UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

All Actions.
_____/

MDL ORDER NUMBER 24

CONFIDENTIALITY STIPULATION AND PROTECTIVE ORDER

WHEREAS, the parties to *Fontainebleau Las Vegas, LLC v. Bank of America, N.A.*, et al., Case No. 1:09-cv-21879-ASG (S.D. Fla.); and the parties and former parties to *Avenue CLO Fund, Ltd.*, et al. *v. Bank of America, N.A.*, et al., Case No. 1:09-cv-23835-ASG (S.D. Fla.); and *ACP Master, Ltd.*, et ano. *v. Bank of America, N.A.*, et al., Case No. 1:10-cv-20236-ASG (S.D. Fla.), all of which have been consolidated for pre-trial purposes under the caption *In re Fontainebleau Las Vegas Contract Litigation*, MDL No. 2106 (together, the "Parties," or individually, a "Party"), seek to enter into a confidentiality stipulation and protective order to govern discovery and the use of discoverable materials or information in the above-captioned cases and in any other related proceeding hereafter transferred to and consolidated therewith (collectively, the "MDL Actions");

WHEREAS, the Parties have conferred and agree that the MDL Actions may require the discovery, production, disclosure, and use of certain documents, information and other materials that contain information that is confidential, proprietary or otherwise inappropriate for public disclosure, and, in certain instances, disclosure directly to the Parties; and

WHEREAS, the Parties desire to be protected against potential disadvantage, financial loss, hardship and/or substantial prejudice that may result from the unauthorized or inappropriate disclosure of confidential proprietary documents, or other information, or materials;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties through their undersigned counsel, and;

IT IS HEREBY ORDERED that this Confidentiality Stipulation and Protective Order (the "Order") shall govern the use and handling of documents, including deposition testimony and transcripts, deposition notices and exhibits, interrogatories and interrogatory responses, requests for admissions and responses, and any other information or material provided, disclosed, produced, given, or exchanged by, between, and among the parties and any non-parties in connection with proceedings in the MDL Actions (such information or material hereinafter referred to as "Covered Material") and any briefs, affidavits or other court documents containing or otherwise disclosing such Covered Material:

1. Any Party or non-party to the MDL Actions disclosing, producing, giving or exchanging any documents, information or material in connection with proceedings in the MDL Actions, or whose documents, information, or material is being disclosed, produced, given, or exchanged by another Party or non-party in connection with the MDL Actions (the "Disclosing Party"), may designate any Covered Material as "Confidential" under the terms of this Order if such party in good faith reasonably believes that such Covered Material contains confidential,

proprietary or commercially or personally sensitive information that requires the protections provided in this Order ("Confidential Information").

2. Any Disclosing Party may designate any Covered Material as "Highly Confidential" under the terms of this Order if such party in good faith reasonably believes that such Covered Material consists of highly sensitive information, the disclosure of which to the adverse party, even subject to the terms governing Confidential Information under this Order, is substantially likely to cause competitive business injury ("Highly Confidential Information"); provided, however, that only that portion of Covered Material that contains Highly Confidential Information shall be designated Highly Confidential.

3. Nothing herein precludes any Party from challenging a designation of Covered Material as Confidential or Highly Confidential, or constitutes an acknowledgement that any Covered Material or category of Covered Material (including those set forth above) are discoverable or appropriate for designation as Confidential or Highly Confidential. If any Party objects to or disagrees with a Disclosing Party's designation of Covered Material as Confidential or Highly Confidential, they shall confer with the Disclosing Party and the parties shall attempt to resolve the objection or disagreement. To the extent the parties are not able to resolve any objection or disagreement, the provisions of paragraph 23 of this Order will apply; provided, however, that it is contemplated that every effort shall be made to resolve a dispute of a designation as Confidential or Highly Confidential within two (2) business days.

4. The designation by any Disclosing Party of Covered Material as Confidential or Highly Confidential shall constitute a representation that such Confidential Information has been reviewed by an attorney (which, for purposes of this paragraph, includes contract attorneys reviewing documents under the supervision of outside counsel) for the Disclosing Party and that

there is a reasonable good-faith basis for such designation.

5. For the purposes of this Order, any Disclosing Party may apply, upon notice, for an order to supplement the foregoing categories of Confidential or Highly Confidential information.

6. Covered Material, or information contained therein or derived therefrom, shall be used solely for prosecution and/or defense of the MDL Actions or any appeals therefrom, and shall not be used for any other purpose, including, without limitation, any business or commercial purposes or any other litigation or proceeding.

7. The designation of Covered Material as Confidential or Highly Confidential for purposes of this Order shall be made in the following manner by any Disclosing Party:

(a) For documents or other materials (apart from depositions or other pretrial testimony), by affixing the legend "Confidential" or "Highly Confidential" to each page containing any Confidential or Highly Confidential information; provided that the failure to designate a document (or a portion of a document) as Confidential or Highly Confidential shall not constitute a waiver of such claim, and a Disclosing Party may so designate a document thereafter by providing written notice to all other parties together with properly designated copies of said document within five (5) business days of becoming aware of such failure to designate, with the effect that such document is thereafter (including previously produced copies) subject to the protections of this Order. In the case of Confidential or Highly Confidential documents or materials that are inadvertently produced without the appropriate designation, but that were otherwise intended to be produced, the Disclosing Party shall deliver to each party to whom the Confidential or Highly Confidential documents or materials were inadvertently produced copies of the Confidential or Highly Confidential documents or material

containing the appropriate designation and each such party shall return or destroy the Confidential or Highly Confidential documents or materials that were produced without the appropriate designation;

(b) For depositions or other pretrial testimony, (i) by a statement on the record, by counsel, at the time of such disclosure; or (ii) by written notice, sent to all parties within ten (10) business days after receiving a copy of the final certified transcript thereof, and in both of the foregoing instances, by directing the court reporter that the appropriate confidentiality legend be affixed to all pages of the original and all copies of the transcript containing any Confidential or Highly Confidential information. Until expiration of the ten (10) business day period, all deposition testimony shall be deemed Confidential and treated as if so designated. The Parties may modify this procedure for any particular deposition, through agreement on the record at such deposition, without further order of the Court; and

(c) For Covered Material that is disclosed or produced in a non-paper medium (*e.g.*, videotape, DVD, CD, audiotape, computer disks, etc.), by affixing the legend "Confidential" or "Highly Confidential" on the medium, if possible, and its container, if any, so as to clearly give notice that the medium contains Confidential and/or Highly Confidential information. Documents produced in PDF or TIFF image format on a CD-ROM or other non-paper medium shall be marked in the manner provided for in paragraph 7(a) above.

8. Except as specifically provided for in this Order or subsequent Court orders or stipulations among the Parties (and the relevant non-party if the Confidential information in question was produced by a non-party), Covered Material produced in the MDL Actions and designated Confidential may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to the following persons:

(a) Outside counsel for the Parties in the MDL Actions, and regular and temporary employees, including clerical, paralegal and secretarial staff, and service vendors of such counsel (including outside copying and litigation support services including, without limitation, contract attorneys) assisting in the conduct of the MDL Actions for use in accordance with this Order;

(b) The parties to the MDL Actions, which for any Party that is an entity means any of its current directors, officers, in-house counsel, employees and general or limited partners who are actively participating in or assisting those parties in the MDL Actions;

(c) Experts, advisors, or consultants (together with their staff) assisting the Parties or their counsel in the MDL Actions; provided that any report created by such expert, advisor or consultant relying on or incorporating Confidential Information, in whole or in part, shall be designated Confidential;

(d) Any person indicated on the face of a document to be the author, addressee, or a copy recipient of the document, or as to whom there has been deposition or trial testimony that the person was the author or a recipient of the document;

(e) Subject to and in accordance with paragraph 9, witnesses or deponents and their counsel, during the course of and, to the extent necessary, in preparation for depositions or testimony in the MDL Actions; provided, however, that no copies or notes relating to the Confidential Information shall be made by such person;

(f) The Court and its employees; and

(g) Court reporters employed in connection with the MDL Actions.

9. Except as specifically provided for in this Order or subsequent Court orders or stipulations among the Parties (and the relevant non-party if the Highly Confidential information in question was produced by a non-party), Covered Material produced in the MDL Actions and designated Highly Confidential may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to the following persons:

(a) Outside counsel for the Parties in the MDL Actions, and regular and temporary employees, including clerical, paralegal and secretarial staff, and service vendors of such counsel (including outside copying and litigation support services including, without limitation, contract attorneys) assisting in the conduct of the MDL Actions for use in accordance with this Order;

(b) Experts, advisors, or consultants (together with their staff) assisting the Parties or their counsel in the MDL Actions; provided that any report created by such expert, advisors or consultant relying on or incorporating Highly Confidential Information, in whole or in part, shall be designated Highly Confidential;

(c) Any person indicated on the face of a document to be the author, addressee, or a copy recipient of the document, or as to whom there has been deposition or trial testimony that the person was the author or a recipient of the document;

(d) The Court and its employees; and

(e) Court reporters employed in connection with the MDL Actions;

10. Persons identified in paragraphs 8(c), 8(e), and 9(b) above who do not fall within the descriptions in paragraph 8(b) and to whom Confidential and/or Highly Confidential Information is disclosed shall prior to such disclosure be required to sign an undertaking (a "Confidentiality Undertaking") in the form attached as Exhibit A hereto, agreeing in writing to

be bound by the terms and conditions of this Order, consenting to the jurisdiction of the Court for purposes of the enforcement of this Order, and agreeing not to disclose or use any Confidential and/or Highly Confidential information in a manner or for purposes other than those permitted hereunder; provided, however, that a non-party witness to whom Confidential and/or Highly Confidential information is first disclosed at deposition need not be required to sign a copy of the Confidentiality Undertaking in order to be bound by the terms hereof. Showing a Confidential or Highly Confidential document to a deponent does not waive the confidentiality protections otherwise afforded that document. The attorneys of record making Confidential and/or Highly Confidential information available to any person required to execute a copy of the Confidentiality Undertaking pursuant to this paragraph shall be responsible for obtaining such signed undertaking and for maintaining all original, executed copies of such Confidentiality Undertakings. Copies of any executed Confidentiality Undertaking shall be disclosed to counsel for the Disclosing Party upon agreement of the parties, which agreement shall not be unreasonably withheld, or upon further Court order. The requirements of this provision are not applicable to non-testifying, consulting experts.

11. To the extent non-parties are authorized by Court order or consent of all Parties hereto to attend a deposition or otherwise participate in discovery in this Action that may involve Confidential and/or Highly Confidential Information, such non-party must sign a Confidentiality Undertaking in the form attached as Exhibit A hereto, agreeing in writing to be bound by the terms and conditions of this Order, consenting to the jurisdiction of the Court for purposes of the enforcement of this Order, and agreeing not to disclose or use any Confidential and/or Highly Confidential Information in a manner or for purposes other than those permitted hereunder.

12. Every person given access to Confidential or Highly Confidential Information shall be advised that the information is being disclosed pursuant and subject to the terms of this Order and may not be disclosed other than pursuant to the terms hereof.

13. Any Party seeking discovery from a non-party shall provide a copy of this Order to the non-party and notify the non-party that the protections of this Order are available to such non-party. Any non-party from whom discovery is sought in the MDL Actions may obtain the protection of this Order by signing and providing to outside counsel for the party seeking the discovery a certification and agreement, substantially in the form attached hereto as Exhibit B, stating that the non-party has read the Order, understands the terms of the Order, agrees to be fully bound by the Order, submits to the jurisdiction of this Court for purposes of enforcement of the Order, and understands that any violation of the terms of the Order shall be punishable by relief deemed appropriate by the Court.

14. Counsel for any Disclosing Party shall have the right to exclude from depositions any person who is not authorized by this Order to receive documents or information designated Confidential or Highly Confidential. Such right of exclusion shall be applicable only during periods of examination or testimony directed to or comprising information which is Confidential or Highly Confidential.

15. Counsel for any party wishing to file documents of any nature, including briefs, which have been designated as Confidential or Highly Confidential, or that would disclose information from a document that has either been designated as Confidential or Highly Confidential, or would otherwise be required to be filed under seal, shall move to file such documents with the Court under seal and, providing that the Court approves the motion to file under seal, a statement shall be endorsed on the cover:

"CONFIDENTIAL – SUBJECT TO COURT ORDER"

It is understood that all such materials so filed shall be maintained by the Clerk separate from public records and shall be released only upon further Order of this Court in accordance with Local Rule 5.4. Upon the conclusion of any of the MDL Actions, any party may seek the return or destruction of documents it has filed under seal pursuant to this paragraph. Any such documents shall remain subject to the provisions of this Order.

16. Entering into, agreeing to and/or producing or receiving Confidential or Highly Confidential Information pursuant to or otherwise complying with the terms of this Order shall not:

(a) Operate as an admission that any discovery is appropriate or warranted in the MDL Actions, or an admission or waiver as to the proper scope of discovery in the MDL Actions;

(b) Operate as an admission that any document designated Confidential or Highly Confidential contains or reflects trade secrets or any other type of Confidential Information;

(c) Prejudice in any way the rights of any Party or non-party to object to the production of documents they consider not subject to discovery, or operate as an admission by any Party or non-party that the restrictions and procedures set forth herein constitute adequate protection for any particular information deemed by any Party to be Confidential or Highly Confidential Information;

(d) Prevent the Parties to this Order from agreeing to alter or waive the provisions or protections provided herein with respect to any particular Covered Material;

(e) Prejudice in any way the rights of any Party to object to the authenticity or admissibility into evidence of any document, testimony or other evidence subject to this Order;

(f) Prejudice in any way the right of any Party or non-party to seek a determination by the Court whether any Confidential or Highly Confidential Information should be subject to the terms of this Order;

(g) Prejudice in any way the right of any Party or non-party to petition the Court for a further protective order relating to any purportedly confidential information;

(h) Waive, supersede, or amend the provisions of any prior confidentiality agreement between and/or among defendants, any of the Parties or non-parties, and/or any other person; and

(i) Be construed or operate as a waiver of any claim of privilege or immunity with respect to the production of any document.

(j) This Order has no effect upon, and shall not apply to, the Parties' or non-parties' use of their own Confidential or Highly Confidential Information for any purpose. Nothing herein shall prevent or in any way limit disclosure, use or dissemination of any information or documents that are in the public domain through no violation of this Order. The following shall not constitute Confidential documents or material for purposes of this Order: (i) information that is or becomes generally available to the public other than as a result of a violation of this Order; (ii) information that was already in the files of a Party, other than the Disclosing Party, on a non-confidential basis prior to be being produced to such Party; (iii) information that becomes available to any Party on a non-confidential basis if the source was not, to the best of the receiving Party's knowledge, subject to any prohibition against transmitting the information to it; or (iv) information independently developed by any Party, other than the Disclosing Party, without use of Confidential documents or material. Nothing herein shall impose any restriction on the use or disclosure by a party of documents, materials or information

designated as "Confidential" or "Highly Confidential" that have been obtained lawfully by such party independently of the discovery proceedings in the MDL Actions.

17. The production, transmission, or disclosure of any material that is arguably or actually subject to a claim of privilege or of protection as trial preparation material ("Privileged Covered Material") shall not prejudice, or constitute a waiver (either as to the specific document disclosed or as to other documents or communications concerning the same subject matter) of, or estop a party from asserting, any claim of privilege, work product or other ground for withholding production of that material. This "non-waiver" provision shall be construed in a manner consistent with Federal Rule of Evidence 502(b). If Privileged Covered Material has been produced, transmitted, or disclosed, the party making the claim of privilege, work product or other ground for withholding may notify the receiving party and state the basis for the claim. After being notified, the receiving Party (i) must promptly return or destroy the Privileged Covered Material and any copies (paper or electronic) the receiving Party has of it and (ii) may not make any disclosure of the Privileged Covered Material or use the Privileged Covered Material, or information gleaned from Privileged Covered Material, in connection with the MDL Actions or for any other purpose until the claim is resolved (even if such a disclosure were otherwise permissible hereunder); provided, however, that a receiving Party may retain one copy of the Privileged Covered Material solely for purposes of submitting the Privileged Covered Material to the Court under seal for a determination of the claim of privilege. If a receiving Party disclosed the Privileged Covered Material before being notified, the receiving Party must make reasonable steps to retrieve it. This provision is intended to facilitate the production of electronic or paper records. No Party or non-party, by virtue of agreeing to this paragraph, is assuming any obligation, or in any way undertaking, to produce privileged matter, and no Party

or non-party is agreeing to waive any applicable privilege.

18. In the event additional Parties join or intervene in any of the MDL Actions, including proceedings consolidated with the existing MDL Actions after the entry of this Order, such Parties shall not have access to Confidential or Highly Confidential Information until counsel for each newly joined or intervening party has executed a Confidentiality Undertaking evidencing the newly joined or intervening party's intent to be bound by this Order, which shall be filed with the Court promptly.

19. The Parties agree to be bound by the terms of this Order pending the entry by the Court of this Order and any violation of its terms shall be subject to the same sanctions and penalties, as if this Order had been entered by the Court.

20. The attorneys of record shall take reasonable measures, consistent with this Order, to prevent the unauthorized disclosure or use of Confidential or Highly Confidential information and are responsible for employing reasonable measures to control the duplication of, access to, and distribution of, Confidential and Highly Confidential information.

21. The provisions of this Order shall, absent written permission of the Disclosing Party or further order of the Court, continue to be binding throughout and after the conclusion of any and all of the MDL Actions, including, without limitation, any appeals therefrom. Within ninety (90) days after receiving notice of the entry of an order, judgment or decree finally disposing of any of the MDL Actions, including the exhaustion of all possible appeals, all persons having received Confidential or Highly Confidential Information shall either return such material and all copies thereof (including summaries and excerpts) to counsel for the Disclosing Party or destroy all such Confidential or Highly Confidential Information, and, in either case, certify that fact to counsel for the Producing Party. Outside counsel for the Parties shall be

entitled to retain court papers, depositions and trial transcripts and attorney work product (including discovery material containing Confidential or Highly Confidential Information); provided, that such outside counsel, and employees of such outside counsel, shall maintain the confidentiality thereof and shall not disclose such court papers or attorney work product to any person except pursuant to court order or agreement by the Disclosing Party.

22. After the termination of any or all of the MDL Actions, this Order shall continue to be binding upon the Parties hereto, and upon all persons to whom Confidential or Highly Confidential Information has been disclosed or communicated, and this Court shall retain jurisdiction over all such Parties and persons for enforcement of its provisions.

23. During the pendency of the MDL Actions, any party objecting to the designation of any Covered Material or testimony as Confidential or Highly Confidential or the application of any provision of this Order may, after making a good-faith effort to resolve any such objection with opposing counsel, move promptly for an order vacating the designation or the application of said provision. While such an application is pending, the Covered Material or testimony in question shall continue to be treated as Confidential or Highly Confidential pursuant to this Order. Nothing in this Order is intended to shift the burden of establishing confidentiality which, at all times, remains upon the Disclosing Party.

24. Counsel shall confer on such procedures that are necessary to protect the confidentiality of any documents, information and transcripts used in the course of any court proceedings. In the event that any Confidential or Highly Confidential information is used in any court proceeding in the MDL Actions or any appeal therefrom, such Confidential or Highly Confidential information shall not lose its status as Confidential or Highly Confidential information through such use.

25. If any person receiving documents covered by this Order (the "Receiver") is subpoenaed or receives other compulsory process in another action or proceeding or is served with a document demand, and such subpoena, process or document demand seeks Covered Material which was produced or designated as Confidential or Highly Confidential by someone other than the Receiver, the Receiver shall (i) give written notice by e-mail, hand or facsimile transmission within five (5) business days of receipt of such subpoena, process or document demand to those who produced or designated the information Confidential or Highly Confidential, and which notice shall include or attach a complete copy of the subpoena or other discovery request, unless prohibited by law, and (ii) refrain from producing any Covered Material that has been designated Confidential or Highly Confidential in response to such a subpoena or document demand until the earlier of (a) receipt of written notice from the Disclosing Party that such party does not object to production of the designated Covered Material, or (b) resolution of any objection asserted by the Disclosing Party either by agreement or by final order of the Court with jurisdiction over the objection of the Disclosing Party, unless prohibited by law; provided, however, that the burden of opposing the enforcement of the subpoena or document demand shall fall solely upon the party who produced or designated the Confidential or Highly Confidential information, and unless the party who produced or designated the Confidential or Highly Confidential Information submits a timely objection seeking an order that the subpoena or document demand not be complied with, and serves such objection upon the Receiver by e-mail, hand or facsimile prior to production pursuant to the subpoena or document demand, the Receiver shall be permitted without violating this Order to produce documents responsive to the subpoena or document demand on the response date. Compliance by the Receiver with any order directing production pursuant to the subpoena or

document demand of any Confidential or Highly Confidential Information shall not constitute a violation of this Order. Nothing herein shall be construed as requiring the Receiver or anyone else covered by this Order to challenge or appeal any order directing production of Confidential or Highly Confidential Information covered by this Order, or to subject himself or itself to any penalties for non-compliance with a legal process or order, or to seek any relief from this Court.

26. Nothing in this Order shall preclude any Party from seeking judicial relief, upon notice to the other Parties, with regard to any provision hereof.

27. This agreement may be executed in counterparts each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

DONE AND ORDERED in Chambers at Miami, Florida at this 20 day of July, 2010.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
Counsel of record
Magistrate Judge Ted E. Badnstra

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.
_____/

MDL ORDER NUMBER 25; GRANTING CHAPTER SEVEN TRUSTEE'S MOTION FOR EXTENSION OF TIME [DE 96] IN PART; REQUIRING SUBMISSION SETTING TELEPHONE STATUS CONFERENCE

THIS CAUSE is before the Court upon the Chapter 7 Trustee's Motion for Extension of Time **[DE 96]**. A telephonic status conference was held on Tuesday, July 20, 2010. Per the agreement of the parties, the following is hereby ORDERED AND ADJUDGED for the reasons stated of record:

1. The Trustee's Motion for Extension of Time **[DE 96]** is GRANTED IN PART.

   a. By no later than **Friday, August 20, 2010 at 5:00 p.m.,** the Trustee is ORDERED to:

      i. File a Notice with the Court stating: (a) whether it intends on prosecuting Case No.: 09-CV-21879-ASG; and (b) whether it has been able to settle Case No.: 09-CV-21879-ASG; and

      ii. If the Trustee intends on proceeding with Case No.: 09-CV-21879-ASG, file a Discovery Status Report with the Court setting forth a good faith proposal that will allow the Trustee to comply with outstanding document production requests in accordance with applicable law by Friday, September 17, 2010.

iii. The Trustee is expressly admonished that it MAY NOT propose a "document dump" strategy. *See* **[DE 106, p. 11]**.

2. A telephonic status conference is HEREBY SET before the Honorable Alan S. Gold, at the United States District Court, Courtroom 11-1, Eleventh Floor, 400 North Miami Avenue, Miami, Florida, on **Tuesday, August 31, 2010 at 8:45 a.m.**

a. All parties shall call 1-888-684-8852 five minutes before the scheduled start time and enter access code 8321924 and security code 5050. **Please be prompt.**

DONE and ORDERED IN CHAMBERS at Miami, Florida this 21st day of July, 2010.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Bandstra
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-2106-CIV-GOLD/MCALILEY

In re:

FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION,

MDL No. 2106

This document relates to all actions.
_____/

MDL ORDER NUMBER TWENTY SIX: GRANTING MOTION FOR LIMITED APPEARANCE OF VINCENT BUCCOLA [DE 108]

THIS CAUSE having come before the Court upon the Motion for Limited Appearance of VINCENT BUCCOLA, Consent to Designation and Request to Electronically Receive Notices of Electronics Filings ("Motion") **[DE 108]**, requesting, pursuant to the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of VINCENT BUCCOLA in this matter and to electronically receive notice of electronic filings. Having considered the Motion and being otherwise fully advised in the Premises, it is hereby

ORDERED and ADJUDGED that:

1. The Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings **[DE 108]** is GRANTED.
2. VINCENT BUCCOLA is permitted to appear and participate in this action for purposes of limited appearances as co-counsel on behalf of AURELIUS CAPITAL MANAGEMENT LP in the above-styled actions.
3. The Clerk shall provide electronic notification of all electronic filings to VINCENT BUCCOLA at vincent.buccola@bartlit-beck.com

CASE NO.: 09-MD-2106-CIV-GOLD/MCALILEY

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of July, 2010.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
Magistrate Judge Chris McAliley
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case 09-2106-MDL-GOLD

IN RE:

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, et al.,

Debtors.

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, *et al.,*

Plaintiffs,

vs.

BANK OF AMERICA, N.A., *et al.,*

Defendants.

COURTROOM 11-1

MIAMI, FLORIDA

JULY 20, 2010

(Pages 1 - 20)

TRANSCRIPT OF TELEPHONIC CONFERENCE
BEFORE THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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11:00:35 **THE COURT:** Good morning. This is Judge Gold on Case
11:00:40 09-MDL-2106. May I have appearances, first on behalf of the
11:00:48 trustee?
11:00:51 **MR. BLAIN:** Good morning, Your Honor. This is Russell
11:00:53 Blain of Stichter, Riedel, Blain & Prosser in Tampa appearing on
11:00:56 behalf of the Chapter 7 Trustee, Soneet Kapila.
11:01:03 **THE COURT:** All right. Thank you. May I have
11:01:04 appearances, please, on behalf of the revolving lenders?
11:01:09 **MR. RICE:** Yes, Your Honor. Good morning. This is Tom
11:01:12 Rice and Steve Fitzgerald from Simpson, Thacher & Bartlett. We
11:01:16 represent Barclays, Deutsch Bank, JP Morgan Chase Bank and the
11:01:23 Royal Bank of Scotland.
11:01:24 **MR. ATAMIAN:** Good morning, Your Honor. This is
11:01:28 Jean-Marie Atamian from Mayer Brown in New York with my
11:01:30 colleague, Jason Kirschner. We're appearing on behalf of
11:01:33 Sumitomo Mitsui.
11:01:36 **MR. SUSHON:** Good morning, Your Honor. This is William
11:01:39 Sushon of O'Melveny & Myers for Bank of America.
11:01:44 **MR. GERACI:** Good morning, Judge. This is Phil Geraci
11:01:47 of Kaye Scholer, LLP, for HSH Nordbank.
11:01:53 **MR. RASILE:** Craig Rasile of Hunton & Williams on
11:01:57 behalf of Bank of America.
11:01:59 **THE COURT:** Any other appearances on behalf of
11:02:03 revolving lenders?
11:02:05 On behalf of the term lenders?

MR. DILLMAN: Good morning, Your Honor. Kirk Dillman of Hennigan Bennett & Dorman on behalf of the Avenue CLO plaintiffs, otherwise known as the Nevada term lenders.

MR. NACHTWEY: Good morning, Your Honor. Steve Nachtwey. I represent the Aurelius plaintiffs in the New York action.

THE COURT: Any other appearances?

MR. KAPILA: Judge, this is Soneet Kapila. I am the bankruptcy trustee in the Chapter 7 case.

THE COURT: All right, sir. Anybody else that I have not recognized? This matter then is before me on the Chapter 7 trustee's motion for brief excusal of compliance with the second amended order which was filed July 12th at Docket Entry 96.

This is the third extension requested. The first was granted to the May 13th deadline. The second was also granted, and I extended the document production deadline to July 12th. On the evening of July 12th, I received this motion.

The term lenders have filed a response at Docket Entry 107 which does not oppose a brief extension, although the trustee has not set forth the amount of time requested and therefore the nonopposition is not specific in terms of how much time should be granted.

On the other hand, the revolving lenders have set forth significant opposition at Docket Entry 106. So, let me start with the trustee. You have not obviously had a chance to

11:04:13 1 respond to the opposition of the revolving lenders.
11:04:14 2 Do you wish to do so at this time?
11:04:16 3 **MR. BLAIN:** Yes, Your Honor. Specifically, the trustee
11:04:21 4 is -- the Court is aware of the circumstances of the appointment
11:04:23 5 of the trustee having come into this late, having no prior
11:04:27 6 knowledge of this lawsuit, and the trustee has done everything
11:04:32 7 that it could have done up to now to bring itself -- bring
11:04:37 8 himself up to speed on where the lawsuit is and to do his
11:04:40 9 fiduciary duty in terms of evaluating where the estate should
11:04:44 10 be.
11:04:45 11 As far as responding to the revolving lenders, the
11:04:48 12 estate does not have sufficient funds to do what they would ask
11:04:53 13 to be done, and it just doesn't make sense for the trustee to
11:04:59 14 expend scarce funds in a bankruptcy estate to produce documents
11:05:02 15 in a lawsuit where the trustee has not even made the
11:05:06 16 determination that it makes sense for the estate to proceed with
11:05:09 17 that lawsuit.
11:05:13 18 **THE COURT:** Well, let me ask you to be specific at this
11:05:16 19 time.
11:05:16 20 **MR. BLAIN:** Yes, sir.
11:05:18 21 **THE COURT:** What is your specific request with regard
11:05:21 22 to extension? Do you have a date?
11:05:22 23 **MR. BLAIN:** Your Honor, we have thought about that and
11:05:24 24 talked to the various parties. We are -- we would be guided by
11:05:29 25 the Court on this as far as the specific date. We think it

would be reasonable to suggest 60 days from today.

As far as the specific date time frame and within that time, the trustee would hope to accomplish one of three things:

1. To determine, first of all, whether the lawsuit should proceed, whether it's in the best interest of the estate for that to happen.

2. Whether there are settlement prospects that can be pursued during that time, and we have begun and had significant discussions in that direction, or

3. Whether it's in the best interest of the bankruptcy estate to abandon this lawsuit in this cause of action, and we think that the 60-day period, given the complexities of the case and the difficulties with documents, not all of which are in the trustee's possession or control, is reasonable to finish and accomplish those goals.

THE COURT: Well, let's assume there's a decision that the lawsuit should proceed, settlement does not work, and you don't abandon.

MR. BLAIN: Yes, sir.

THE COURT: How are you going to respond? There's a great concern that there's simply going to be a document dump in bad faith.

MR. BLAIN: Yes, sir.

THE COURT: What's your response?

MR. BLAIN: Well, that's a difficult problem to deal

with, Your Honor, and I'm appreciative of the concern with the document dump and have had discussion with the revolving lenders' counsel about that.

The trustee's estimate of the cost just to start this process and to take documents that it has inherited is somewhere in the range of a quarter of a million dollars and up. So the trustee, even proceeding with that, is a very costly decision to the estate.

That is one reason we suggest the element of time that we do because this is not a matter of just seeking time to accomplish that. This is an extension of time for the trustee to make the evaluation as to whether this lawsuit should go forward at all.

And if the trustee makes the decision that the lawsuit should go forward -- and that is by no means a preordained conclusion -- if the trustee does make that decision, then we will sit down with the revolving lenders and do whatever we can possibly do to satisfy their concerns and to comply in good faith with discovery.

One of the -- I'm sorry.

THE COURT: How are you going to make a decision like that without reviewing the documents?

MR. BLAIN: Well, we're going to review what documents are available to us, and we're going to review what we get when we get the documents that are being downloaded by the custodians

of those documents at their disparate locations in Miami and Las Vegas.

And with that information in hand and in consulting with prior estate counsel on this who had handled this litigation, we would hope to get access to whatever documents are needed for the trustee to make that decision.

THE COURT: All right. So now that I have something more specific, let me start with the term lenders.

MR. DILLMAN: Yes, sir.

THE COURT: Do you have a position, given what you have heard, and then I'll hear from the revolving lenders. Who's gonna speak on this issue?

MR. DILLMAN: Your Honor, this is Kirk Dillman. Let me chime in here. We have a case where the trustee is not a party. We need these documents for our case.

We think this issue is going to come up, you know, relatively quickly one way or the other, and we think that there should be a process put in place here to get us to the end of that.

I don't know what it is but, you know, we need to be able to access those documents for our case.

THE COURT: Okay. I'm not sure what you're telling me. The term lenders in the response did not oppose a request for a brief extension.

MR. DILLMAN: Oh, and we don't. We don't, Your Honor.

A brief extension is fine but --

THE COURT: The request here is 60 days. What's your position?

MR. DILLMAN: Well, 60 days, Your Honor, is -- we would prefer it to be a shorter period of time, although we're mindful of the trustee's sort of dilemma. We think a "document dump" here may be what has to occur.

If the trustee cannot economically go through the documents, which he may not be able to do, then making them available to the parties who are in this case so that we can go through them seems to be the only alternative. That could be done quickly.

THE COURT: So what is your request?

MR. DILLMAN: Your Honor, our request is either the trustee provide the documents as requested in both the subpoena and the request in a narrower fashion than a dump within the 60 days, or sooner than that if the trustee elects not to proceed or determines that a more narrow production is not economically feasible; that we be given to access to wherever the documents are. There's a virtual warehouse of documents somewhere.

We just want to be able to get access to those. If the trustee says, "We don't have the resources to go through those documents to sort out which ones are particularly responsive to particular requests," we understand that, but just give us the ability to do that. Make the documents available to us, and we

can do that in a matter of weeks. It wouldn't take 60 days.

