallion Signature Guarantee Program, the Stock Exchange Medallion Program, or any other eligible guarantor institution, as such term is defined in Rule 17Ad-15 under the Securities and Exchange Act of 1934, as amended. Except in cases where shares of Company Common Stock are tendered and a Letter of Transmittal is submitted (i) by a registered holder of Company Common Stock who has not completed either the box entitled "Special Issuance and Payment Instructions" or the box entitled "Special Delivery Instructions" on the Letter of Transmittal or (ii) for the account of an Eligible Institution. If a share certificate is registered in the name of a shareholder other than the signer of the Letter of Transmittal, or if payment is to be made, or a share certificate not accepted for payment or not tendered is to be returned, to a person other than the registered holder(s), then the share certificate(s) which are being tendered must be endorsed or accompanied by appropriate stock powers, in either case signed exactly as the name(s) of the registered holder(s) appear on the share certificate, with the signature(s) on such share certificate or stock powers guaranteed by an Eligible Institution.

*Guaranteed Delivery.* If the tendering shareholder desires to tender Company Common Stock pursuant to this Offer to Purchase and such shareholder's share certificates evidencing such Company Common Stock are not immediately available, or who cannot comply with the procedures for book-entry transfer on a timely basis, or such shareholder cannot deliver the share certificates and all other required documents to us prior to the expiration of this Offer, such Company Common Stock may nevertheless be tendered provided that all the following conditions are satisfied:

- (i) Such tender is made by or through an Eligible Institution.
- (ii) A properly completed and duly executed Notice of Guaranteed Delivery, substantially in the form provided by us, is received by us, prior to the expiration of this Offer; and
- (iii) The certificates for all tendered shares, in proper form for transfer (or a confirmation of a book-entry transfer of such shares), together with a properly completed and duly executed Letter of Transmittal (or facsimile thereof) with any required signature guarantees (or, in the case of a book-entry transfer, an Agent's Message in lieu of the Letter of Transmittal), and any other required documents, are received by us within three trading days after the date of execution of such Notice of Guaranteed Delivery. A trading day is any day on which The Nasdaq SmallCap Market is open for business.

The Notice of Guaranteed Delivery may be delivered by hand or mail or facsimile transmission to us and must include a guarantee by an Eligible Institution in the form set forth in such Notice of Guaranteed Delivery.

*Determination of Validity.* ALL QUESTIONS AS TO THE FORM OF DOCUMENTS AND THE VALIDITY, FORM, ELIGIBILITY (INCLUDING TIME OF RECEIPT) AND ACCEPTANCE FOR PAYMENT OF ANY TENDER OF COMPANY COMMON STOCK WILL BE DETERMINED BY US OR OUR REPRESENTATIVES, IN OUR SOLE DISCRETION, WHICH DETERMINATION SHALL BE FINAL AND BINDING ON ALL PARTIES. We reserve the absolute right to reject any and all tenders determined by us not to be in proper form or the acceptance for payment of which may, in the opinion of our counsel, be unlawful. We also reserve the absolute right to waive any condition of this Offer to Purchase to the extent permitted by applicable law or any defect or irregularity in the tender of any Company Common Stock of any particular shareholder, whether or not similar defects or irregularities are waived in the case of other shareholders.

NO TENDER OF COMPANY COMMON STOCK WILL BE DEEMED TO HAVE BEEN VALIDLY MADE UNTIL ALL DEFECTS AND IRREGULARITIES HAVE BEEN CURED OR WAIVED. WE ARE NOT UNDER ANY DUTY TO GIVE NOTIFICATION OF ANY DEFECTS OR IRREGULARITIES IN TENDERS OR INCUR ANY LIABILITY FOR FAILURE TO GIVE ANY SUCH NOTIFICATION. IN ADDITION, NONE OF OUR AFFILIATES OR ASSIGNS, OR ANY OTHER PERSON WILL BE UNDER ANY DUTY TO GIVE NOTIFICATION OF ANY DEFECTS OR IRREGULARITIES IN TENDERS OR INCUR ANY LIABILITY FOR FAILURE TO GIVE ANY SUCH NOTIFICATION. Our interpretation of the terms and conditions of this Offer to Purchase (including the Letter of Transmittal and the instructions thereto) will be final and binding.

A tender of Company Common Stock pursuant to any of the procedures described above will constitute your acceptance of the terms and conditions of this Offer to Purchase, as well as your representation and warranty to us that (i) you have the full power and authority to tender, sell, assign and transfer the tendered Company Common Stock (and any and all other Company Common Stock or other securities issued or issuable in respect of such Company Common Stock), and (ii) when the same are accepted for payment by us, we will acquire good and unencumbered title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claims.

When we accept payment for the Company Common Stock pursuant to any of the procedures described above, it will constitute a binding agreement between the tendering shareholder and us upon the terms and subject to the conditions of this Offer to Purchase.

*Appointment as Proxy.* By executing the Letter of Transmittal as set forth above, you irrevocably appoint us as your agent, attorney-in-fact and proxy, with full power of substitution, in the manner set forth in the Letter of Transmittal, to the full extent of your rights with respect to the Company Common Stock tendered by you and accepted by us (and with respect to any and all other Company Common Stock or other securities issued or issuable in respect of such Company Common Stock on or after the date of this Offer to Purchase). All such powers of attorney and proxies shall be considered irrevocable and coupled with an interest in the tendered Company Common Stock. Such appointment will be effective when, and only to the extent that, we accept such Company Common Stock for payment. Upon such acceptance for payment, all prior powers of attorney and proxies given by you with respect to your tendered Company Common Stock (and all other Company Common Stock and securities) will be revoked, without further action, and no subsequent powers of attorney or proxies may be given nor any subsequent written consent executed by you (and, if given or executed, will not be deemed to be effective) with respect thereto. We agree that we will, with respect to the Company Common Stock, for which the appointment is effective, be empowered to exercise all of your voting and other rights, as we in our sole discretion may deem proper at any annual or special meeting of the Company's shareholders or any adjournment or postponement thereof, by written consent in lieu of any such meeting or otherwise. We reserve the right to require that, in order for Company Common Stock to be deemed validly tendered, immediately upon our payment for such Company Common Stock, we must be able to exercise full voting rights with respect to such Company Common Stock (and such other Company Common Stock and securities).

#### **IV. WITHDRAWAL RIGHTS.**

Tenders of Company Common Stock made pursuant to this Offer to Purchase are irrevocable except that such Company Common Stock may be withdrawn at any time prior to the expiration of this Offer (or such later date as may apply in case we extend this Offer to Purchase). If we extend this Offer to Purchase, or are delayed in our acceptance for payment of Company Common Stock or are unable to accept Company Common Stock for payment pursuant to this Offer to Purchase for any reason, then, without prejudice to our rights under this Offer to Purchase, we may, nevertheless, retain tendered Company Common Stock, and such Company Common Stock may not be withdrawn except to the extent that you are entitled to withdrawal rights as described in this Article IV, subject to Rule 14e-1(c) under the Securities and Exchange Act of 1934, as amended. Any such delay will be by an extension of this Offer to Purchase to the extent required by law.

For a withdrawal to be effective, a written or facsimile transmission notice of withdrawal must be timely received by Mr. Coyne c/o Semele Group, Inc. at 200 Nyala Farms, Westport, Connecticut 06880 or (203) 341-9988. Any such notice of withdrawal must specify the name of the person who tendered the Company Common Stock to be withdrawn, the number of shares of Company Common Stock to be withdrawn and the name of the registered holder of such Company Common Stock, if different from that of the person who tendered such Company Common Stock. The signature(s) on the notice of withdrawal must be guaranteed by an Eligible Institution, unless such shares have been tendered for the account of any Eligible Institution. If such shares have been tendered pursuant to the procedures for book-entry transfer as set forth in Article III, any notice of withdrawal must specify the name and number of the account the Book-Entry Transfer Facility to be credited with the withdrawn shares. If certificates for shares to be withdrawn have been delivered or otherwise identified to us, the name of the registered holder and the serial numbers of the particular certificates evidencing the shares to be withdrawn must also be furnished to us at as aforesaid prior to the physical release of such certificates.

ALL QUESTIONS AS TO THE FORM AND VALIDITY (INCLUDING TIME OF RECEIPT) OF ANY NOTICE OF WITHDRAWAL WILL BE DETERMINED BY US, IN OUR SOLE DISCRETION, AND OUR DETERMINATION WILL BE FINAL AND BINDING. WE WILL NOT, NOR WILL ANY OF OUR RESPECTIVE AFFILIATES OR ASSIGNS BE UNDER ANY DUTY TO GIVE ANY NOTIFICATION OF ANY DEFECTS OR IRREGULARITIES IN ANY NOTICE OF WITHDRAWAL OR INCUR ANY LIABILITY FOR FAILURE TO GIVE ANY SUCH NOTIFICATION.

## Edgar Filing: SEMELE GROUP INC - Form SC TO-C

Withdrawals of Company Common Stock may not be rescinded. Any Company Common Stock properly withdrawn will thereafter be deemed not to have been validly tendered for purposes of this Offer to Purchase. However, withdrawn Company Common Stock may be re-tendered at any time prior to the expiration of this Offer to Purchase by following the procedures described in Article III.