So while we're prepared to work with the trustee while he goes through the decision process to decide exactly how he's going to respond to the revolver's claims and so on, in the meantime we'd like to have our interests, you know, put forward as well which, even if he drops the case, we're going to be there asking for those documents.

THE COURT: What's the revolving lenders' position given what you have heard?

MR. RICE: Your Honor, this is Tom Rice. If I may, certainly speaking for my client, you know, and I think for the others as well, although if they disagree they'll say so, I think if the decision is made obviously to dismiss the case, then the revolving lenders, other than Bank of America, are out and we don't care what happens.

But if the trustee decides to proceed with the case, you know, in no way would we agree to, you know, anything approaching this idea of a document dump.

If what the trustee is saying is that within 60 days he will decide whether to proceed with the case and then will comply within that time period, you know, with his obligations under Rule 34, then certainly speaking for my clients that's something I would agree to.

I think, Your Honor, we do have a schedule that Your Honor has put in place that has depositions starting on August

11:12:22 30th. I would think that will need to be adjusted, and there
11:12:25 are some other dates that might need to be adjusted as well. My
11:12:30 guess is we could work cooperatively with everybody to come up
11:12:33 with new dates.
11:12:34 So, you know, assuming that's what we're talking about,
11:12:36 which is an extension of 60 days to provide them -- to enable
11:12:41 them to decide to proceed, whether or not to proceed, and then,
11:12:44 if so, to meet their obligations under Rule 34, then that's
11:12:48 certainly something from my clients we could agree with.
11:12:51 **MR. DILLMAN:** Your Honor, this is Kirk Dillman again.
11:12:53 If I might respond to the notion of an extension of the other
11:12:56 deadlines in this case. That is something that the term lenders
11:12:59 who are indeed the plaintiffs in these cases, at least in two of
11:13:04 them, would be very opposed.
11:13:06 We have a schedule. The trial date was set
11:13:09 sufficiently far out to allow discovery to be done. There has
11:13:12 been extensions that are certainly not the fault of the term
11:13:16 lenders, and it's important that we keep our trial dates.
11:13:19 **THE COURT:** Well, I don't know that that's an issue
11:13:22 here because there's sufficient time between events that were
11:13:28 going to occur beginning actually the beginning of September and
11:13:33 other dates which are set for November and December, but we'll
11:13:36 get back to that. So let me discuss this concept and see what
11:13:43 everybody's position is.
11:13:47 Mr. Blain, I understand that you're in a situation

where you have to make an assessment, but there are limitations on what I'm going to do giving you this time.

MR. BLAIN: Yes, sir.

THE COURT: So as I see this, given what I've heard from the parties now, it would appear to me that a two-step process would be appropriate. The first step would be to give you a period of time -- and we'll have to discuss how this works in a moment -- not more than 30 days to make a decision relative to whether this lawsuit's going to proceed and whether you have accomplished any settlement.

If Events 1 and 2 have not been resolved and this case goes away, then we need to have a specific plan on compliance filed at the end of that 30-day period for production within the next 30 days and this is not a dump. This has to be something that is going to be more helpful regardless of the cost if you're going to proceed with this litigation.

So I would see it in those two steps.

Does anybody have an objection to that from the term lenders or the revolving lenders, assuming I have to adjust some dates here to commence fact depositions?

MR. RICE: Your Honor, Tom Rice again speaking for my clients. I think, you know, the 30-day idea that you came up with makes a lot of sense.

Just to respond, I don't think the trial date needs, you know, changing, even if we needed to adjust things at the

front end. But I do think if we're going to be in these cases and there's gonna be, you know, depositions, depositions shouldn't start against us or shouldn't start generally until we've had access to the debtor's documents.

THE COURT: Well, I know. We'll have to readjust that date. Any other comment then by your side? How about the revolvers? What's your position? Does that seem a reasonable approach here?

MR. DILLMAN: Actually, that was the revolvers, Your Honor.

THE COURT: Any further comments from the term lenders?

MR. DILLMAN: I'll let Mr. Nachtwey obviously speak up if he disagrees, but we don't have an objection to the 30 days. We have worked out with Bank of America an extension of their time to produce documents which is consistent with that.

I would suggest that perhaps we have a status conference set before the conclusion of that 30 days because whatever the decision of the trustee is, as I said, we will have the need for those documents, and we're going to need to figure out how to get from here to there even if the trustee elects to abandon its case.

THE COURT: All right. Any comments from the trustee on that?

MR. BLAIN: Your Honor, this is Russ Blain speaking. No, Your Honor. I think that the proposal that you have

outlined is workable and is consistent with the requests that we have made and we appreciate your fashioning it in that way.

THE COURT: All right. So let's see if we can be more specific here on dates. Let me go through this, and then I'll get input from you.

I'm going to grant the motion in part by allowing an additional 30 days. Let's see. Well, I will give you, on this side of it, until August 20th to make a decision on whether or not you're going to proceed with the litigation or it has settled.

By August 20th you're to file a status report with me. If the status report is that the case is going to go forward, then you're going to have to include in that report a proposal for document compliance not later than September 17, and that document compliance is going to have to be done not as a dump but in good faith and in accordance with applicable rules and procedures.

So you have to submit a response in some detail about how that's going to be accomplished with no further extensions.

MR. BLAIN: Yes, sir.

THE COURT: So is that part understood?

MR. BLAIN: Yes, sir. This is Rus Blain speaking, Your Honor, and that's understood.

THE COURT: All right. Now, I'm going to set a status conference which follows during that week of August 23rd. I

don't have a date yet but I'll give that to you in the order and we'll discuss this. Also at that time if the case is going to go forward, I will discuss adjustments to the Court's order at Docket Entry 76 concerning the commencement of fact depositions and the date for filing nondispositive motions.

What I would ask counsel to be prepared to do at that time at that status conference is suggest to me some revised dates for that early part of our schedule, but I intend to hold the other parts of the schedule so that we will be able to move forward as set forth.

Does anybody have any objection or suggestions relative to those matters?

MR. RICE: No, Your Honor. Thank you. This is Tom Rice.

MR. BLAIN: Rus Blain, Your Honor. No, that's fine and understood.

THE COURT: Anything else this morning?

MR. DILLMAN: I don't believe so, Your Honor.

THE COURT: If not, I'll put this in an order, but I expect from the trustee's standpoint that you do not wait to receive anything in writing but you make good use of the time that I've given you here.

MR. BLAIN: Yes, Your Honor, and we appreciate it and thank you for the Court's time today.

THE COURT: All right. Thank you for your appearances

11:20:29 today.

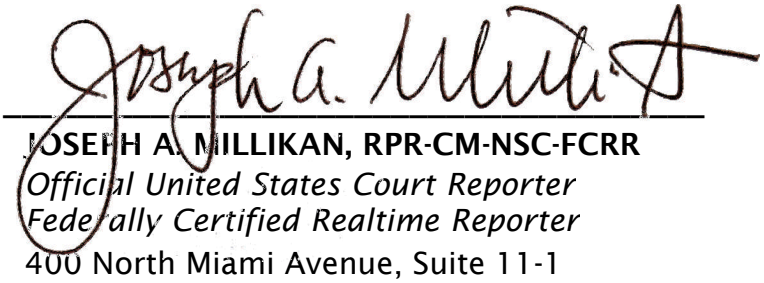
11:20:29 **MR. BLAIN:** Thank you, Your Honor.

11:20:31 [The proceedings conclude at 11:20 a.m., 7/20/10.]

CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

07.22.10
DATE



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to Case Number:

09-CV-21879-ASG
_____/

BANK DEFENDANTS' OPPOSITION TO FONTAINEBLEAU RESORTS, LLC, FONTAINEBLEAU RESORTS HOLDINGS, LLC AND FONTAINEBLEAU RESORTS PROPERTIES I, LLC'S MOTION TO QUASH SUBPOENAS [DKT # 93]

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Defendants Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank N.A., and The Royal Bank of Scotland plc, (collectively the "Bank Defendants") by and through their undersigned counsel, hereby submit this response and opposition to Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC's (collectively, "Fontainebleau Resorts") Motion to Quash Subpoenas Dated May 4, 2010 [DKT #93] (the "Motion to Quash"). On July 8, 2010, the Honorable Alan S. Gold referred the Motion to Quash to the Honorable Ted E. Bandstra [DKT # 94].

PRELIMINARY STATEMENT

On June 9, 2009, Fontainebleau Resorts' bankrupt affiliate, Fontainebleau Las Vegas, LLC ("FBLV"), commenced a lawsuit against the Bank Defendants and other revolving lenders (collectively, the "Revolving Lender Defendants") under a Credit Agreement, dated as of June 6, 2007 (the "Credit Agreement"). FBLV alleged, *inter alia*, that the Revolving Lender Defendants breached the Credit Agreement by (i) failing to fund Notices of Borrowing issued in March 2009; and (ii) terminating their revolving lending commitments under the Credit Agreement in April 2009 based on the occurrence of Events of Default. FBLV's lawsuit is now part of a Multi-District Litigation pending before the Honorable Alan S. Gold. In decisions dated August 26, 2009 and May 28, 2010, [1] Judge Gold twice ruled that the March Notices of Borrowing issued by FBLV did not comply with the Credit Agreement and thus, that the Revolving Lender Defendants were within their rights not to fund those Notices. Accordingly, the only claims

[1] The August 26, 2009 ruling was issued in FBLV's lawsuit and denied FBLV's motion for partial summary judgment. The May 28, 2010 ruling was issued in two lawsuits commenced by Term Lenders, which Judge Gold dismissed in their entirety as against the Revolving Lender Defendants.

remaining in FBLV's suit relate to the assertion that no Events of Default had occurred as of the time the Revolving Lender Defendants terminated their obligations in April 2009.

Pursuant to Scheduling Orders entered by Judge Gold, the Bank Defendants and the other revolving lenders have for several months sought document discovery from FBLV and from Fontainebleau Resorts. Despite these efforts, not a single document has been produced by either entity. Even though Fontainebleau Resorts is the indirect corporate parent of FBLV and many of the present and former employees of FBLV are or were employed by Fontainebleau Resorts, FBLV took the position that it would not produce any documents in the possession of Fontainebleau Resorts, thus requiring the Bank Defendants to serve subpoenas on Fontainebleau Resorts, which they did on May 4, 2010 (the "Subpoenas").[2] After multiple extensions and delays, Fontainebleau Resorts now claims that the Chapter 7 trustee appointed in FBLV's bankruptcy case (the "FBLV Trustee") has directed it not to produce responsive documents and that logistical issues relating to the appointment of a FBLV Trustee prevent it from complying with the Subpoenas. The FBLV Trustee, for its part, has claimed that Fontainebleau Resorts has directed it not to produce responsive documents in FBLV's custody or control that are purportedly the property of Fontainebleau Resorts.

Judge Gold, considering document requests similar in scope to those contained in the Subpoenas, rejected out of hand the suggestion that the conversion of FBLV's bankruptcy case and the appointment of the FBLV Trustee is an excuse for not participating fully in discovery. Judge Gold has given the FBLV Trustee until August 20 to decide whether to pursue its case against the Revolving Lender Defendants and, if so, to complete its document production by

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[2] *See* Exhibits A, B, and C to the Declaration of Steven S. Fitzgerald in Support of the Bank Defendants' Opposition to Fontainebleau Resorts' Motion to Quash Subpoenas. References to "Exhibit" herein are to the Exhibits attached to the Fitzgerald Declaration.

September 17, 2010 in a manner that fully complies with the Federal Rules of Civil Procedure regardless of the cost.

Consistent with Judge Gold's rulings, this Court should reject Fontainebleau Resorts' attempt to evade its obligations to respond to the Subpoenas and order Fontainebleau Resorts to fully comply with the Subpoenas by September 17, 2010. The Court should also reject Fontainebleau Resorts' conclusory assertions that the Subpoenas are overbroad because (1) they are appropriately tailored to seek responsive materials, and (2) Fontainebleau Resorts made no attempt to meet and confer with the Revolving Lender Defendants regarding the scope of the Subpoenas.

BACKGROUND

I. The Credit Agreement

The present case involves a dispute under a $1.85 billion Credit Agreement entered into on June 6, 2007 in connection with Fontainebleau Resorts' now bankrupt affiliate FBLV. *In re Fontainebleau Las Vegas Holdings, LLC*, 417 B.R. 651, 655-56 (S.D. Fla. 2009). The Credit Agreement provided FBLV with three types of loans:

- A $700 million term loan that was funded on the date of the inception of the Credit Agreement;
- a $350 million so-called Delay Draw Term Loan that would become available after the inception date of the Credit Agreement; and
- an $800 million revolving loan (the "Revolver") funded by lenders that included the Revolving Lender Defendants.

Id. FBLV planned to use the proceeds from these loans, along with other sources of funding, to build a Fontainebleau branded casino in Las Vegas (the "Project"). *Id*. The Project was the brainchild of Jeffrey Soffer who controlled both Fontainebleau Resorts and FBLV (prior to its bankruptcy). Under the Credit Agreement, the Revolving Lender Defendants had the right to

terminate their obligations to loan money upon the occurrence of an Event of Default. *Id*. at 664. As Judge Gold has ruled, the Revolving Lender Defendants also had the ability to refuse to lend if FBLV materially breached the Credit Agreement. *Id*.

On March 2 and March 3, 2009, FBLV submitted Notices of Borrowing under the Credit Agreement (the "March Notices of Borrowing"), requesting a Delay Draw Term Loan for the entire $350 million facility and a $670 million Revolving Loan. FBLV offered no explanation for its sudden request for over $1 billion. *In re Fontainebleau Las Vegas Holdings,* 417 B.R. at 655-56. The Credit Agreement's Administrative Agent notified FBLV that it would not process the March Notices of Borrowing because they did not comply with the Credit Agreement's requirement that "unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed $150,000,000." *Id*. Judge Gold has ruled on two occasions that, as a matter of law, the Revolving Lender Defendants properly denied the March Notices of Borrowing because the Credit Agreement unambiguously prohibits FBLV from borrowing more than $150 million under the Revolver until FBLV requests and receives the entire $350 million provided for under the Delay Draw Term Loan. *Id*. at 659-60; *In re Fontainebleau Las Vegas Contract Litig*., No. 09-MD-2106-CIV-GOLD/BANDSTRA, MDL Order 18, at 20-21 [DKT. #79] (S.D. Fla. May 28, 2010).

In the days and weeks following the March Notice of Borrowing, FBLV provided its Lenders with information that not only confirmed that the Project was in serious trouble, but also strongly suggested that FBLV had been in default under the Credit Agreement when it submitted the March Notices of Borrowing.

As Judge Gold found, on April 13, 2009, FBLV notified the Lenders that, contrary to its representations, FBLV did not have sufficient sources of capital to satisfy the In Balance Test:

> [O]ne or more events, occurrences or circumstances have occurred which reasonably could be expected to cause the In Balance Test to fail to be satisfied or render the Project Entities incapable of, or prevent the Project Entities from (a) achieving the Opening Date on or before the Scheduled Opening Date, or (b) meeting one or more material obligations under the Prime Construction Agreement or the other Material Contracts as and when required thereunder.

In re Fontainebleau, 417 B.R. at 656.

On April 20, 2009, in light of the evidence that Events of Default had occurred, the Revolving Lenders issued a notice of termination of their obligations under the Credit Agreement. *Id*. On June 9, 2009, FBLV filed for bankruptcy. *Id.* at 655. The same day, it filed suit against the Revolving Lender Defendants for breach of the Credit Agreement for failure to fund its March 2009 borrowing request and for improperly terminating the Credit Agreement. *Id*. In light of Judge Gold's rulings, the only claims remaining in the case are those based on the alleged improper termination of the Credit Agreement.

II. The Discovery Dispute

From the beginning of the case, FBLV has indicated to the Revolving Lender Defendants that Fontainebleau Resorts has knowledge and documents relevant to this case. The declaration filed in support of FBLV's Chapter 11 Petition and First Day Pleadings was from Howard C. Karawan, who self-identified as "Chief Operating Officer and Chief Restructuring Officer of Fontainebleau Resorts, LLC, the indirect parent company and manager of Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas Capital Corp." Exhibit G (Karawan Decl.) at ¶ 1. Organizational charts submitted to the Bankruptcy Court make clear that there is an unbroken chain of parent/subsidiary relationships with 100%

ownership interests between Fontainebleau Resorts, LLC and FBLV. Exhibit G at 61, Exhibit A. Karawan further described Fontainebleau Resorts in Miami as the nerve center where "all major decisions" regarding the Project were made. Exhibit G at ¶ 12.

In addition, during meet and confer conferences, FBLV has indicated that Fontainebleau Resorts possesses relevant documents, a fact which Fontainebleau Resorts does not dispute. Both Fontainebleau Resorts and FBLV shared common email servers and documents databases. *See* Exhibit H (Mar. 24, 2010 letter from S. Baena to R. Mockler) at 1 (indicating that FBLV's documents are housed on same servers as Fontainebleau Resorts' documents). The Revolving Lender Defendants requested that FBLV collect and produce those documents but, to date, FBLV has refused stating that Fontainebleau Resorts was claiming a proprietary interest in the documents and would not consent to production. *See* Chapter 7 Trustee's Motion for Brief Excusal of Compliance With Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures ("Motion for Excusal") [DKT # 96] at ¶ 9 (The FBLV's motion seeking to be relieved from Judge Gold's scheduling order in part because "Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC … are claiming that certain documents in the Chapter 7 Trustee's possession are owned by [them] …"). What makes FBLV's position particularly unreasonable is that FBLV concedes that it already possesses many of the relevant documents it claims are controlled by Fontainebleau Resorts.

Although the Revolving Lender Defendants believe that FBLV is required to produce documents relating to the Project regardless of whether FBLV or Fontainebleau Resorts purports to "own" the document, in order to avoid unnecessary delay, on May 4, 2010, the Bank Defendants served the Subpoenas with a June 4, 2010 return date. On June 7, 2010,

Fontainebleau Resorts sought an extension of time to respond to the Subpoenas. Fontainebleau Resorts' Motion for Extension of Time to Respond to Subpoenas Dated May 4, 2010 [DKT #84]. The Bank Defendants consented to the extension and on June 8 the Court entered an order extending Fontainebleau Resorts' time to respond to July 6, 2010. Paperless Order Granting Unopposed Motion for Extension of Time [DKT #85].

In a letter dated June 9, 2010, counsel for Fontainebleau Resorts stated:

> In order to respond to your subpoenas, Fontainebleau Resorts needs access to their computer servers which house both e-mails and documents. However, because these servers contain information belonging to the debtors or the servers themselves belong to the debtors, the Trustee has either taken possession these [sic] servers or is aware of the servers and will not allow the removal of any information at this time.

Exhibit D (June 9, 2010 letter from S. Springer to T. Rice) at 1-2. Thus, the Bank Defendants found themselves in a position where FBLV was claiming that Fontainebleau Resorts was refusing to consent to discovery and, for its part, Fontainebleau Resorts was claiming that the FBLV Trustee was actually the party who would not consent to production. Fontainebleau Resorts asked the Bank Defendants to be "patient." *Id.*

During a call that occurred at the end of June, counsel for Fontainebleau Resorts assured the Bank Defendants that Fontainebleau Resorts was working through its issues with the FBLV Trustee. Fontainebleau Resorts again asked the Bank Defendants to "be patient" as they worked through these issues. Fitzgerald Decl. at ¶ 5. Fontainebleau Resorts did not indicate that it wished to discuss the scope of the subpoena. *Id.*

However, on July 6, 2010, counsel for Fontainebleau Resorts emailed counsel for the Bank Defendants stating:

> As a result of the conversion and the breadth of the subpoenas, please be advised that I plan on filing a Motion to Quash Defendants' Subpoenas dated May 4, 2010. As required by S.D.Fla.L.R. 7.1A, I am writing in an attempt to resolve by agreement the issues raised in the Motion to Quash. If you would like, I will send

> you a signed copy of the Motion when it is complete. Please let me know if you need to see the Motion before deciding whether I need to file it. I look forward to hearing from you before the end of the day as the deadline to file a response is today.

Exhibit E (July 6, 2010 email from S. Fitzgerald to S. Springer).

Counsel for the Bank Defendants responded:

> When we spoke you did not mention that you believed our subpoena was over-broad. We are willing to meet and confer on that subject and discuss further any additional issues you may be having with the trustee. I do not think emailing us with an hour's notice satisfies your obligations under the S.D. Fla. Local Rules. If you would like to satisfy the rule and engage in a legitimate meet and confer process let me know.

Id. Shortly thereafter, the parties spoke on the telephone. Counsel for the Bank Defendants offered to grant an extension and stated that the Bank Defendants had thoughts on how to mitigate the burden of complying with the Subpoenas. Fitzgerald Decl. at ¶ 7. But counsel for Fontainebleau Resorts indicated that Fontainebleau Resorts had no interest in discussing an extension or a mutually acceptable approach to mitigating the burden of discovery and, instead, intended to file this Motion to Quash, which it did later in the evening of July 6, 2010. *Id.* at ¶ 8.

ARGUMENT

Fontainebleau Resorts refuses to make any production in response to the Subpoenas on the ground that the conversion of FBLV's bankruptcy case to a Chapter 7 case in April 2010 purportedly makes compliance difficult and, alternatively, on the ground that the requests are overbroad and unduly burdensome. Fontainebleau Resorts' objections are inadequate and without merit, and are particularly inappropriate in light of its disregard of its meet and confer obligations.

I. Judge Gold Has Rejected Any Assertion that the Conversion of FBLV's Bankruptcy Case Should Serve as a Basis for Delaying or Avoiding Discovery

Judge Gold has rejected out of hand any contention that the conversion of FBLV's Chapter 11 case to a Chapter 7 case is grounds for avoiding discovery in this case. *See* Exhibit I (Transcript from the April 16, 2010 Telephonic Status Conference) at 8:12-24 ("I'm not interested as much as you all are in what a bankruptcy trustee does or doesn't do. So what I set in this case as our timelines and guidelines must be followed, end of story, including by the bankruptcy judge and the trustee. As far as I understand the way our system works, if I say do something, the bankruptcy judge is obligated to do it and any trustee for the bankruptcy judge is obligated to follow it. … So this is to be done, and I'm going to require that Fontainebleau proceed forthwith and get it done.").

In FBLV's most recent attempt to evade discovery, the FBLV Trustee filed a motion seeking relief from Judge Gold's scheduling order setting July 12 as the deadline for documents responsive to the Revolving Lenders' document requests, which contain requests similar to those in the Subpoenas. FBLV argued that it cannot comply with discovery requests served upon FBLV because the FBLV Trustee could not "work out logistic and proprietary issues" relating to an asserted ownership interest by Fontainebleau Resorts in documents in the FBLV Trustee's possession. *See* Motion for Excusal at 3. Judge Gold rejected the FBLV Trustee's assertion that an open-ended extension of discovery is appropriate in the present case in light of the logistical issues presented by conversion of FBLV's bankruptcy case and Fontainebleau Resorts' purported ownership interest in responsive documents. Judge Gold ordered the FBLV Trustee to decide by August 20, 2010 whether or not to pursue its claims and report its decision in a filing with the Court. *See* Exhibit J (MDL Order Number 25). If FBLV decides to pursue its claims, it must complete its document production by September 17, 2010. *Id.* Judge Gold also "expressly

admonished" that a "document dump" shall not suffice and that FBLV must comply with the Revolving Lender Defendants' discovery requests in good faith and in compliance with the Federal Rules of Civil Procedure regardless of cost. *Id.* This Court should order Fontainebleau Resorts to produce documents on the same schedule as FBLV and on the same terms.[3]

Fontainebleau Resorts' attempt to characterize itself a "non-party" to this litigation that should not have to comply with discovery demands is disingenuous. Fontainebleau Resorts is the corporate parent of bankrupt FBLV. Exhibit G at ¶¶ 1, 12. Fontainebleau Resorts and FBLV share common email servers and document databases. Exhibit H. Pursuant to Federal Rules of Civil Procedure 34(a) and 45(a)(1)(A)(iii), a party may serve a request for the production of documents that are an entity's "possession, custody or control." Here, Fontainebleau Resorts clearly has "control" over the documents (along with FBLV) as contemplated by Rule 34(a) and 45(a)(1)(A)(iii) and Fontainebleau Resorts has an obligation to respond to the Subpoenas. *See Choice-Intersil Microsystems, Inc. v. Agere Sys. Inc*., 224 F.R.D. 471, 472-73 (N.D. Cal 2004) (holding that pursuant to third-party subpoena, wholly-owned subsidiary of foreign company was required to produce documents in possession of parent, given that among other things parent and subsidiary shared databases); *see also Gerling Int'l Ins. v. Comm'r of Internal Revenue*, 839 F.2d 131, 140-41 (3d Cir. 1988) ("Where the relationship is thus that the agent-subsidiary can secure documents of the principal-parent to meet its own business needs and documents helpful for use in the litigation, the courts will not permit the agent-subsidiary to deny control for purposes of discovery by an opposing party."); *Grosek v. Panther Transp., Inc*., 251 F.R.D. 162, 166 (M.D. Pa. 2008) (holding that to the extent a parent and subsidiary had a "business relationship,"

[3] Of course, if FBLV voluntarily dismisses its lawsuit on August 20, 2010, Fontainebleau Resorts will not have to produce any documents responsive to the Subpoena. However, if FBLV, Fontainebleau Resorts' affiliate, decides to pursue the action, Fontainebleau Resorts should complete its production by September 17, 2010.

information on the financial information of the parent was under the control of the subsidiary and had to be produced).

Fontainebleau Resorts' claim that the parties must sift through all the documents to determine "which documents belong to" which entity before they can be produced is nonsense. Motion to Quash at 3. All Fontainebleau Resorts and FBLV need to do is identify responsive documents and produce them. There is no need to segregate them by entity.

Fontainebleau Resorts' attempt to distance itself from the present controversy is further undermined by the fact that key officers of FBLV were employees of Fontainebleau Resorts. According to the declaration of Howard C. Karawan filed in the *In re Fontainebleau Las Vegas Holdings, LLC* bankruptcy proceeding:

> All major decisions in respect to the Project (defined below) have been made by the Board of Managers of Fontainebleau Resorts, LLC. The Board of Managers has continuously exercised its ultimate control over the management, business activities (including the design and development of the Project) and capital structure/financing …. I report directly to the Board of Managers … including the ultimate controlling person of the Fontainebleau families and Chairman of Fontainebleau Resorts, LLC, Jeffrey Soffer.

Exhibit G at ¶ 12. Moreover, the assertion that Fontainebleau Resorts and FBLV are even separate entities is a dubious claim which we understand is currently being litigated in multiple forums. *See* Exhibit K (Complaint in *CCCS International v. Fontainebleau Las Vegas*, 2:09-cv-00853-KJD-PAL)at ¶ 5 ("Upon information and belief, Defendant Fontainebleau Resorts, LLC is a parent company, and/or is an alter ego of the Fontainebleau Las Vegas LLC …"); Exhibit L (Amended Complaint in *Fidelity National Title Insurance Company v. Fontainebleau Resorts, LLC*, No. 09-75602-CA-15) at ¶ 15 ("[T]he assets and management of the various [Fontainebleau] entities have been intermingled, formalities have not been maintained, and the

assets have been manipulated by and among the defendants (including undercapitalization) to assist them in evading obligations and debt payments.")[4]

II. The May 4 Subpoena is Neither Overbroad Nor Unduly Burdensome

Prior to the date of its Motion to Quash, Fontainebleau Resorts never indicated that it believed the scope of the Subpoenas was in any way inappropriate and never sought to meet and confer with the Bank Defendants to narrow the scope of the Subpoenas. Nevertheless, Fontainebleau Resorts now argues that the Subpoenas are overbroad.[5]

A. Fontainebleau Resorts Has Not Established that the Subpoenas are Overbroad

Under Federal Rule of Civil Procedure 45(c)(3)(A), the burden to establish that a subpoena should be quashed is on the party that moves to have it quashed. *Int'l Ass'n of Machinists and Aerospace Workers v. P&B Transport*, 3:05-cv-1083, 2007 WL 4145974, at *2 (M.D. Fla. Nov. 19, 2007) (citing *Wiwa v. Royal Dutch Petroleum Co*., 392 F.3d 812, 818 (5th Cir. 2004)). The moving party also has the burden of proof to demonstrate that compliance with

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[4] The *Fidelity National* plaintiffs further allege that Soffer, the "ultimate controlling person of the Fontainebleau family of companies," is also the general partner and owner of both Turnberry West Construction, the corporation created for the sole purpose of performing general contractor services to benefit Fontainebleau Resorts, and Turnberry Residential Limited Partner, L.P., a Delaware limited partnership that owns or controls various residential and commercial development entities, and signed the Project's Completion Guaranty on June 6, 2007. Exhibit L at ¶¶ 11-12, 17. On May 20, 2010, the Revolving Lender Defendants served a subpoena requesting documents from Turnberry West Construction and Turnberry Residential Limited Partner. To date, there has not been *any* acknowledgment of the subpoena from those entities and they are in default.

[5] Fontainebleau Resorts also objects on the basis that the Subpoenas request that Fontainebleau Resorts send the documents to New York. During counsels' telephone conversation on July 6, 2010, the Bank Defendants indicated that they would be happy to allow Fontainebleau Resorts to produce documents at the offices of Bank Defendants' Miami counsel, Greenberg Traurig. Indeed, Fontainebleau Resorts concedes that "[t]he FBR Entities have not been requested . . . to produce documents in New York." Motion to Quash at 4.

the subpoena would be unreasonable and oppressive. *Wiwa*, 392 F.3d at 818; *Linder v. Dep't of Defense*, 133 F.3d 17, 24 (D.C. Cir. 1998) (holding that, to justify quashing a subpoena for relevant information, the moving party must satisfy the heavy burden of proving oppressiveness or other recognized ground); *Westinghouse Electric Corp. v. City of Burlington*, 351 F.2d 762, 766 (D.C. Cir. 1965) (noting that the burden is "particularly heavy to support a motion to quash as contrasted to some more limited protection").

A party objecting to a discovery request must, at a minimum, identify the objectionable request and explain why it is overbroad or unduly burdensome. *Guzman v. Irmadan, Inc.*, 249 F.R.D. 399, 400 (S.D. Fla. 2008) (holding that an objecting party "must explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome."). Fontainebleau Resorts barely even attempts to meet this burden. It has not even attached a copy of the Subpoenas to its Motion to Quash.

Fontainebleau Resorts points to two single document requests in support of its assertion that the Subpoenas must be quashed in their entirety as overbroad. It cites request number 9, which seeks all documents concerning communications between FBLV and Fontainebleau Resorts concerning the Project. *See* Motion to Quash at 1-2. It also cites request number 26, which they contend "asks for '[a]ll [d]ocuments [c]oncerning [y]our [c]ommunications with Fontainebleau relating to this [a]ction' and '[a]ll [d]ocuments [c]oncerning [c]ommunications with, to or from Turnberry West, or any general contractor concerning the [Fontainebleau Las Vegas] Project.'" *See* Motion to Quash at 4 n.2.

Other than conclusory statements, Fontainebleau Resorts does not explain why these requests are overbroad. It cannot be disputed that Fontainebleau Resorts was involved in overseeing the construction of the Project and that its communications concerning the Project

will reflect whether or not FBLV could satisfy the In-Balance Test under the Credit Agreement. It also is undisputed that Fontainebleau Resorts' communications with its affiliates will reflect whether there were Events of Default under the Credit Agreement entitling the Revolving Lender Defendants to terminate their obligations under the Credit Agreement. Such communications will help show whether or not FBLV was in compliance with its financial covenants, including those relating to the solvency of FBLV and its affiliates. *In re Fontainebleau Las Vegas*, 417 B.R. at 664 (noting that each Revolving Lender Defendant "had the specified right" to determine if FBLV had satisfied the terms and conditions set forth in the Credit Agreement, and the representations and warranties under the Credit Agreement and Disbursement Agreement). As those materials are obviously relevant, the Bank Defendants are entitled to discovery of them under the Federal Rules of Civil Procedure. *S.E.C. v. Huff*, No. 08-60315-CIV, 2010 WL 228000, at *3-4 (S.D. Fla. Jan. 13, 2010) (Under Fed. R. Civ. P. 26(b), "Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party…the purpose of discovery is to allow a **broad** search for facts, the names of witnesses, or any other matters which may aid a party in the preparation or presentation of his case.") (internal citations omitted).

Fontainebleau Resorts has provided no facts that suggest compliance with these requests would be unduly burdensome. It apparently asserts that its attorney's argument is evidence enough of overbreadth, but this is plainly inadequate to support a motion to quash. *See* Order on Discovery, *Kelesceny v. Chevron U.S.A., Inc*., No. 08-61294-CMA [DKT # 61] (S.D. Fla. Nov. 17, 2008) (noting in the context of Federal Rule of Civil Procedure 34, "Objections which state that a discovery request is 'vague, overly broad, or unduly burdensome' are, by themselves, meaningless, and are deemed without merit by this Court. A party objecting on these bases must

explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome.").[6]

Fontainebleau Resorts cannot dispute that the Subpoenas also contain other requests that are tailored to seek documents obviously responsive to this action. For example, the Subpoenas ask for documents concerning:

- "the Credit Agreement, Disbursement Agreement or Financing Agreements" (Request No. 2);
- "the In Balance Test, including any calculation or revision thereof" (Request No. 6);
- "the financial condition of each Fontainebleau entity involved with the Project, including, without limitation, financial statements, balance sheets, income statements, cash flow statements and other reports for any period or as of any date during calendar years 2007, 2008 and 2009." (Request No. 8 seeking documents relating to whether FBLV was in compliance with financial covenants);
- "financing for the Project's retail component, including any communication with Lehman Brothers Holdings Inc." (Request No. 21 seeking documents relating to the Event of Default that occurred when FBLV was unable to replace financing the Lehman could not provide due to its collapse).

See, e.g., Exhibit A. While Fontainebleau Resorts objects to the number of requests, the present dispute involves complex commercial agreements that were entered into as a direct result of Fontainebleau Resorts involvement in the Project. Fontainebleau Resorts created FBLV and directly participated in the complex commercial agreements at issue in the present case with eyes wide open knowing that if litigation ensued there would be substantial discovery obligations as a result. Given the critical significance of the documents requested, and Fontainebleau's utter failure to establish overbreadth, this Court must deny the Motion to Quash.

[6] Attached as Exhibit M.

III. The Motion to Quash Should Be Denied Because Fontainebleau Resorts Failed to Satisfy Rule 7.1(A)(3)

In addition, Fontainebleau Resorts' assertions of overbreadth must be rejected for its failure to meet and confer prior to filing its Motion to Quash. Rule 7.1(A)(3) of this court requires that prior to filing any motion in a civil case, counsel for the movant:

> shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with all parties or non-parties who may be affected by the relief sought in the motion ***in a good faith effort to resolve by agreement the issues to be raised in the motion***. … Failure to comply with the requirements of this rule may be cause for the court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee. (emphasis added)

S.D. Fla. R. 7.1(A). Failure to satisfy this obligation alone provides grounds for denying the motion. *See Armor Screen Corp. v. Storm Catcher, Inc*., No. 07-81091-Civ., 2009 WL 1871685, at *5 (S.D. Fla. June 29, 2009) ("Apparently, rather than confer with Plaintiff's counsel in a good faith attempt to resolve the issue, the [Defendants] filed the motion shortly before midnight that same day. Such action undermines the purpose and effectiveness of the meet and confer requirement and the Court considers such action an additional reason for finding that the motion was not in response to a genuine dispute.").

Late in the afternoon on the day Fontainebleau Resorts was required to respond to the Subpoenas, its counsel sent counsel for the Bank Defendants an email stating that rather than comply, Fontainebleau Resorts intended to move to quash the Subpoenas. *See* Exhibit E. Counsel for the Bank Defendants immediately objected to the fact that Fontainebleau was raising the issue of overbreadth for the first time and encouraged Fontainebleau Resorts to engage in a "meaningful meet and confer process." *Id*. Shortly thereafter, the Bank Defendants offered to extend Fontainebleau Resorts' time to respond so that Fontainebleau Resorts could work through

its issues with the FBLV Trustee. Fitzgerald Decl. at ¶ 7. Counsel also indicated that the Bank Defendants had ideas for mitigating any burden associated with complying with the Subpoenas. *Id.* Fontainebleau Resorts declined and instead filed this motion. *Id.* at ¶ 8.

Particularly in the discovery context, Rule 7.1(A) cannot be satisfied merely by picking up the telephone (or sending an email) just hours before a motion is to be filed and telling your adversary you are going to file a motion. If Rule 7.1(A) is construed to have any meaning at all, the party making the motion must confer "*in a good faith effort to resolve by agreement the issues to be raised in the motion*." *See Trinos v. Quality Staffing Servs., Inc.*, 250 F.R.D. 696, 698 (S.D. Fla. 2008) (emphasis added) (finding that refusal to engage in telephone discussions before moving for a protective order did not comply with Rule 7.1(A), "and the Court is entitled to deny the motion on these grounds alone"); *see also Lockheed Martin Corp. v. Boeing Co.*, No. 6:03-cv-796, 2003 WL 22962782 (M.D. Fla. Oct. 21, 2003) (noting in the context of equivalent Local Rule 3.01(g) that "the term 'confer' … requires a substantive conversation in person or by telephone in a good faith effort to resolve the motion without court action, and does not envision an exchange of ultimatums by fax or letter."). Fontainebleau Resorts made *no* effort to resolve the issues relating to its Motion to Quash by agreement and, thus, its Motion to Quash should be denied.

[Remainder of page intentionally left blank.]

CONCLUSION

For the foregoing reasons, Fontainebleau Resorts' Motion to Quash [DKT # 93] should be denied and Fontainebleau Resorts should be ordered to comply with the Subpoenas and complete its document production by September 17, 2010, the same date Judge Gold recently ordered FBLV to complete its production.

Dated: July 23, 2010

By: /s/ John B. Hutton

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ATTORNEYS FOR DEFENDANTS BARCLAYS BANK PLC, DEUTSCHE BANK TRUST COMPANY AMERICAS, JPMORGAN CHASE BANK, N.A., and THE ROYAL BANK OF SCOTLAND PLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Bank Defendants' Opposition to Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC's Motion to Quash Subpoenas was furnished via First Class U.S. Mail to those on the attached service list on July 23, 2010.

By: /s/ John B. Hutton
John B. Hutton

Service List:

Sarah J. Springer
WALDMAN TRIGOBOFF HILDEBRANDT MARX & CALNAN, P.A.
2200 North Commerce Parkway, Suite 200
Weston, Florida 33326

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to Case Number:

09-CV-21879-ASG

_____/

DECLARATION OF STEVEN S. FITZGERALD IN SUPPORT OF THE BANK DEFENDANTS' OPPOSITION TO FONTAINEBLEAU RESORTS, LLC, FONTAINEBLEAU RESORTS HOLDINGS, LLC AND FONTAINEBLEAU RESORTS PROPERTIES I, LLC'S MOTION TO QUASH SUBPOENAS [DKT # 93]

Pursuant to 28 U.S.C. § 1746 STEVEN S. FITZGERALD hereby declares as follows:

1. I am an associate of the law firm of Simpson Thacher & Bartlett LLP, counsel for Defendants Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank N.A., and The Royal Bank of Scotland plc (collectively the "Bank Defendants"). I am fully familiar with matters stated herein based on my personal knowledge and familiarity with the records in the above-captioned proceeding.

2. I submit this Declaration in support of the Bank Defendants' Opposition to Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC's Motion to Quash Subpoenas.

3. On May 4, 2010, the Bank Defendants served subpoenas for the production of documents (the "Subpoenas") upon Fontainebleau Resorts, LLC, Fontainebleau

Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC (collectively, "Fontainebleau Resorts") with a June 4, 2010 return date. Attached hereto as Exhibits A, B, and C are true and correct copies of the Subpoenas.

4. Attached hereto as Exhibit D is a true and correct copy of a letter dated June 9, 2010 from counsel for Fontainebleau Resorts to Thomas C. Rice of Simpson Thacher & Bartlett LLP.

5. On or about the week of June 28, 2010, I called counsel for Fontainebleau Resorts, Sarah Springer, to discuss the status of the Subpoenas. Ms. Springer assured me that Fontainebleau Resorts was working through its issues with the trustee appointed to oversee Fontainebleau Las Vegas LLC's ("FBLV's") Chapter 7 bankruptcy case (the "FBLV Trustee") and asked the Bank Defendants to "be patient" as Fontainebleau Resorts continued to work through the issues regarding access to their computer servers. Ms. Springer did not indicate that Fontainebleau Resorts considered the scope of the Subpoenas to be inappropriate.

6. On July 6, 2010, at 3:26 PM, Ms. Springer sent me an email stating that she planned to file a Motion to Quash the Subpoenas later that day. I responded that I was willing to meet and confer on the subject. Attached hereto as Exhibit E is a true and correct copy of that July 6, 2010 email exchange between me and Ms. Springer.

7. On the afternoon of July 6, Ms. Springer and I spoke on the telephone and I offered to grant her an extension of time to respond to the Subpoenas in order to have a productive meet and confer on the issues raised in her email attached hereto as Exhibit E and stated that the Bank Defendants had ideas about how to mitigate any burden associated with complying with the Subpoenas that were discussed during meet and confer meetings with FBLV.

8. Instead of discussing an extension or a mutually acceptable approach to mitigating the burden of discovery, Ms. Springer responded by email at 5:16 PM that Fontainebleau Resorts still intended to file the Motion to Quash, which it did later in the evening of July 6, 2010. Attached hereto as Exhibit F is a true and correct copy of that second July 6, 2010 email exchange.

9. Attached hereto as Exhibit G is a true and correct copy of the Howard C. Karawan Declaration in support of FBLV's Chapter 11 Petition and First Day Pleadings ("Karawan Declaration"), including Exhibit A thereto.

10. Attached hereto as Exhibit H is a true and correct copy of a March 24, 2010 letter from Scott Baena, counsel to FBLV, to Robert Mockler of Hennigan, Bennett & Dorman, LLP, that was forwarded to me by Seth Moskowitz, counsel to FBLV, on March 25, 2010.

11. Attached hereto as Exhibit I is a true and correct copy of the Transcript from the April 16, 2010 Telephonic Status Conference held by Judge Gold.

12. Attached hereto as Exhibit J is a true and correct copy of the July 22, 2010 MDL Order Number 25, Granting Chapter 7 Trustee's Motion for Extension of Time in Part, Requiring Submission and Setting Telephone Status Conference.

13. Attached hereto as Exhibit K is a true and correct copy of the May 12, 2009 Complaint in the action before the United States District Court for the District of Nevada captioned *CCCS International v. Fontainebleau Las Vegas*, 2:09-cv-00853-KJD-PAL.

14. Attached hereto as Exhibit L is a true and correct copy of the November 16, 2009 Amended Complaint in the action before the Circuit Court of the Eleventh Judicial

Circuit in and for Miami-Dade County, Florida captioned *Fidelity National Title Insurance Company v. Fontainebleau Resorts, LLC*, No. 09-75602-CA-15.

15. Attached hereto as Exhibit M is a true and correct copy of the November 17, 2008 Order on Discovery in the case before the United States District Court for the Southern District of Florida captioned *Kelesceny v. Chevron U.S.A., Inc.*, No. 08-61294-CMA [DKT #61].

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 23, 2010

Steven S. Fitzgerald

EXHIBIT A

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

Issued by the

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

SUBPOENA IN A CIVIL CASE
Case No. 09-MD-02106-CIV-GOLD/BANDSTRA

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

TO: FONTAINEBLEAU RESORTS, LLC
Attention: Whitney Their, General Counsel
19950 West Country Club Drive
Aventura, Florida 33180

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached Exhibit A

PLACE	DATE AND TIME
Simpson Thacher & Bartlett LLP Attention: David Woll 425 Lexington Avenue New York, New York 10017	June 4, 2010

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	DATE AND TIME
David Woll Simpson Thacher & Bartlett LLP Attorney for Defendants JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, and The Royal Bank of Scotland plc 425 Lexington Avenue New York, New York 10017 (212) 455-2000	May 4, 2010

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d) and (e), on next page)

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

PROOF OF SERVICE

DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivision (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A TO DEFENDANTS' DOCUMENT SUBPOENA TO FONTAINEBLEAU RESORTS, LLC

DEFINITIONS AND INSTRUCTIONS

1. These Requests cover all Documents in Your possession, custody, and control, including Documents in the possession of Your officers, employees, agents, servants, representatives, trustees, attorneys, consultants, or other Persons directly or indirectly employed or retained by You, or anyone else acting on Your behalf or otherwise subject to Your control, and any merged, consolidated, or acquired predecessor or successor, subsidiary, division, or affiliate.

2. Unless otherwise indicated, the Documents requested are those generated, created, or distributed on or after June 1, 2006.

3. These Requests are continuing in nature and require production in the future of any responsive Documents that are subsequently discovered, generated, created, distributed or received by You or any previously-known Documents whose responsiveness to these Requests is later ascertained.

4. For each Request, You are to produce entire Documents including all attachments, enclosures, cover letters, memoranda, and appendices. Copies that differ in any respect from an original (because, by way of example only, handwritten or printed notations have been added) are treated as separate Documents and should be produced separately. A Request for a Document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures or attachments to the Document, in addition to the Document itself.

5. With the exception of Excel files which shall be produced in native format, You are to produce Documents and electronically stored information ("ESI") in a searchable format including:

a) Single-page TIFF images at a resolution of 300 dpi

b) Concordance compatible comma-delimited file for all fields excluding OCR
c) One OCR text file per document with the file name matching the beginning bates number
d) An IPRO (LFP) image cross-reference file

6. ESI and e-mails produced pursuant to this request shall be produced in a searchable format with an accompanying index that states the following metadata:

a) Date created/sent
b) Author
c) Recipients
d) cc – copies
e) bcc – blind copies
f) Beginning bates
g) End bates
h) File type

7. If any Document or thing requested was at one time in existence, but has been lost, discarded or destroyed, identify each such Document or thing by date, type, and subject matter, describe the circumstances under which the Document was lost, discarded, or destroyed, and identify the person with knowledge of its subject matter and of the circumstances under which it was lost, discarded, or destroyed and, if the Documents are destroyed, state the reason for such destruction.

8. If the production of any document requested herein is withheld on the ground of any claim of privilege or attorney work-product, provide a statement detailing the claim of privilege and all facts relied on to support that claim, including the Document date, author(s), recipient(s), type (*e.g.*, memo, interview notes), subject matter, its present location, and all information required by the Federal Rules of Civil Procedure.

9. If a portion of an otherwise responsive Document contains information subject to a claim of privilege, those portions and the rest of the Document subject to the claim of privilege shall be redacted from the Document and the rest of the Document shall be

produced. Information regarding that portion that is redacted must be included in the privilege log.

10. If there is any question as to the meaning of any part of these Requests, or an issue as to whether production of any Documents requested herein would impose an undue burden on Fontainebleau Resorts, Defendants' counsel should be contact promptly to discuss these matters, and Fontainebleau Resorts should respond to the remainder of these Requests as written.

11. Whenever an objection is made as to any particular part or subpart of a Request herein, all other portions or aspects of that Request as to which the objection does not apply shall be responded to in full.

12. If any Request cannot be responded to fully, You should provide as full a response as possible, state the reason for the inability to answer fully, and provide any information, knowledge, or belief that You have regarding the unanswered portion.

13. Whenever appropriate, the singular form of a word shall be interpreted in the plural, or vice versa; verb tenses shall be interpreted to include past, present, and future tenses; the terms "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests any Documents that might otherwise be construed as outside its scope; words in the masculine, feminine or neuter form include the others.

14. The following definitions will apply to these Requests. Notwithstanding any definition stated below, each word, term or phrase used in this document is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

a. "Action" refers to the case captioned *Fontainebleau Las Vegas LLC v. Bank of America, N.A.*, et al., in the United District Court for the Southern District of Florida, Case No. 09-21879-CIV-ASG.

b. "CCCS" means CCCS International and each of its predecessors, successors, affiliates, divisions, subsidiaries, parents, members, officers, representatives, agents and/or employees.

c. "Communication" means any form of transmission of information, oral, written, electronic or otherwise, including, without limitation, in-person discussions and conversations, telephone calls, memoranda, letters, telecopies and e-mails.

d. "Concerning" means relating to, referring to, describing, evidencing, constituting, supporting, negating, refuting, embodying, containing, memorializing, comprising, reflecting, analyzing, identifying, referencing, discussing, indicating, connected with or otherwise pertaining in any way, in whole or in part, to the subject matter referred to in each Request.

e. "Credit Agreement" shall refer to the agreement titled Credit Agreement by and among Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, and each lender from time to time party thereto, including Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland plc, Sumitomo Mitsui Banking Corporation, Bank of Scotland plc, HSH Nordbank AG, New York Branch, and MB Financial Bank, N.A., dated as of June 6, 2007 (as amended, supplemented or otherwise modified from time to time).

f. "Defendants" or "Revolving Lenders" shall refer to the defendants to this Action, collectively Bank of America, N.A., Merrill Lynch Capital Corporation, JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland plc, Sumitomo Mitsui Banking Corporation, Bank of Scotland plc, HSH Nordbank AG, and MB Financial Bank, N.A.

g. "Disbursement Agreement" shall refer to the agreement titled Master Disbursement Agreement by and among Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Capital Corp., Fontainebleau Las Vegas Retail, LLC, Fontainebleau Las Vegas, LLC, and Fontainebleau Las Vegas II, LLC, Bank of America, N.A., Wells Fargo Bank, N.A., and Lehman Brothers Holdings Inc., dated as of June 6, 2007 (as amended, supplemented or otherwise modified from time to time).

h. "Document(s)" is used in the broadest possible sense in accordance with Rule 34 of the Federal Rules of Civil Procedure and shall include, without limitation, all written, recorded, transcribed, punched, taped, filmed or graphic material, however produced or reproduced, which embodies any handwritten, typed, printed, oral or visual Communication or representation, including writings, drawings, graphs, spreadsheets, charts, photographs, presentations, calendar entries, data compilations or any other information or data recorded in readable and/or retrievable form, whether typed, handwritten, reproduced, magnetically or optically or electronically recorded, coded, or in any other way made readable or retrievable, computer files, hard disk files, diskettes or tapes, or archival or

backup copies thereof, audio recordings, video recordings, drafts of all the aforesaid and all copies of the aforesaid upon which have been placed any additional marks, stamps, underlining, bccs or notations of any kind, which are in your possession or custody or subject to your control.

i. "Each" shall be construed to include "every," and "every" shall be construed to include "each." "Any" shall be construed to include "all," and "all" shall be construed to include "any."

j. "Financing Agreements" means, collectively, the Disbursement Agreement, the Facility Agreements, the Security Documents, the Disbursement Agent Fee Letter, the Bank Agent Fee Letter, the Trustee's fee letters with the Issuers, the Second Mortgage Purchase Agreement, the Second Mortgage Notes and any other loan or security agreements entered into on, prior to or after the Closing Date with the Disbursement Agent or any Funding Agent in connection with the financing of the Project.

k. "Fontainebleau" means Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Retail, LLC and/or Fontainebleau Las Vegas Capital Corporation and each of their predecessors, successors, affiliates, divisions, subsidiaries, parents, members, officers, representatives, agents and/or employees, including without limitation, their attorneys, investment bankers and advisers acting or purporting to act on its or their behalf.

l. "Fontainebleau Resorts, LLC," "Fontainebleau Resorts," "You," "Your," and "Yours" mean Fontainebleau Resorts, LLC and its parents, subsidiaries, partners,

directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Fontainebleau Resorts exercises control, or who exercises control over, or is in common control with them.

m. "Including" is used in its inclusive sense and shall be construed so as to require the broadest possible response. In other words, "including" should be read as "including, but not limited to."

n. "Moelis" mean Moelis & Company LLC and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Moelis exercises control, or who exercises control over, or is in common control with them.

o. "Offering Materials" means any materials distributed to existing and potential investors or lenders in connection with the Project.

p. "Offering Memorandum" means the March 2007 Senior Secured Credit Facilities Confidential Offering Memorandum.

q. "Person" means each and every individual, partner, corporation, partnership, joint venture, or any other entity, whether incorporated or unincorporated, encompassed within the usual and customary meaning of "person" or "persons" or otherwise encompassed within this definition.

r. "Project" refers to the construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada.

s. "Relating to" means concerning, referring to, describing, evidencing or constituting.

t. "Request(s)" refers to each of these document requests to Fontainebleau Resorts.

u. "Retail Facility Agreement" means the Loan Agreement dated June 6, 2007 (as amended, supplemented or otherwise modified from time to time) among Fontainebleau Las Vegas Retail, LLC, Lehman Brothers Holdings Inc., and certain other parties.

v. "Turnberry Residential" means Turnberry Residential Limited Partner, L.P. and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Turnberry Residential exercises control, or who exercises control over, or is in common control with them.

w. "Turnberry West" means Turnberry West Construction, Inc. and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Turnberry West exercises control, or who exercises control over, or is in common control with them.

x. All capitalized terms used but not defined herein shall have the same meanings given to them in the Credit Agreement and Master Disbursement Agreement.

REQUESTS FOR DOCUMENTS

1. Documents sufficient to identify the ownership and organizational structure of Fontainebleau Resorts as well as each Fontainebleau entity involved with the Project, including, without limitation, Documents sufficient to identify each Person or entity that holds, directly or indirectly, an ownership interest in any Fontainebleau entity involved with the Project.

2. All Documents Concerning the Credit Agreement, Disbursement Agreement or Financing Agreements, including, without limitation, all drafts thereof, and any memoranda or notes.

3. All Documents Concerning any presentations and/or meetings Concerning the Project from June 6, 2006 to the present, including without limitation, all Documents, including presentations, PowerPoint slides, spreadsheets, videos, charts, or memoranda provided by Fontainebleau to any actual or potential Project lender, rating agency, any Project construction consultant, or any actual or potential Investor in Fontainebleau or the Project, any and all drafts thereof, and any other Documents Concerning Information provided by Fontainebleau through such presentations and/or meetings.

4. All Documents Concerning any Notice of Borrowing by Fontainebleau, including, without limitation, all Documents Concerning Fontainebleau's decision to amend or revise any Notice of Borrowing, any amended or revised Notices of Borrowing, as well as all supporting documents and drafts thereof.

5. All Documents Concerning any Advance Request by Fontainebleau including, without limitation, all Documents Concerning Fontainebleau's decision to amend or revise any Advance Requests, any amended, revised or draft Advance Requests, any certifications included in or accompanying the Advance Requests and all drafts and other support documents.

6. All Documents Concerning the In Balance Test, including any calculation or revision thereof.

7. All Documents Concerning Available Funds as of each Advance Date, including, without limitation, all supporting documents.

8. All Documents Concerning the financial condition of each Fontainebleau entity involved with the Project, including, without limitation, financial statements, balance sheets, income statements, cash flow statements and other reports for any period or as of any date during calendar years 2007, 2008 and 2009.

9. All Documents Concerning Communications between Fontainebleau Resorts and Fontainebleau, its shareholders, management, members, financial advisors, board of directors, auditors or accountants Concerning the Project.

10. All Documents Concerning Fontainebleau's failure to furnish audited annual financial statements for the year ended December 31, 2008.

11. All Documents Concerning Fontainebleau's internal controls or accounting procedures.

12. All Documents Concerning any request, demand or attempt to inspect or to audit any of the books or records of Fontainebleau.

13. All Documents Concerning Communications Relating to any potential or actual Fontainebleau bankruptcy filing on or before June 9, 2009.

14. All Documents Concerning Fontainebleau's ability to repay its debts including, without limitation, the debts incurred to build the Project.

15. All Documents Concerning Communications with rating agencies Relating to the Project, as well as Documents Concerning presentations made to or by rating agencies discussing the Project.

16. All Documents Concerning Standard & Poor's reporting on the Project, including any internal Communications at Fontainebleau Resorts Concerning such reporting.

17. All Documents Concerning the resignation or termination of employment of Glenn Schaeffer, including, without limitation, Documents Concerning the possibility that Mr. Schaeffer would resign or be terminated and all Communications, agreements or understandings relating thereto.

18. All Documents Concerning the Offering Materials.

19. All Documents Concerning any efforts given to or consideration of raising any additional equity or debt capital, or selling of any interests in the Project, including, without limitation, any presentation made to or by investment or commercial banks, financial advisors or restructuring advisors.

20. All Documents Concerning any efforts to obtain alternative financing for the Project as a replacement or substitute for the financing contemplated by the Credit Agreement.

21. All Documents Concerning financing for the Project's retail component, including any communication with Lehman Brothers Holdings Inc.

22. All Documents Concerning any actual or potential investment in, financing of, or acquisition of an interest in the Project by Persons other than parties to the Credit Agreement, the Retail Agreement, or the holders of the Second Mortgage Notes from June 6, 2006 to the present.

23. All Documents Concerning Communications between Fontainebleau Resorts and investors or potential investors Concerning the Project from June 6, 2006 to the present.

24. All Documents relating to any investigation or due diligence undertaken in connection with any actual or contemplated financing or other acquisition of any claim or interest in Fontainebleau or the Project, after June 6, 2007.

25. All Documents Concerning Communications with, to or from Moelis & Company Concerning the Project.

26. All Documents Concerning Communications with, to or from Turnberry West, or any general contractor Concerning the Project.

27. All Documents Concerning Communications with, to or from Turnberry Residential, or any property manager Concerning the Project.

28. All Documents Concerning Communications with, to or from CCCS International, Hill International, Inc. or Cumming Corporation, and any other construction management company or consultant relating to the Project.

29. All Documents Concerning Advance Requests under the Retail Agreement, including, without limitation, any Communications between Fontainebleau and the Retail Lenders Concerning such Advance Requests.

30. All Documents Concerning the Revolving Lenders' requests to arrange for a discussion or meeting with Fontainebleau Concerning the Project, including any internal Communications within Fontainebleau Resorts Concerning the Revolving Lenders' requests.

31. All Documents Concerning the "Enhanced Plan" discussed by Fontainebleau at the April 17, 2009 meeting with the Lenders.

32. All Documents Concerning Applied Analysis relating to the Project or to Las Vegas economic conditions.

33. All Documents Concerning Fontainebleau's Budgets, including, without limitation, the underlying assumptions, models, analyses and calculations used.

34. All Documents Concerning actual and anticipated costs for the Project.

35. All Documents Concerning anticipated contingencies for the Project.

36. All Documents Concerning billing of, and payment to, contractors and/or suppliers for expenses related to the Project, including any Documents Concerning actual or potential overpayments to contractors and/or suppliers.

37. All Documents Concerning change order requests or pending change orders for the Project and the dates and amounts of such requests, including, without limitation, any schedules or charts reflecting same and all Communications with any contractor or subcontractor Concerning same.

38. All Documents Concerning the schedule for work on the Project, including, without limitation, all as-planned schedules, master schedules, milestone schedules, monthly or periodic update schedules.

39. All Documents Concerning financial projections and/or forecasts for the Project, including, without limitation, all supporting Documents.

40. All Documents Concerning valuations or appraisals of the Project.

41. All Documents Concerning marketing studies related to the Project.

42. All Documents Concerning economic trends and developments related to the Project, including current and projected supply and demand for retail space, hotel rooms, condominiums and convention space in Las Vegas and projections for Las Vegas visitor volume and hotel occupancy.

43. All Documents Concerning the sales of condominium units at Fontainebleau Las Vegas, including, without limitation, any Communications with investment or commercial banks Concerning the financing of condominium unit sales at Fontainebleau Las Vegas, marketing materials, sales efforts, financing for the sales and offers received.

44. All Documents Concerning Communications with the Revolving Lenders Relating to the Project.

45. All Documents Concerning LEED credits, audits, shortfalls and/or targets for the Project.

46. All Documents Concerning the development, construction, operation and status of the Project, including, without limitation, any actual or proposed plans for modifying or enhancing the current Project plan.

47. All Documents Concerning the Opening Date, including, without limitation, any Documents Concerning impediments to achieving the Opening Date by the Scheduled Opening Date or the Outside Date and any changes in the Project's Opening Date.

48. All Documents Concerning any actual, alleged, potential or anticipated breach of, or any actual, alleged, potential or anticipated Material Adverse Event, Default or Events of Default under the Credit Agreement, Disbursement Agreement, Financing Agreements or any Material Contract.

49. All Documents Concerning any existing or threatened material litigation by or against Fontainebleau.

50. All Documents Concerning the holders of Indebtedness issued by Fontainebleau, including, without limitation, any agreements or proposals with respect to

restructuring matters and all notices of default or reservations of rights received by Fontainebleau or by You.

51. All Documents Concerning any default or alleged default by completion guarantor Turnberry Residential Limited Partner, L.P. that was the subject of the action captioned *Prudential Insurance Co. of America* et ano. *v. Turnberry West, L.L.C.,* et al., Case No. 2:09-cv00695-KJD-GWF (D. Nev. Apr. 17, 2009).

52. All Documents Concerning Your Communications with Fontainebleau relating to this Action.

53. All Documents provided to or Concerning the Examiner appointed by Order of the Bankruptcy Court dated October 14, 2009, in the action captioned *In re Fontainebleau Las Vegas Holdings, LLC, et al.,* Case No. 09-21481-BKC-AJC (Bankr. S.D. Fla.) (D.E. #770), and any Communications relating thereto.

54. All Documents Concerning Communications with the plaintiffs in any of the following actions Concerning those actions and/or matters at issue in those actions, including the costs associated with maintaining those actions, as well as all Documents Concerning this litigation and/or matters at issue in this litigation:

a. *Avenue CLO Fund, Ltd.,* et al. *v. Bank of America, NA.,* et al., 2:09-cv-01047-KJD-PAL (D. Nev.);

b. *ACP Master, Ltd.* et ano. v. *Bank of America, NA.,* et al., No. 09 Civ. 8064 (LTS)(THK) (S.D.N.Y.); or

c. *Turnberry West Construction, Inc. v. Fontainebleau Las Vegas Holdings,* et al., Adv. Pro. No. 09-01762-BKC-AJC-A (Bankr. S.D. Fla.).

55. All Documents Concerning Communications with any or all of the defendants or third-party plaintiffs in the action captioned *Deutsche Bank Trust Company Americas v. Soffer,* et al., No. 09 Civ. 7089 (RJS) (S.D.N.Y.) Concerning that litigation and/or

matters at issue in that litigation or Concerning this litigation and/or matters at issue in this litigation.

56. All Documents sufficient to show Fontainebleau Resorts' document retention or destruction policies and practices, including, without limitation, as to electronic mail and other electronic records.

EXHIBIT B

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

Issued by the

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

SUBPOENA IN A CIVIL CASE
Case No. 09-MD-02106-CIV-GOLD/BANDSTRA

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

TO: FONTAINEBLEAU RESORTS HOLDINGS, LLC
Attention: Whitney Their, General Counsel
19950 West Country Club Drive
Aventura, Florida 33180

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached Exhibit A

PLACE	DATE AND TIME
Simpson Thacher & Bartlett LLP Attention: David Woll 425 Lexington Avenue New York, New York 10017	June 4, 2010

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	DATE AND TIME
David Woll Simpson Thacher & Bartlett LLP Attorney for Defendants JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, and The Royal Bank of Scotland plc 425 Lexington Avenue New York, New York 10017 (212) 455-2000	May 4, 2010

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d) and (e), on next page)

PROOF OF SERVICE

DATE	PLACE

SERVED ON (PRINT NAME)	MANNER OF SERVICE

SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivision (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

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(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

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(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

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DEFINITIONS AND INSTRUCTIONS

1. These Requests cover all Documents in Your possession, custody, and control, including Documents in the possession of Your officers, employees, agents, servants, representatives, trustees, attorneys, consultants, or other Persons directly or indirectly employed or retained by You, or anyone else acting on Your behalf or otherwise subject to Your control, and any merged, consolidated, or acquired predecessor or successor, subsidiary, division, or affiliate.

2. Unless otherwise indicated, the Documents requested are those generated, created, or distributed on or after June 1, 2006.

3. These Requests are continuing in nature and require production in the future of any responsive Documents that are subsequently discovered, generated, created, distributed or received by You or any previously-known Documents whose responsiveness to these Requests is later ascertained.

4. For each Request, You are to produce entire Documents including all attachments, enclosures, cover letters, memoranda, and appendices. Copies that differ in any respect from an original (because, by way of example only, handwritten or printed notations have been added) are treated as separate Documents and should be produced separately. A Request for a Document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures or attachments to the Document, in addition to the Document itself.

5. With the exception of Excel files which shall be produced in native format, You are to produce Documents and electronically stored information ("ESI") in a searchable format including:

a) Single-page TIFF images at a resolution of 300 dpi

b) Concordance compatible comma-delimited file for all fields excluding OCR
c) One OCR text file per document with the file name matching the beginning bates number
d) An IPRO (LFP) image cross-reference file

6. ESI and e-mails produced pursuant to this request shall be produced in a searchable format with an accompanying index that states the following metadata:

a) Date created/sent
b) Author
c) Recipients
d) cc – copies
e) bcc – blind copies
f) Beginning bates
g) End bates
h) File type

7. If any Document or thing requested was at one time in existence, but has been lost, discarded or destroyed, identify each such Document or thing by date, type, and subject matter, describe the circumstances under which the Document was lost, discarded, or destroyed, and identify the person with knowledge of its subject matter and of the circumstances under which it was lost, discarded, or destroyed and, if the Documents are destroyed, state the reason for such destruction.

8. If the production of any document requested herein is withheld on the ground of any claim of privilege or attorney work-product, provide a statement detailing the claim of privilege and all facts relied on to support that claim, including the Document date, author(s), recipient(s), type (*e.g.*, memo, interview notes), subject matter, its present location, and all information required by the Federal Rules of Civil Procedure.

9. If a portion of an otherwise responsive Document contains information subject to a claim of privilege, those portions and the rest of the Document subject to the claim of privilege shall be redacted from the Document and the rest of the Document shall be

produced. Information regarding that portion that is redacted must be included in the privilege log.