### V. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF TENDERING SHARES

The following is a general summary of certain United States federal income tax consequences of this Offer to Purchase to shareholders whose Company Common Stock is purchased pursuant to this Offer to Purchase. This information is not intended as tax advice to any person, and is not a comprehensive description of all of the tax consequences that may be relevant to shareholders of the Company. The summary is based on the provisions of the Internal Revenue Code of 1986, as amended, applicable current and proposed United States Treasury Regulations issued thereunder, judicial authority and administrative rulings and practice, all of which are subject to change, possibly with retroactive effect, at any time. The following statements and conclusions, therefore, could be altered or modified. As set forth below, you are urged to consult your own financial and/or tax advisors.

The discussion does not consider shareholders, (i) in whose hands Company Common Stock is not a capital asset, (ii) who holds Company Common Stock as part of a hedge, "straddle," constructive sale or conversion or other risk reduction arrangement, (iii) who received Company Common Stock upon conversion of securities or exercise of warrants or other rights to acquire shares or pursuant to the exercise of employee stock options or otherwise as compensation or (iv) who hold restricted Company Common Stock received as compensation or (v) who are in special tax situations (such as insurance companies, tax-exempt organizations, financial institutions, United States expatriates or non-U.S. persons).

Furthermore, the discussion does not consider any aspect of state, local or foreign taxation or estate and gift taxation.

The United States federal income tax consequences set forth below are included for general informational purposes only and are based upon current law. The following summary does not purport to consider all aspects of United States federal income taxation that might be relevant to shareholders of the Company. Because individual circumstances may differ, each shareholder should consult his, her or its own tax advisor to determine the applicability of the rules discussed below to their particular tax effects of this Offer to Purchase, including the application and effect of state, local and other tax laws.

The receipt of cash for Company Common Stock pursuant to this Offer to Purchase will generally be a taxable transaction for United States federal income tax purposes and also may be a taxable transaction under applicable state, local, foreign and other income tax laws. In general, for United States federal income tax purposes, a shareholder who ceases to hold, either directly, indirectly or constructively, any such shares after this Offer to Purchase, will recognize gain or loss equal to the difference between the shareholder's adjusted tax basis in the Company Common Stock sold pursuant to this Offer to Purchase and the amount of cash received therefor. Gain or loss must be determined separately for each block of Company Common Stock (i.e., Company Common Stock acquired at the same cost in a single transaction) sold pursuant to this Offer to Purchase. If the Company Common Stock exchanged constitutes capital assets in the hands of the shareholder, gain or loss will generally be capital gain or loss. In general, capital gains recognized by an individual will be subject to a maximum United States federal income tax rate of 15% if the Company Common Stock was held for more than one year on the date of sale and if held for one year or less they will be subject to tax at ordinary income tax rates. Certain limitations may apply on the deductibility of capital losses.

Payments in connection with this Offer to Purchase may be subject to "backup withholding" of U.S. federal income tax at a 28% rate. Backup withholding generally applies if a shareholder (a) fails to furnish his, her or its TIN, (b) furnishes an incorrect TIN, (c) fails properly to include a reportable interest or dividend payment on its United States federal income tax return or (d) under certain circumstances, fails to provide a certified statement, signed under penalties of perjury, that the TIN provided is his, her or its correct number and that he, she or it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons generally are entitled to exemption from backup withholding, including corporations, financial institutions and certain foreign shareholders if such foreign shareholders submit a statement, signed under penalties of perjury, attesting to their exempt status. Certain penalties apply for failure to furnish correct information and for failure to include reportable payments in income. Each shareholder should consult his, hers or its own tax advisor as to their qualification for exemption from backup withholding and the procedure for obtaining such exemption.

All shareholders who are United States persons surrendering Company Common Stock pursuant to this Offer to Purchase should complete and sign the main signature form and the Substitute Form W-9 included as part of the Letter of Transmittal to provide the information and certification necessary to avoid backup withholding (unless an applicable exemption exists and is proved in a manner satisfactory to us). Non-corporate foreign shareholders should complete and sign the main signature form and Form W-8BEN or other applicable Form W-8, signed under penalties of perjury, attesting to that shareholder's exempt status (such forms can be obtained from the Company), in order to avoid backup withholding.

THE INCOME TAX DISCUSSION SET FORTH ABOVE IS INCLUDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE TO SHAREHOLDERS IN SPECIAL SITUATIONS SUCH AS SHAREHOLDERS WHO RECEIVED THEIR COMPANY COMMON STOCK UPON THE EXERCISE OF EMPLOYEE STOCK OPTIONS OR OTHERWISE AS COMPENSATION AND SHAREHOLDERS WHO ARE NOT UNITED STATES PERSONS. SHAREHOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE SPECIFIC TAX CONSEQUENCES TO THEM OF THIS OFFER TO PURCHASE INCLUDING THE APPLICATION AND EFFECT OF FEDERAL, STATE, LOCAL, FOREIGN OR OTHER TAX LAWS.

**VI. PRICE RANGE OF COMPANY COMMON STOCK**

Prior to the going private transaction, the Company Common Stock was publicly traded in the over the counter market with the trading symbol of VSLF. During the last two years, the high and low prices have been:

Year Ended December 31 2004	
High	Low
1.25	0.7
1.40	1.0

nts

holders do not ratify the selection of Ernst & Young LLP, the Audit Committee will take that into account in selecting an accounting firm for the year 2011.

**EXECUTIVE COMPENSATION**

**and Analysis**

*and Process*

for our named executive officers is intended to:

executive officers with needed skills and qualities who exemplify the Company's core values, including integrity, inclusion and continuous improvement, and who work well within our culture, and

stockholder value by motivating cooperative performance toward the near- and long-term goals that enable us to succeed in each of our markets through high-quality facilities and products and a strong focus on superior guest service and a variety of attractive growth opportunities.

As a result, the Company generally seeks to compensate the named executive officers in cash at levels that are competitive with the market, and to provide long-term incentives, while providing opportunities in both cases for above-market compensation for superior

significant changes in management in mid-2008 in connection with the departure of the then-President and Chief Executive Officer. Mr. Nielsen was elected Chairman of the Board, an executive officer position. Mr. Kanofsky was appointed Chief Executive Officer of the Board, with oversight responsibility for all of the Company's affairs. Mr. Hodges joined management as President and Chief Operating Officer, undertaking primary management responsibility for the Company's core operations, including casino, hotel, food and beverage, entertainment, design, construction and information technology. Mr. Walsh added the responsibilities of Chief Human Resources Officer, administration and communications departments in addition to his positions as Senior Vice President and Chief of Staff. Mr. Weinbauer remained the Company's Chief Financial Officer.

Management's response to the extreme and unforeseen national economic conditions in 2008 and continuing throughout 2009. Management's response to the extreme and unforeseen national economic conditions in 2008 and continuing throughout 2009.

#### Compensation Matters

The Compensation Committee acts on behalf of the Board of Directors to establish the compensation of our named executive officers and to administer our compensation programs. The Committee also acts as the oversight committee with respect to our Deferred Compensation Plan (the "Deferred Compensation Plan") and bonus plans covering named executive officers. The Committee may also have authority to administer those plans to

authority to select participants and determine award levels for executive officer bonus plans may not be delegated, and  
s and determine award levels for the Deferred Compensation Plan and Stock Incentive Plan may only be delegated to one  
of the Committee. In practice, for the past several years, decisions concerning awards under our Stock Incentive Plan have  
ttee.

*Management.* The Chief Executive Officer formulates recommendations to the Committee on matters of compensation  
s well as specific compensation for the named executive officers. The Chief Executive Officer discusses with the  
and compensation recommendations for each of the named executive officers, which may include himself. His  
nsidered by the Committee and approved or modified as the Committee deems appropriate. In doing so, the Committee  
the views of the Chairman of the Board.

*stant.* The Committee did not engage an independent compensation consultant in connection with making decisions  
n. The Committee has engaged independent compensation consultants from time to time in the past as the Committee  
07, the Committee engaged an internationally recognized independent consulting firm to assist the Committee in  
compensation philosophy, establishing 2007 cash and incentive compensation for the named executive officers and  
revisions to the Company's change in control arrangements with named executive officers. The Committee's 2009  
ue to take into account the results of that and earlier analyses. In addition, during 2009 the Compensation Committee  
nection with evaluation of the compensation of Company management below the level of the named executive officers as  
iminary considerations regarding 2010 compensation for the named executive officers.

ies and making compensation decisions, the Committee primarily uses consolidated earnings before interest, taxes,  
, as adjusted for certain non-cash or non-recurring items (Adjusted EBITDA), a non-GAAP financial measure, to measure  
ples of adjustments include impairment charges related to intangible assets and pre-opening and rebranding expenses. The  
EBITDA is an appropriate measure for compensation decisions because it is the primary metric used by the Company  
competitors as well as financial analysts in evaluating many aspects of overall corporate performance, and it is a good

compensate our employees, including our named executive officers, in an amount and manner that makes us competitive  
ividuals who have high skill levels and are top performers, which will drive our corporate success, as measured by  
study by the Committee's independent compensation consultant compared the compensation of the named executive  
group selected from among others in the casino gaming industry within certain ranges of employee counts, revenues and  
ablished a target competitive range calculated from the median amounts paid for comparable positions in the peer group.  
many companies in that peer group, as well as significant changes in the gaming industry, equity markets and economic  
t reliance on the earlier comparisons. The Committee did not undertake a systematic update of peer group data for  
compensation and benchmarking was not a significant consideration in

2009 compensation. The Committee did update its evaluation of compensation by gaming industry peers during 2009 in connection with its work on establishing compensation for 2010.

for 2009

Compensation for our management, including named executive officers, includes base salary, an annual incentive cash bonus, and the form of annual awards under our Stock Incentive Plan and a benefits package comprising retirement savings and health insurance. Management should be rewarded with total compensation that is increasingly weighted toward performance-based compensation and toward equity-based compensation as the executive's position and responsibilities increase, because of the executive's contribution to the overall performance of the Company. This mix of compensation, with an emphasis on compensation that is tied to the performance objectives of the Company to attract and retain an effective management team and keep their incentives aligned with the interests of the stockholders.