10. If there is any question as to the meaning of any part of these Requests, or an issue as to whether production of any Documents requested herein would impose an undue burden on Fontainebleau Resorts Holdings, Defendants' counsel should be contact promptly to discuss these matters, and Fontainebleau Resorts Holdings should respond to the remainder of these Requests as written.

11. Whenever an objection is made as to any particular part or subpart of a Request herein, all other portions or aspects of that Request as to which the objection does not apply shall be responded to in full.

12. If any Request cannot be responded to fully, You should provide as full a response as possible, state the reason for the inability to answer fully, and provide any information, knowledge, or belief that You have regarding the unanswered portion.

13. Whenever appropriate, the singular form of a word shall be interpreted in the plural, or vice versa; verb tenses shall be interpreted to include past, present, and future tenses; the terms "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests any Documents that might otherwise be construed as outside its scope; words in the masculine, feminine or neuter form include the others.

14. The following definitions will apply to these Requests. Notwithstanding any definition stated below, each word, term or phrase used in this document is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

a. "Action" refers to the case captioned *Fontainebleau Las Vegas LLC v. Bank of America, N.A.*, et al., in the United District Court for the Southern District of Florida, Case No. 09-21879-CIV-ASG.

b. "CCCS" means CCCS International and each of its predecessors, successors, affiliates, divisions, subsidiaries, parents, members, officers, representatives, agents and/or employees.

c. "Communication" means any form of transmission of information, oral, written, electronic or otherwise, including, without limitation, in-person discussions and conversations, telephone calls, memoranda, letters, telecopies and e-mails.

d. "Concerning" means relating to, referring to, describing, evidencing, constituting, supporting, negating, refuting, embodying, containing, memorializing, comprising, reflecting, analyzing, identifying, referencing, discussing, indicating, connected with or otherwise pertaining in any way, in whole or in part, to the subject matter referred to in each Request.

e. "Credit Agreement" shall refer to the agreement titled Credit Agreement by and among Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, and each lender from time to time party thereto, including Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland plc, Sumitomo Mitsui Banking Corporation, Bank of Scotland plc, HSH Nordbank AG, New York Branch, and MB Financial Bank, N.A., dated as of June 6, 2007 (as amended, supplemented or otherwise modified from time to time).

f. "Defendants" or "Revolving Lenders" shall refer to the defendants to this Action, collectively Bank of America, N.A., Merrill Lynch Capital Corporation, JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland plc, Sumitomo Mitsui Banking Corporation, Bank of Scotland plc, HSH Nordbank AG, and MB Financial Bank, N.A.

g. "Disbursement Agreement" shall refer to the agreement titled Master Disbursement Agreement by and among Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Capital Corp., Fontainebleau Las Vegas Retail, LLC, Fontainebleau Las Vegas, LLC, and Fontainebleau Las Vegas II, LLC, Bank of America, N.A., Wells Fargo Bank, N.A., and Lehman Brothers Holdings Inc., dated as of June 6, 2007 (as amended, supplemented or otherwise modified from time to time).

h. "Document(s)" is used in the broadest possible sense in accordance with Rule 34 of the Federal Rules of Civil Procedure and shall include, without limitation, all written, recorded, transcribed, punched, taped, filmed or graphic material, however produced or reproduced, which embodies any handwritten, typed, printed, oral or visual Communication or representation, including writings, drawings, graphs, spreadsheets, charts, photographs, presentations, calendar entries, data compilations or any other information or data recorded in readable and/or retrievable form, whether typed, handwritten, reproduced, magnetically or optically or electronically recorded, coded, or in any other way made readable or retrievable, computer files, hard disk files, diskettes or tapes, or archival or

backup copies thereof, audio recordings, video recordings, drafts of all the aforesaid and all copies of the aforesaid upon which have been placed any additional marks, stamps, underlining, bccs or notations of any kind, which are in your possession or custody or subject to your control.

i. "Each" shall be construed to include "every," and "every" shall be construed to include "each." "Any" shall be construed to include "all," and "all" shall be construed to include "any."

j. "Financing Agreements" means, collectively, the Disbursement Agreement, the Facility Agreements, the Security Documents, the Disbursement Agent Fee Letter, the Bank Agent Fee Letter, the Trustee's fee letters with the Issuers, the Second Mortgage Purchase Agreement, the Second Mortgage Notes and any other loan or security agreements entered into on, prior to or after the Closing Date with the Disbursement Agent or any Funding Agent in connection with the financing of the Project.

k. "Fontainebleau" means Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Retail, LLC and/or Fontainebleau Las Vegas Capital Corporation and each of their predecessors, successors, affiliates, divisions, subsidiaries, parents, members, officers, representatives, agents and/or employees, including without limitation, their attorneys, investment bankers and advisers acting or purporting to act on its or their behalf.

l. "Fontainebleau Resorts Holdings, LLC," "Fontainebleau Resorts Holdings," "You," "Your," and "Yours" mean Fontainebleau Resorts Holdings, LLC and its

parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Fontainebleau Resorts Holdings exercises control, or who exercises control over, or is in common control with them.

m. "Including" is used in its inclusive sense and shall be construed so as to require the broadest possible response. In other words, "including" should be read as "including, but not limited to."

n. "Moelis" mean Moelis & Company LLC and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Moelis exercises control, or who exercises control over, or is in common control with them.

o. "Offering Materials" means any materials distributed to existing and potential investors or lenders in connection with the Project.

p. "Offering Memorandum" means the March 2007 Senior Secured Credit Facilities Confidential Offering Memorandum.

q. "Person" means each and every individual, partner, corporation, partnership, joint venture, or any other entity, whether incorporated or unincorporated, encompassed within the usual and customary meaning of "person" or "persons" or otherwise encompassed within this definition.

r. "Project" refers to the construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada.

s. "Relating to" means concerning, referring to, describing, evidencing or constituting.

t. "Request(s)" refers to each of these document requests to Fontainebleau Resorts Holdings.

u. "Retail Facility Agreement" means the Loan Agreement dated June 6, 2007 (as amended, supplemented or otherwise modified from time to time) among Fontainebleau Las Vegas Retail, LLC, Lehman Brothers Holdings Inc., and certain other parties.

v. "Turnberry Residential" means Turnberry Residential Limited Partner, L.P. and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Turnberry Residential exercises control, or who exercises control over, or is in common control with them.

w. "Turnberry West" means Turnberry West Construction, Inc. and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Turnberry West exercises control, or who exercises control over, or is in common control with them.

x. All capitalized terms used but not defined herein shall have the same meanings given to them in the Credit Agreement and Master Disbursement Agreement.

REQUESTS FOR DOCUMENTS

1. Documents sufficient to identify the ownership and organizational structure of Fontainebleau Resorts Holdings as well as each Fontainebleau entity involved with the Project, including, without limitation, Documents sufficient to identify each Person or entity

that holds, directly or indirectly, an ownership interest in any Fontainebleau entity involved with the Project.

2. All Documents Concerning the Credit Agreement, Disbursement Agreement or Financing Agreements, including, without limitation, all drafts thereof, and any memoranda or notes.

3. All Documents Concerning any presentations and/or meetings Concerning the Project from June 6, 2006 to the present, including without limitation, all Documents, including presentations, PowerPoint slides, spreadsheets, videos, charts, or memoranda provided by Fontainebleau to any actual or potential Project lender, rating agency, any Project construction consultant, or any actual or potential Investor in Fontainebleau or the Project, any and all drafts thereof, and any other Documents Concerning Information provided by Fontainebleau through such presentations and/or meetings.

4. All Documents Concerning any Notice of Borrowing by Fontainebleau, including, without limitation, all Documents Concerning Fontainebleau's decision to amend or revise any Notice of Borrowing, any amended or revised Notices of Borrowing, as well as all supporting documents and drafts thereof.

5. All Documents Concerning any Advance Request by Fontainebleau including, without limitation, all Documents Concerning Fontainebleau's decision to amend or revise any Advance Requests, any amended, revised or draft Advance Requests, any certifications included in or accompanying the Advance Requests and all drafts and other support documents.

6. All Documents Concerning the In Balance Test, including any calculation or revision thereof.

7. All Documents Concerning Available Funds as of each Advance Date, including, without limitation, all supporting documents.

8. All Documents Concerning the financial condition of each Fontainebleau entity involved with the Project, including, without limitation, financial statements, balance sheets, income statements, cash flow statements and other reports for any period or as of any date during calendar years 2007, 2008 and 2009.

9. All Documents Concerning Communications between Fontainebleau Resorts Holdings and Fontainebleau, its shareholders, management, members, financial advisors, board of directors, auditors or accountants Concerning the Project.

10. All Documents Concerning Fontainebleau's failure to furnish audited annual financial statements for the year ended December 31, 2008.

11. All Documents Concerning Fontainebleau's internal controls or accounting procedures.

12. All Documents Concerning any request, demand or attempt to inspect or to audit any of the books or records of Fontainebleau.

13. All Documents Concerning Communications Relating to any potential or actual Fontainebleau bankruptcy filing on or before June 9, 2009.

14. All Documents Concerning Fontainebleau's ability to repay its debts including, without limitation, the debts incurred to build the Project.

15. All Documents Concerning Communications with rating agencies Relating to the Project, as well as Documents Concerning presentations made to or by rating agencies discussing the Project.

16. All Documents Concerning Standard & Poor's reporting on the Project, including any internal Communications at Fontainebleau Resorts Holdings Concerning such reporting.

17. All Documents Concerning the resignation or termination of employment of Glenn Schaeffer, including, without limitation, Documents Concerning the possibility that Mr. Schaeffer would resign or be terminated and all Communications, agreements or understandings relating thereto.

18. All Documents Concerning the Offering Materials.

19. All Documents Concerning any efforts given to or consideration of raising any additional equity or debt capital, or selling of any interests in the Project, including, without limitation, any presentation made to or by investment or commercial banks, financial advisors or restructuring advisors.

20. All Documents Concerning any efforts to obtain alternative financing for the Project as a replacement or substitute for the financing contemplated by the Credit Agreement.

21. All Documents Concerning financing for the Project's retail component, including any communication with Lehman Brothers Holdings Inc.

22. All Documents Concerning any actual or potential investment in, financing of, or acquisition of an interest in the Project by Persons other than parties to the Credit Agreement, the Retail Agreement, or the holders of the Second Mortgage Notes from June 6, 2006 to the present.

23. All Documents Concerning Communications between Fontainebleau Resorts Holdings and investors or potential investors Concerning the Project from June 6, 2006 to the present.

24. All Documents relating to any investigation or due diligence undertaken in connection with any actual or contemplated financing or other acquisition of any claim or interest in Fontainebleau or the Project, after June 6, 2007.

25. All Documents Concerning Communications with, to or from Moelis & Company Concerning the Project.

26. All Documents Concerning Communications with, to or from Turnberry West, or any general contractor Concerning the Project.

27. All Documents Concerning Communications with, to or from Turnberry Residential, or any property manager Concerning the Project.

28. All Documents Concerning Communications with, to or from CCCS International, Hill International, Inc. or Cumming Corporation, and any other construction management company or consultant relating to the Project.

29. All Documents Concerning Advance Requests under the Retail Agreement, including, without limitation, any Communications between Fontainebleau and the Retail Lenders Concerning such Advance Requests.

30. All Documents Concerning the Revolving Lenders' requests to arrange for a discussion or meeting with Fontainebleau Concerning the Project, including any internal Communications within Fontainebleau Resorts Holdings Concerning the Revolving Lenders' requests.

31. All Documents Concerning the "Enhanced Plan" discussed by Fontainebleau at the April 17, 2009 meeting with the Lenders.

32. All Documents Concerning Applied Analysis relating to the Project or to Las Vegas economic conditions.

33. All Documents Concerning Fontainebleau's Budgets, including, without limitation, the underlying assumptions, models, analyses and calculations used.

34. All Documents Concerning actual and anticipated costs for the Project.

35. All Documents Concerning anticipated contingencies for the Project.

36. All Documents Concerning billing of, and payment to, contractors and/or suppliers for expenses related to the Project, including any Documents Concerning actual or potential overpayments to contractors and/or suppliers.

37. All Documents Concerning change order requests or pending change orders for the Project and the dates and amounts of such requests, including, without limitation, any schedules or charts reflecting same and all Communications with any contractor or subcontractor Concerning same.

38. All Documents Concerning the schedule for work on the Project, including, without limitation, all as-planned schedules, master schedules, milestone schedules, monthly or periodic update schedules.

39. All Documents Concerning financial projections and/or forecasts for the Project, including, without limitation, all supporting Documents.

40. All Documents Concerning valuations or appraisals of the Project.

41. All Documents Concerning marketing studies related to the Project.

42. All Documents Concerning economic trends and developments related to the Project, including current and projected supply and demand for retail space, hotel rooms, condominiums and convention space in Las Vegas and projections for Las Vegas visitor volume and hotel occupancy.

43. All Documents Concerning the sales of condominium units at Fontainebleau Las Vegas, including, without limitation, any Communications with investment or commercial banks Concerning the financing of condominium unit sales at Fontainebleau Las Vegas, marketing materials, sales efforts, financing for the sales and offers received.

44. All Documents Concerning Communications with the Revolving Lenders Relating to the Project.

45. All Documents Concerning LEED credits, audits, shortfalls and/or targets for the Project.

46. All Documents Concerning the development, construction, operation and status of the Project, including, without limitation, any actual or proposed plans for modifying or enhancing the current Project plan.

47. All Documents Concerning the Opening Date, including, without limitation, any Documents Concerning impediments to achieving the Opening Date by the Scheduled Opening Date or the Outside Date and any changes in the Project's Opening Date.

48. All Documents Concerning any actual, alleged, potential or anticipated breach of, or any actual, alleged, potential or anticipated Material Adverse Event, Default or Events of Default under the Credit Agreement, Disbursement Agreement, Financing Agreements or any Material Contract.

49. All Documents Concerning any existing or threatened material litigation by or against Fontainebleau.

50. All Documents Concerning the holders of Indebtedness issued by Fontainebleau, including, without limitation, any agreements or proposals with respect to restructuring matters and all notices of default or reservations of rights received by Fontainebleau or by You.

51. All Documents Concerning any default or alleged default by completion guarantor Turnberry Residential Limited Partner, L.P. that was the subject of the action captioned *Prudential Insurance Co. of America* et ano. *v. Turnberry West, L.L.C.*, et al., Case No. 2:09-cv00695-KJD-GWF (D. Nev. Apr. 17, 2009).

52. All Documents Concerning Your Communications with Fontainebleau relating to this Action.

53. All Documents provided to or Concerning the Examiner appointed by Order of the Bankruptcy Court dated October 14, 2009, in the action captioned *In re Fontainebleau Las Vegas Holdings, LLC, et al.*, Case No. 09-21481-BKC-AJC (Bankr. S.D. Fla.) (D.E. #770), and any Communications relating thereto.

54. All Documents Concerning Communications with the plaintiffs in any of the following actions Concerning those actions and/or matters at issue in those actions, including the costs associated with maintaining those actions, as well as all Documents Concerning this litigation and/or matters at issue in this litigation:

a. *Avenue CLO Fund, Ltd.*, et al. *v. Bank of America, NA.*, et al., 2:09-cv-01047-KJD-PAL (D. Nev.);

b. *ACP Master, Ltd.* et ano. v. *Bank of America, NA.*, et al., No. 09 Civ. 8064 (LTS)(THK) (S.D.N.Y.); or

c. *Turnberry West Construction, Inc. v. Fontainebleau Las Vegas Holdings,* et al., Adv. Pro. No. 09-01762-BKC-AJC-A (Bankr. S.D. Fla.).

55. All Documents Concerning Communications with any or all of the defendants or third-party plaintiffs in the action captioned *Deutsche Bank Trust Company Americas v. Soffer,* et al., No. 09 Civ. 7089 (RJS) (S.D.N.Y.) Concerning that litigation and/or matters at issue in that litigation or Concerning this litigation and/or matters at issue in this litigation.

56. All Documents sufficient to show Fontainebleau Resorts Holdings' document retention or destruction policies and practices, including, without limitation, as to electronic mail and other electronic records.

EXHIBIT C

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

Issued by the

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

SUBPOENA IN A CIVIL CASE
Case No. 09-MD-02106-CIV-GOLD/BANDSTRA

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

TO: FONTAINEBLEAU RESORTS PROPERTIES I, LLC
Attention: Whitney Their, General Counsel
19950 West Country Club Drive
Aventura, Florida 33180

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached Exhibit A

PLACE	DATE AND TIME
Simpson Thacher & Bartlett LLP Attention: David Woll 425 Lexington Avenue New York, New York 10017	June 4, 2010

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	**DATE AND TIME**
David Woll Simpson Thacher & Bartlett LLP Attorney for Defendants JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, and The Royal Bank of Scotland plc 425 Lexington Avenue New York, New York 10017 (212) 455-2000	May 4, 2010

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d) and (e), on next page)

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

PROOF OF SERVICE

DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivision (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A TO DEFENDANTS' DOCUMENT SUBPOENA TO FONTAINEBLEAU RESORTS PROPERTIES I, LLC

DEFINITIONS AND INSTRUCTIONS

1. These Requests cover all Documents in Your possession, custody, and control, including Documents in the possession of Your officers, employees, agents, servants, representatives, trustees, attorneys, consultants, or other Persons directly or indirectly employed or retained by You, or anyone else acting on Your behalf or otherwise subject to Your control, and any merged, consolidated, or acquired predecessor or successor, subsidiary, division, or affiliate.

2. Unless otherwise indicated, the Documents requested are those generated, created, or distributed on or after June 1, 2006.

3. These Requests are continuing in nature and require production in the future of any responsive Documents that are subsequently discovered, generated, created, distributed or received by You or any previously-known Documents whose responsiveness to these Requests is later ascertained.

4. For each Request, You are to produce entire Documents including all attachments, enclosures, cover letters, memoranda, and appendices. Copies that differ in any respect from an original (because, by way of example only, handwritten or printed notations have been added) are treated as separate Documents and should be produced separately. A Request for a Document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures or attachments to the Document, in addition to the Document itself.

5. With the exception of Excel files which shall be produced in native format, You are to produce Documents and electronically stored information ("ESI") in a searchable format including:

a) Single-page TIFF images at a resolution of 300 dpi

b) Concordance compatible comma-delimited file for all fields excluding OCR
c) One OCR text file per document with the file name matching the beginning bates number
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6. ESI and e-mails produced pursuant to this request shall be produced in a searchable format with an accompanying index that states the following metadata:

a) Date created/sent
b) Author
c) Recipients
d) cc – copies
e) bcc – blind copies
f) Beginning bates
g) End bates
h) File type

7. If any Document or thing requested was at one time in existence, but has been lost, discarded or destroyed, identify each such Document or thing by date, type, and subject matter, describe the circumstances under which the Document was lost, discarded, or destroyed, and identify the person with knowledge of its subject matter and of the circumstances under which it was lost, discarded, or destroyed and, if the Documents are destroyed, state the reason for such destruction.

8. If the production of any document requested herein is withheld on the ground of any claim of privilege or attorney work-product, provide a statement detailing the claim of privilege and all facts relied on to support that claim, including the Document date, author(s), recipient(s), type (*e.g.*, memo, interview notes), subject matter, its present location, and all information required by the Federal Rules of Civil Procedure.

9. If a portion of an otherwise responsive Document contains information subject to a claim of privilege, those portions and the rest of the Document subject to the claim of privilege shall be redacted from the Document and the rest of the Document shall be

produced. Information regarding that portion that is redacted must be included in the privilege log.

10. If there is any question as to the meaning of any part of these Requests, or an issue as to whether production of any Documents requested herein would impose an undue burden on Fontainebleau Resorts Properties, Defendants' counsel should be contact promptly to discuss these matters, and Fontainebleau Resorts Properties should respond to the remainder of these Requests as written.

11. Whenever an objection is made as to any particular part or subpart of a Request herein, all other portions or aspects of that Request as to which the objection does not apply shall be responded to in full.

12. If any Request cannot be responded to fully, You should provide as full a response as possible, state the reason for the inability to answer fully, and provide any information, knowledge, or belief that You have regarding the unanswered portion.

13. Whenever appropriate, the singular form of a word shall be interpreted in the plural, or vice versa; verb tenses shall be interpreted to include past, present, and future tenses; the terms "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests any Documents that might otherwise be construed as outside its scope; words in the masculine, feminine or neuter form include the others.

14. The following definitions will apply to these Requests. Notwithstanding any definition stated below, each word, term or phrase used in this document is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

a. "Action" refers to the case captioned *Fontainebleau Las Vegas LLC v. Bank of America, N.A.*, et al., in the United District Court for the Southern District of Florida, Case No. 09-21879-CIV-ASG.

b. "CCCS" means CCCS International and each of its predecessors, successors, affiliates, divisions, subsidiaries, parents, members, officers, representatives, agents and/or employees.

c. "Communication" means any form of transmission of information, oral, written, electronic or otherwise, including, without limitation, in-person discussions and conversations, telephone calls, memoranda, letters, telecopies and e-mails.

d. "Concerning" means relating to, referring to, describing, evidencing, constituting, supporting, negating, refuting, embodying, containing, memorializing, comprising, reflecting, analyzing, identifying, referencing, discussing, indicating, connected with or otherwise pertaining in any way, in whole or in part, to the subject matter referred to in each Request.

e. "Credit Agreement" shall refer to the agreement titled Credit Agreement by and among Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, and each lender from time to time party thereto, including Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland plc, Sumitomo Mitsui Banking Corporation, Bank of Scotland plc, HSH Nordbank AG, New York Branch, and MB Financial Bank, N.A., dated as of June 6, 2007 (as amended, supplemented or otherwise modified from time to time).

f. "Defendants" or "Revolving Lenders" shall refer to the defendants to this Action, collectively Bank of America, N.A., Merrill Lynch Capital Corporation, JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland plc, Sumitomo Mitsui Banking Corporation, Bank of Scotland plc, HSH Nordbank AG, and MB Financial Bank, N.A.

g. "Disbursement Agreement" shall refer to the agreement titled Master Disbursement Agreement by and among Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Capital Corp., Fontainebleau Las Vegas Retail, LLC, Fontainebleau Las Vegas, LLC, and Fontainebleau Las Vegas II, LLC, Bank of America, N.A., Wells Fargo Bank, N.A., and Lehman Brothers Holdings Inc., dated as of June 6, 2007 (as amended, supplemented or otherwise modified from time to time).

h. "Document(s)" is used in the broadest possible sense in accordance with Rule 34 of the Federal Rules of Civil Procedure and shall include, without limitation, all written, recorded, transcribed, punched, taped, filmed or graphic material, however produced or reproduced, which embodies any handwritten, typed, printed, oral or visual Communication or representation, including writings, drawings, graphs, spreadsheets, charts, photographs, presentations, calendar entries, data compilations or any other information or data recorded in readable and/or retrievable form, whether typed, handwritten, reproduced, magnetically or optically or electronically recorded, coded, or in any other way made readable or retrievable, computer files, hard disk files, diskettes or tapes, or archival or

backup copies thereof, audio recordings, video recordings, drafts of all the aforesaid and all copies of the aforesaid upon which have been placed any additional marks, stamps, underlining, bccs or notations of any kind, which are in your possession or custody or subject to your control.

i. "Each" shall be construed to include "every," and "every" shall be construed to include "each." "Any" shall be construed to include "all," and "all" shall be construed to include "any."

j. "Financing Agreements" means, collectively, the Disbursement Agreement, the Facility Agreements, the Security Documents, the Disbursement Agent Fee Letter, the Bank Agent Fee Letter, the Trustee's fee letters with the Issuers, the Second Mortgage Purchase Agreement, the Second Mortgage Notes and any other loan or security agreements entered into on, prior to or after the Closing Date with the Disbursement Agent or any Funding Agent in connection with the financing of the Project.

k. "Fontainebleau" means Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Retail, LLC and/or Fontainebleau Las Vegas Capital Corporation and each of their predecessors, successors, affiliates, divisions, subsidiaries, parents, members, officers, representatives, agents and/or employees, including without limitation, their attorneys, investment bankers and advisers acting or purporting to act on its or their behalf.

l. "Fontainebleau Resorts Properties," "You," "Your," and "Yours" mean Fontainebleau Resorts Properties I, LLC and its parents, subsidiaries, partners,

directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Fontainebleau Resorts Properties exercises control, or who exercises control over, or is in common control with them.

m. "Including" is used in its inclusive sense and shall be construed so as to require the broadest possible response. In other words, "including" should be read as "including, but not limited to."

n. "Moelis" mean Moelis & Company LLC and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Moelis exercises control, or who exercises control over, or is in common control with them.

o. "Offering Materials" means any materials distributed to existing and potential investors or lenders in connection with the Project.

p. "Offering Memorandum" means the March 2007 Senior Secured Credit Facilities Confidential Offering Memorandum.

q. "Person" means each and every individual, partner, corporation, partnership, joint venture, or any other entity, whether incorporated or unincorporated, encompassed within the usual and customary meaning of "person" or "persons" or otherwise encompassed within this definition.

r. "Project" refers to the construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada.

s. "Relating to" means concerning, referring to, describing, evidencing or constituting.

t. "Request(s)" refers to each of these document requests to Fontainebleau Resorts Properties.

u. "Retail Facility Agreement" means the Loan Agreement dated June 6, 2007 (as amended, supplemented or otherwise modified from time to time) among Fontainebleau Las Vegas Retail, LLC, Lehman Brothers Holdings Inc., and certain other parties.

v. "Turnberry Residential" means Turnberry Residential Limited Partner, L.P. and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Turnberry Residential exercises control, or who exercises control over, or is in common control with them.

w. "Turnberry West" means Turnberry West Construction, Inc. and its parents, subsidiaries, partners, directors, shareholders, officers, employees, agents assigns or any predecessors or successors in interest, or any person or entity over which Turnberry West exercises control, or who exercises control over, or is in common control with them.

x. All capitalized terms used but not defined herein shall have the same meanings given to them in the Credit Agreement and Master Disbursement Agreement.

REQUESTS FOR DOCUMENTS

1. Documents sufficient to identify the ownership and organizational structure of Fontainebleau Resorts Properties as well as each Fontainebleau entity involved with the Project, including, without limitation, Documents sufficient to identify each Person or entity

that holds, directly or indirectly, an ownership interest in any Fontainebleau entity involved with the Project.

2. All Documents Concerning the Credit Agreement, Disbursement Agreement or Financing Agreements, including, without limitation, all drafts thereof, and any memoranda or notes.

3. All Documents Concerning any presentations and/or meetings Concerning the Project from June 6, 2006 to the present, including without limitation, all Documents, including presentations, PowerPoint slides, spreadsheets, videos, charts, or memoranda provided by Fontainebleau to any actual or potential Project lender, rating agency, any Project construction consultant, or any actual or potential Investor in Fontainebleau or the Project, any and all drafts thereof, and any other Documents Concerning Information provided by Fontainebleau through such presentations and/or meetings.

4. All Documents Concerning any Notice of Borrowing by Fontainebleau, including, without limitation, all Documents Concerning Fontainebleau's decision to amend or revise any Notice of Borrowing, any amended or revised Notices of Borrowing, as well as all supporting documents and drafts thereof.

5. All Documents Concerning any Advance Request by Fontainebleau including, without limitation, all Documents Concerning Fontainebleau's decision to amend or revise any Advance Requests, any amended, revised or draft Advance Requests, any certifications included in or accompanying the Advance Requests and all drafts and other support documents.

6. All Documents Concerning the In Balance Test, including any calculation or revision thereof.

7. All Documents Concerning Available Funds as of each Advance Date, including, without limitation, all supporting documents.

8. All Documents Concerning the financial condition of each Fontainebleau entity involved with the Project, including, without limitation, financial statements, balance sheets, income statements, cash flow statements and other reports for any period or as of any date during calendar years 2007, 2008 and 2009.

9. All Documents Concerning Communications between Fontainebleau Resorts Properties and Fontainebleau, its shareholders, management, members, financial advisors, board of directors, auditors or accountants Concerning the Project.

10. All Documents Concerning Fontainebleau's failure to furnish audited annual financial statements for the year ended December 31, 2008.

11. All Documents Concerning Fontainebleau's internal controls or accounting procedures.

12. All Documents Concerning any request, demand or attempt to inspect or to audit any of the books or records of Fontainebleau.

13. All Documents Concerning Communications Relating to any potential or actual Fontainebleau bankruptcy filing on or before June 9, 2009.

14. All Documents Concerning Fontainebleau's ability to repay its debts including, without limitation, the debts incurred to build the Project.

15. All Documents Concerning Communications with rating agencies Relating to the Project, as well as Documents Concerning presentations made to or by rating agencies discussing the Project.

16. All Documents Concerning Standard & Poor's reporting on the Project, including any internal Communications at Fontainebleau Resorts Properties Concerning such reporting.

17. All Documents Concerning the resignation or termination of employment of Glenn Schaeffer, including, without limitation, Documents Concerning the possibility that Mr. Schaeffer would resign or be terminated and all Communications, agreements or understandings relating thereto.

18. All Documents Concerning the Offering Materials.

19. All Documents Concerning any efforts given to or consideration of raising any additional equity or debt capital, or selling of any interests in the Project, including, without limitation, any presentation made to or by investment or commercial banks, financial advisors or restructuring advisors.

20. All Documents Concerning any efforts to obtain alternative financing for the Project as a replacement or substitute for the financing contemplated by the Credit Agreement.

21. All Documents Concerning financing for the Project's retail component, including any communication with Lehman Brothers Holdings Inc.

22. All Documents Concerning any actual or potential investment in, financing of, or acquisition of an interest in the Project by Persons other than parties to the Credit Agreement, the Retail Agreement, or the holders of the Second Mortgage Notes from June 6, 2006 to the present.

23. All Documents Concerning Communications between Fontainebleau Resorts Properties and investors or potential investors Concerning the Project from June 6, 2006 to the present.

24. All Documents relating to any investigation or due diligence undertaken in connection with any actual or contemplated financing or other acquisition of any claim or interest in Fontainebleau or the Project, after June 6, 2007.

25. All Documents Concerning Communications with, to or from Moelis & Company Concerning the Project.

26. All Documents Concerning Communications with, to or from Turnberry West, or any general contractor Concerning the Project.

27. All Documents Concerning Communications with, to or from Turnberry Residential, or any property manager Concerning the Project.

28. All Documents Concerning Communications with, to or from CCCS International, Hill International, Inc. or Cumming Corporation, and any other construction management company or consultant relating to the Project.

29. All Documents Concerning Advance Requests under the Retail Agreement, including, without limitation, any Communications between Fontainebleau and the Retail Lenders Concerning such Advance Requests.

30. All Documents Concerning the Revolving Lenders' requests to arrange for a discussion or meeting with Fontainebleau Concerning the Project, including any internal Communications within Fontainebleau Resorts Properties Concerning the Revolving Lenders' requests.

31. All Documents Concerning the "Enhanced Plan" discussed by Fontainebleau at the April 17, 2009 meeting with the Lenders.

32. All Documents Concerning Applied Analysis relating to the Project or to Las Vegas economic conditions.

33. All Documents Concerning Fontainebleau's Budgets, including, without limitation, the underlying assumptions, models, analyses and calculations used.

34. All Documents Concerning actual and anticipated costs for the Project.

35. All Documents Concerning anticipated contingencies for the Project.

36. All Documents Concerning billing of, and payment to, contractors and/or suppliers for expenses related to the Project, including any Documents Concerning actual or potential overpayments to contractors and/or suppliers.

37. All Documents Concerning change order requests or pending change orders for the Project and the dates and amounts of such requests, including, without limitation, any schedules or charts reflecting same and all Communications with any contractor or subcontractor Concerning same.

38. All Documents Concerning the schedule for work on the Project, including, without limitation, all as-planned schedules, master schedules, milestone schedules, monthly or periodic update schedules.

39. All Documents Concerning financial projections and/or forecasts for the Project, including, without limitation, all supporting Documents.

40. All Documents Concerning valuations or appraisals of the Project.

41. All Documents Concerning marketing studies related to the Project.

42. All Documents Concerning economic trends and developments related to the Project, including current and projected supply and demand for retail space, hotel rooms, condominiums and convention space in Las Vegas and projections for Las Vegas visitor volume and hotel occupancy.

43. All Documents Concerning the sales of condominium units at Fontainebleau Las Vegas, including, without limitation, any Communications with investment or commercial banks Concerning the financing of condominium unit sales at Fontainebleau Las Vegas, marketing materials, sales efforts, financing for the sales and offers received.

44. All Documents Concerning Communications with the Revolving Lenders Relating to the Project.

45. All Documents Concerning LEED credits, audits, shortfalls and/or targets for the Project.

46. All Documents Concerning the development, construction, operation and status of the Project, including, without limitation, any actual or proposed plans for modifying or enhancing the current Project plan.

47. All Documents Concerning the Opening Date, including, without limitation, any Documents Concerning impediments to achieving the Opening Date by the Scheduled Opening Date or the Outside Date and any changes in the Project's Opening Date.

48. All Documents Concerning any actual, alleged, potential or anticipated breach of, or any actual, alleged, potential or anticipated Material Adverse Event, Default or Events of Default under the Credit Agreement, Disbursement Agreement, Financing Agreements or any Material Contract.