The primary objective in the determination of a named executive officer's annual cash compensation. The Committee's objectives in establishing base salaries for named executive officers are to compensate the officers for committing their time and skills for the benefit of the Company and to reflect the officer's position and productivity. Other forms of incentive and other compensation, including the annual incentive cash bonus, the form of annual awards and Company match on executives' Deferred Compensation Plan deferrals, are directly tied to the amount of base salaries of named executive officers, as described in more detail below.

The 2008 management realignment involved substantial reallocations of responsibilities. The Committee at that time established compensation levels for named executive officers' responsibilities, without adding significant aggregate management compensation expense as compared to historical levels. Factors such as the relationship between the salary of the Chief Executive Officer and those of other officers and members of management (including equity) and salaries paid in the industry to individuals in comparable positions. In early 2009, based on the industry's compensation for the Chief Executive Officer, the Committee decided to freeze the 2009 base salaries of the named executive officers at 2008 levels to support the Company's cost-containment programs during the economic recession. Because incentive cash bonuses and other forms of compensation are dependent in part on base salaries, this salary freeze had flow-through effects on other forms of compensation for named executive officers.

The annual incentive cash bonus program in order to align senior executives' goals with our performance objectives for the current year. The amount of the annual incentive cash bonus paid to each named executive officer is determined based on two factors:

1. The percentage of the Company's actual Adjusted EBITDA to the target Adjusted EBITDA for the year; and

2. The percentage established by the Committee for the executive's position, expressed as a percentage of the individual's base

salary. The target Adjusted EBITDA for the year is established in connection with management's annual budgeting process and is intended to be the most conservative estimate of Adjusted EBITDA that is the most

e., a median result among possible future outcomes), assuming the successful implementation of the Company's business  
 Company's target Adjusted EBITDA for the year in the first quarter of that year. The Committee defines the manner of  
 DA, which may vary in some respects from Adjusted EBITDA used or publicly announced by the Company in other

ommittee adopted the Company's Performance-Based Annual Bonus Plan (the Bonus Plan), which was subsequently  
 stockholders. In February 2009, the Committee adopted the 2009 Bonus Opportunities and Performance Goal (the 2009  
 the Bonus Plan. The 2009 Bonus Criteria established the following bonus target factors, expressed as a percentage of base  
 ve officers:

	<b>Incentive Bonus Target Factor</b>
Kanofsky)	100%
Neilsen)	100%
e Officer (Mr. Hodges)	100%
rs. Walsh and Steinbauer)	75%

he Company's target Adjusted EBITDA Before DC (EBITDADC) at \$317,600,000. EBITDADC was defined as  
 (i) interest, taxes, depreciation and amortization, (ii) items that are disregarded in determining Adjusted EBITDA as  
 public earnings releases and (iii) income or expense attributable to changes in the value of the Company's deferred  
 liabilities that do not affect net income. The 2009 Bonus Criteria provided that each executive officer would be paid his  
 s actual EBITDADC were within 1% of the target EBITDADC, and that the bonus earned would increase in steps  
 us for each 1% increase over target EBITDADC), from 105% of the target bonus at 102% of target EBITDADC up to a  
 get bonus at 110% or more of target EBITDADC. Similarly, the bonus earned would decrease from 95% of target bonus at  
 zero at 85% or less of target EBITDADC. This formula is less sensitive to changes in earnings than the formula used in  
 uces the maximum bonus from 200% of target to 150% of target. Under the Bonus Plan, the Committee retains discretion  
 incentive bonuses from the levels provided in the 2009 Bonus Criteria based on the Committee's assessment of individual  
 the Committee may determine.

s \$333,120,000, or approximately 105% of the target and, therefore, a bonus of 120% of target bonus was paid to each of  
 pursuant to the 2009 Bonus Criteria.

m compensation is grants of equity-based awards made pursuant to the Stock Incentive Plan awarded upon hiring or  
 ion and thereafter annually. Equity-based awards are designed to align executives' interests with the interests of  
 value as the price of our stock increases. They also give executives a greater incentive to focus on the long-term  
 l performance of the Company and allow us to remain competitive in the market for management talent. Our equity-based  
 executive officers because they vest over a period of years and, to the extent not vested, are forfeited if the officer leaves

for the named executive officers included stock options and restricted stock units ( RSUs ). The Company also uses stock equity-based compensation of management below the level of the named executive officers. The Committee began using the named executive officers in 2008, in part due to the determination that other forms of performance-based equity compensation and incentive benefits of RSUs in prevailing economic conditions.

equity-based compensation in terms of the fair value of options to purchase Common Stock and RSUs, using the Black-Scholes pricing model and historical average stock prices shortly before the grant date to estimate the value of the equity

Following management realignment in May 2008, the Committee established target factors for equity-based compensation for named executive officers. In the case of Messrs. Kanofsky, Neilsen, Hodges and Walsh, these target factors are set forth in their respective compensation agreements. The target factors, expressed as a percentage of base salary at the time of grant, are as follows:

**Equity Compensation  
Target Factor**

200%  
125%  
200%  
175%  
150%

The target factors for positions of broader responsibility implement the Company's philosophy that increased responsibility and accountability is increasingly tied to the equity performance.

The target value is determined as the product of (i) the target factor for the named executive officer and (ii) the named executive officer's base salary. The target value is then divided by the per-share fair value of the options, a target number for options granted at market

The Committee exercised its discretion to increase equity-based compensation from contractual levels. The Chief Executive Officer announced an additional \$2,000,000 pool of options and RSUs for the 2009 annual equity grants to be allocated among members of the management team at the level of Chief and above (a total of nine persons), based on the turnaround in the performance of the Company, the need to boost morale and performance, a financial analysis of the amount of grants and forfeitures from 2006 to 2008 under the Company's Incentive Plan, the Company's Amended and Restated 1999 Stock Incentive Plan (the "1999 Plan"), which reflected a substantial increase in the compensation expense associated with the net grants in 2008 compared to prior years, and equitable considerations involving the equity-based incentive compensation elements for the named executive officers versus other management of the Company. The Committee determined that such a discretionary increase in the 2009 annual equity grants for certain members of management was appropriate.

values of the respective discretionary increases to the named executive officers' equity compensation targets were as

	\$ 525,000
	\$ 265,000
	\$ 265,000
	\$ 110,000
	\$ 300,000

These amounts were determined taking into account the considerations described above.

**Compensation**

The Company awarded awards of equity-based compensation for each named executive officer between options and RSUs in a ratio such that the fair value of options (determined using the Black-Scholes-Merton pricing model) would be awarded for each three dollars of RSUs (assumed to have the same value as one share of Common Stock as of the grant date). This ratio in values between options and RSUs was used in 2008 and 2007, although the increased relative value of options in 2009 resulted in grants of more RSUs than the same three-to-one value ratio. The allocation is intended to provide a mix of incentives that promotes employee performance while neither over-emphasizing near-term stock prices nor creating excessive incentives for risk-taking, and yet retaining the potential of a larger number of options alone. Comparing the grant-date Black-Scholes-Merton valuation of the stock options to the Company's Common Stock on the same date, each stock option had a fair value at the time of the annual grants approximately equal to one RSU.

The Company encourages management to take actions in order to increase the price of the underlying securities, thereby maximizing stockholder value. Options are granted with an exercise price equal to the market value (defined as the average of the high and low sale prices of the underlying securities on the date of grant, the options have value only to the extent that the price of our Common Stock increases compared to the exercise price. Conversely, the value of options can significantly decrease, including to zero, in weakening markets for equities. All stock options granted since December 2007 vest over four years and have a 10-year contractual term.

The Company's RSUs are shares of Common Stock in the future after completion of a specified period of service with the Company. RSUs therefore serve to increase the Company's stock price but also to minimize risks that can affect the value of the Common Stock over the long term. RSUs can be rendered generally worthless by a large decline in stock prices which the executive officer may have little ability to control. The value in generally falling equity markets, such as was experienced in 2008.

The Company's named executive officer in July 2009 entitle him to receive the specified number of shares of Common Stock in four equal installments, one before each of the first four anniversaries of the grant.

Equity-based compensation greatly reduce the possibility of timing being manipulated to result in stock option exercise prices that are significantly higher than the value of the stock at the time of the option grant. All of our options are priced on the date the Committee takes formal action and we have never backdated the grant of options. Likewise, we do not intentionally time the grant of options in relation to fluctuations in our stock price.

Annual equity-based compensation for all eligible continuing employees, including named executive officers, are made on a single date each year. Since 2008, the Company has granted awards of equity-based compensation in July based on the judgment that the timing of equity-based compensation from the dates for cash bonuses furthers the incentive and retention objectives of the Company. Payments of incentive compensation vest or become payable at two different times of each year.

With very few exceptions, granted by the Committee on the last business day of the quarter in which employment starts.