49. All Documents Concerning any existing or threatened material litigation by or against Fontainebleau.

50. All Documents Concerning the holders of Indebtedness issued by Fontainebleau, including, without limitation, any agreements or proposals with respect to restructuring matters and all notices of default or reservations of rights received by Fontainebleau or by You.

51. All Documents Concerning any default or alleged default by completion guarantor Turnberry Residential Limited Partner, L.P. that was the subject of the action captioned *Prudential Insurance Co. of America* et ano. *v. Turnberry West, L.L.C.*, et al., Case No. 2:09-cv00695-KJD-GWF (D. Nev. Apr. 17, 2009).

52. All Documents Concerning Your Communications with Fontainebleau relating to this Action.

53. All Documents provided to or Concerning the Examiner appointed by Order of the Bankruptcy Court dated October 14, 2009, in the action captioned *In re Fontainebleau Las Vegas Holdings, LLC, et al.*, Case No. 09-21481-BKC-AJC (Bankr. S.D. Fla.) (D.E. #770), and any Communications relating thereto.

54. All Documents Concerning Communications with the plaintiffs in any of the following actions Concerning those actions and/or matters at issue in those actions, including the costs associated with maintaining those actions, as well as all Documents Concerning this litigation and/or matters at issue in this litigation:

a. *Avenue CLO Fund, Ltd.*, et al. *v. Bank of America, NA.*, et al., 2:09-cv-01047-KJD-PAL (D. Nev.);

b. *ACP Master, Ltd.* et ano. v. *Bank of America, NA.*, et al., No. 09 Civ. 8064 (LTS)(THK) (S.D.N.Y.); or

c. *Turnberry West Construction, Inc. v. Fontainebleau Las Vegas Holdings,* et al., Adv. Pro. No. 09-01762-BKC-AJC-A (Bankr. S.D. Fla.).

55. All Documents Concerning Communications with any or all of the defendants or third-party plaintiffs in the action captioned *Deutsche Bank Trust Company Americas v. Soffer,* et al., No. 09 Civ. 7089 (RJS) (S.D.N.Y.) Concerning that litigation and/or matters at issue in that litigation or Concerning this litigation and/or matters at issue in this litigation.

56. All Documents sufficient to show Fontainebleau Resorts Properties' document retention or destruction policies and practices, including, without limitation, as to electronic mail and other electronic records.

EXHIBIT D

WALDMAN TRIGOBOFF
HILDEBRANDT MARX & CALNAN, P.A.
ATTORNEYS AT LAW

2200 NORTH COMMERCE PARKWAY • SUITE 202 • WESTON, FLORIDA 33326
TELEPHONE (954) 467-8600 • FACSIMILE (954) 467-6222

June 9, 2010

VIA U.S. MAIL & FACSIMILE

Thomas C. Rice, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Facsimile: (212) 255-2502

John B. Hutton, Esq.
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0717

Re: *In re: Fontainebleau Las Vegas Contract Litigation,* Master Case No. 09-2106-MD-Gold/Bandstra

Dear Gentlemen:

This firm represents Fontainebleau Resorts, LLC in connection with other matters presently pending in the Southern District of Florida. In addition, we may shortly be retained to represent Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC (collectively, "Fontainebleau Resorts") in connection with the above referenced matter.

As you are probably aware, the Fontainebleau Las Vegas bankruptcy case was recently converted to Chapter 7 and a Trustee has been appointed. While Fontainebleau Resorts is not in bankruptcy and is not a party to any of the bankruptcy litigation, Fontainebleau Resorts has been making every effort to coordinate with the Trustee regarding some issues that have arisen as a result of the conversion to Chapter 7. As explained below, these issues will affect Fontainebleau Resorts' response to your subpoenas dated May 4, 2010.

In order to respond to your subpoenas, Fontainebleau Resorts needs access to their computer servers which house both e-mails and documents. However, because these servers contain information belonging to the debtors or the servers themselves belong to the debtors, the Trustee has either taken possession these servers or is aware of the servers and will not allow the removal of any information at this time. I have spoken with the Trustee regarding the outstanding discovery which is owed to you and others. The

Trustee and I (as well as all other Fontainebleau entities with information on these servers) are in the process of coordinating the removal of information from the servers. However, due to the number of parties and the interests involved, this could take some time.

As such, and in the hopes of avoiding unnecessary litigation over matters which are out of Fontainebleau Resorts' control, I would ask that your clients be patient while Fontainebleau Resorts makes every effort to follow bankruptcy procedures.

Please contact me upon receipt of this letter so we can discuss this matter further.

Very truly yours,

Sarah J. Springer

cc: Fontainebleau Resorts, LLC Board of Managers

EXHIBIT E

Fitzgerald, Steven S

From: Fitzgerald, Steven S
Sent: Tuesday, July 06, 2010 4:45 PM
To: 'Sarah Springer'
Subject: RE: Fontainebleau Resorts' Response to Defendant's Subpoenas - Sarah J. Springer, Esq.

Sure. Give me a call.

From: Sarah Springer [mailto:SSpringer@waldmanlawfirm.com]
Sent: Tuesday, July 06, 2010 4:41 PM
To: Fitzgerald, Steven S
Subject: RE: Fontainebleau Resorts' Response to Defendant's Subpoenas - Sarah J. Springer, Esq.

Are you available to discuss it now? If so, would you be willing to give me until tomorrow to file my Motion should that become necessary?

Sincerely,

Sarah J. Springer, Attorney at Law
Waldman Trigoboff Hildebrandt Marx & Calnan, P. A.

From: Fitzgerald, Steven S [mailto:SFitzgerald@stblaw.com]
Sent: Tuesday, July 06, 2010 4:37 PM
To: Sarah Springer
Subject: RE: Fontainebleau Resorts' Response to Defendant's Subpoenas - Sarah J. Springer, Esq.

Sarah: When we spoke you did not mention that you believed our subpoena was over-broad. We are willing to meet and confer on that subject and discuss further any additional issues you may be having with the trustee. I do not think emailing us with an hour's notice satisfies your obligations under the S.D. Fla. Local Rules. If you would like to satisfy the rule and engage in a legitimate meet and confer process let me know.

Regards,

Steven Fitzgerald
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

Tel: (212) 455-7993
Fax: (212) 455-2502
sfitzgerald@stblaw.com

From: sspringer@waldmanlawfirm.com [mailto:sspringer@waldmanlawfirm.com]
Sent: Tuesday, July 06, 2010 3:26 PM
To: Fitzgerald, Steven S
Cc: sspringer@waldmanlawfirm.com
Subject: Fontainebleau Resorts' Response to Defendant's Subpoenas - Sarah J. Springer, Esq.

The following message was sent to you by Sarah J. Springer, Esq. on 07/06/2010 at 3:26 PM.

Steve,

I am writing you in reagrd to the subpoenas dated May 4, 2010 which were served on my clients, Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC in the matter titled In re: Fontainebleau Las Vegas Contract Litigation presently before Judge Gold in the Sourthern District of Florida.

We spoke last week regarding my clients' predicament due to the recent conversion of the bankruptcy action. I have also written you regarding same. As a result of the conversion and the breadth of the subpoenas, pleasebe advised that I plan on filing a Motion to Quash Defendants' Subpoenas dated May 4, 2010.

As requried by S.D.Fla.L.R. 7.1A, I am writing in an attempt to resolve by agreement the issues raised in the Motion to Quash. If you would like, I will send you a signed copy of the Motion when it is complete. Please let me know if you need to see the Motion before deciding whether I need to file it. I look forward to hearing from you before the end of the day as the deadline to file a response is today.

Sincerely,

Sarah J. Springer, Esq.
954-467-8600

http://www.simpsonthacher.com

EXHIBIT F

Fitzgerald, Steven S

From: Fitzgerald, Steven S
Sent: Tuesday, July 06, 2010 5:30 PM
To: 'Sarah Springer'
Cc: Glenn J. Waldman
Subject: RE: Motion to Quash

You wrote in your prior email: As requried by S.D.Fla.L.R. 7.1A, I am writing in an attempt to resolve by agreement the issues raised in the Motion to Quash. If you would like, I will send you a signed copy of the Motion when it is complete. Please let me know if you need to see the Motion before deciding whether I need to file it. I look forward to hearing from you before the end of the day as the deadline to file a response is today.

I suppose this was just window dressing because you obviously don't intend to actually have a constructive conversation "as is required by" the local rules.

From: Sarah Springer [mailto:SSpringer@waldmanlawfirm.com]
Sent: Tuesday, July 06, 2010 5:27 PM
To: Fitzgerald, Steven S
Cc: Glenn J. Waldman
Subject: RE: Motion to Quash

No. There is no requirement that I do so.

Sincerely,

Sarah J. Springer, Attorney at Law
Waldman Trigoboff Hildebrandt Marx & Calnan, P. A.

From: Fitzgerald, Steven S [mailto:SFitzgerald@stblaw.com]
Sent: Tuesday, July 06, 2010 5:18 PM
To: Sarah Springer
Cc: Glenn J. Waldman
Subject: RE: Motion to Quash

So you no longer intend to show us your motion before filing it?

From: Sarah Springer [mailto:SSpringer@waldmanlawfirm.com]
Sent: Tuesday, July 06, 2010 5:16 PM
To: Fitzgerald, Steven S
Cc: Glenn J. Waldman
Subject: Motion to Quash

Steve,

This will confirm that we just spoke regarding my clients' Motion to Quash in the matter titled *In re: Fontainebleau Las Vegas Contract Litigation*. In order to protect our clients' rights, we are going to file the Motion to Quash. However, we will continue to work with you regarding the scope of the Subpoenas and the location for production of the documents (as you had orally agreed to allow us to produce the documents in South Florida). You will find in the Motion a full explanation of the proposed process for the copying and/or removal of documents on the servers.

Sincerely,

Sarah J. Springer, Attorney at Law
Waldman Trigoboff Hildebrandt Marx & Calnan, P.A.

Weston Pointe II Suite 202
2200 N. Commerce Parkway
Weston, FL 33326 - 3258

Telephone: 954-467-8600 ext. 106
Facsimile: 954-467-6222
E-Mail: sspringer@waldmanlawfirm.com

EXHIBIT G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:	Chapter 11
FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, ET AL.,[1]	Case No. 09-21481-BKC-AJC
Debtors.	(Jointly Administered)

_____/

DECLARATION OF HOWARD C. KARAWAN IN SUPPORT OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS

I, Howard C. Karawan, being duly sworn, depose and state as follows:

1. I am the Chief Operating Officer and the Chief Restructuring Officer of Fontainebleau Resorts, LLC ("Fontainebleau Resorts" or "FBR"), the indirect parent company and manager of Fontainebleau Las Vegas Holdings, LLC ("Resort Holdings"), Fontainebleau Las Vegas, LLC ("Resort") and Fontainebleau Las Vegas Capital Corp. ("Capital"; and, together with Resort Holdings and Resort, the "Resort Debtors"). I also serve as the Chief Operating Officer and the Chief Restructuring Officer of three affiliates of the Resort Debtors, namely Fontainebleau Las Vegas Retail Parent, LLC ("Retail Parent"), Fontainebleau Las Vegas Retail Mezzanine, LLC ("Retail Mezzanine") and Fontainebleau Las Vegas Retail, LLC ("Retail"; and, together with Retail Parent and Retail Mezzanine, the "Retail Entities")[2]. The Resort Debtors and the Retail Entities are referred to collectively as the "Debtors").

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[1] The last four digits of each Debtor's tax identification number are: (i) Fontainebleau Las Vegas Holdings, LLC [9337]; (ii) Fontainebleau Las Vegas, LLC [9332]; and (iii) Fontainebleau Las Vegas Capital Corp. [7822]. The Debtors' current mailing address is 19950 West Country Club Drive, Aventura, Florida 33180.

[2] Although chapter 11 cases for the Retail Entities have not been filed concurrently with those of the Resort Debtors, it is nonetheless anticipated that the Retail Entities will be filing petitions for relief under chapter 11 shortly, and that the bankruptcy cases of the Resort Debtors and the Retail Entities will be jointly administered.

2. I have been the Chief Operating Officer of Fontainebleau Resorts since September 2007 and was officially designated the Chief Restructuring Officer in May 2009.

3. I am familiar with each of the matters set forth below based on personal knowledge, from review of the Debtors' relevant business records, information supplied to me by others at the Debtors' businesses, or my opinion based upon my experience and knowledge of the Debtors' operations and financial condition. If I were called to testify, I could and would testify competently to the facts set forth herein.

4. On June 9, 2009 (the "Petition Date"), each of the Resort Debtors filed voluntary petitions for relief (the "Chapter 11 Cases") under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Florida (the "Bankruptcy Court"). Each of the Resort Debtors continues to operate its business and manage its affairs and prospects as a debtor in possession.

5. This Declaration describes the business of the Debtors, the circumstances surrounding the commencement of the Resort Debtors' Chapter 11 Cases, and the relevant facts for the purpose of supporting the First Day Motions (as defined below). Nothing herein is intended to be or should be construed as an admission of the validity of claims, security interests, liens, contractual defaults or any other rights or interests that may be asserted against the Resort Debtors. The statements made herein regarding debts, obligations, defaults and liens represent only assertions made by creditors to the Resort Debtors or that the Resort Debtors anticipate will be made by creditors and does not constitute a belief on the part of the Resort Debtors that these assertions are true or accurate.

BACKGROUND

My Background and Experience

6. I completed post-graduate studies and obtained a Master's of Business Administration degree with a concentration in finance and marketing from the State University of New York. At the age of 24, I became one of the youngest Directors of Marketing at Hyatt Hotels. Prior to joining FBR, I was President of Kerzner International's destination resort business. I had responsibility for the development of Kerzner's Atlantis at Paradise Island in the Bahamas. I was also involved with project planning for Kerzner's Atlantis project in Dubai and strategic direction of Kerzner's international One&Only Resorts.

The Debtors' Business and Ownership Structure

7. Until recently, the Resort Debtors were actively engaged in ongoing construction and development of "Fontainebleau Las Vegas," conceived as a signature "Tier A" casino hotel resort with gaming, lodging, convention and entertainment amenities (the "Project"). Upon completion of construction, the Resort Debtors anticipate that the Project will support 6,000 full-time jobs at the Project and 2,000 additional jobs elsewhere in Las Vegas. The Project is situated on approximately 24.4 acres at the sites of the former El Rancho Hotel and Algiers Hotel on the north end of the Las Vegas Strip. The current plans for the Project include a 63-story glass skyscraper, featuring, among other things: (a) approximately 3,815 stylishly furnished guest rooms;[3] (b) an approximately 100,000 square-foot casino with an approximately 40-foot tall ceiling, featuring 1,700 slot machines, 125 table games, a 14-table poker room and a race and sports book; (c) approximately 394,000 square feet of class "A" convention, meeting and pre-

[3] Original plans for the Project included 933 luxury hotel-condominium suites. The Resort Debtors have determined that market conditions are so highly unfavorable at the present time that the sale of hotel-condominium suites is not desirable. The Resort Debtors may reincorporate hotel-condominiums in the Project if market conditions become more favorable in the future.

function space; (d) an approximately 60,000 square-foot state-of-the-art spa; (e) a rooftop pool; and (f) a state-of-the-art theater featuring live entertainment and shows. At the time that construction of the Project was reduced to a stabilization effort as a result of the unjustified failure of certain of the Debtors' lenders to fulfill their loan commitments, the Project was approximately 70% complete.

8. The Retail Entities have been engaged in the development of approximately 286,500 square feet of the Project's retail component, consisting of signature restaurants, marquee nightclubs and related amenities (the "Retail Component"). The Retail Component is the subject of a Master Lease Agreement dated as of June 6, 2007, by and among Resort, as lessor, and Retail, as lessee (the "Retail Component Lease").

9. The Debtors' business strategy is to create an architecturally and experientially significant destination resort appealing to sophisticated travel consumers with high levels of discretionary income and a desire for luxury and aesthetic quality. The Debtors intend to reflect the Fontainebleau brand[4] and image in their lodging, convention and entertainment offerings, including (i) luxury hotel rooms and suites, (ii) high-tech convention and meeting amenities, (iii) signature restaurants and lounges, (iv) upscale entertainment venues, (v) state-of-the-art spa facilities, (vi) high-end retail outlets, and (vii) gaming.

10. The chart attached as Exhibit "A" hereto illustrates the organizational structure of the Debtors, their parent entities and certain affiliated entities. The chart does not contain all of Fontainebleau Resorts' subsidiaries. By way of example, the Fontainebleau family of companies

[4] Resort and Retail are non-exclusive licensees of the trademarks and service marks related to the "Fontainebleau." The trademarks and service marks are owned by Fontainebleau Resort Properties II, LLC, a non-debtor affiliate.

includes a joint venture partner in Fontainebleau Miami Beach[5] which is among the most dynamic destination resorts in the world.

11. Each Resort Debtor is a member managed limited liability company, except for Capital, which is a Delaware corporation. FBR, the indirect parent of each Resort Debtor, operates through a "Board of Managers" which, in turn, is responsible for all major business decisions for each Resort Debtor, other than Capital. Capital's board of directors currently consists of two members, each of whom is also on the Board of Managers of FBR.

12. FBR is headquartered in Miami, Florida. All major decisions in respect of the Project have been and are made by the Board of Managers of FBR. The Board of Managers has continuously exercised its ultimate control over the management, business activities (including the design and development of the Project) and capital structure/financing of the Debtors. Overall responsibility within the Fontainebleau family of companies for managing, directing and coordinating reorganization efforts has been entrusted to me by the Board of Managers. My office is in Miami, Florida. I report directly to the Board of Managers and generally work side-by-side with members of the Board of Managers, including the ultimate controlling person of the Fontainebleau family of companies and Chairman of FBR, Jeffery Soffer, and Albert Kotite, an Executive Vice President of FBR. Mr. Kotite has his office in Miami, Florida. All other personnel critical to the reorganization of the Debtors either work from or report to others situated in Miami, Florida. As a consequence, all critical decisions in respect of the Project – operational and restructuring – are and shall be made in Miami, Florida. Accordingly, I am advised and believe that venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.

[5] Fontainebleau Miami JV Member, LLC.

THE DEBTORS' FINANCING STRUCTURE

A. The Resort Debtors

13. On June 6, 2007 (the "Closing Date"), Resort and Fontainebleau Las Vegas II, LLC,[6] as borrowers, and Bank of America, N.A., as Administrative Agent, Issuing Lender and Swing Line Lender, as well as various other lenders thereto, entered into a $1.85 billion senior secured credit facility (the "Senior Credit Facility"), comprised of a seven-year, $700 million term loan facility (the "Term Loan Facility") which was fully funded on the Closing Date, a seven-year, $350 million delay draw term loan facility (the "Delayed Draw Facility") and a five-year, $800 million revolving credit facility (the "Revolver Facility"; the Revolver Facility, the Term Loan Facility and the Delayed Draw Facility being collectively referred to as the "Facilities"). As of the Petition Date, approximately $700 million is outstanding under the Term Loan Facility; approximately $336.7 million is outstanding under the Delayed Draw Facility;[7] and, other than letters of credit in the aggregate face amount of approximately $13 million, nothing is outstanding under the Revolver Facility.[8] The Senior Credit Facility is secured by a first priority lien on substantially all of the Project's assets, other than the air rights comprising the Retail Component of the Project, which serves as collateral for the Retail Loans (as defined below). The Senior Credit Facility is guaranteed by Resort Holdings, which is the direct parent of Capital and Resort, Capital, FBR and Fontainebleau Resort Properties I, LLC ("FRP"), the direct parent of the Resort Holdings. In addition, Turnberry Residential Limited Partner, L.P. ("TRD") provided a completion guaranty in respect of construction of the Project.

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[6] On February 4, 2009, Fontainebleau Las Vegas II, LLC merged into Resort.

[7] Of that amount, approximately $136.5 million is held in the Bank Proceeds Account (as hereinafter defined) and has not been advanced to the Resort Debtors for use in the Project.

[8] As will be discussed in greater detail, it was the unjustified and impermissible failure and refusal of the lenders which committed to make revolving loans under the Revolver Facility that ultimately resulted in the suspension of construction of the Project and the chapter 11 proceedings of the Resort Debtors.

14. The Senior Credit Facility provides two related mechanisms for funding the Project. First, Resort must submit a notice of borrowing under the Delayed Draw Facility and/or the Revolver Facility, as applicable (each, a "Notice of Borrowing") which obligates the respective lenders to transfer the requested funds into an account (the "Bank Proceeds Account") that is subject to the Disbursement Agreement (as hereinafter defined). Second, Resort must submit an advance request (each, an "Advance Request"), typically monthly, to secure disbursements from the Bank Proceeds Account that can then be used to pay the costs of the Project.

15. In addition, on the Closing Date, Resort Holdings and Capital, jointly and severally, issued $675 million of 10.25% Second Mortgage Notes Due 2015 (the "Junior Mortgage Notes"), for which Wells Fargo Bank, National Association serves as Trustee. The Junior Mortgage Notes are secured primarily by a second priority mortgage lien on the Project, other than the air rights comprising the Retail Component of the Project, and is guaranteed by Resort, FRP and FBR. As of the Petition Date, the full $675 million principal amount of the Junior Mortgage Notes and accrued interest thereon, is outstanding.

16. The Junior Mortgage Notes and the Senior Credit Facility are subject to an intercreditor agreement among the various lenders thereto.

17. The Senior Credit Facility, the Junior Mortgage Notes and the Mortgage Loan (as defined below) are subject of a Master Disbursement Agreement (the "Disbursement Agreement"), among the Debtors, the Administrative Agent under the Senior Credit Facility, the Trustee under the Junior Mortgage Notes, and Lehman Brothers Holdings, Inc. ("Lehman") as Agent under the Retail Loans, that established the conditions to and the order of funding of such credit facilities.

B. The Retail Entities

18. On June 6, 2007, Retail, as borrower, and Lehman,[9] individually and as Agent for one or more Co-Lenders, entered into a $315 million construction loan (the "Mortgage Loan"), is presently secured by the Retail Component Lease. The Mortgage Loan matures on October 9, 2010, subject to certain rights to extend the maturity, and is guaranteed, in part, by FBR. As described above, the Mortgage Loan is subject to the Disbursement Agreement.

19. As contemplated by the Mortgage Loan, Lehman syndicated a portion of the Mortgage Loan to Union Labor Life Insurance Company ("ULLICO"), Mitsui Trust Company, and National City Bank (collectively with ULLICO, the "Co-Lenders"). Lehman, as agent and split note holder, and the Co-Lenders, as split note holders, are parties to a Co-Lending Agreement. After the syndication, on information and belief, Lehman retained 68.26% of the Retail Loan.

20. On September 15, 2008, Lehman filed for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York. Since December 2008, Lehman has failed and refused to make any advances under the Mortgage Loan. As a consequence, ULLICO agreed to fund above and beyond its own funding commitment in respect of several monthly draws under the Mortgage Loan (the "Defaulted Funding Loans"). As of the Petition Date, the outstanding principal balance of the Defaulted Funding Loans is approximately $5.7 million, and the loans are guaranteed by FBR and TRD, and secured by the pledge of certain interests.

[9] On September 15, 2008, Lehman and a number of its affiliates and subsidiaries filed for chapter 11 protection in the United States Bankruptcy Court for the Southern District of New York (Case No. 08-13555).

21. As of the Petition Date, approximately $165 million of principal is outstanding on the Mortgage Loan. Of the remaining $105 million of undrawn funds on the Mortgage Loan, $66 million is allocable to Lehman and $39 million is allocable to the non-Lehman Co-Lenders.

22. In addition, on the Closing Date, Retail Mezzanine, as borrower, and Lehman, individually and as Agent for one or more Co-Lenders, entered into a $85 million PIK secured loan (the "Mezzanine Loan"; and, together with the Mortgage Loan, the "Retail Loans"), secured by, among things, Retail Mezzanine's membership interests in Retail. In addition, Retail Parent has pledged its 100% membership interest in Retail Mezzanine as collateral for the Mezzanine Loan. The Mezzanine Loan was fully funded on the Closing Date and matures on October 9, 2009, subject to certain rights to extend the maturity, and is guaranteed, in part, by Jeffrey Soffer and FBR. The Mezzanine Loan is not subject to the Disbursement Agreement.

23. As of the Petition Date, approximately $114 million of principal and PIK interest is outstanding on the Mezzanine Loan.

EVENTS LEADING UP TO THE CHAPTER 11 CASES AND RELATED CONSEQUENCES

24. The bankruptcy of Lehman and its subsequent failure to fund its commitment under the Mortgage Loan necessitated the search for additional funding sources. However, the demise of Lehman also marked a cataclysmic global decline in the credit markets, making it exceedingly difficult to find financing or to attract an equity investment. Making matters more difficult, the general decline in the economy has taken its toll on Las Vegas which likewise affects investment and credit risks. Nonetheless, FBR has been intensely focused on those efforts ever since. To assist, the Debtors and their affiliates engaged investment bankers and

other advisors to advise them and to identify sources of equity and credit. Numerous confidentiality agreements have been executed with diverse parties. That process continues.

25. The Lehman experience, the insolvency and the ensuing FDIC receivership of one of the lenders under the Delayed Draw Facility, and the continuing downward macro-economic spiral also engendered concerns that bank members of the Senior Credit Facility might become unable or unwilling to meet their respective commitments under the Delayed Draw Facility and the Revolver Facility.

26. Reference is made to the Complaint filed in the Adversary Proceeding No. 09-01621-ap-AJC [D.E. #1] commenced by Resort in these cases contemporaneously herewith. The Complaint specifically describes the defaults and wrongful termination by the bank members of the Senior Credit Facility with respect to their commitment to fund the Revolver Facility. The Complaint seeks specific performance of these bank members' obligations, as well as enormous damages resulting from their malfeasance.

27. As a consequence of the bank members' breaches of the Senior Credit Facility, the Resort Debtors have been left with virtually no source of funding the continuing construction of the Project. Try as they might to find new sources of working capital, to encourage existing lenders to meet their funding commitments, or to obtain further financial accommodations from existing lenders, the Debtors were ultimately compelled to virtually cease construction of the Project and the Retail Component. As a consequence, most laborers and materialmen have left the jobsite and many of them have filed mechanic liens against the Project. As of the Petition Date, there were approximately $403 million of payables outstanding in respect of the Project that might result in mechanic liens against the Project.[10] It is my understanding that under

[10] On June 4, 2009, Turnberry West Construction, Inc., the general contractor on the Project, filed a claim of lien against the Project for $668,990,933.27.

Nevada law, duly perfected mechanic liens against the Project may prime the mortgage liens of existing lenders.

28. At my direction, the Resort Debtors have also terminated the employment of approximately 40 employees, are implementing significant across-the-board salary reductions, and have reallocated certain personnel. We continue to evaluate cost saving opportunities that will not jeopardize the value of the Project or our ability to resume construction. However, it has become painfully clear that the Project likely will not be completed by the scheduled opening date in January 2010.[11] As a consequence, we are in cancellation/rescheduling discussions with groups which have made bookings for January through March 2010 and, out of an abundance of caution, April 2010.

FACTS IN SUPPORT OF FIRST DAY MOTIONS

29. Concurrently with the filing of the Chapter 11 Cases, the Resort Debtors filed a number of motions for immediate and necessary relief (the "First Day Motions"). I have reviewed the First Day Motions and I believe that the relief sought in each of the First Day Motions is necessary to enable the Resort Debtors to operate in chapter 11 and preserve and maximize value of the Project for all constituencies. The factual background in support of the First Day Motions is set forth herein.

***Ex Parte* Motion by the Resort Debtors for Joint Administration**

30. As discussed above, the Resort Debtors consist of Resort Holdings and five of its affiliates, all of whom are ultimately controlled by the Board of Managers of the parent company, FBR, as two of the Resort Debtors are limited liability companies that are member managed, and the third has a board of directors that is comprised of the same members as the

[11] Under the Mortgage Loan, March 31, 2010 is the Outside Opening Date.

Board of Managers of FBR. The Resort Debtors share key financial and operational systems, as well as local management to oversee day-to-day operations.

31. The Resort Debtors anticipate that a multitude of creditors and parties in interest will be involved in their chapter 11 bankruptcy cases, many of whom may have overlapping claims and interests in several of the Resort Debtors' estates. Joint administration of these cases will obviate the need for the filing and service of duplicative notices, motions, applications, hearings, and orders. Moreover, joint administration will reduce the administrative burden on this Court, by freeing the Court from the burden of scheduling duplicative hearings, entering duplicative orders, and maintaining redundant files, and will also save the Resort Debtors' estates considerable time and expense.

32. The Resort Debtors believe that the requested relief is needed immediately in order to avoid the substantial costs of duplicative mailing expenses that debtors traditionally incur after the filing of a chapter 11 petition. The procedural benefits of joint administration will not adversely affect creditors and other parties in interest, but rather will ultimately benefit all creditors since it will reduce costs and the administrative burden of maintaining the estates.

Debtors' Motion for Orders (I) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (II) Providing Adequate Protection to Prepetition Secured Parties Pursuant to Sections 361, 362, and 363 of the Bankruptcy Code, and (III) Scheduling Final Hearing

33. The Resort Debtors require the use of cash on deposit or maintained in bank accounts identified in Section 2.2 of the Disbursement Agreement (the "Cash Collateral") to, among other things, pay present operating expenses, including payroll and vendors, maintain insurance coverage, taxes, utilities, security and other essential expenses essential to the preservation of the Project.

34. The Debtors and their financial advisors undertook extensive efforts to obtain debtor-in-possession financing for the purpose of paying their anticipated expenses of administration in the Chapter 11 Cases. While the Debtors obtained expressions of interest in providing such financing, the Debtors did not receive commitments for the same by the Petition Date. Moreover, the expressions of interest received imposed conditions that made it difficult, if not impossible, to timely access the proposed financing.

35. The Debtors also requested the use of Cash Collateral from lenders under the Term Loan and Delayed Draw Facilities (collectively, the "Term Lenders") which have the first priority lien and security interest in the Cash Collateral. The Debtors' counsel and financial advisors extensively negotiated the terms upon which the Debtors can use the Cash Collateral with counsel for certain of the Term Lenders. Such negotiations were at arms' length and in good faith. By the Petition Date, a group of the Term Lenders comprising the holders of approximately $350 million of the Term Loan and Delayed Draw Facilities consented to the Debtors' use of the Cash Collateral. Moreover, the Debtors' were encouraged to believe that additional Term Lenders would likewise consent by the date of the hearing on the Debtors' emergency motion for leave to use the Cash Collateral. Thus, the Debtors' anticipate that Term Lenders holding over 51% of the Term Loan and Delayed Draw Facilities will consent to the Debtors' use of the Cash Collateral by the hearing.

36. The Debtors will suffer immediate and irreparable harm if they cannot obtain use of the Cash Collateral. Among other things, the Debtors have payroll obligations that must be met almost immediately. The failure to meet those payroll obligations may well result in the loss of critical employees vital to the Project and to the Debtors' reorganization efforts. Likewise, the

failure to pay insurances, taxes, utilities, security and other ordinary and necessary expenses may impair the maintenance of the Project until such time as construction may be resumed.

Emergency Motion by the Debtors for Entry of an Order (A) Authorizing the Debtors to Maintain Their Existing Cash Management System, Bank Accounts, and Business Forms, (B) Granting Administrative Expense Priority to Postpetition Intercompany Claims and Authorizing Continued Intercompany Arrangements and Historical Practices; and (C) Waiving Investment and Deposit Requirements

37. To facilitate efficient operations, in the ordinary course of business, and as required by the Resort Debtors' loan documents, the Resort Debtors maintain a cash management system (the "Cash Management System") allowing them to collect, transfer, and disburse funds pursuant to a disbursement agreement. The Cash Management System provides significant benefits to the Resort Debtors, including the ability to: (a) control and centrally manage corporate funds; (b) invest idle cash; (c) ensure the availability of funds when necessary; (d) reduce administrative costs by facilitating the movement of funds and the development of more timely and accurate balance and presentment information; (e) provide the necessary accounting controls to enable the Resort Debtors, as well as creditors and the Court, if necessary, to trace funds through the system and to ensure that all transactions are adequately documented and readily ascertainable, whether prepetition or postpetition; and (f) fulfill contractual obligations of the Credit Facilities, the Notes, as well as to facilitate any DIP financing agreements that may be approved by this Court. The cash management procedures employed by the Resort Debtors constitute ordinary, usual and essential business practices, and are similar to those used by other corporate enterprises in the same industry.

38. The Resort Debtors' Cash Management System consists generally of the following accounts described below (collectively, the "Bank Accounts").

Debtor-Controlled Bank of America Accounts

39. *Resort Payment Account (*2813)* – In accordance with practices prior to the Petition Date, Monthly Disbursements are deposited into this account. The funds are then disbursed to pay costs of the Project in accordance with the applicable Advance Request or transferred to the Construction Payable Account (see below), Cash Management Account (see below) or Payroll Account to pay costs of the Project.

40. *Construction Payable Account* (*2853) – This account is funded from the Resort Payment Account and used as a disbursement account to pay construction costs.

41. *Cash Management Account* (*2450) – This impressed account is funded from the Resort Payment Account and used to pay Project costs between regularly scheduled disbursements and is replenished on a revolving basis up to $6 million at any given time.