Grants of equity-based compensation pursuant to the Stock Incentive Plan may also be made at other times (besides the regular dates) and for specific reasons, at the discretion of the Committee, such as for an exceptional individual contribution to the Company. In 2009, no named executive officer received any grant other than the regular annual grant under the Stock Incentive Plan.

n

The Deferred Compensation Plan that allows highly compensated employees, including named executive officers, to defer up to 90% of their base salary and up to 100% of their annual cash bonus until the date or dates selected by the participant at the time of the grant. The Deferred Compensation Plan is offered to higher-level employees in order to allow them to defer taxation on more income and to participate in our broad-based tax-qualified 401(k) Plan. Further, we offer the Deferred Compensation Plan as a competitive benefit to attract and retain top talent, and have found it to be effective in that regard.

Participants in the Deferred Compensation Plan are credited with earnings or debited with losses equal to the returns on measurement fund selections made by the participant from among a group of publicly available variable universal life insurance separate accounts. The measurement fund selections at any time, which changes will become effective on the first day of the following month. The Company funds the participants' Deferred Compensation Plan benefits and ensure that the Company does not become subject to a significant liability. For plan benefits, the Company funds a grantor trust (known as a "rabbi trust") with amounts equal to the participants' deferrals and distributions and causes those funds to be invested in the accounts selected by the participants. The rabbi trust is designed so that the Company can pay benefits to participants in the event the Company is unwilling or unable to pay the plan benefits for any reason other than a change in control or management of the Company). As a result, the Company is generally prevented from incurring significant out-of-pocket expense related to participants' earnings on the plan.

Participants' contributions to the Deferred Compensation Plan equal to 100% of the first 5% of salary and 100% of the first 5% of bonus. Company matching contributions vest at the rate of 20% per year. Vested account balances are paid following termination. Participants may elect, at the time of annual enrollment, to receive their deferred amounts,

of their selected measurement funds, either as short-term payouts starting as soon as five years from the date of deferral, or as annuities to be paid in up to 15 annual installments after retirement.

The deferral of compensation benefits provided is typically not taken into account in determining a named executive officer's overall compensation for a particular year.

### **Employee Benefits**

Health and welfare benefits generally available to all full-time Company employees, the named executive officers and certain other employees are not required to pay premiums for medical, dental and vision coverage and certain other benefits, and the named executive officers receive health benefits at no cost to them, which cover all co-payments, deductibles and other out-of-pocket costs up to \$1,000 per year. We believe that these benefits have been valuable in our efforts to recruit and retain qualified management personnel.

Other benefits provided to our management, including our named executive officers. These benefits include company cars, travel allowances, company meals, lodging and entertainment at our properties, use of season seats for sporting events when not provided to our other employees, and condominium units in Sun Valley, Idaho that are leased by the Company. These benefits are minimal in value, broadly available to all employees and not considered by the Committee as a factor in establishing the specific compensation levels for any individual.

### **Control Payments**

The named executive officers are entitled to receive certain severance payments and other benefits upon a termination of his employment in 2007, the Compensation Committee adopted the Change in Control Severance Plan (the "CIC Plan"). Adoption of the CIC Plan replaced the Company's existing change in control provisions conducted by the Committee's compensation consultant to ensure that the Company's change in control provisions are aligned with its defined philosophy and to identify potential changes in those provisions aimed at providing enhanced protections for named executive officers, as well as establishing standard and competitive change in control terms. Prior to the adoption of the CIC Plan, Mr. Walsh were eligible for single-trigger change in control severance payments under the terms of their existing employment contracts. The CIC Plan reflects the Committee's views that (i) best practices dictate that change in control cash payments should only be payable upon a change in control of an executive officer's employment (i.e., double-trigger benefits), rather than solely upon the occurrence of the change in control (single-trigger benefits) and (ii) the benefits payable to any executive officer should be set at the level necessary to fairly compensate the executive officer for the loss of salary and other benefits lost in connection with a change of employment, rather than to enrich the officer upon a change in control. Under the CIC Plan, the Committee also reviewed projections of total change in control severance costs and determined they were not expected to impede or affect the consideration payable in a potential change in control transaction.

The Company's policy is to provide compensation and benefits to certain senior-level employees of the Company and its subsidiaries upon termination of their employment (a "Change in Control") involving the Company. The CIC Plan and a similar plan adopted by the Committee in 2007 for other employees cover each of the Company's current named executive officers and all other current and future employees of the Company who are in the position of director or executive officer.

of Mr. Steinbauer and two other executives who elected to retain the benefits in their existing employment agreements in the CIC Plan. All compensation and benefits provided to participants under the CIC Plan are in lieu of, and not in addition to, termination pay or benefits payable specifically as a result of a Change in Control or a termination of employment within a Change in Control that are provided for in any employment agreement between the Company or one of its subsidiaries and

the occurrence of a Change in Control, except as otherwise expressly provided in the applicable plan document or award agreement. Unvested stock options and restricted stock awards held by each participant will become vested and non-forfeitable, if a participant's employment is terminated. This provision of the CIC Plan reflects a continuation of the pre-existing terms of the CIC Plan (in contrast with the terms of the Stock Incentive Plan) applicable to all participants and therefore does not increase any benefits. In consultation with its compensation consultant, the Committee determined that single-trigger acceleration of equity awards is the standard practice for the Company's peer group and companies in general. Single-trigger vesting of equity awards may avoid complications in a Change in Control that results in the Company's Common Stock no longer being publicly traded and may also help retain key personnel. The award agreements for the RSUs awarded under the Stock Incentive Plan and the 1999 Plan and the award agreements for the RSUs granted to the executives in 2009 and 2008 contain the same provision.

Additional compensation on a double-trigger basis. If a participant's employment is terminated within a one-year period following a Change in Control by a participant for a defined Good Reason, or by the Company for any reason other than Cause or the participant's death, the participant will be entitled to a lump-sum cash payment, payable within 10 days following the participant's last day of employment, applicable to the named executive officers:

For participants employed in a position above the Senior Vice President level (Messrs. Kanofsky, Neilsen and Hodges), two times the participant's then-current annual base salary and target annual incentive bonus, plus a prorated target annual incentive bonus for the year in which the participant's employment termination date occurs; and

For participants employed at the Senior Vice President level (Mr. Walsh), one and one-half times the sum of the participant's then-current annual base salary and target annual incentive bonus, plus a prorated target bonus for the year in which the participant's employment termination date occurs.

The level of these payments with reference to compensation payable in the event of a change in control within the Company's peer group of comparable companies, with the Company's benefits established slightly below median levels. In addition, the larger proportion of these payments for senior executives is intended to reflect the additional time that may be required for such an executive to find a comparable

For more information on the specific payments that would be made to our named executive officers in connection with a Change in Control pursuant to the terms of their employment agreement, see "Payments Upon Termination of Employment or Change in Control."

For participants employed at the Senior Vice President level or higher, following a participant's last day of employment, the participant's eligible dependents will be entitled to continue to participate at the Company's expense in the Company's primary and secondary health benefit plans as in effect immediately prior to the Change in Control, pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). This benefit also

er his employment agreement, notwithstanding that he is not participating in the CIC Plan.

icer who is a participant in the CIC Plan becomes subject to the excise tax on excess parachute payments under Revenue Code (the Code), the Company will reimburse the participant for an amount equal to the amount of any such tax imposed on the participant, and will gross up the tax reimbursement by paying the participant an additional amount equal to the amount of such taxes (including income taxes, excise taxes, special taxes and employment taxes) that are payable by the participant as a result of such payment, such that after payment of such additional taxes the participant will have received on a net after-tax basis an amount equal to the amount of the net benefits under the CIC Plan. The Committee believed that such gross-up was reasonable based on competitive practices in order to ensure that the projected net benefits under the CIC Plan and concluded that the projected gross-up costs would not be material to the

### Section 162(m) Revenue Code

Section 162(m) disallows a deduction for federal income tax purposes of most compensation exceeding \$1,000,000 in any year paid to the chief executive officer and certain other executive officers of a publicly traded corporation. However, performance-based compensation, as defined under Section 162(m), is fully deductible. Our policy is to qualify our incentive compensation programs for full income tax deductibility to the extent possible in accordance with our overall compensation goals. The Committee takes into account the effect of Section 162(m) if the potential compensation of a named executive officer approaches or exceeds \$1,000,000. However, the fact that compensation in excess of \$1,000,000 in any year for federal income tax purposes will not preclude the award of such compensation if the Committee believes it is otherwise appropriate. Compensation upon vesting of RSUs do not constitute performance-based compensation under Section 162(m) and therefore may be deductible. In making the awards of RSUs, the Committee considered the fact that a portion of the compensation of certain of the named executive officers is deductible by the Company in 2009 and future years due to Section 162(m).

The Committee considered the deductibility of a small portion of the compensation paid to Messrs Kanofsky, Neilsen and Hodges.

### Committee Report

The Committee has reviewed and discussed with management the preceding Compensation Discussion and Analysis. Based on its review and discussion with management, the Committee recommended to the Board of Directors that the Compensation Discussion and Analysis be included in the proxy statement on Form 10-K for the year ended December 31, 2009 and in this proxy statement.

Committee

compensation information for 2007 through 2009 for each of our named executive officers.

### Summary Compensation Table

	Year	Salary (\$)(1)	Bonus (\$)(2)	Stock Awards (\$)(3)	Option Awards (\$)(4)	Non-Equity Incentive Plan Compensation (\$)(5)	All Other Compensation (\$)(6)	Total(\$)
	2009	\$ 750,000	\$ 0	\$ 1,579,907	\$ 493,783	\$ 900,000	\$ 112,780	\$ 3,836,470
	2008	\$ 674,134	\$ 426,997	\$ 849,732	\$ 267,020	\$ 0	\$ 89,056	\$ 2,306,939
	2007	\$ 522,854	\$ 12,317	\$ 610,268	\$ 208,199	\$ 254,541	\$ 71,663	\$ 1,679,842
	2009	\$ 425,000	\$ 0	\$ 660,265	\$ 206,375	\$ 382,500	\$ 67,275	\$ 1,741,415
ief	2008	\$ 440,192	\$ 207,188	\$ 255,800	\$ 80,383	\$ 0	\$ 49,742	\$ 1,033,304
	2007	\$ 397,885	\$ 7,650	\$ 306,680	\$ 104,627	\$ 158,100	\$ 55,582	\$ 1,030,524
	2009	\$ 575,000	\$ 0	\$ 1,103,980	\$ 345,009	\$ 690,000	\$ 149,768	\$ 2,863,757
	2008	\$ 469,135	\$ 299,801	\$ 651,503	\$ 204,729	\$ 0	\$ 77,091	\$ 1,702,259
	2007	\$ 297,884	\$ 6,210	\$ 269,013	\$ 91,776	\$ 128,340	\$ 81,254	\$ 874,477
	2009	\$ 550,000	\$ 0	\$ 1,033,969	\$ 323,155	\$ 660,000	\$ 37,948	\$ 2,605,072
	2008	\$ 315,192	\$ 357,000	\$ 525,112	\$ 165,011	\$ 0	\$ 7,451	\$ 1,369,766
	2007							
	2009	\$ 500,000	\$ 0	\$ 819,094	\$ 256,016	\$ 450,000	\$ 76,953	\$ 2,102,063
al	2008	\$ 483,173	\$ 228,624	\$ 424,866	\$ 133,510	\$ 0	\$ 64,743	\$ 1,334,916
ative	2007	\$ 399,154	\$ 9,000	\$ 360,932	\$ 123,136	\$ 186,000	\$ 57,108	\$ 1,135,330

Salary, including amounts paid as paid time off (PTO) used by the named executive officer.

Bonus for 2007 and 2008 performance paid outside of the Bonus Plan in January of the following year.

The grant date fair value of awards of restricted stock units (in 2009 and 2008) and performance share units (in 2007) for each of our named executive officers in the applicable year, calculated in accordance with Financial Accounting Standards Board's Accounting Standards Codification Topic 718 (ASC Topic 718). See Note 10 to the Consolidated Financial Statements in our 2009 Form 10-K for the year ended December 31, 2009, which was filed with the SEC on March 16, 2010 (the "2009 Form 10-K") for the assumptions underlying the valuation of restricted stock unit and performance share unit awards. The values of awards awarded in 2007 are computed based upon the probable outcome of the performance conditions at the date of the awards at the grant date, assuming that the highest level of performance conditions were achieved, were: Mr. Steinbauer \$536,000; Mr. Steinbauer \$613,360; Mr. Neilsen \$538,026; Mr. Walsh \$721,864.

The grant date fair value of awards of stock options to each of the named executive officers in the applicable year, calculated in accordance with ASC Topic 718. See Note 10 to the Consolidated Financial Statements in the 2009 Form 10-K for the assumptions underlying the valuation of option awards.

Bonus for 2007 and 2008 performance in the applicable year made in January of the following year under the Bonus Plan.

the components of this column for 2009, which include: the Company match on each individual's 401(k) Plan; each individual's Deferred Compensation Plan deferrals (including on deferrals of the individuals' 2009 annual salary for January 2010); the cost of excess term life insurance provided without charge to Mr. Kanofsky; and the cost of health and dental insurance for each individual and his covered dependents. The named executive officers received certain perquisites and benefits, including complimentary food, lodging and entertainment at properties owned or leased by us. No named executive officer received more than Mr. Neilsen and Mr. Hodges.

perquisites or other personal benefits with an aggregate value, based on the Company's incremental cost, of

Year	401(k) Match	Deferred Compensation Plan Match	Term Life Insurance	Perquisites	Health Benefits(a)	Total All Other Compensation
2009	\$ 4,900	\$ 82,500	\$ 827	\$	\$ 24,553	\$ 112,780
2009	\$ 4,900	\$ 40,375	\$ 0	\$	\$ 22,000	\$ 67,275
2009	\$ 4,900	\$ 63,250	\$ 0	\$ 59,618(b)	\$ 22,000	\$ 149,768
2009	\$ 0	\$ 0	\$ 0	\$ 11,048(c)	\$ 22,000	\$ 37,948
2009	\$ 4,900	\$ 47,500	\$ 0	\$	\$ 24,553	\$ 76,953

Company's cost of providing self-funded primary and supplemental executive health benefits without cost to the named executive officer and his dependents, calculated in accordance with the Company's COBRA rates for 2009.

Payment of monthly mortgage payments for Mr. Nielsen's home in Las Vegas, Nevada, in the amount of \$54,618.

Assistance provided to Mr. Hodges in connection with his relocation to Las Vegas.

Company as an executive officer on May 31, 2008.

s

Plan-based awards granted to the named executive officers during 2009. The equity awards identified in the table below are included in the Compensation Discussion and Analysis and include the Bonus Plan, a non-equity incentive plan, and the Stock Option Plan for stock option, restricted stock, restricted stock unit and performance share unit grants.

#### Grants of Plan-Based Awards in 2009

Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards(1)			All Other Stock Awards: Number of Shares of Stock or Units (#)(2)	All Other Option Awards: Number of Securities Underlying Options (#)(3)	Exercise or Base Price of Option Awards (\$/Share)(4)	Closing Market Price on Date of Grant (\$/Share)	Grant Date Fair Value of Stock and Option Awards (\$)(5)
	Threshold (\$)	Target (\$)	Maximum (\$)					
1/2009	\$ 75,000	\$ 750,000	\$ 1,125,000	84,850		\$	\$	\$
	\$	\$	\$			\$	\$	\$ 1,579,907

Edgar Filing: SEMELE GROUP INC - Form SC TO-C

1/2009	\$	\$	\$		65,750	\$	18.62	\$	18.67	\$	493,783
	\$	31,875	\$	318,750	\$	478,125		\$		\$	
1/2009	\$	\$	\$		35,460	\$		\$		\$	660,265
1/2009	\$	\$	\$		27,480	\$	18.62	\$	18.67	\$	206,375
	\$	57,500	\$	575,000	\$	862,500		\$		\$	
1/2009	\$	\$	\$		59,290	\$		\$		\$	1,103,980
1/2009	\$	\$	\$		45,940	\$	18.62	\$	18.67	\$	345,009
	\$	55,000	\$	550,000	\$	825,000		\$		\$	
1/2009	\$	\$	\$		55,530	\$		\$		\$	1,033,969
1/2009	\$	\$	\$		43,030	\$	18.62	\$	18.67	\$	323,155
	\$	37,500	\$	375,000	\$	562,500		\$		\$	
1/2009	\$	\$	\$		43,990	\$		\$		\$	819,099
1/2009	\$	\$	\$		34,090	\$	18.62	\$	18.67	\$	256,016

The range of payouts targeted for 2009 performance under the Bonus Plan as described in the section entitled "Executive Compensation for 2009 – Incentive Cash Bonus" of Compensation Discussion and Analysis. The January 2010 bonus payments were made on the basis of the metrics described in that section, at 120% of target bonus, and are included in the "Executive Incentive Plan Compensation" column of the Summary Compensation Table.

restricted stock units granted under the Stock Incentive Plan, which are described in the section entitled Compensation for 2009 Equity-Based Compensation of Compensation Discussion and Analysis and in the Awards at December 31, 2009 table. The restricted stock units granted to the named executive officers were part of our annual equity award program.

Stock options granted under the Stock Incentive Plan, which are described in the section entitled Components of Equity-Based Compensation of Compensation Discussion and Analysis and in the Outstanding Equity Awards at December 31, 2009 table. The options granted to the named executive officers were part of our annual equity award program.

Under the Stock Incentive Plan, the fair market value per share of our Common Stock on the date of grant is defined as the lowest sale prices of the Common Stock on the Nasdaq Global Select Market on that date. We have consistently used the lowest sale prices on an as-if sold basis rather than using the closing market price on the date of grant.

The values in this column represent the fair value of the restricted stock unit and option awards as of the grant date, determined in accordance with ASC Topic 718. Regardless of the value placed on a restricted stock unit or a stock option on the grant date, the value realized by the named executive officer from the restricted stock unit or the option will depend on the market price of our Common Stock on the date in the future when the restricted stock unit vests or the option is exercised.

outstanding stock options, unvested restricted stock units and unvested performance share units held by the named of 2009.