42. *Payroll Account* (*1021) – This account is funded from the Resort Payment Account and used to pay Resort's payroll.

43. *General Account* (*8730) – This account is used for customer deposits received by Resort.

44. *Credit Card Deposit Account* (*8743) – This account was set up to receive credit card deposits when Resort starts to take reservations.

45. *Retail Payment Account* (*3826) – This account is not active.

Bank-Controlled Accounts

Resort Accounts at Bank of America, N.A.

46. *Bank Funding Accounts* (*6005) – This account was established for the initial funding under the Credit Facilities, and currently has a zero balance.

47. *Resort Loss Proceeds Account* (*5959) – This account was set up to receive all loss proceeds received by Resort and applied to pay for Project costs in respect of Resort,

including the costs to repair or replace the property that was damaged or destroyed. In limited circumstances, amounts held in this account could be applied to the prepayment of indebtedness under the Senior Credit Facility or Junior Mortgage Notes.

48. *Second Mortgage Funding Account* (*5954) – The net proceeds of the Junior Mortgage Notes were deposited into this Account and applied, from time to time, to the payment of the Project's costs.

49. *Completion Guarantee Proceeds Account* (*6968) – This account was set up to receive any drawings on the completion guarantee provided by TRD or any replacement completion guarantor. There are no funds currently in this account.

50. *Bonded Condo Proceeds Account* (*5997) – This account was set up to receive the proceeds of deposits for the purchase of condominiums to the extent such deposits have been bonded. There are no funds currently in this account.

Resort Accounts at Columbia Investments[12]

51. *Equity Funding Account* (*0385) – This account is used for equity contributions. However, previous equity contributions have been used to pay construction costs of the Project and the account currently has a zero balance.

52. *Bank Proceeds Account* (*0384) – All funds advanced from time to time by the participating lenders under the Senior Credit Facility are deposited in this account. Upon approval of an Advance Request, certain amounts on deposit in this account are transferred to the Resort Payment Account and used to pay the Project's costs, to fund the Cash Management Account, or to pay interest on the Senior Credit Facility. Currently, there is approximately $136.6 million in this account, which was funded under the Delayed Draw Term Facility.

[12] Columbia Investments is an affiliate of Bank of America, N.A.

53. *Liquidity Reserve Account* (*0382) – As security for Resort's obligation to complete the Project, Resort has $50 million on deposit in this account which serves as cash collateral for the Senior Credit Facility. The interest earned from this account is used to pay a portion of the Advance Request.

Resort Accounts at Wells Fargo

54. *Second Mortgage Proceeds Account* (*8800) – This is a trust account held at Wells Fargo bank that received proceeds of the Junior Mortgage Notes. Such proceeds were subsequently used to pay costs of the Project. There are no funds presently in this account.

55. *10.25% Second Mortgage Notes Due 2015 Account* (*6200) – This is a trust account held at Wells Fargo Bank that received proceeds of the Notes. Such proceeds were subsequently used to pay costs of the Project. There are no funds presently in this account.

56. The operation of the Resort Debtors' business requires that the Cash Management System continue. Requiring the Resort Debtors to adopt new, segmented cash management systems at this critical stage of these Chapter 11 Cases would be unduly expensive, create unnecessary administrative problems, and negatively impact the usual and ordinary operations of the Resort Debtors, This impact would be much more disruptive than productive. The Resort Debtors' treasury, accounting, and bookkeeping employees would be forced to focus nearly exclusively upon immediately opening new accounts and revising cash management procedures, instead of upon their many other usual daily responsibilities. These distractions would hinder the Resort Debtors' smooth transition into chapter 11.

57. Importantly, parties in interest would not be harmed by the Resort Debtors' maintenance of the Cash Management System. The Resort Debtors will immediately undertake measures to ensure that they will not make payments inadvertently on any prepetition debt, unless otherwise authorized by the Court.

58. The Cash Management System allows the Resort Debtors to centrally manage all of their cash-flow needs and includes the necessary accounting controls to enable the Resort Debtors, as well as creditors and the Court, if necessary, to trace funds through the system and to ensure that all transactions are adequately documented and readily ascertainable. The Resort Debtors will continue to maintain detailed records reflecting all transfers of funds between themselves so that all intercompany transactions can be readily ascertained. Consequently, maintenance of the existing Cash Management System during these Chapter 11 Cases is in the best interests of all creditors and other parties in interest.

59. In order to avoid delays in payments to administrative creditors, to ensure as smooth a transition into chapter 11 as possible with minimal disruption, and to aid in the Resort Debtors' efforts to successfully and rapidly complete these cases, it is important that the Resort Debtors be permitted to continue to maintain their existing Bank Accounts and, if necessary, open new accounts, wherever they are needed, all in the ordinary course of business and as provided in the existing agreements between the Resort Debtors and the various banks regarding the Bank Accounts.

60. The Resort Debtors use a wide variety of business forms. In order to minimize expenses to the estates, and to minimize disruption of their businesses, the Resort Debtors also request that they be authorized to continue to use all correspondence, business forms (including, but not limited to, letterhead, stationary, purchase orders, employment applications, invoices, etc.) and checks in the form that they exist immediately prior to the Petition Date (collectively, the "Business Forms"), without reference to the Resort Debtors' status as debtors-in-possession. Because of the complex nature of the Resort Debtors' business operations, use of new business

forms would greatly increase the Resort Debtors' costs and add significantly to the administrative burdens of transitioning to operations under chapter 11.

61. Parties doing business with the Resort Debtors will undoubtedly be aware of the Resort Debtors' status as chapter 11 debtors-in-possession as a result of the size and notoriety of these cases, and from coverage of these cases by the press. Moreover, each of the parties with whom the Resort Debtors do business will also receive notices of the commencement of these cases. Because of the nature and scope of the Resort Debtors' business operations and the large number of vendors, customers and other parties with whom the Resort Debtors deal on a regular basis, it is necessary that the Resort Debtors be permitted to continue to use their existing Business Forms without alteration or change.

62. If the Resort Debtors were required to change their Business Forms, it would be unduly expensive and burdensome to the Resort Debtors' estates and disruptive to the Resort Debtors' business operations and would not confer any benefit on those dealing with the Resort Debtors. For these reasons, the Resort Debtors request that they be authorized to use existing checks and Business Forms without being required to place the label "debtor-in-possession" on each.

63. Each of the Bank Accounts are swept nightly and invested in conservative investments with the primary goal of protecting principal, and the secondary goal of maximizing yield and liquidity.

64. The Resort Debtors believe that the institutions at which the Bank Accounts are maintained are financially stable. Both Bank of America, N.A. and Wells Fargo Bank, N.A. are approved depositories pursuant to the U.S. Trustee's List of Approved Depositories for Region 21, dated as of April 15, 2009. Columbia Investments is an affiliate of Bank of America, N.A.

All such deposits and investments are prudent and designed to yield the maximum reasonable net return on the funds invested, taking into account the safety of such deposits and investments.

65. The Resort Debtors believe that it is in the best interests of the estates and creditors for the Resort Debtors to continue their prepetition practice of investing excess cash as they did prior to the bankruptcy. The yield on investments under these prepetition practices will be substantially greater than that which can be obtained under the restrictions contained in Section 345(b) of the Bankruptcy Code. Indeed, the Resort Debtors estimate that, given the amount of cash that is or will be in the estates, the Resort Debtors would lose a substantial amount of money if limited to direct investment in government securities.

66. The Resort Debtors believe that investments made in accordance with their standard prepetition investment procedures provide the protection required by Section 345(b) of the Bankruptcy Code, notwithstanding the absence of a "corporate surety" requirement. First, these procedures permit investments only in investment or money market accounts maintained at stable institutions (which are insured), and such accounts are widely regarded as one of the safest forms of investment. Moreover, any corporate surety that might be obtained to guarantee the safety of such investments would likely not have significantly greater strength than the private entities in which the Resort Debtors would continue to invest. Finally, the requirement of obtaining a bond secured by the undertaking of a corporate surety from each of the numerous institutions with which the Resort Debtors deposit or invests funds would be prohibitively expensive and administratively burdensome, and could offset much of the gain derived from investing in private as well as federal or federally guaranteed securities.

67. Accordingly, the Resort Debtors seek an order (a) authorizing the Resort Debtors to maintain their existing Cash Management System, Bank Accounts, and Business Forms;

(b) granting administrative expense priority to postpetition intercompany claims and authorizing continued intercompany arrangements and historical practices; and (c) waiving the Resort Debtors' compliance with investment and deposit requirements of § 345(b) of the Bankruptcy Code and the U.S. Trustee's operating guidelines.

Emergency Motion by Debtors for Entry of an Order (I) Authorizing the Debtors to Pay (A) Prepetition Wages, Salaries, and Employee Benefits and (B) Prepetition Withholding Obligations, (II) Authorizing Continuation of Employee Benefit Plans and Programs Postpetition, and (III) Directing All Banks to Honor Payments of Prepetition Employee Obligations (the "Wage Motion")

68. In order to maintain the level of excellence typical of the Fontainebleau brand name, Resort has engaged the services of employees in various sectors, including, inter alia, information technology, sales and marketing, legal services, purchasing, and design development. Since April 2009, Resort has undergone significant reductions in force, eliminating approximately one-third of its total workforce and has begun to implement the reduction of the salaries of the remaining employees. The remaining employees are crucial to the continued marketing and development of the Project facilities and thus to the viability of the Project as a going concern.

69. The Resort Debtors believe that it is in the best interests of the estates for this Court to: (a) authorize the Resort Debtors to pay or otherwise honor the Resort Debtors' various employee-related prepetition obligations (including, but not limited to, claims for wages, salaries, vacation, leave obligations, unpaid reimbursable expenses, and federal and state withholding obligations) to, or for the benefit of, current employees (each an "Employee" and collectively, the "Employees"), (b) authorize the Resort Debtors to continue postpetition the employee benefit plans and programs in effect immediately prior to the filing of this case (including, but not limited to, medical, dental, vision, prescription drug, life insurance, and

disability benefits), and (c) direct all banks to honor prepetition checks for payment of the Resort Debtors' prepetition employee obligations.

A. The Workforce

70. The Employees perform a variety of critical functions, all directed towards completion of the ongoing construction of the Project, development of current and future operations of the Resort Debtors' businesses, and sales and marketing of the Project as a world-class casino resort.[13] The Employees also perform many administrative, accounting, marketing, purchasing, supervisory, and management tasks. The Employees' skills, institutional knowledge, and understanding of the Resort Debtors' operations are essential to the effective restructuring of the Resort Debtors' business. To ensure timely completion of the Project and a successful opening of the resort and gaming facilities, Resort has retained a sufficient number of Employees to open and operate the Project immediately upon completion. The collective expertise of these Employees, many of whom are highly specialized within the gaming industry, is instrumental to the Project's success as a going concern.

71. If prepetition Employee obligations and Employee benefits are not received by the Employees in the ordinary course, they will suffer extreme personal hardship and, in many cases, will be unable to pay their basic living expenses. Such a result obviously would destroy Employee morale and result in unmanageable Employee turnover, causing immediate and pervasive damage to the Resort Debtors' business operations. Further, any significant Employee departures could seriously jeopardize the crux of the Resort Debtors' current business, namely, construction and design development of the Project. Any significant deterioration in morale at this time would substantially and adversely affect the Resort Debtors and their ability to

[13] Approximately 40% of the Project's business is expected to be generated from corporate and association groups that make their meeting and conference commitments up to three years in advance, which necessitates Resort maintaining a sales and marketing effort prior to the opening of the Project.

reorganize, thereby resulting in immediate and irreparable harm to the Resort Debtors, their estates, and creditors.

72. With a few exceptions, the compensation, benefit, and reimbursement amounts that the Resort Debtors seek to pay the Employees do not exceed the sum of $10,950 per Employee (not including accrued vacation).

B. Employee Compensation.

73. Wages and Salaries. As of the Petition Date, the Resort Debtors' workforce consisted of approximately 115 Employees located in Florida, Nevada, California, and Virginia. Resort employs all Employees on either a salaried or hourly basis.[14] Resort pays its Employees (the collective payments, the "Employee Compensation") either biweekly (collectively, the "Biweekly Employees") or semimonthly (collectively, the "Semimonthly Employees"). Resort has a combined total of approximately 88 Biweekly Employees (12 of whom are paid hourly)[15] and 27 salaried Semimonthly Employees.

74. Employment Agreements. Approximately 23 Employees have employment agreements with Resort. All of these Employees are executive, senior management, or supervisory level employees. A number of executives are eligible for bonuses upon a substantially complete and timely opening of the Project and thereafter.

75. Payment Schedule and Average Payroll. The Biweekly Employees are paid every two weeks, which equates to 26 pay periods in a calendar year, and are paid four days in arrears. The Semimonthly Employees are paid twice a month, which equates to 24 pay periods in a calendar year, and are current when paid.

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[14] Of the 115 Employees, 114 are full-time employees and one is a part-time employee.

[15] All hourly employees are Biweekly Employees. The rest of the Employees (both Biweekly and Semimonthly) are salaried.

76. The gross amount of the Resort Debtors' average Biweekly Employee payroll is approximately $351,000. The gross amount of the Resort Debtors' average Semimonthly Employee payroll is approximately $152,071. The combined total of both payrolls is approximately $503,071.

77. Overtime. Certain of the Employees are eligible for overtime and, when necessary, their pay is adjusted accordingly. At present, the Resort Debtors do not owe overtime pay to any Biweekly Employees. The year-to-date totals for 2009 overtime pay is approximately $4,850 for Biweekly Employees. No overtime pay has been allocated to current Semimonthly Employees for this calendar year.

78. Biweekly Employees received their most recent paychecks on May 29, 2009, which includes payments of all amounts owed through May 24, 2009. Semimonthly Employees received their last paychecks on May 29, 2009 for work through May 31, 2009. Biweekly Employees are scheduled to receive their next paychecks on June 12, 2009, and Semimonthly Employees are scheduled to receive their next paychecks on June 15, 2009.

79. The Resort Debtors seek authority to pay the outstanding amounts owed as of the Petition Date for accrued Employee Compensation, including unpaid wages, salaries, and adjustments thereto.

C. Vacation, Holiday Benefits, and Other Leave Obligations.

80. The Resort Debtors provide vacation time to Employees ("Vacation Time") under two different policies: (i) a paid time off policy and (ii) a vacation policy.

81. Paid Time Off Policy for Biweekly Employees. Biweekly Employees are provided Vacation Time pursuant to a paid time off ("PTO") policy. This policy covers all forms of time off from work, including holidays, vacation and sick days. Biweekly Employees earn

PTO time for each regular hour of work (not including overtime hours) plus hours taken for PTO. Biweekly Employees can apply no more than 40 hours per workweek towards the PTO policy. Biweekly Employees begin to accrue PTO on each such Employee's respective hire date (a.k.a. the "anniversary" date), with the accrual continuing over a 12-month rolling period. The actual rate of PTO accrual is based upon length of the particular Employee's service with Resort. All full-time employees earn PTO hours according to the schedule below:

Completed Years of Service	PTO Days Per Year	Hourly Accrual	Hours Earned in a 80-Hour Pay Period
Hire Date to 1 Year	19	0.07308	5.85
2 – 5 years	21	0.08077	6.46
5 – 12 Years	25	0.09618	7.69
12+ Years	28	0.10769	8.62

82. Biweekly Employees may carry over up to 40 hours from one anniversary year to the next. All other PTO hours must be taken during the relevant twelve month period or such hours are forfeited. Although accrued PTO hours may be used during a Biweekly Employee's first year of employment, PTO hours do not vest until the Biweekly Employee's first anniversary date. Separated employees may receive payment for any unused vested PTO hours. As of the Petition Date, current Biweekly Employees have accrued approximately $440,121 in earned but unused PTO hours. Approximately $177,115 of this PTO time has vested and would thus need to be paid in the event of the relevant Employees' departure.

83. Vacation Policy for Semimonthly Employees. Semimonthly Employees accrue Vacation Time semimonthly at an annual rate of two to four weeks per year in most cases based upon years of service with Resort. However, four Employees have been credited with a past employer’s years of service. Semimonthly Employees must use accrued Vacation Time during

the twelve months immediately following completion of each year of continuous employment. Semimonthly Employees may not carry over Vacation Time into the subsequent year and taking pay in lieu of unused Vacation Time is not permitted absent termination. Upon termination, Resort pays Semimonthly Employees in good standing who have completed at least one year of full-time employment the value of their accrued, unused Vacation Time. Semimonthly Employees working less than 1,900 hours during their anniversary year are entitled to a partial vacation determined by the number of hours worked. As of the Petition Date, current Semimonthly Employees have accrued approximately $203,858 in earned but unused Vacation Time. Approximately $184,041 of this time has been earned by Employees with more than one year of service with Resort.

84. Paid Holidays. Semimonthly Employees are also compensated for eight holidays per year and Employees are paid for up to twenty days spent in jury duty (less the amount earned as juror) per year. Employees are also entitled to certain other paid leave, much of which is required by law, i.e. the Family and Medical Leave Act (FMLA).

85. Military Leave. Any Employee who is a member of the United States Army, Navy, Air Force, Marines, Coast Guard, National Guard, Reserves, or Public Health Service is entitled to an unpaid leave of absence for military service, training, or related obligations in accordance with applicable law. Employees on military leave may substitute their accrued paid leave time for unpaid leave.

86. Bereavement. Biweekly Employees may receive three days of bereavement leave for the death of immediate family members. Semimonthly Employees are not entitled to bereavement leave.

87. The Debtors seek authority to honor the PTO, vacation, military, bereavement, and other applicable leave obligations to current Employees in the ordinary course of the Resort Debtors' business.

D. Deductions, Payroll Taxes and Withholding Obligations.

88. Deductions. In the ordinary course of its business, Resort deducts certain amounts from the Employees' paychecks in each pay period, including, without limitation, garnishments, child support, and other pre-tax and after-tax deductions payable pursuant to certain of the Employee Benefit Plans and Programs discussed herein (such as an Employee's share of insurance premiums) (collectively, the "Deductions"). Resort remits the amount of the Deductions to the appropriate third-party recipients. As of the Petition Date, approximately $5,130 in Deductions were accrued but unremitted to the third-party recipients.

89. Payroll Taxes. In addition, Resort is required by law to withhold amounts related to federal, state and local income taxes, Social Security, and Medicare taxes from an Employee's wages for remittance to the appropriate federal, state or local taxing authority (collectively, the "Withheld Amounts"). Resort must then match from its own funds the required remittances for Social Security and Medicare taxes and subsequently pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance (the "Employer Payroll Tax Contributions," and together with the Withheld Amounts, the "Payroll Taxes"). The Resort Debtors estimate that approximately $150,494[16] in Payroll Taxes have accrued but remain unpaid as of the Petition Date. Resort's average monthly submission for Payroll Taxes[17] is $303,261.

[16] This figure includes approximately $35,127 in Employer Payroll Tax Contributions.

[17] The Debtors submit that Payroll Taxes, to the extent that they remain in the Debtors' possession, constitute amounts held in trust and therefore, are not property of the Debtors' bankruptcy estates.

90. Withholding Obligations. Resort pays all Payroll Taxes and Deductions (collectively, the "Withholding Obligations") directly to applicable taxing authorities and third parties. As of the Petition Date, Resort may not have completed the process of forwarding certain Withholding Obligations to the appropriate third party recipients.

91. The Resort Debtors request that they be authorized to remit any Withholding Obligations accrued but unpaid as of the Petition Date to the appropriate third parties and to continue to make such deductions from the Employees' paychecks postpetition and to remit such Withholding Obligations to the appropriate third party recipients.

E. Reimbursement Obligations.

92. Most Employee work-related expenses are incurred on the Employees' personal credit cards. It is the Resort Debtors' policy to reimburse Employees for certain expenses within the scope of their employment, including expenses for travel, mileage, lodging, meals and entertainment, supplies, cellular phone, gas, car rental, and other miscellaneous expenses. Reasonable reimbursable expenses are incurred on the Resort Debtors' behalf and with the understanding that the Resort Debtors will reimburse such expenses. The Resort Debtors request authority to pay such accrued reasonable prepetition reimbursement amounts, and to continue to reimburse such expenses as they are incurred postpetition.

F. Employee Benefit Plans and Programs.

93. The Resort Debtors offer Employees many standard employee benefits, including health insurance, dental insurance, disability and life insurance, workers' compensation insurance, and other benefits (collectively, the "Employee Benefit Plans and Programs") through its parent company, Fontainebleau Resorts. Although the contracts associated with the Employee Benefit Plans and Programs are between Fontainebleau Resorts and the applicable

providers (collectively, the "Providers"), Resort pays the premiums and payments for such plans directly to the Providers.

94. Health, Dental, and Vision Insurance Plans. Through the above-mentioned association with Fontainebleau Resorts, Resort offers all Employees one of four voluntary health insurance plans, two dental insurance plans, and a prescription vision insurance plan. The health insurance plans for non-Florida Employees include two PPO plans and one HMO plan, administered by Health Plan of Nevada and Sierra Health and Life. The health insurance plan for Florida Employees is through Humana Healthcare. Each of the health insurance plans includes a prescription drug coverage plan. Guardian Life Insurance Co. ("Guardian") administers the dental and vision plans.

95. Payment Schedule. Resort pays all of the employer obligations for its benefit programs on a current basis. Mid-month, the Providers of the various Employee Benefits and Programs submit a consolidated bill to Fontainebleau Resorts and Resort for coverage in the month to follow. Each company pays its respective share early in the following month, with such payment relating to the coverage which is actually being provided for that month.

96. Employer Contribution. Resort pays approximately 85% of the premium for the Employees electing either of the PPO plans and approximately 90% of the premium for Employees electing the HMO plan. Employees are responsible for the payment of 70%-85% of the premiums under the dental and vision insurance plans, with the actual percentage depending upon whether the applicable Employee has a spouse and/or other dependents included on his or her particular plan. Similarly, the amount of each Employee's contribution to his or her health insurance coverage varies depending upon the plan in which the Employee elects to participate and whether or not the Employee's spouse or dependents are covered. Resort's monthly

contribution (including both Employee and employer contributions) is approximately $88,209 for health insurance premiums and a combined total of approximately $12,509 for dental plan premiums and vision premiums. All premiums for such benefit plans have been paid through May 31, 2009.

97. The Resort Debtors anticipate that, as of the Petition Date, some Employees have filed claims under the health, dental, and vision insurance plans that are as yet unpaid. If the Resort Debtors are not authorized to honor Resort's various obligations under the insurance programs, these Employees will likely not be reimbursed nor have their benefit claims paid. Consequently, certain Employees may become primarily obligated for the payment of these claims in cases where Providers of health care have not been reimbursed. These Employees may also face termination of health services.

98. Disability and Life Insurance. The Debtors also provide basic life and accidental death and dismemberment insurance ("Life and AD&D Insurance") to all Employees through Guardian. The premiums are fully paid by Resort. Such insurance entitles all Employees hired prior to January 1, 2009 and certain Executive Director level Employees hired after January 1, 2009 (collectively, the "Group I Employees") to a life insurance benefit of up to one year's salary not to exceed $750,000. Employees hired after January 1, 2009 who are below the Executive Director level (the "Group IV Employees") are entitled to a maximum benefit of $20,000. All Employees may purchase supplemental life insurance for themselves and/or their dependents at their own expense. The current monthly premium for Life and AD&D Insurance remitted by Resort is approximately $3,056.

99. For Group I Employees, Resort also provides employer-paid long- and short-term disability plans ("Disability Insurance"). Resort allows Group IV Employees to purchase

Disability Insurance at their own cost and likewise permits Group I Employees to purchase supplemental Disability Insurance as they elect. Resort pays premiums of approximately $12,255 per month for short- and long-term disability insurance benefits for the Employees.

100. Workers Compensation Insurance Program. The Resort Debtors also carry workers compensation insurance provided by Hartford (a.k.a. Twin City Fire Insurance Co.) and premiums on such policy are paid through August 9, 2009.

101. 401(k) Program. The Resort Debtors' direct and indirect parent, Fontainebleau Resorts, also maintains a retirement savings plan (the "401(k) Plan") meeting the requirements of section 401(k) of the Internal Revenue Code for the benefit of eligible employees, including Employees of the Debtors. The 401(k) Plan allows for automatic pre-tax salary deductions of eligible compensation up to the limits set by the Internal Revenue Code. Approximately 71 Employees currently participate in the 401(k) Plan. For both Semimonthly and Biweekly Employees, Resort withheld a combined total of approximately $17,145 in the last pay period of May 2009 for employee 401(k) contributions. The Resort Debtors are currently not making any matching contributions to such plan. The 401(k) plan is administered by Fontainebleau Resorts.

102. Exec-U-Care Coverage. Four Employees are eligible for Exec-U-Care, a form of supplemental insurance coverage for certain key employees. This program covers the majority of all out of pocket health costs incurred by enrollees. Resort pays Exec-U-Care claim charges for these Employees when due. The amount currently outstanding is the sum of $3,192.67. Historically, the Debtors have incurred on average approximately $1,126.20 per month in Exec-U-Care charges.

103. Car Allowance. Two of Resort's executives receive an automobile allowance as part of their negotiated compensation packages. Resort currently pays $1,400 per applicable pay period for existing automobile allowances to these Employees.

104. The Resort Debtors believe that it is critical that they be authorized to continue making payments for the Employee Benefit Plans and Programs on a regular basis as and when they come due. For example, if the Resort Debtors fail to pay insurance premiums, certain Providers may seek payment directly from the Employees and might refuse to provide continuing medical services or treatment. Employees and their dependents who have sought health care services in reliance on their insurance could become financially devastated if their medical services are affected by the Resort Debtors' bankruptcy filing. Moreover, the morale of the Employees would be seriously undermined if Employee Benefit Plans and Programs are interrupted.

105. The Resort Debtors' ability to remain engaged in a highly competitive business depends on their ability to retain existing skilled and dedicated employees. Absent the relief requested herein, the Employees and their families will suffer undue hardship and consequently, the Employees may be forced to seek employment elsewhere. The requested funds requested are essential for the Employees and their families to be able to continue to meet their financial obligations and to maintain their life and health insurance. Since the Resort Debtors' ability to preserve their going concern value and to maximize the value of their assets for all creditors of its estate is inextricably linked with Resort's ability to retain its dedicated and loyal Employees, all creditors will be adversely affected if the Resort Debtors are not permitted to timely pay their obligations under the Employee Benefit Plans and Programs. It is thus critical that any hardship

and disruption to Employees caused by these Chapter 11 Cases be minimized in order to preserve Employee morale and maintain the Resort Debtors' workforce.

106. Accordingly, the Resort Debtors request authority (a) to pay the appropriate parties any unpaid prepetition obligations, including monthly maintenance or administrative fees, associated with the Employee Benefit Plans and Programs, and (b) to continue paying all premiums, expenses, and employee wage deductions related to the Employee Benefit Plans and Programs when due.

G. Direction to Banks.

107. With the exception of approximately three Employees, payroll for both Biweekly and Semimonthly Employees is effectuated through electronic fund transfers.

108. Accordingly, the Resort Debtors also seek an order authorizing and directing all banks to receive, process, honor and pay any and all checks or electronic transfers drawn on Resort's payroll and general disbursement accounts related to ordinary course Employee compensation, Employee reimbursement obligations, Employee Benefit Plans and Programs, Deductions, Payroll Taxes and premiums and fees in respect of workers' compensation insurance, as outlined above, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

Debtors' Emergency Motion to (A) File Under Seal Exhibit "B" to Wage Motion and (B) Set an In Camera Hearing for Consideration Thereof.

109. Exhibit B to the Wage Motion (the "Wage Motion Exhibit") provides a detailed list of (a) the names of the Employees, (b) the amount due to each Employee as of the Petition Date, (c) the amounts withheld from each Employee's wages, including all applicable payroll taxes and related benefits, (d) the period of time for which such prepetition wages are due, and

(e) whether the Employee is presently employed by Resorts. Additionally, the Wage Motion Exhibit also identifies any Employees who may hold insider status.

110. Within the gaming and resort industry, salaries are highly confidential, as the pool of skilled persons within this specialized area of industry is limited. Since all employers, including competitors of the Resort Debtors, naturally wish to obtain the most talented employees available, the information contained in the Wage Motion Exhibit is highly sensitive. The Resort Debtors need the continued support of their employees throughout the chapter 11 process. Accordingly, the Resort Debtors seek entry of an order authorizing the Resort Debtors to file the Wage Motion Exhibit under seal in order to maintain as confidential the information contained in the Wage Motion Exhibit.

Motion by Debtors for Entry of an Order (I) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Service (II) Deeming Utility Companies Adequately Assured for Future Payment and Establishing Procedures for Determining Requests for Additional Adequate Assurance (the "Utility Motion")

111. In connection with its daily operations, Resort uses electricity, natural gas, telephone and telecommunication, water, waste removal, and other utility services from approximately nine utility providers through approximately thirty different accounts with an average monthly aggregate cost of approximately $180,913.[18] A complete list of the companies that provide these utility services (each, a "Utility Provider" and collectively, the "Utility Providers") is annexed to the Utility Motion as Exhibit "B" ("Utility Provider List"). As of the Petition Date, the Debtor believes they have no past due utilities payments due to the Utility Providers.

[18] The amount assumes Resort's portion of the accounts listed in Exhibit "B" to the Utilities Motion that are shared with its non-debtor affiliate.

112. Prior to the Petition Date, certain of the Utility Providers (the "Assured Utility Providers") were provided letters of credit or deposits from the Debtors as security for future services to be provided by such Utility Provider (collectively, the "Pre-Petition Security Deposits"). A list containing the Pre-Petition Security Deposits is attached to the Utility Motion as Exhibit "C". As of the Petition Date, the Assured Utility Providers include Southwest Gas Corporation ("SW Gas"), NV Energy, and Las Vegas Valley Water District ("LVVWD").

113. On August 13, 2008, Resort provided SW Gas with an irrevocable standby letter of credit (the "SW LOC") in the amount of $754,672 to secure utility services. The termination date of the SW LOC is currently August 31, 2009. The SW LOC provides that it will automatically renew without amendment for a period of one year upon each successive expiration date, but in no event later than August 2016, unless Bank of America ("BOA") provides thirty days' notice of its intent not to renew the SW LOC for any additional period. In addition to the SW LOC, SW Gas currently holds two deposits totaling approximately $8,130 for the benefit of Resort (the "SW Gas Cash Deposits"). The combined average monthly invoices for all SW Gas accounts maintained by Resort was approximately $572.

114. On February 3, 2009, Resort provided NV Energy with an irrevocable standby letter of credit (the "NV Energy LOC") in the amount of $855,000. The NV Energy LOC provides that it will automatically renew without amendment for a period of one year from the date of signing or any future expiration date, unless BOA provides sixty days' notice of its intent not to automatically extend the NV Energy LOC. The combined total of Resort's most recently monthly invoices for all relevant NV Energy accounts was approximately $156,000.

115. LVVWD currently holds two deposits (the "LVVWD Deposit") in the aggregate amount of $5,250 for the benefit of Resort. The combined total of Resort's most recently monthly invoices for all relevant LVVWD accounts was approximately $1,773.

116. None of the other Utility Providers (the "Other Utility Providers") currently holds a deposit from Resort.

117. The Utility Providers service the Resort Debtors' properties, including the Project and corporate offices. Preserving utility services on an uninterrupted basis is essential to the Resort Debtors' ongoing operations and, therefore, to the success of their reorganization. Any interruption of utility services, even for a brief period of time, would disrupt the Resort Debtors' ability to continue to construct the Project, thereby negatively impacting the estate. Such a result could seriously jeopardize the Resort Debtors' reorganization efforts and, ultimately, value and creditor recoveries. It is, therefore, critical that utility services continue uninterrupted during these Chapter 11 Cases.

118. The Resort Debtors intend to pay postpetition obligations owed to the Utility Providers in a timely manner. Should the use of cash collateral be approved by this Court, the Resort Debtors expect that they will have ample liquidity, based upon borrowings, to pay their postpetition obligations to their Utility Providers. Moreover, the Resort Debtors submit that the Assured Utility Providers are adequately protected by the Pre-Petition Security Deposits.

119. Nevertheless, to provide additional assurance of payment for future services to the Other Utility Providers, the Resort Debtors will deposit $25,000, a sum in excess of the Debtors' estimated cost of their aggregate monthly utility consumption of the Other Utility Providers, into an interest-bearing account (the "Utility Deposit Account") for the benefit of the Other Utility Providers. The Utility Deposit Account will provide still further assurance of future payment,

over and above the Resort Debtors' ability to pay for future utility services in the ordinary course of business, based upon their cash on hand and cash flow from operations (collectively, with the Utility Deposit Account and Pre-Petition Security Deposits, the "Proposed Adequate Assurance").

120. The Resort Debtors submit that the Proposed Adequate Assurance package provides sufficient protection to all Utility Providers. Specifically, the Resort Debtors submit that the SW LOC, SW Gas Cash Deposits, the NV Energy LOC, and the LVVWD Deposit provide ample assurance of payment and thus respectfully request that SW Gas, NV Energy, and LVVWD be deemed adequately assured by the Pre-Petition Security Deposits.

121. Accordingly, the Resort Debtors request entry of an order (i) prohibiting all Utility Providers from altering, refusing, or discontinuing service to the Resort Debtors on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Resort Debtors' Proposed Adequate Assurance (as defined in the above-named motion), (ii) deeming the Assured Utility Providers adequately assured of future payment by the Prepetition Security Deposits, (iii) deeming the Other Utility Providers assured of future payment by the Utility Deposit Account, and (iv) establishing procedures for determining requests for additional adequate assurance.

Debtors' Emergency Motion for an Order, (I) Authorizing, But Not Requiring, the Debtors to (a) Continue Their Existing Insurance Programs, and (b) Pay Certain Obligations in Respect Thereof, and (II) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations (the "Insurance Motion")

122. The Resort Debtors request entry of an order authorizing the Resort Debtors to (a) continue Resort's Owner Controlled Insurance Program (the "OCIP") for construction of the Project, which includes a workers' compensation program (the "Workers' Compensation

Program")[19] and a builder's risk program (the "Builder's Risk Program"), as well as general liability, excess liability, contractor's pollution liability, and environmental site liability programs, and (b) continue all of the Resort Debtors' various insurance programs for, among other things, property, general liability, automobile, umbrella, excess liability, professional liability, crime, employment practices liability, directors' and officers' liability, and fiduciary liability (collectively, the "General Insurance Programs," and, together with the Workers' Compensation and Builder's Risk Programs, the "Insurance Programs") uninterrupted, and (c) honor certain of their undisputed prepetition obligations thereunder (collectively, the "Insurance Obligations").[20]

The Resort Debtors' OCIP and Related Obligations

123. The OCIP. The Resort Debtors are required to maintain various forms of insurance coverage for all persons working on the Project site (collectively, the "Insured Parties") for claims arising from or related to their employment on the Project. Under applicable Nevada law, programs similar to the OCIP are created to manage claims on projects with a construction budget of over $50 million. Generally, an OCIP is a single insurance program that covers the owner, all enrolled contractors, and their enrolled subcontractors under a single insurance contract. The benefits of an OCIP include reduced project cost and owner-controlled safety standards.[21]

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[19] The Resort Debtors have separately requested relief for workers' compensation payments for Resort employees in the Wage Motion, filed concurrently herewith.

[20] In addition to the Insurance Programs discussed in this section, the Resort Debtors maintain numerous insurance programs with respect to, among other things, medical, prescription, dental, vision, and other health-related benefits and life, accidental death and dismemberment, and other welfare-related benefits. These policies are addressed in the Wage Motion.

[21] Within certain states, including Nevada, it has become very difficult (and generally very expensive) for subcontractors to obtain workers' compensation insurance on larger projects, primarily due to the recent increase in construction litigation claims. By using an OCIP, a project owner can reduce overall insurance costs significantly. Further, by using an OCIP, the owner is also able to offer all qualified contractors and

124. In the case of Resort, all contractors and subcontractors performing work at the Project site must enroll in the OCIP in order to provide their employees with appropriate work-related insurance coverage. All other professionals, suppliers, and materialmen performing work at the Project site must also enroll, including, *inter alia*, architects, interior designers, engineers, vendors, suppliers, fabricators, and material dealers. Persons not performing work at the Project site are excluded from coverage, as are workers who merely transport or deliver materials to or from the site and workers who specifically deal in hazardous materials and/or waste removal.

125. OCIP Premium Payments and Cost-Sharing. Since the OCIP covers various parties working at the Project site for multiple types of potential liability, the cost of such coverage is distributed amongst the Insured Parties in proportion to their actual cost, duration, and nature of participation in the Project. Thus, although Resort is responsible for upfront payment of premiums as the contracting "Owner" under the policy, this cost has been and will continue to be ratably distributed amongst all Insured Parties over the course of Project construction. Resort obtains reimbursement from the Insured Parties that are employers by deducting a ratable portion of the premium cost from each construction payment made to the Insured Parties (as set forth more fully below).

126. In June 2007, Resort contracted for initial OCIP coverage and paid the first set of premiums (each, an "OCIP Premium") to the OCIP plan administrator, Aon Risk Services ("Aon"). In order to reimburse Resort for this and other subsequent upfront OCIP Premiums paid by Resort in advance of coverage, Aon continually recalculates the various premium percentages owed by each of the Insured Parties based upon the relevant Insured Party's

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subcontractors the option of participating in the project, as opposed to only those contractors and subcontractors who can obtain affordable insurance. Finally, an OCIP permits the owner to implement and enforce uniform safety standards, which provides yet another benefit to all parties involved.

payroll.[22] Thus, as construction progresses, Aon monitors and assesses the proportionate required contribution from each of the Insured Parties. Resort subsequently deducts the required premium amount, plus a small fee, from each Insured Party's portion of Resort's advance request. By following this process, Resort will recoup its initial cash investment for OCIP Premiums, and all Insured Parties are continuously provided with adequate workers' compensation coverage as required by applicable state law. In the ordinary course of business, Resort will continue postpetition to deduct each Insured Party's ratable share of the prepaid OCIP Premiums from the amount that would otherwise be paid to the party by Resort for work completed on the Project.

127. In anticipation of a completion date in late 2009, Resort solicited OCIP coverage through March 2010. Pursuant to the terms of the OCIP, Resort has currently prepaid all OCIP Premiums.[23]

128. Workers' Compensation Program. The OCIP includes comprehensive workers' compensation coverage for all persons actively working at the Project site, including, but not limited to, enrolled contractors, subcontractors, vendors, suppliers, materialmen, architects, designers, engineers, and other similar service providers. Such coverage is separate from the workers' compensation program for employees of the Resort Debtors and is intended to cover claims arising from injuries incurred at the Project location by persons who are not direct employees of the Resort Debtors.

129. Builders' Risk Program. As part of the OCIP, Resort also maintains insurance coverage for certain non-personal injury claims related to construction of the Project, including, *inter alia*, theft of construction materials, property damage, and similar claims.

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[22] The Insured Parties submit monthly payroll reports to Aon as part of the general OCIP administration process.

[23] Upon completion of the Project, Aon will audit the total project costs and has the right to assess a supplemental premium.

130. Other OCIP Programs. Included within the OCIP are several other insurance programs that are intended to cover claims arising from or related to construction of the Project, including programs for general liability, excess liability, professional liability, contractor's pollution liability, and environmental site liability (collectively, the "Other OCIP Programs"). The cost of such coverage is included in the OCIP Premiums and, accordingly, all necessary premiums for such additional coverage have been prepaid by Resort as noted above.

131. OCIP Deductibles and Open Claims. Resort has a $250,000 deductible (the "Deductible") per incident under both the Workers' Compensation and Builder's Risk Programs of the OCIP. Claimants are required to seek payment from the OCIP. For the last twelve months, Resort has paid an average cost of $161,000 in deductibles for filed claims. Resort has estimated that its obligations associated with open claims is approximately $2,095,000 as of the Petition Date. Under the terms of the OCIP, Resort would be obligated to pay amounts up to the deductible for each such open claim.

132. The OCIP Letter of Credit and Claims Escrow. As part of its OCIP obligations, Resort obtained a letter of credit (the "OCIP LOC") from Bank of America in the amount of $11,750,000 for the benefit of multiple insurance providers that provide coverage for the OCIP.

133. In addition to the OCIP LOC, when the OCIP was established, Resort funded a claims escrow of $250,000 with AIG. AIG pays valid claims from this account, and Resort then replenishes the account to bring it back up to the $250,000 threshold. Resort has booked a reserve of approximately $2,094,528 for open OCIP claims as of the Petition Date.

The Debtors' General Insurance Programs and Related Obligations

134. General Insurance Programs. In addition to the OCIP, the Resort Debtors maintain the General Insurance Programs to help manage the risks associated with their business.

The General Insurance Programs collectively are intended to provide coverage for Resort and its employees in connection with the Resort Debtors' general business operations. A list of all insurance policies and the dates in which the policies are in force is attached to the Insurance Motion as Exhibit "C".[24]

135. Continuation of the General Insurance Programs policies is essential to the ongoing operation of the Resort Debtors' businesses and is also required under the U.S. Trustee guidelines. Accordingly, the Resort Debtors submit that it is both appropriate and necessary for Resort to (i) be authorized to pay any prepetition obligations associated with the OCIP and General Insurance Programs, including the payment of deductibles associated with such claims, and (ii) continue the OCIP and General Insurance Programs in the ordinary course of the Resort Debtors' business.

136. The nature of the Resort Debtors' businesses and the extent of their operations make it essential for the Resort Debtors to maintain their Insurance Programs on an ongoing and uninterrupted basis. The nonpayment of any premiums, deductibles, or related fees under one of the Insurance Programs could provoke one or more of the carriers under the Insurance Programs to terminate or decline to renew one or more aspects of the Insurance Programs, or to refuse to enter into new insurance agreements with the Resort Debtors in the future. If the Insurance Programs are allowed to lapse without renewal, then the Resort Debtors could be exposed to substantial liability. This exposure would almost certainly have an extremely negative impact on the Resort Debtors' ability to successfully reorganize. Furthermore, the Resort Debtors would be required to obtain replacement policies on an expedited basis at what they expect to be a

[24] A number of the policies have the Debtors' non-debtor affiliate, Fontainebleau Resorts, LLC, as an additional insured party under such policies.

significantly higher cost to their estates. Accordingly, it is in the best interests of all creditors for the Resort Debtors to make all payments with respect to the Insurance Programs.

137. Moreover, the Insurance Programs are vital to the Resort Debtors' continued operations since applicable state law mandates that the Resort Debtors maintain workers' compensation coverage for persons working at the Project site. Failure by the Resort Debtors to pay the any necessary open prepetition claims or future premiums associated with the OCIP would potentially expose the Resort Debtors to substantial liability in fines by the state workers' compensation board.

138. Finally, pursuant to the guidelines established by the United States Trustee for the Southern District of Florida (the "U.S. Trustee"), the Resort Debtors are obligated to remain current with respect to certain of their primary Insurance Programs. Therefore, the continuation of the Insurance Programs on an uninterrupted basis and the payment of all prepetition and postpetition Insurance Obligations arising under the Insurance Programs are both essential to preserve the Resort Debtors' businesses and to comply with U.S. Trustee guidelines.

Application by Debtors for Interim and Final Order Authorizing the Employment and Retention of Scott L. Baena and the Law Firm of Bilzin Sumberg Baena Price & Axelrod LLP as Counsel for the Debtors Nunc Pro Tunc to the Petition Date and for Entry of a Final Order on or After June 29, 2009

139. The Resort Debtors seek immediate entry of an interim order, and entry of a final order on or after June 29, 2009 authorizing the Resort Debtors to employ and retain Scott L. Baena, Esq. and the law firm of Bilzin Sumberg Baena Price & Axelrod LLP ("Bilzin Sumberg") as its general bankruptcy counsel in these Chapter 11 Cases. The Resort Debtors request authority to employ Bilzin Sumberg under a general retainer because of the extensive legal services that will be required in connection with these Chapter 11 Cases and the firm's familiarity with the Resort Debtors' business operations.

140. Mr. Baena and Bilzin Sumberg are well-known to this Court. Mr. Baena has practiced in the areas of creditors' rights, workouts and restructurings, secured transactions, and bankruptcy for over 35 years. He has represented numerous high-profile clients in some of the largest bankruptcy cases ever filed in this jurisdiction and elsewhere. Mr. Baena is constantly recognized as "tops in his field" by his peers and by national and international rating associations such as Chambers Partners, Best Lawyers in America, Martindale-Hubbell, and Florida Trend. He is the only bankruptcy lawyer in Florida included for six consecutive years in the K & A Restructuring Register of the top 100 restructuring professionals in the United States.

141. Likewise, Bilzin Sumberg has achieved national recognition for its restructuring and bankruptcy practice. Chambers Partners most recently ranked the firm in the highest tier of bankruptcy groups situated in Florida. The depth of the firm's restructuring and bankruptcy practice derives from the senior members of the practice group, including Mindy A. Mora, Jay M. Sakalo, Matthew I. Kramer, and Jason Z. Jones, all seasoned and highly regarded bankruptcy professionals, who – like Mr. Baena – handle matters throughout the United States.

142. Prior to commencement of these Chapter 11 Cases, the Resort Debtors sought the services of Bilzin Sumberg with respect to, among other things, advice regarding restructuring matters in general, and preparation for the potential commencement and prosecution of chapter 11 cases on behalf of the Debtors. The Resort Debtors believe that continued representation by its prepetition restructuring counsel, Bilzin Sumberg, is critical to the Resort Debtors' efforts to restructure its businesses because Bilzin Sumberg has extensive experience and expertise in complex commercial reorganization cases and has become familiar with the Debtors' business, legal and financial affairs. Accordingly, Bilzin Sumberg is well-suited and uniquely able to guide the Resort Debtors through the chapter 11 process in an efficient and timely manner.

Application by Debtors for Interim Order Authorizing the Employment and Retention of Buchanan Ingersoll & Rooney, P.C. as Special Counsel to the Debtors *Nunc Pro Tunc* to the Petition Date and for Entry of a Final Order

143. The Resort Debtors seek entry of an order (i) authorizing the employment and retention of Buchanan Ingersoll & Rooney PC ("Buchanan") as special counsel to the Resort Debtors *nunc pro tunc* to the Petition Date, and (ii) approving the terms and conditions under which Buchanan will be retained and compensated.

144. The Resort Debtors seek to retain Buchanan as special counsel because of its intimate knowledge of the Debtors' business and operations. Since the inception of the Debtors in 2005, Buchanan has represented certain of the Debtors and non-debtor affiliates (collectively, "FB Entities") on a variety of matters, including general advice and legal services relating to the following practice areas: corporate, financing, tax, real estate, intellectual property, litigation, employment, construction and government relations matters (collectively, the "Buchanan Matters"). The Resort Debtors believe that the employment of Buchanan as special counsel for the Resort Debtors will enable the Resort Debtors to avoid the unnecessary delay and expense otherwise attendant to another law firm familiarizing itself with the Buchanan Matters. As a result of its knowledge and experience, it is unquestionable that the postpetition employment of Buchanan as special counsel to provide FB Entities with advice and services relating to the Buchanan Matters during the bankruptcy is in the best interests of the Resort Debtors and the Resort Debtors' estates.

145. In addition to seeking to retain Buchanan as special counsel with respect to the Buchanan Matters, by separate Application filed herein, the Resort Debtors have filed applications to employ, among others, (i) Bilzin Sumberg, as the Resort Debtors' general bankruptcy counsel, (ii) Kasowitz Benson Torres & Friedman LLP, as special litigation counsel,

and (iii) Moelis & Company LLC and Citadel Derivatives Group LLC as investment bankers and financial advisors to the Resort Debtors. The Resort Debtors will ensure that Buchanan will coordinate with the Resort Debtors' other professionals to ensure that services are, to the maximum extent possible, complementary and not duplicative.

Application by Debtor for Entry of an Interim Order Authorizing the Employment and Retention of Kasowitz Benson Torres as Special Litigation Counsel

146. The Resort Debtors seek to retain Kasowitz Benson Torres & Friedman LLP ("Kasowitz Benson") as special litigation counsel because of Kasowitz Benson's extensive experience in matters concerning complex bankruptcy and commercial litigation. Kasowitz Benson is a 300 attorney litigation firm based in New York City which has acted as lead counsel in numerous lawsuits on behalf of debtors against lenders. Among the "lender liability" cases handled by Kasowitz Benson are those in the bankruptcy cases of Adelphia, Le Natures, Refco, Hechinger Stores, FoxMeyer Drug Company, Fruit of the Loom, Enron, Sunbeam and NextWave Telecom. All of these cases have involved hundred million to multi-billion dollar damage claims and those that have been resolved have yielded substantial benefits. Accordingly, Kasowitz Benson is well suited to deal effectively with many of the potential legal issues that may arise in the Chapter 11 Cases, including prosecution of the Credit Agreement Litigation described below.

147. Further, Kasowitz Benson currently represents Resort in connection with numerous aspects of dealing with its lenders and related issues. In that capacity, among other things, Kasowitz Benson represents Resort in litigation against certain of Resort's lenders pending in the United States District Court for the District of Nevada, initially commenced in Nevada State Court on April 23, 2009 and removed by the defendants to federal court on May 13, 2009, captioned *Fontainebleau Las Vegas LLC v. Bank of America, N.A.*, Case No. 2:09-cv-

00860-RLH-GWF. Contemporaneously with the filing of a chapter 11 petition by Resort, the complaint filed in Nevada has been withdrawn without prejudice and a substantially similar complaint has been filed as an adversary proceeding in this Court (the "Credit Agreement Litigation").

148. Kasowitz Benson maintains offices in New York, Houston, Atlanta, San Francisco, Newark, and Miami. Kasowitz Benson's principal areas of practice include, among others, general litigation and creditors' rights and bankruptcy.

149. The proposed lead attorneys at Kasowitz Benson on this matter are Marc E. Kasowitz and David M. Friedman. Mr. Kasowitz, the founding and managing partner of the firm, is widely regarded as one of the nation's preeminent business litigators and trial lawyers. He has been recognized in several publications as one of the nation's leading litigators and trial lawyers, including in Chambers USA ("bright and skilled" and "respected") and Law Dragon 500 ("the cream of the crop"), and was ranked among The American Lawyer's "Forty-Five Under 45." Mr. Kasowitz has an extensive background as national trial counsel in complex litigation, including in the areas of bank finance, leveraged-buyouts, fraudulent conveyance, RICO, corporate governance, trade secret misappropriation, antitrust, securities, mass tort, breach of contract and other commercial cases.

150. Mr. Friedman, the head of Kasowitz Benson's bankruptcy group, has represented, among others, debtors-in-possession, commercial lenders in complex real estate and industrial bankruptcies and informal restructurings, committees of creditors and equity security holders, hedge funds, high-yield mutual funds and other distressed investors, trustees in bankruptcy and acquirers of distressed businesses. He has published articles and lectured on novel and complex areas of bankruptcy law. Since the inception of its publication, Chambers has ranked Mr.

Friedman as one of the "Leading Individuals" in the United States in Bankruptcy/Restructuring. He is perennially listed as one of the "Best Lawyers in New York" and as one of the top bankruptcy lawyers in the United States in the "K&A Restructuring Register." In 2007 and 2008, Lawdragon named Mr. Friedman one of the 500 leading lawyers in the United States. Mr. Friedman has served as lead lawyer on many of the Kasowitz Benson lender-liability matters discussed above.

151. The Resort Debtors seek to retain Kasowitz Benson on an interim and final basis as special litigation counsel to assist in the prosecution of the Chapter 11 Cases, the Credit Agreement Litigation and other necessary matters. In particular, the Resort Debtors anticipate that Kasowitz Benson will provide the following professional services, among others, for the Debtors:

a. advise Resort regarding the pending Credit Agreement Litigation and all matters related thereto, including the continued prosecution of the Credit Agreement Litigation against all non-settling defendants;

b. commence and conduct any and all litigation necessary or appropriate, as directed by the Resort Debtors, to assert rights held by the Resort Debtors, including without limitation any litigation within the bankruptcy cases in adversary proceedings or contested matters in connection with the Prepetition Credit Agreement and/or any DIP Financing Agreement or contested cash collateral usage, as well as litigation to protect assets of the Resort Debtors' chapter 11 estates, confirm a plan of reorganization, or otherwise further the goal of completing the Resort Debtors' successful reorganization; and

c. advise the Resort Debtors with respect to any possible settlement of potential claims by or against the Resort Debtors' estates.

152. The services of Kasowitz Benson are necessary and appropriate to enable the Resort Debtors to execute their duties as debtors and debtors-in-possession faithfully and are in the best interest of the Resort Debtors, their estates, and creditors. It is proposed that Kasowitz

Benson be employed to render such services as requested by the Resort Debtors and agreed to by Kasowitz Benson pursuant to the terms of the Engagement Letter.

153. In addition to seeking to retain Kasowitz Benson as special litigation counsel, by separate Application filed herein, the Resort Debtors have filed applications to employ, among others, (i) Bilzin Sumberg, as the Resort Debtors' general bankruptcy counsel, (ii) Buchanan as special counsel, and (iii) Moelis & Company LLC and Citadel Investment Group, L.L.C. as investment bankers and financial advisors to the Resort Debtors. The Resort Debtors will ensure that Kasowitz Benson will coordinate with the Resort Debtors' other professionals to ensure that services are, to the maximum extent possible, complementary and not duplicative.

Application by Debtor for Entry of an Interim Order Authorizing the Employment and Retention of Moelis & Company LLC as Financial Advisors and Investment Bankers to the Debtor *Nunc Pro Tunc* to the Petition Date and for Entry of a Final Order

154. The Resort Debtors require the expertise and services of a financial advisor and investment banker to assist in the restructure of outstanding debt obligations, raising additional capital and/or consummating a sale transaction, in a short timeframe, to facilitate the Resort Debtors' reorganization and emergence from chapter 11.

155. Moelis & Company LLC ("Moelis") is an investment banking firm with its principal office located at 245 Park Avenue, 32nd Floor, New York, New York 10167. Moelis is a registered broker-dealer with the United States Securities and Exchange Commission and is a member of the Financial Industry Regulatory Authority and the Securities Investor Protection Corporation. Moelis was founded in 2007 and is a wholly-owned subsidiary of Moelis & Company Holdings LLC. Moelis' chief executive officer is Kenneth D. Moelis and the Recapitalization & Restructuring Group is co-headed by Thane W. Carlston and William Q.

Derrough. Moelis & Company Holdings LLC, together with its subsidiaries, has approximately 150 employees located in offices in New York, Los Angeles, Boston, Chicago and London.

156. Moelis provides a broad range of corporate advisory services to its clients, including, without limitation, services pertaining to: (i) general financial advice; (ii) mergers, acquisitions, and divestitures; (iii) corporate restructurings; (iv) special committee assignments; and (v) capital raising. Moelis and its senior professionals have extensive experience in the reorganization and restructuring of distressed companies, both out-of-court and in chapter 11 proceedings.

157. Prior to the Petition Date, Moelis's professionals have worked closely with the Debtors' management and other professionals and have become well-acquainted with the Debtors' operations, debt structure, creditors and business and operations. Accordingly, Moelis has developed significant and relevant experience and expertise regarding the Resort Debtors and their business that will assist it in providing effective and efficient services throughout the Chapter 11 Cases.

158. Based on the breadth of Moelis' experience in this area and excellent reputation in providing financial advisory and investment banking services in complex chapter 11 cases such as these, the Resort Debtors, after due deliberation, determined it would be in the best interest of their estates, creditors and stakeholders to retain Moelis as their financial advisor and investment banker in the Resort Debtors' Chapter 11 Cases. The Resort Debtors believe that Moelis is qualified and uniquely situated to perform the work required to facilitate the Resort Debtors' restructuring activities and exit from chapter 11.

Application by Debtor for Entry of an Interim Order Authorizing the Employment and Retention of Citadel Derivatives Group LLC as Financial Advisors and Investment Bankers to the Debtor *Nunc Pro Tunc* to the Petition Date and for Entry of a Final Order

159. The Resort Debtors require the expertise and services of a financial advisor and investment banker to assist in the restructure of outstanding debt obligations, raising additional capital and/or consummating a sale transaction, in a short timeframe, to facilitate the Resort Debtors' reorganization and emergence from chapter 11. Accordingly, the Resort Debtors believe that the retention of Citadel Derivatives Group LLC ("CDRG") is necessary and will be critical to the overall success of the reorganization efforts.

160. Founded in 1990, Citadel Investment Group, L.L.C. ("Citadel") is a diverse global financial institution focused on financial services and investment strategies located at 131 South Dearborn Street, Suite 3200, Chicago, Illinois 60603. Citadel's investment banking services are provided by CDRG, a broker-dealer with the United States Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority.

161. CDRG is led by three senior investment bankers, Todd Kaplan, Brian Maier and Carl Mayer, each of whom joined CDRG from Merrill Lynch. At Merrill Lynch, Todd Kaplan was head of Global Leveraged Finance, Capital Markets & Financing, Global Principal Investments and Corporate Finance, and Head of Capital Commitments; Brian Maier was Group Head of Consumer Industries and Equity Private Placements; and Carl Mayer was Head of Leveraged Finance Capital Markets. Each of these principals has over 20 years of experience providing financial advisory, mergers, acquisitions and divestiture services. In addition, CDRG has substantial experience in balance sheet restructurings and debt and equity capital raising services for clients across a wide range of industries, with a particular expertise in the gaming and lodging sector.

162. CDRG's professionals have represented numerous gaming and lodging clients including: Fontainebleau Resorts, Harrah's Entertainment, MGM Mirage, International Game Technology, Kerzner International, Wynn Resorts, Trump Entertainment Resorts, Penn National Gaming, Boyd Gaming, Stations Casino, Isle of Capri, Mandalay Resorts Group, Greektown Casino, Seminole Tribe of Florida, Mashantucket Pequot (Foxwoods), Seneca Nation, Mohegan Tribal Gaming Authority (Mohegan Sun), Waterford Gaming, Yonkers Raceway, BLB Management Services, Intrawest Corporation, Cannery Casino Resorts, French Lick Resorts and Casino, San Pasqual, Chukchansi Economic Development Authority, Cabazon Band of Mission Indians, Galaxy Entertainment (Macau), MotorCity Casinos, Gulfside Casino Resorts, Hollywood Casinos, and Bally's Las Vegas.

163. Based on the breadth of CDRG's experience in this area and excellent reputation in providing financial advisory and investment banking services to numerous hotel and gaming companies, the Resort Debtors, after due deliberation, determined it would be in the best interest of their estates, creditors and stakeholders to retain CDRG as their financial advisor and investment banker in the Chapter 11 Cases. As such, the Resort Debtors believe that CDRG is qualified and uniquely situated to perform the work required to facilitate the Resort Debtors' restructuring activities and exit from chapter 11.

164. The services to be provided by CDRG will be undertaken concurrently with the services of Moelis. The Resort Debtors believe it is in the best interests of these estates to retain both CDRG and Moelis as financial advisors and investment bankers to the Debtors. Each of these entities has critical, but distinct, expertise necessary to assist the Resort Debtors in effectuating a Restructuring Transaction, Capital Transaction or Sales Transaction. In addition, the Resort Debtors recognize that each of these entities possess differing industry knowledge and

relationships that will be utilized for the benefit of the Debtors. Furthermore, CDRG will coordinate any services performed (or to be performed) with Moelis, counsel for the Resort Debtors and other professionals as appropriate to ensure resources are not expended on duplication of effort. Moreover, the combined aggregate fees that could be awarded to CDRG and Moelis in the event a Restructuring Transaction, Capital Transaction or Sale Transaction is consummated was specifically negotiated with the recognition and acknowledgment that both advisors would be engaged.

Emergency Motion for Entry of an Order Authorizing the Employment and Retention of Kurtzman Carson Consultants LLC as Notice, Claims and Balloting Agent

165. The Resort Debtors have more than 1600 potential creditors. Although the office of the Clerk of the United States Bankruptcy Court for the Southern District of Florida (the "Clerk's Office") ordinarily would serve notice on the Resort Debtors' creditors and other parties in interest and administer claims against the Resort Debtors, the Clerk's Office may not have the resources to undertake such tasks, especially in light of the sheer magnitude of the Resort Debtors' creditor body and the tight timelines that frequently arise in chapter 11 cases.

166. As specialists in legal administration services, Kurtzman Carson Consultants LLC ("KCC") provides comprehensive solutions to design legal notice programs and manage claims issues for chapter 11 cases. With respect to chapter 11 case management, KCC specializes in noticing, claims processing, balloting and other administrative tasks necessary to operate chapter 11 cases effectively. KCC is well-recognized as a specialist in performing these functions and has been retained in numerous chapter 11 cases of significant size, both in the Southern District of Florida and in other districts. See, e.g., *In re Mercedes Homes, Inc.*, Case No. 09-11191 (Bankr. S.D. Fla. Jan. 29, 2009); *In re TOUSA, Inc.*, Case No. 08-10928 (Bankr. S.D. Fla. Jan. 31, 2008); *In re Levitt & Sons, LLC*, Case No. 07-19845 (Bankr. S.D. Fla. Nov. 14, 2007), *In re*

All Am. Semiconductor, Inc., No. 07-12963 (Bankr. S.D. Fla. May 25, 2007); *see also In re Circuit City Stores, Inc.*, No. 08-36563 (Bankr. E.D. Va. Nov. 12, 2008); *In re Gottschalks Inc.*, Case No. 09-10157 (Bankr. D. Del. Jan. 15, 2009); *In re Aleris Int'l Inc.*, Case No. 09-10478 (Bankr. D. Del. Feb. 13. 2009); *In re HPG Int'l, Inc.*, Case No. 09-10231 (Bankr. D. Del. Jan. 27, 2009); *In re Wash. Mut., Inc.*, Case No. 08-12229 (Bankr. D. Del. Oct. 30, 2008); *In re Motor Coach Indus. Int'l, Inc.*, Case No. 08-12136 (Bankr. D. Del. Sept. 16, 2008); *In re Boscov's, Inc.*, Case No. 08-11637 (Bankr. D. Del. Aug. 5, 2008); *In re Mervyn's Holdings, LLC*, Case No. 08-11586 (Bankr. D. Del. July 30, 2008).

167. Accordingly, the Resort Debtors propose to engage KCC to act as the Debtors' notice, claims and balloting agent. The Resort Debtors respectfully submit that the retention of KCC is the most effective and efficient manner of noticing the thousands of creditors and parties in interest of the filing of the Resort Debtors' Chapter 11 Cases and other developments in the Chapter 11 Cases. In that capacity, KCC will transmit, receive, docket and maintain proofs of claim filed in connection with these Chapter 11 Cases and solicit ballots in favor of the Resort Debtors' chapter 11 plan.

Emergency Motion for an Order Establishing Omnibus Hearing Dates and Certain Notice, Case Management and Administrative Procedures Pursuant to Section 105(a) of the Bankruptcy Code, Procedures and Local Bankruptcy Rule 2002-1 (the "Notice and Case Management Motion")

168. The Resort Debtors expect there to be a substantial number of creditors and parties-in interest in these cases and that many of such parties will be filing requests for service of filings. The Resort Debtors also expect numerous motions, applications, orders, and other such documents to be filed in these cases that will need to be served on some or all of these parties.

169. Given the size of these cases, the Resort Debtors believe it necessary to establish clear and streamlined procedures, in the form of the "Notice, Case Management, and Administrative Procedures" (the "Case Management Procedures") attached as Schedule 1 to Exhibit A of the Notice and Case Management Motion, in order to facilitate the efficient administration of these cases. Specifically, the Case Management Procedures will benefit the Resort Debtors, the Court and all parties-in-interest by, among other things:

a. Reducing the need for emergency hearings and requests for expedited relief;

b. Fostering consensual resolution of important matters;

c. Assuring prompt receipt of appropriate notice affecting parties' interests;

d. Providing ample opportunity to parties-in-interest to prepare for and respond to matters before this Court;

e. Reducing the substantial administrative and financial burden that would otherwise be placed on the Resort Debtors and parties-in-interest who file documents in these cases; and

f. Reducing administrative burdens on the Court and the Clerk's office.

170. The Resort Debtors propose to serve the Case Management Procedures on the master service list (the "Master Service List") maintained in accordance with Local Rule 2002-1(H) and the Case Management Procedures. Additionally, on the last day of each calendar month, or as soon thereafter as is practicable, the Resort Debtors shall cause a copy of the Case Management Procedures to be served on each party that has filed a notice of appearance or request for notice in these cases during the preceding calendar month. Further, the Case Management Procedures will be available, free of charge, (a) directly from the website to be maintained by KCC, the Resort Debtors' proposed notice, balloting and claims agent, in connection with these cases (www.kccllc.net/FBLV) or (b) by contacting KCC directly. Should the Case Management Procedures be modified in any respect during the pendency of these cases,

the Resort Debtors will redistribute the modified Case Management Procedures to the Master Service List.

Debtor's Motion to Establish Procedures to Permit Monthly Payment of Interim Fee Applications of Chapter 11 Professionals

171. The Resort Debtors request that the Court enter an order establishing procedures (the "Procedures") for compensating and reimbursing professionals on a monthly basis comparable to those established in complex chapter 11 cases in this District and elsewhere.

172. In connection with these Chapter 11 Cases, the Debtors are filing applications to retain (i) Bilzin Sumberg as general bankruptcy counsel, (ii) KCC as claims, noticing and balloting agent, (iii) Moelis as financial advisors and investment bankers, (iv) CRDG and Moelis as financial advisors and investment bankers, (v) Buchanan as special corporate, tax, and lobbying counsel, and (vi) Kasowitz Benson as special litigation counsel. As this case progresses, the Resort Debtors may seek to employ additional professionals in the future.

173. The Procedures will enable the Court and parties-in-interest to more effectively monitor fees incurred, and the Resort Debtors to spread out payment of professional fees, rather than suffer larger depletions to cash flow on an irregular basis. Because of the likelihood that the Resort Debtors may seek to employ additional professionals, the process of such professional fee applications may well be burdensome on the Resort Debtors, these professionals, and the Court. Thus, implementation of the Procedures will provide a streamlined and efficient method for compensating professionals and, as stated, such procedures will allow the Court and parties-in-interest to monitor fees sought by and paid to such professionals. Moreover, the Procedures will ensure against imposition upon estate professionals to finance the Resort Debtors' Chapter 11 Cases.