### Outstanding Equity Awards at December 31, 2009

Option Awards				Stock Awards			Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights that Have Not Vested (\$)(2)
Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)(1)	Market Value of Shares or Units of Stock That Have Not Vested (\$)(1)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights that Have Not Vested (#)(2)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights that Have Not Vested (\$)(2)
002	47,660	0	\$ 6.97	12/20/2012(4)	\$		\$
003	48,340	0	\$ 11.53	12/11/2013(4)	\$		\$
004	83,800	0	\$ 21.30	12/16/2011(4)	\$		\$
005	61,696	15,424	\$ 22.87	12/15/2012(4)	\$		\$
006	50,898	33,932	\$ 31.68	12/14/2013(4)	\$		\$
007	10,855	10,855	\$ 28.11	12/15/2017(5)	\$	21,710	\$ 330,643
008	16,900	50,700	\$ 12.57	7/25/2018(5)	50,700	\$ 772,161	\$
009	0	65,750	\$ 18.62	7/31/2019(5)	84,850	\$ 1,292,266	\$
003	22,840	0	\$ 11.53	12/11/2013(4)	\$		\$
003	5,340	0	\$ 6.97	12/20/2012(6)	\$		\$
004	39,600	0	\$ 21.30	12/16/2011(4)	\$		\$
005	28,848	7,212	\$ 22.87	12/15/2012(4)	\$		\$
006	24,432	16,288	\$ 31.68	12/14/2013(4)	\$		\$
007	5,455	5,455	\$ 28.11	12/15/2017(5)	\$	10,910	\$ 166,159
008	5,087	15,263	\$ 12.57	7/25/2018(5)	15,263	\$ 232,455	\$
009	0	27,480	\$ 18.62	7/31/2019(5)	35,460	\$ 540,056	\$
004	32,000	0	\$ 21.30	12/16/2011(4)	\$		\$
005	23,656	5,914	\$ 22.87	12/15/2012(4)	\$		\$
006	18,612	12,408	\$ 31.68	12/14/2013(4)	\$		\$
007	4,785	4,785	\$ 28.11	12/15/2017(5)	\$	9,570	\$ 147,751
008	12,957	38,873	\$ 12.57	7/25/2018(5)	38,873	\$ 592,036	\$

Edgar Filing: SEMELE GROUP INC - Form SC TO-C

009	0	45,940	\$ 18.62	7/31/2019(5)	59,290	\$ 902,987	\$
001	15,000	0	\$ 6.62	6/8/2011(7)		\$	\$
002	15,000	0	\$ 13.22	6/7/2012(7)		\$	\$
003	15,000	0	\$ 10.23	7/18/2013(7)		\$	\$
004	15,000	0	\$ 15.77	7/16/2014(7)		\$	\$
005	15,000	0	\$ 27.41	6/17/2012(7)		\$	\$
006	15,000	0	\$ 20.94	6/9/2013(7)			
007	15,000	0	\$ 31.37	6/8/2014(7)		\$	\$
008	10,443	31,332	\$ 12.57	7/25/2018(5)	31,332	\$ 477,186	\$
009	0	43,030	\$ 18.62	7/31/2019(5)	55,530	\$ 845,722	\$
003	228,000	0	\$ 13.18	3/8/2012(8)		\$	\$
004	48,800	0	\$ 21.30	12/16/2011(4)		\$	\$
005	37,016	9,254	\$ 22.87	12/15/2012(4)		\$	\$
006	30,540	20,360	\$ 31.68	12/14/2013(4)		\$	\$
007	6,420	6,420	\$ 28.11	12/15/2017(5)		\$	12,840 \$ 195,553
008	8,450	25,350	\$ 12.57	7/25/2018(5)	25,350	\$ 386,081	\$
009	0	34,090	\$ 18.62	7/31/2019(5)	43,990	\$ 669,968	\$

RSUs granted under the Stock Incentive Plan to each of the named executive officers as part of our annual equity award program. The RSUs granted in July 2008 vest 25% on each of July 24, 2009, 2010, 2011 and 2012. The RSUs granted in July 2009 vest 25% on each of July 30, 2010, 2011, 2012 and 2013. Dividends or dividend equivalents are not payable with respect to the shares shown in the table is calculated based on the closing sale price of the Common Stock on July 25, 2018 (5.23).

Performance share units ( PSUs ) granted under the Stock Incentive Plan to each of the named executive officers on December 15, 2007 as part of our annual equity award program. Each PSU represented the right to receive Common Stock when the PSU has been earned and has vested. Approximately 45% of the PSUs granted were earned in 2008 to the extent to which the specified performance objectives were attained for the two-year performance period 2008-2009, and the balance of the PSUs granted was forfeited. 50% of the earned PSUs vested on February 8, 2010 and 25% of the earned PSUs will vest on December 30, 2011. Dividends or dividend equivalents are not payable with respect to the shares shown in the table is based on achievement of the performance objectives at the target performance period and the payout value is calculated based on the closing sale price of the Common Stock on July 25, 2018 (5.23).

Messrs. Kanofsky, Hodges and Walsh were transferred by them without consideration to their respective trusts for estate planning purposes.

our then-standard five-year vesting schedule: assuming continued employment or other qualifying relationship of the options in the original grant vest on the day before the first anniversary of the grant date and thereafter day in each of the next four years.

our current standard four-year vesting schedule: assuming continued employment or other qualifying company, 25% of the options in the original grant vest on the day before the first anniversary of the grant date on the same day in each of the next three years.

the original grant vested on each of December 19, 2003, 2004, 2005, 2006 and 2007.

to our then-standard schedule for grants to non-employee Directors, vested in full on the first anniversary of

the original grant vested on each of April 2, 2003, 2004, 2005, 2006 and 2007.

**Vested**

stock options exercised by and vesting of restricted stock units held by the named executive officers in 2009 and the or vesting.

**Option Exercises and Stock Vested in 2009**

<b>Option Awards</b>		<b>Stock Awards</b>	
<b>Number of Shares Acquired on Exercise (#)</b>	<b>Value Realized on Exercise \$(1)</b>	<b>Number of Shares Acquired on Vesting (#)</b>	<b>Value Realized on Vesting \$(2)</b>
8,000	\$ 19,940	16,900	\$ 336,986
5,340	\$ 42,306	5,087	\$ 101,435
27,324	\$ 259,658	12,957	\$ 258,363
34,000	\$ 190,950	10,443	\$ 209,278
33,008	\$ 448,918	8,450	\$ 168,493

erence between the closing sale price of the Common Stock on the date of exercise and the exercise price of

number of shares multiplied by the closing sale price of the Common Stock on the vesting date.

**Compensation**

Deferred Compensation Plan, which is described in the section entitled Compensation Discussion and Analysis for 2009 Deferred Compensation Plan.





and (ii) abiding by the non-competition and non-solicitation provisions of his employment agreement for a period of 24 months following termination of employment.

On December 31, 2009 at a transaction price of \$15.23, the closing price of our Common Stock on December 31, 2009. In the case with all employees who hold equity awards, Mr. Kanofsky's unvested RSUs and PSUs (collectively, "Units") will vest immediately upon the CIC (having a value of \$2,529,932). If Mr. Kanofsky's employment is terminated without cause or if he terminates his employment for good reason, as defined in the CIC Plan, within one year following the CIC, he would receive, in lieu of the above-described severance payments, (i) a severance payment equal to two times his annual base salary and target incentive bonus in effect at the time of his termination, whichever is greater, payable in a lump sum (\$3,000,000 as of December 31, 2009) and (ii) continuation of Company-paid primary and supplemental executive health benefits for Mr. Kanofsky and his eligible dependents for 18 months following termination as provided above. Additionally, Mr. Kanofsky would be entitled to be reimbursed (grossed-up) for any excise tax payable by him under Section 4999 of the Code as well as any income and excise taxes payable by him as a result of the reimbursement for the Section 4999 excise tax. Under the CIC Assumption, no excise tax would be payable by Mr. Kanofsky. Such severance payments and benefits would be provided to Mr. Kanofsky upon signing a release of all claims against the Company.

Mr. Nielsen's employment without cause (including failing to renew his employment agreement at the end of any annual term) or if he terminates his employment for good reason, in either case at any time prior to a CIC or after one year following a CIC, he would receive (i) severance equal to two times his annual base salary, payable in equal installments over 24 months (a total of \$1,746,176 as of December 31, 2009) and (ii) continuation of Company-paid primary and supplemental executive health benefits for Mr. Nielsen and his eligible dependents for 24 months (having an estimated cost to the Company of \$33,000 as of December 31, 2009). Such payments and benefits would be provided to Mr. Nielsen upon signing a release of all claims against the Company and (ii) abiding by the non-competition and non-solicitation provisions of his employment agreement for a period of 24 months following termination of employment.

Mr. Nielsen's unvested stock options and Units would vest immediately upon the CIC (having a value of \$1,746,176). If Mr. Nielsen's employment is terminated without cause, or if he terminates his employment for good reason, as defined in the CIC Plan, within one year following the CIC, he would receive, in lieu of the above-described severance payments, (i) a severance payment equal to two times his annual base salary and target incentive bonus in effect at the time of the CIC or at the time of his termination, whichever is greater, payable in a lump sum (\$3,000,000 as of December 31, 2009) and (ii) continuation of Company-paid primary and supplemental executive health benefits for Mr. Nielsen and his eligible dependents for 24 months following termination as provided above. Additionally, Mr. Nielsen would be entitled to be grossed-up for any excise tax payable by him under Section 4999 of the Code as well as any income and excise taxes payable by him as a result of the reimbursement for the Section 4999 excise tax. The tax gross-up is expected to have a value of \$1,028,943, based on the CIC Assumption, a Section 4999 excise tax rate of 35%, a 1.45% Medicare tax rate, a 1.45% Medicare tax rate and a state income tax rate of 5%. Such severance payments and benefits would be provided to Mr. Nielsen upon signing a release of all claims against the Company.

Mr. Hodges' employment without cause (including failing to renew his employment agreement at the end of any annual term) or if he terminates his employment for good reason, in either case at any time prior to a CIC or after one year following a CIC, he would receive (i) severance equal to two times his annual base salary, payable in equal installments over 24 months (a total of \$1,746,176 as of December 31, 2009) and (ii) continuation of Company-paid primary and supplemental executive health benefits for Mr. Hodges and his eligible dependents for 24 months following termination as provided above.

ed cost to the Company of \$33,000 as of December 31, 2009). Such payments and benefits would be contingent on  
 ease of all claims against the Company and (ii) abiding by the non-competition and non-solicitation provisions of his  
 period of 24 months following termination of employment.

a, Mr. Hodges' unvested stock options and RSUs would vest immediately upon the CIC (having a value of \$1,406,251). If  
 terminated without cause, or if he terminates his employment for good reason, as defined in the CIC Plan, within one year  
 receive, in lieu of the above-described severance payments, (i) a severance payment equal to two times his annual base  
 nus in effect at the time of the CIC or at the time of his termination, whichever is greater, payable in a lump sum  
 31, 2009) and (ii) continuation of Company-paid primary and supplemental executive health benefits for Mr. Hodges and  
 months following termination as provided above. Additionally, Mr. Hodges would be entitled to be grossed-up for any  
 der Section 4999 of the Code as well as any income and excise taxes payable by him as a result of the reimbursement for  
 The tax gross-up is expected to have a value of \$1,127,016, based on the CIC Assumption, a Section 4999 excise tax rate  
 e tax rate, a 1.45% Medicare tax rate and no state income tax. Such severance payments and benefits would be contingent  
 ease of all claims against the Company.

Mr. Walsh's employment without cause (including failing to renew his employment agreement at the end of any annual  
 rates his employment for good reason, in either case at any time prior to a CIC or after one year following a CIC,  
 ve (i) severance equal to one times his annual base salary, payable in equal installments over 12 months (a total of  
 2009) and (ii) continuation of Company-paid primary and supplemental executive health benefits for Mr. Walsh and his  
 nths (having an estimated cost to the Company of \$36,830 as of December 31, 2009). Such payments and benefits would  
 s (i) signing a release of all claims against the Company and (ii) abiding by the non-competition and non-solicitation  
 agreement for a period of 12 months following termination of employment.

n, Mr. Walsh's unvested stock options and Units would vest immediately upon the CIC (having a value of \$1,319,033). If  
 terminated without cause, or if he terminates his employment for good reason, as defined in the CIC Plan, within one year  
 receive, in lieu of the above-described severance payments, (i) a severance payment equal to one and one-half times his  
 incentive bonus in effect at the time of the CIC or at the time of his termination, whichever is greater, payable in a lump  
 ber 31, 2009) and (ii) continuation of Company-paid primary and supplemental executive health benefits for Mr. Walsh  
 r 18 months following termination as provided above. Additionally, Mr. Walsh would be entitled to be grossed-up for any  
 der Section 4999 of the Code as well as any income and excise taxes payable by him as a result of the reimbursement for  
 Based on the CIC Assumption, no excise tax would be payable by Mr. Walsh. Such severance payments and benefits  
 Walsh's signing a release of all claims against the Company.

ate Mr. Steinbauer's employment without cause, or if Mr. Steinbauer terminates his employment for any reason, including  
 ion, death or disability, Mr. Steinbauer is entitled to receive (i) a lump-sum severance payment of \$275,000,  
 paid primary and supplemental executive health benefits for Mr. Steinbauer and his eligible dependents for 18 months  
 he Company of \$33,000 as of December 31, 2009) and (iii) an extension of the right to exercise all of his stock options  
 e of termination until the later of one year following termination or 90 days after the cessation

(including a relationship as a Director or consultant) with the Company. Such payments and benefits would be contingent on the release of all claims against the Company. Mr. Steinbauer's employment agreement contains a covenant not to compete (including a non-solicitation covenant) for a period of one year following termination of employment, although the foregoing is expressly conditioned on Mr. Steinbauer's abiding by the non-competition covenant. Mr. Steinbauer would not be entitled to payments or benefits in the event of a CIC, other than the immediate vesting of all of his unvested stock options and Units (based on the CIC Assumption) and the payments and benefits provided on a non-discriminatory basis to salaried

When an officer's employment terminates for any reason, whether before or after a CIC, the officer's vested account balance in the Plan will be distributed to him in a lump sum or, in the case of retirement, over a period of years previously selected by the officer. In 2009, these balances are: Mr. Kanofsky \$998,308; Mr. Nielsen \$178,314; Mr. Hodges \$0; Mr. Walsh \$1,211,892;

With respect to the reimbursement of Section 4999 excise and related taxes to Messrs. Kanofsky, Nielsen, Hodges and Walsh in connection with the payments and benefits described above are subject to applicable income, Medicare and other tax withholding.

As of the end of 2009, the non-employee Directors of the Company (currently, Messrs. Kanofsky, Nielsen, Hodges and Steinbauer) receive no additional compensation for services rendered. In 2009, we provided the following compensation to non-employee Directors.

**Director Compensation for 2009**

<b>Fees Earned or Paid in Cash (\$)</b>	<b>Option Awards (\$)(1)</b>	<b>Stock Awards (\$)(1)</b>	<b>All Other Compensation (\$)</b>	<b>Total (\$)</b>
\$ 72,500	\$ 28,162	\$ 69,825	\$ 4,000(2)	\$ 174,487
\$ 72,500	\$ 28,162	\$ 69,825	\$ 0	\$ 170,487
\$ 82,500	\$ 28,162	\$ 69,825	\$ 0	\$ 180,487
\$ 87,500	\$ 28,162	\$ 69,825	\$ 0	\$ 185,487

The fair value of the grant of stock options and RSUs to Directors in 2009. All options and RSUs granted to Directors are exercisable in equal installments over a period of four years from the grant date. The grant date fair value of the stock options and RSUs was calculated in accordance with ASC Topic 718. Regardless of the value placed on a stock option or RSU on the grant date, the value realized by the Director from the option or RSU will depend on the market price of the Common Stock at the time the option is exercised or the RSU vests. The following table shows the total number of stock options and RSUs outstanding as of December 31, 2009.

<b>Total Options Outstanding at December 31, 2009</b>	<b>Total Stock Awards Outstanding at December 31, 2009</b>
46,250	9,375
46,250	9,375
84,750	9,375
83,750	9,375



fees paid to Mr. Brooks for service as Chairman of the Compliance Committee that oversees our Gaming. The Compliance Committee is not a Board committee.

Director received an annual Director's fee of \$50,000, paid in quarterly installments, plus \$4,500 for each Board meeting. Members of the Audit and Compensation Committees received an additional annual fee of \$15,000 and \$10,000, respectively, in their respective capacities. Pursuant to our 2002 Non-Employee Directors' Stock Election Plan, each non-employee Director may elect to receive all or part of his or her Director's and Board committee fees in shares of Common Stock in lieu of cash. None of our current

The Program requires one of the members of the Compliance Committee that oversees that Program to be an outside Director of the Company. Mr. Brooks currently serves as the Chairman of the Compliance Committee. For these additional services, Mr. Brooks receives compensation for each meeting, whether attended in person or by telephone. Mr. Steinbauer is also a member of the Compliance Committee, but does not receive any compensation for these services.

We granted 3,750 RSUs and options to purchase 3,750 shares of Common Stock to each non-employee Director on July 31, 2009. The RSUs are exercisable in equal installments over a period of four years from the grant date. We also reimburse each non-employee Director for out-of-pocket expenses incurred in his or her capacity as a member of the Board or its committees. No payments are made for travel to meetings of the Board or its committees or actions taken in writing.

## Information

The following table contains certain information regarding our equity compensation plans as of December 31, 2009.

	<b>Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)</b>	<b>Weighted-average exercise price of outstanding options, warrants and rights (b)</b>	<b>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)</b>
Approved by the Board	6,595,708(1)	\$ 20.42(1)	5,010,920(1)(2)
Not approved by the Board	0		0
	6,595,708(1)	\$ 20.42(1)	5,010,920(1)(2)

The table includes outstanding stock options, restricted stock units and performance share units. The numbers of performance share units earned are based on the achievement of the specific performance objectives at the end of the period. As of December 31, 2009, approximately 45% of the target number of performance share units were earned and outstanding. The weighted-average exercise price shown in column (b) does not take into account the restricted stock units.

The following table shows the number of shares of Common Stock remaining available for future issuance under our 2002 Non-Employee Directors' Stock



## REPORT OF AUDIT COMMITTEE

During the 2009 fiscal year, the Audit Committee has reviewed and discussed our audited financial statements with our independent registered public accounting firm. The Audit Committee has also discussed with our independent registered public accounting firm the matters required to be disclosed under the *Professional Standards*, AU Section 380). The Audit Committee has received from our independent registered public accounting firm the disclosures and the letter required by applicable requirements of the Public Company Accounting Oversight Board regarding the firm's communications with the Audit Committee concerning independence, and has discussed with the independent registered public accounting firm their independence. Based on the foregoing review and discussions, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in our 2009 Form 10-K.

man

## TRANSACTIONS WITH RELATED PERSONS

### Transactions with Related Persons

The Company is committed to upholding the highest standards of legal and ethical conduct in fulfilling its responsibilities and recognizes that transactions with related persons present a heightened risk of potential or actual conflicts of interest. Accordingly, as a general matter, it is our preference to avoid transactions with related persons.

The Company has adopted a written policy and procedures for review, approval and monitoring of transactions involving the Company or one of its related parties (defined as Directors, nominees for election as Directors, executive officers and stockholders owning more than 1% of the Company's Common Stock, or members of their immediate families). The policy generally covers any related party transaction in which the aggregate amount involved will or is expected to exceed \$100,000 in any calendar year in which a related party has a direct or material indirect interest.

The Audit Committee will review the material facts of all related party transactions and either approve or disapprove of the Company's entry into the transaction. If the Audit Committee approval is not feasible, the related party transaction will be considered and, if the Audit Committee approves, ratified at the Audit Committee's next regularly scheduled meeting. In determining whether to approve or ratify a related party transaction, the Audit Committee will take into account, among other factors, whether the transaction is on terms no less favorable to the Company than a transaction with an unaffiliated third party under similar circumstances and the extent of the related party's interest in the transaction. The Audit Committee has determined that certain types of related party transactions that are not considered to involve a significant risk of conflicts of interest are deemed to be pre-approved or ratified by the Audit Committee under the policy. Additionally, the Board has granted the Audit Committee the authority to pre-approve or ratify any related party transaction in which the aggregate amount involved is less than \$250,000.

in any discussion or approval of a related party transaction in which he or she is a related party, but will provide all information concerning the transaction to the Audit Committee. If a related party transaction will be ongoing, the Audit Committee may determine the appropriate course of action to follow in its dealings with the related party. Thereafter, the Audit Committee, on at least an annual basis, will review the Company's relationships with the related party to see that they are in compliance with the Audit Committee's guidelines and that the related party is acting in the best interests of the Company.

Any executive officer, director, or nominee, or a greater-than-5% stockholder employed by the Company, who proposes to enter into a related party transaction, shall notify the Chairman of the Audit Committee prior to engaging in the transaction and provide all material information concerning the transaction to the Chairman. Any executive officer or Director who becomes aware that the Company proposes to enter into a related party transaction, shall notify the Chairman. Any greater-than-5% stockholder who is not employed by the Company must provide this notification to the Chairman.

All such transactions will be disclosed in our filings with the SEC to the extent required under SEC rules.

### **Related Party Transactions**

The Company's transactions and relationships was reviewed and approved by the Audit Committee pursuant to the Board's related party policy set forth above:

The Neilsen Foundation is a private charitable foundation established by Craig H. Neilsen, our former Chairman of the Board, Chief Executive Officer and a former Director of the Company. The foundation is primarily dedicated to spinal cord injury research and treatment. Our former Director of Charitable Giving and a former full-time employee of the Neilsen Foundation and continues to occupy Company office space without charge to the Neilsen Foundation. The Neilsen Foundation receives Company-provided administrative assistance under a revocable license from the Company. The Neilsen Foundation reimburses the Company \$100,000 per year for the Company's estimated cost of providing administrative assistance. Messrs. Ray H. Neilsen and Robert Kanofsky are members of the board of directors of the Neilsen Foundation and devote a portion of their time to its affairs, and Messrs. Neilsen and Kanofsky provide services to the Neilsen Foundation on an incidental basis. As part of its charitable giving program, the Company supports the goals and objectives of the Neilsen Foundation and considers the expenditure of time by Company employees on behalf of the Neilsen Foundation without compensation to the Company (except as described above) to be consistent with those goals and objectives. The Audit Committee has waived the Company's policy requiring the Neilsen Foundation to reimburse the Company for services provided to the Neilsen Foundation.

Messrs. Neilsen and Kanofsky are the co-executors of the Neilsen Estate. Since Craig Neilsen's death in 2006, Messrs. Neilsen and Kanofsky have continued to provide for an indefinite period, personal services in connection with the administration of the Neilsen Estate. The Audit Committee reviewed the provision of these services to the Neilsen Estate as well as the time and effort devoted by Messrs. Neilsen and Kanofsky to the Company, and the Audit Committee has determined that it has not detracted and will not detract in any significant manner from the Company's performance. Messrs. Neilsen's and Kanofsky's respective duties to the Company, has not resulted and will not result in the Company incurring any additional cost or other costs and does not create a conflict of interest. Accordingly, the Audit Committee has waived the Company's policy requiring reimbursement to the Company with respect to services provided to the Neilsen Estate by Messrs. Neilsen and Kanofsky in their capacities as co-executors of the Neilsen Estate. The Audit Committee will review periodically, not less than annually, the relevant facts and

whether it is appropriate and in the best interest of the Company to rescind this waiver or modify it in any respect. This Audit Committee in July 2009.

### **FORM 10-K**

**Request to each stockholder, upon oral or a written request addressed to Ameristar Casinos, Inc., 3773 Howard Hughes Parkway, Las Vegas, Nevada 89169, Attention: Investor Relations Department, a copy of our 2009 Form 10-K (excluding the exhibits) to the SEC. We will provide a copy of the exhibits to our 2009 Form 10-K upon the written request of any beneficial owner of the record date for the Annual Meeting and reimbursement of our reasonable expenses. The request should be addressed to:**

### **FUTURE STOCKHOLDER PROPOSALS**

Proposals intended to be presented at our 2011 Annual Meeting of Stockholders and included in our proxy statement and form of proxy must be submitted sufficiently far in advance so that it is received by us not later than January 7, 2011. In the event that any stockholder nomination is presented at the 2011 Annual Meeting of Stockholders other than in accordance with the procedures set forth in the Exchange Act, proxies solicited by the Board of Directors for such meeting will confer upon the proxy holders the right to vote on any matter so presented of which we do not have notice by April 2, 2011.

### **OTHER MATTERS**

The Board of Directors and management knows of matters other than those stated above to be voted on at the Annual Meeting. However, if any other matters are presented at the Annual Meeting, the persons named as proxies are empowered to vote in accordance with their discretion on those matters.

The 2009 Annual Report is being mailed under the same cover as this proxy statement to each person who was a stockholder of record as of the record date. The 2009 Annual Report will be considered a part of the proxy soliciting material. The Company will deliver only one proxy statement and 2009 Annual Report to multiple stockholders sharing an address unless the Company has received contrary instructions from one or more of the stockholders. The Company will undertake to deliver promptly, upon written or oral request, a separate copy of the proxy statement and 2009 Annual Report to a stockholder at a shared address to which a single copy of such documents is delivered. A stockholder can request a separate copy of the proxy statement and 2009 Annual Report by contacting the Investor Relations Department, Ameristar Casinos, Inc., 3773 Howard Hughes Parkway, Suite 490 South, Las Vegas, Nevada 89169, Attention: Investor Relations Department, (702) 735-0000. Similarly, stockholders sharing an address who are receiving multiple copies of the proxy statement and 2009 Annual Report may request delivery of a single copy of the proxy statement and/or 2009 Annual Report by contacting the Investor Relations Department at the telephone number set forth above.

**PLEASE COMPLETE, SIGN AND RETURN  
THE ENCLOSED PROXY PROMPTLY**

NC.  
ctors

Gordon R. Kanofsky  
*Chief Executive Officer and Vice Chairman*

35

---

NOS, INC.

your votes with an X as shown in x  
rite outside the designated areas.

rd

**THE PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED ENVELOPE.**

of Directors recommends a vote **FOR** all the nominees listed and **FOR** Proposal 2.

Carl Brooks      **02 - Gordon R. Kanofsky**      **03 - J. William Richardson**      +

**R** all nominees

**OLD** vote from all nominees

withhold a vote for one or more      01      02      03  
o      o      o

ne corresponding numbered box(es)

tion of the Company s independent      **For**      **Against**      **Abstain**  
g firm for 2010.      o      o      o

business as may properly come before the Meeting or any adjournments or  
either the Board of Directors nor management currently knows of any other  
y or on behalf of the Company or the Board of Directors at the Meeting.

print new address below.

**Meeting Attendance**

Mark box to the right   
if you plan to attend  
the Annual Meeting.

**This section must be completed for your vote to be counted. Date and Sign Below**  
Print your name as it appears on your stock certificates. (Executors, administrators, trustees, etc., should give their  
signature.)

Print date below. Signature 1 Please keep signature within the box. Signature 2 Please keep signature within the box.

**THE PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED ENVELOPE.**

6

**AMERISTAR CASINOS, INC.**

**STOCKHOLDERS JUNE 16, 2010**

Mr(s) of Ameristar Casinos, Inc. (the Company ) hereby nominates, constitutes and appoints Ray H. Neilsen, Larry A. Weinbauer, and each of them, the attorney, agent and proxy of the undersigned, with full power of substitution, to vote all the undersigned is entitled to vote at the Annual Meeting of Stockholders of the Company (the Meeting ) to be held at the Casino Hotel Kansas City, 3200 North Ameristar Drive, Kansas City, Missouri 64161, at 8:00 a.m. (local time) on and any and all adjournments or postponements thereof, with respect to the matters described in the accompanying Proxy Statement, on such other matters that properly come before the Meeting, as fully and with the same force and effect as the undersigned if personally present thereat, as specified on the reverse.

THE BOARD OF DIRECTORS RECOMMENDS: (1) A VOTE **FOR** THE ELECTION OF EACH OF THE NOMINEES AS DIRECTORS; AND (2) THE REAFFIRMATION OF THE SELECTION OF THE COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM. THE BOARD CONFERS AUTHORITY TO VOTE AND SHALL BE VOTED IN SUCH MANNER UNLESS OTHER INSTRUCTIONS ARE SPECIFIED. IN EACH CASE THIS PROXY SHALL BE VOTED IN ACCORDANCE WITH SUCH INSTRUCTIONS.

**IF THIS PROXY IS PRESENTED AT THE MEETING, THIS PROXY SHALL BE VOTED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE BOARD OF DIRECTORS.**

**THIS PROXY IS REVOKED ON BEHALF OF THE BOARD OF DIRECTORS AND MAY BE REVOKED PRIOR TO ITS EXERCISE. THE BOTTOM PORTION ON THE REVERSE SIDE OF THIS PROXY.**