174. The requested Procedures would require all professionals retained with Court approval to present a detailed statement of services rendered and expenses incurred for the prior month to counsel for the Resort Debtors, counsel for the Official Committee of Unsecured Creditors, if one is established, counsel to any other appointed committee, counsel to the Resort Debtors' postpetition lenders, and the United States Trustee. If no timely objection is filed, the Procedures require the Resort Debtors to promptly pay 80% of the amount of fees incurred for the month and 100% of out-of-pocket expenses for the month. These payments and allowance of payment of a 20% holdback will be subject to the Court's subsequent approval as part of the normal interim fee application process (i.e. every 120 days).

175. The Resort Debtors will include all payments made to Professionals as contemplated herein in their monthly operating reports, identifying the amount paid to each Professional. Additionally, the Procedures will enable all parties to closely monitor costs of administration, and will enable the Resort Debtors to maintain a more level cash flow availability and implement efficient cash management.

Motion for Entry of an Order Authorizing the Retention of Compensation of Certain Professionals in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date

176. The Resort Debtors employ various attorneys, accountants, appraisers, and other professionals in the ordinary course of their business (each, an "OCP" and, collectively, the "OCPs"). The OCPs provide services for the Resort Debtors in a variety of matters unrelated to these Chapter 11 Cases, including legal services with regard to specialized areas of the law such as real estate and gaming, accounting services, auditing and tax services, and certain consulting services.

177. The Resort Debtors submit that the continued employment and compensation of the OCPs is in the best interests of their estates, creditors, and other parties in interest. Although

the Resort Debtors anticipate that the OCPs will wish to continue to represent the Resort Debtors on an ongoing basis, some may not be in a position to do so if the Resort Debtors cannot pay them on a regular basis. Without the background knowledge, expertise, and familiarity that the OCPs have relative to the Resort Debtors and their operations, the Resort Debtors undoubtedly would incur additional and unnecessary expenses in educating replacement professionals about the Resort Debtors' business and financial operations.

178. The Resort Debtors' estates and their creditors are best served by avoiding any disruption in the professional services that are required for the day-to-day operation of the Resort Debtors' businesses. Moreover, in light of the substantial number of OCPs, and the significant costs associated with the preparation of employment applications for professionals who will receive relatively modest fees, the Resort Debtors submit that it would be impractical, inefficient, and extremely costly for the Resort Debtors and their legal advisors to prepare and submit individual applications and proposed retention orders for each OCP.

179. Moreover, in light of the substantial number of OCPs and the significant costs associated with the preparation of employment applications for professionals who will receive relatively modest fees, the Resort Debtors submit that it would be impractical, inefficient, and extremely costly for the Resort Debtors and their legal advisors to prepare and submit individual applications and proposed retention orders for each OCP. The Resort Debtors seek permission to continue to employ the OCPs postpetition and to retain any new OCP postpetition without requiring each OCP to file a formal application for employment or compensation pursuant to §§ 327, 328, 329 or 330 of the Bankruptcy Code. Specifically, with respect to the OCPs, the Resort Debtors request that (i) the Court dispense with the requirement of individual employment applications and retention orders, and (ii) each OCP be retained as of the Petition

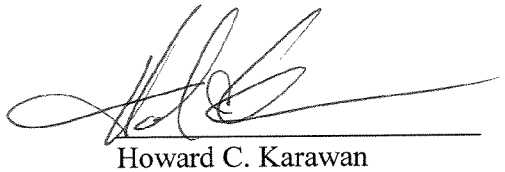
Date on terms substantially similar to those in effect prior to the Petition Date, but subject to the terms and procedures outlined in the above-named motion (the "Compensation Procedures").

180. Although some of the OCPs may hold relatively small unsecured claims against one or more of the Resort Debtors in connection with services rendered to such Debtor prepetition, the Resort Debtors do not believe that any of the OCPs have an interest materially adverse to the Resort Debtors, their creditors or other parties in interest.

181. Therefore, the Resort Debtors submit it is in the best interest of all creditors and parties in interest to avoid any disruption in the professional services that are required for the day-to-day operation of the Resort Debtors' businesses by retaining and compensating the OCPs in accordance with the Compensation Procedures.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Further deponent says not.



Howard C. Karawan

EXHIBIT "A"

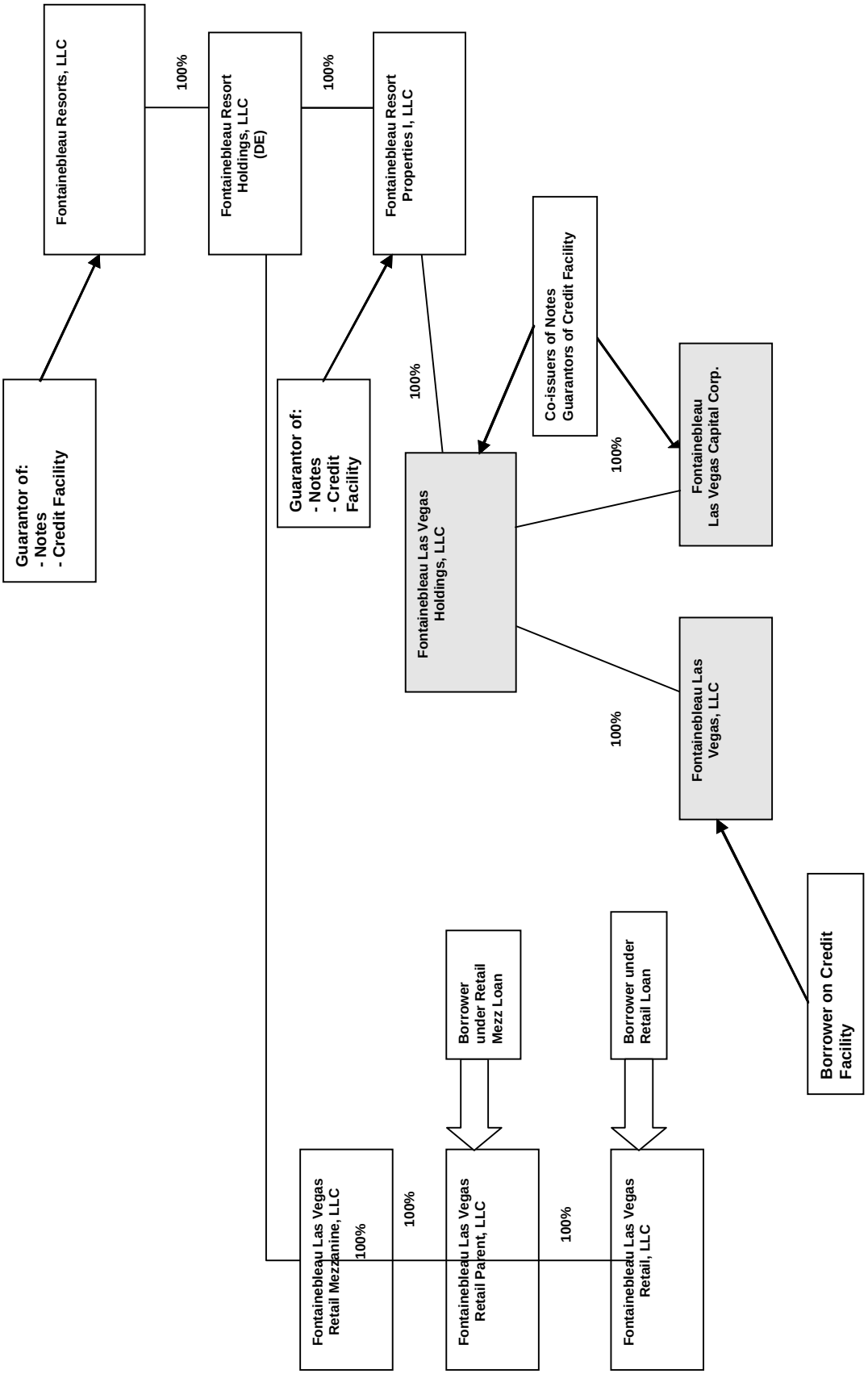

Fontainebleau Resorts, LLC
100%
Fontainebleau Resort Holdings, LLC (DE)
100%
Fontainebleau Resort Properties I, LLC
Guarantor of:
- Notes
- Credit Facility
Guarantor of:
- Notes
- Credit Facility
100%
Co-issuers of Notes
Guarantors of Credit Facility
100%
Fontainebleau Las Vegas Capital Corp.
Fontainebleau Las Vegas Holdings, LLC
100%
Fontainebleau Las Vegas, LLC
Borrower under Retail Mezz Loan
Borrower under Retail Loan
Borrower on Credit Facility
Fontainebleau Las Vegas Retail Mezzanine, LLC
100%
100%
Fontainebleau Las Vegas Retail Parent, LLC
100%
Fontainebleau Las Vegas Retail, LLC

EXHIBIT H

Bilzin Sumberg
ATTORNEYS AT LAW

Scott L. Baena, Esq.
Tel 305.350.2403
Fax 305.351.2203
sbaena@bilzin.com

March 24, 2010

Via E-mail & U.S. Mail

Robert W. Mockler, Esq. (mocklerr@hbdlawyers.com)
Hennigan, Bennett & Dorman LLP
865 South Figueroa Street
Suite 2900
Los Angeles, CA 90017

Re: Fontainebleau Bankruptcy

Dear Mr. Mockler:

We write in response to your letter dated March 16, 2010.

While your requests and inquiries of Ms. Thier are exceedingly broad and generalized, by the following response we have endeavored to provide the information we believe you seek taking into account our prior discussions with Sid Levinson.

First, the Debtors have historically maintained virtually all of their physical records in Las Vegas, Nevada. In contemplation of the impending conversion of the cases to chapter 7, in order to facilitate the transition to the chapter 7 Trustees, those records have been moved into one central location at a warehouse facility in Las Vegas. As you know, certain members of the Board of Managers of Fontainebleau Resorts, LLC ("FBR") were or are based in South Florida. Thus, we have requested those managers, as well as professionals formerly engaged by the Debtors, to deliver to us any of the Debtors' records they may have in their possession. We are in the process of collecting such records and they will likewise be indexed and placed in the storage facility.

Second, the Debtors have historically maintained their electronic records on two servers; one dedicated to department and user files (the "Department File Server") and the other dedicated to electronic mail records (the "Email Server"). The Department File Server is housed in a co-location facility in Las Vegas, Nevada and is a shared server that includes records of FBR and its parents and subsidiaries entirely unrelated to the Debtors. The Email Server is housed in Miami Beach, Florida and includes electronic mail records of FBR and the Fontainebleau Miami Beach, entirely unrelated to the Debtors. As FBR asserts rights of privacy as to records which do not pertain to the Debtors, we have been endeavoring to resolve retrieval issues precipitated by the fact of employment of common servers.

The Debtors and FBR (and its parents and subsidiaries) also utilized the following databases: Timberline; Infinium, Image Logix, HR Logix, and Red Rock. Similar privacy issues pertain to such information and records and we are likewise endeavoring to resolve the same.

In addition, the Debtors continue to maintain the RR Donnelly electronic dataroom that was established and maintained as part of the section 363 sale process. After a conversion of

the cases, the Trustees will need to determine whether to keep that dataroom up and running or to copy all of the data onto portable media.

Third, while your request is exceedingly broad, the following is a non-exclusive list of present or former employees, officers or directors of the Debtors or FBR who may have knowledge of the subjects listed in your third bullet point:

Bill Bewley	Audrey Oswell
James Freeman	Ray Parello
Bernie Glanister	Amie Sabo
Kathy Hernandez	Eric Salzinger
Howard Karawan	Glenn Schaeffer
Devendra Kumar	Jeffrey Soffer
Albert E. Kotite	Whitney Thier
Devendra Kumar	Brian Turpin
Mark Lefever	Dave Walker
Jaclyn Miller	Bruce Weiner
Lauren Oberg	Richard C. White

As for your request to interview Ms. Thier, please be advised that given Ms. Thier's role as general counsel, not only to the Debtors but to FBR as well until after the Debtors' chapter 11 filings, she is unwilling to grant informal interviews at this time. Moreover, Ms. Thier is one of only three remaining officers who are actively handling the preparations for conversion to chapter 7 and we do not wish to distract her in the limited time remaining to accomplish essential pre-conversion tasks.

Sincerely yours,

Scott L. Baena

SLB/rar

cc: Mr. Howard Karawan
Whitney Thier, Esq.
Jay M. Sakalo, Esq.

MIAMI 2108936.1 7650831854

EXHIBIT I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case 09-2106-MDL-GOLD

IN RE:

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, et al.,

Debtors.

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.

COURTROOM 11-1

MIAMI, FLORIDA

APRIL 16, 2010

(Pages 1 - 11)

TRANSCRIPT OF TELPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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Reporter's Certificate 11

13:29:17 **THE COURT:** Good afternoon. This is Judge Gold. I'm going to ask for appearances. May I start with Fontainebleau, please?

13:29:26 **MR. MOSKOWITZ:** This is Seth Moskowitz and my colleague, Jed Bergman.

13:29:31 **MR. SAKALO:** Jay Sakalo from Bilzin Sumberg, bankruptcy counsel for the debtors.

13:29:38 **THE COURT:** Other appearances, please?

13:29:40 **MR. WOLL:** Good afternoon, Your Honor. It's David Woll from Simpson Thacher on behalf of JP Morgan Chase, Deutsche Bank, Barclays and Royal Bank of Scotland.

13:29:51 **MR. DILLMAN:** Kirk Dillman of Hennigan Bennett on behalf of the Nevada term lenders.

13:29:57 **THE COURT:** Others, please? Anybody else?

13:30:01 **MR. AMRON:** Good afternoon, Your Honor. Brett Amron on behalf of the plaintiff, ACP Master, Ltd., and Aurelius Capital Master, Ltd.

13:30:09 **MR. GROSSMAN:** Greg Grossman for MB Financial Bank, NA.

13:30:15 **MR. HUTTENLOCHER:** Michael Huttenlocher from Camulos Master Fund.

13:30:21 **MS. CAMILLE:** Bonnie Camille for Bank of Scotland.

13:30:26 **MR. NACHTWEY:** Steve Nachtwey for the Aurelius plaintiffs.

13:30:32 **MR. CANTOR:** Good afternoon, Your Honor. This is Daniel Cantor from O'Melveny & Myers on behalf of Bank of

America, N.A. and Merrill Lynch Capital Corp.

THE COURT: Anyone else?

MR. KIRSCHNER: Good afternoon, Your Honor. Jason Kirschner of Mayer Brown LLP on behalf of defendant Sumitomo Mitsui Banking Corporation.

THE COURT: Thank you. Do I have all appearances or are there others.

MR. BLOOM: Good afternoon, Your Honor. Mark Bloom of Greenberg Traurig as local counsel for the defendants represented by the Simpson Thacher firm.

MR. WALLACE: Also defendant HSH Nordbank, Kaye Scholer, Stewart Wallace.

THE COURT: All right. Any other appearances? Then thank you. I appreciate your submitting to me the joint statement. It helps me understand in a little bit more detail where everybody is on issues.

There are two issues that you presented. One is whether to grant a 60-day extension of the document production deadline which is, I believe, May 13th; the fact deposition commencement deadline, July 1st; and the expert disclosure deadlines of September 30 for plaintiffs and November 1 for defendants. Apparently none of the parties object to this. If I did not understand that correctly, please tell me now.

What I would like to have, however, is a little bit more specific proposal as it relates to the order already

entered setting deadlines and any other adjustment of dates that would be necessary to accommodate these dates. So if you would be kind enough to give me your positions on that within the next seven days, by next Friday, I'll be able to get an order out which shifts the dates.

The second is whether Fontainebleau should be required to agree to document search terms despite the pending Chapter 7 conversion which apparently is officially set for some proceeding next Monday. Is that true? Is it Monday?

MR. MOSKOWITZ: Yes, Your Honor. This is Seth Moskowitz for Fontainebleau. We just received today an order from Judge Cristol setting a hearing for next Wednesday at three o'clock on the motion to convert.

THE COURT: Next Wednesday. So it's Wednesday, the 21st?

MR. MOSKOWITZ: Yeah. It's a little unclear. The order granting conversion -- and I'll defer to my bankruptcy counsel, if necessary -- the order granting the motion to convert subject to negative notice was to expire this coming Monday, and we've now received an order from Judge Cristol setting a hearing for Wednesday.

MR. SAKALO: Your Honor, this is Jay Sakalo. I'm going to accept Mr. Moskowitz's invitation and interrupt him for a moment. We're bankruptcy counsel for the debtors. The judge's conversion order last week scheduled a final order on conversion

13:34:05 by operation of that order if there were no objections or
13:34:10 motions to vacate filed within seven days.
13:34:12 Since that order was entered, there have been a couple
13:34:15 of motions to clarify that order filed by interested parties.
13:34:21 The Court scheduled a hearing on those motions to clarify for
13:34:26 Wednesday of next week, but he has not set a hearing to
13:34:30 reconsider his order approving conversion.
13:34:34 So we're not entirely sure if it actually becomes final
13:34:37 by its own operation on Monday or whether he will consider that
13:34:41 anew at the hearing on Wednesday on the motion to clarify that
13:34:45 he did set.
13:34:49 **THE COURT:** All right. Well, thank you for that
13:34:51 clarification. But in any event, I'd like to ask a question
13:35:00 which goes to the heart of it as far as I'm concerned. I see no
13:35:08 reason to delay on this, and I'm not interested as much as you
13:35:17 all are in what a bankruptcy trustee does or doesn't do. And as
13:35:22 far as I understand the way our system works, if I say do
13:35:27 something, the bankruptcy judge is obligated to do it and any
13:35:31 trustee for the bankruptcy judge is obligated to follow it.
13:35:34 So what I set in this case as our timelines and
13:35:41 guidelines must be followed, end of story, including by the
13:35:48 bankruptcy judge and the trustee. So this is to be done, and
13:35:55 I'm going to require that Fontainebleau proceed forthwith and
13:36:00 get it done. And if your hearing is mid-week next week, you've
13:36:07 had plenty of time to work on this, and it has to be finished

13:36:11 very quickly now, so that's why I was inquiring about your
13:36:19 schedule because it would seem to me to be better to have this
13:36:24 requirement in place, coupled with my order saying it is to be
13:36:31 done and followed.
13:36:36 I hope that's clear. Well, let me ask it this way: Is
13:36:43 anybody unclear about what I said?
13:36:45 **MR. MOSKOWITZ:** Your Honor, Seth Moskowitz for
13:36:48 Fontainebleau. I guess I'm a little unclear. We understand
13:36:51 that your current scheduling order, we have to comply with it;
13:36:56 and we have and we intend to do so.
13:36:58 I thought you also said earlier, because all of the
13:37:01 parties seemed to agree to a 60-day extension, we should submit
13:37:05 to you something next week, by Friday, on our respective
13:37:09 positions with the interim dates as well.
13:37:13 **THE COURT:** Well, what I said is I don't mind giving
13:37:16 you the extensions you want in terms of having some more time on
13:37:21 the schedule, but I am not going to give you more time to agree
13:37:26 on search terms, nor am I going to be in a situation where I'm
13:37:33 going to deal with whether the trustee wants to do that in case
13:37:38 there's a conversion here.
13:37:42 **MR. MOSKOWITZ:** Okay. I think that's clear. We will
13:37:44 work with the counsel for the term lender plaintiffs and
13:37:47 revolver defendants.
13:37:50 **THE COURT:** Regardless of this moving from Chapter 11
13:37:54 to Chapter 7, that's all fine in terms of whatever is the

13:38:03 motivations driving that; but it has absolutely no effect on the
13:38:08 requirements to get this aspect finished and negotiated in place
13:38:16 and underway.
13:38:17 Now, if everybody's in agreement that we need to have
13:38:24 the other adjustments that I've alluded to, I'm also in
13:38:30 agreement. My only question is: Now that I am doing that, what
13:38:34 effect would it have on the remaining dates in the order that
13:38:39 I've already issued? That's the only thing I'm giving you the
13:38:43 time.
13:38:44 **MR. MOSKOWITZ:** Your Honor, Seth Moskowitz. I think
13:38:45 given what you've just stated, it makes sense for the parties to
13:38:49 confer as soon as possible and well in advance of next Friday,
13:38:52 and we can determine I think pretty readily whether there are
13:38:56 any other dates that would need adjustment.
13:38:58 **THE COURT:** All right. I want this clarification on
13:39:04 search terms, or waiver of objection to them, not later than
13:39:08 next Wednesday and please tell the bankruptcy judge that I'm
13:39:14 taking a very strong position on this, and it has to be
13:39:21 accommodated in whatever orders are entered appointing trustee.
13:39:27 Anything else then?
13:39:29 **MR. DILLMAN:** Your Honor, if I might, this is Kirk
13:39:32 Dillman for the Nevada plaintiffs. I believe at least all of
13:39:35 the defendants and all of the plaintiffs but Fontainebleau -- and
13:39:38 I don't know what their position is -- agree that the 60-day
13:39:41 continuance does not, at least in our opinion, affect any other

dates.

THE COURT: Well, that's fine. I'm just double-checking. If there is something you need, you'll tell me; but if not, then I'm not asking you to do an extension. I just want to give you the opportunity to take another look at that and make sure.

MR. DILLMAN: Very good, Your Honor. Thank you.

THE COURT: Anything else? If not, I wish you all a good weekend.

[The proceedings conclude at 1:40 p.m., 4/16/10.]

CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

07.16.10
DATE

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EXHIBIT J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.
_____/

MDL ORDER NUMBER 25; GRANTING CHAPTER SEVEN TRUSTEE'S MOTION FOR EXTENSION OF TIME [DE 96] IN PART; REQUIRING SUBMISSION SETTING TELEPHONE STATUS CONFERENCE

THIS CAUSE is before the Court upon the Chapter 7 Trustee's Motion for Extension of Time **[DE 96]**. A telephonic status conference was held on Tuesday, July 20, 2010. Per the agreement of the parties, the following is hereby ORDERED AND ADJUDGED for the reasons stated of record:

1. The Trustee's Motion for Extension of Time **[DE 96]** is GRANTED IN PART.

   a. By no later than **Friday, August 20, 2010 at 5:00 p.m.,** the Trustee is ORDERED to:

      i. File a Notice with the Court stating: (a) whether it intends on prosecuting Case No.: 09-CV-21879-ASG; and (b) whether it has been able to settle Case No.: 09-CV-21879-ASG; and

      ii. If the Trustee intends on proceeding with Case No.: 09-CV-21879-ASG, file a Discovery Status Report with the Court setting forth a good faith proposal that will allow the Trustee to comply with outstanding document production requests in accordance with applicable law by Friday, September 17, 2010.

iii. The Trustee is expressly admonished that it MAY NOT propose a "document dump" strategy. *See* **[DE 106, p. 11]**.

2. A telephonic status conference is HEREBY SET before the Honorable Alan S. Gold, at the United States District Court, Courtroom 11-1, Eleventh Floor, 400 North Miami Avenue, Miami, Florida, on **Tuesday, August 31, 2010 at 8:45 a.m.**

a. All parties shall call 1-888-684-8852 five minutes before the scheduled start time and enter access code 8321924 and security code 5050. **Please be prompt.**

DONE and ORDERED IN CHAMBERS at Miami, Florida this 21st day of July, 2010.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Bandstra
Counsel of record

EXHIBIT K

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Matthew D. Novello, Esq. (*will comply with LR 1A 10-2 within 45 days*)
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CCCS INTERNATIONAL, a South Carolina corporation, PLAINTIFF v. FONTAINEBLEAU LAS VEGAS, LLC, a Nevada limited liability company; FONTAINEBLEAU LAS VEGAS II, LLC, a Florida limited liability company; and FONTAINEBLEAU RESORTS, LLC, a Florida limited liability company, DEFENDANTS.	CASE NO.:

PLAINTIFF'S ORIGINAL COMPLAINT

JURY DEMANDED

CCCS International ("CCCS"), through its attorneys, Jolley Urga Wirth Woodbury & Standish and McAlpine & Associates, P.C. (will comply with LR 1A 10-2 within 45 days), states as its Complaint against the Defendants as follows:

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PARTIES AND JURISDICTION

1. CCCS is a South Carolina corporation with its principal place of business located at 102 Graduate Lane, Ladson, South Carolina. CCCS did engage in systematic and regular business activities in Clark County, Nevada.

2. Fontainebleau Las Vegas, LLC is a Nevada limited liability company, with its principal place of business at 2827 Paradise Road, Las Vegas, Nevada 89109.

3. Fontainebleau Las Vegas II, LLC, is a Florida limited liability company, and predecessor of Fontainebleau Las Vegas, LLC, which conducts systematic and regular business activities in Clark County, Nevada.

4. Fontainebleau Resorts, LLC, is a Florida limited liability company, which engages in systematic and regular business activities in Clark County, Nevada.

5. Upon information and belief, Defendant Fontainebleau Resorts, LLC is a parent company, and/or is an alter ego of the Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC. As such, these companies (Fontainebleau Resorts, LLC, Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC) shall be collectively referred to herein as "Fontainebleau". Moreover, and based upon information and belief, the various Fontainebleau entities are the instrumentality and/or alter ego of each other.

6. There is complete diversity of citizenship between the litigants, and the amount in controversy in this action exceeds $75,000.00 exclusive of interest and costs. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

7. Venue is proper in this Court in that Defendant Fontainebleau Las Vegas, LLC maintains its principal place of business in Las Vegas, Nevada, and Defendants Fontainebleau Las Vegas II, LLC and Fontainebleau Resorts, LLC maintain and operate businesses in Las Vegas, Nevada.

FACTUAL SUMMARY

8. This lawsuit arises from the construction of the Fontainebleau Las Vegas Hotel and Resort, in Las Vegas, Nevada (the "Project"). CCCS was retained to perform various construction management and auditing services for the Project. Fontainebleau Las Vegas, LLC, Fontainebleau

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Las Vegas II, LLC and Fontainebleau Resorts, LLC are the owners of the Project. Turnberry West Corporation was the general contractor for the Project, who operated under the direction and control of Fontainebleau.

9. During the summer of 2008, CCCS was contacted by Fontainebleau representatives and asked to provide various construction management services for the Project. According to Fontainebleau, the Project was severely over budget and Fontainebleau was in need of a construction manager able to provide cost management and auditing services to recover prior unnecessary overpayments.

10. Based upon a past project, CCCS was told that CCCS would be compensated through the agreed upon "Incentive Recovery Fee", whereby CCCS would obtain a percentage of recovery on the overpayments made to various contractors and suppliers who worked at the Project. The parties projected that CCCS would save Fontainebleau a total of $130 million in prior overpayments.

11. CCCS was told that CCCS would be entitled to 2% of any discovery of prior overpayments or potential overpayments.

12. In addition to the Incentive Recovery Fee, CCCS was to be paid a monthly billing fee, moving/living expenses and a separate 10% overhead/administration fee on all costs associated with overseeing and managing other cost control teams and staff members.

13. Based upon these discussions, in the fall of 2008, CCCS entered into a contract with Fontainebleau for the construction, bidding, negotiating and auditing of the Project (the "Contract").

14. Before any written agreement was formalized, Fontainebleau brought CCCS to the Project in an attempt to contain costs and recover prior overpayments.

15. Shortly thereafter, CCCS began performing its work under the Contract.

16. During the negotiations prior to the formation of the Contract, Fontainebleau failed to disclose that Fontainebleau did not have adequate financing to continue performance under the terms of the Contract through to the completion of the Project.

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17. Nor did Fontainebleau disclose that Fontainebleau had no intention of honoring the terms of Contract.

18. Fontainebleau failed to adequately design, supervise, coordinate, plan and schedule all of the work performed at the Project, which resulted in significant delays, disruptions, alterations and hardship on many of the subcontractors, consultants and employees who worked on the Project, including CCCS.

19. In addition, Fontainebleau wrongfully terminated the Contract and improperly removed CCCS from completing the Project for no justifiable basis.

20. At the time of the wrongful termination, and based upon CCCS's detailed auditing procedure, CCCS had already discovered over $40 million in overpayments in the few months onsite. CCCS was well on its way to discovering the benchmark of $130 million in contractor/supplier overcharges when Fontainebleau unfairly removed CCCS from the Project. However, and despite receiving these significant benefits, Fontainebleau has refused to pay CCCS the agreed to compensation.

21. Upon CCCS's discovery of Fontainebleau's fraudulent billing practices and inappropriate payment methods, CCCS was wrongfully terminated.

22. Despite repeated requests, Fontainebleau has refused to deal fairly and in good faith with CCCS, including failing to resolve any of the issues relating to payment for the work performed and accepted.

23. These and other breaches as alleged above and below have severely damaged CCCS, particularly Fontainebleau's failure to pay for the work performed, which has caused CCCS to incur considerable financial damages, along with the attorney's fees and costs incurred in pursuing this matter.

COUNT I
BREACH OF CONTRACT

24. CCCS repeats and realleges the allegations contained in each and every preceding paragraph of this Complaint as though fully set forth herein.

25. CCCS entered into the Contract with Fontainebleau as set forth above.

26. CCCS performed its obligations under the Contract.

27. CCCS discovered over $40 million in prior overpayments, and was well on its way to uncovering upwards of $130 million.

28. Fontainebleau repeatedly, materially, and cardinally breached the Contract including, but not limited to, the following:

a. Failure to make payments when due under the Contract as if completed;

b. Failing to honor the agreed to Incentive Recovery Fee;

c. Failing to provide CCCS with the agreed upon fees, including the overhead/administration fee;

d. Failing to provide CCCS with the agreed upon moving and living expenses;

e. Refusing to recognize and accept many discovered over-billings;

f. Refusing to accept the discovery of various improper billing practices by many contractors, subcontractors and suppliers;

g. Attempting to renegotiate with various contractors with the use of CCCS's overpayment information to the detriment of CCCS;

h. Maintaining a separate corporate entity as an alter ego to perpetrate various misdeeds and misrepresentations concerning the billings and payment practices at the Project;

i. Failing to honor various bidding and change order requirements;

j. Failing to provide a proper and adequate design for the Project;

k. Failing to properly administer the Contract and coordinate the Project;

l. Delaying, disrupting and interfering with CCCS's work;

m. Improperly terminating the Contract without justification and cause;

n. Wrongful rejection of work;

o. Lack of adequate supervision and coordination;

p. Inadequate planning and coordination with government requirements;

q. Failing to timely obtain the appropriate permits; and

r. Improper, inaccurate and excessive change order work.

29. The foregoing breaches of Contract directly and proximately caused CCCS to incur additional costs and damages including, but not limited to:

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a. Nonpayment of the Contract's balance;

b. Increased Project costs;

c. Increased travel and living expenses;

d. Loss of productivity;

e. Lost use of capital;

f. Extended home office and site overhead costs;

g. Lost business opportunities;

h. Damage to its reputation; and

i. Other related, incidental and consequential damages.

30. By reason of Fontainebleau's wrongful conduct, CCCS has been damaged in an amount in excess of $75,000.00, to be determined at trial, along with the attorney's fees and costs incurred in pursuing this matter.

COUNT II
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

31. CCCS repeats and realleges the allegations contained in each and every preceding paragraph of this Complaint as though fully set forth herein.

32. Under Nevada law, in every contract there is a covenant of good faith and fair dealing.

33. Fontainebleau owed CCCS a duty of good faith and fair dealing arising from the Contract.

34. Fontainebleau breached that duty imposed by the Contract by performing in a manner that was unfaithful to the Contract and failing to honor its terms.

35. As a result of Fontainebleau's breach of that duty, CCCS's justified expectations were denied.

36. As a direct result of this breach, CCCS has suffered damages in an amount in excess of $75,000.00, to be determined at trial, along with the attorney's fees and costs incurred in pursuing this matter.

///

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COUNT III
UNJUST ENRICHMENT / QUANTUM MERUIT

37. CCCS repeats and realleges the allegations contained in each and every preceding paragraph of this Complaint as though fully set forth herein.

38. CCCS contributed significant improvements and cost savings to the Project.

39. CCCS has not been paid in excess of $1 million for its services provided to the Project.

40. Fontainebleau has received, and continues to receive, the benefits of the project management and auditing services provided by CCCS at the Project.

41. The services provided by CCCS have saved or should save Fontainebleau in excess of $40 million.

42. However, and despite Fontainebleau having received this significant benefit and cost savings, Fontainebleau has refused to compensate CCCS for these services, which are valued in excess of $1 million.

43. As a direct and proximate result of the nonpayment by Fontainebleau, CCCS continues to suffer further damages, including attorney's fees and costs incurred in pursuing this matter.

44. Unless Fontainebleau is made to pay for the services provided by CCCS for the benefit of the Project, Fontainebleau will be unjustly enriched in an amount in excess of $1 million to the detriment of CCCS.

COUNT IV
FRAUD, MISREPRESENTATION, FRAUDULENT INDUCEMENT

45. CCCS repeats and realleges the allegations contained in each and every preceding paragraph of this Complaint as though fully set forth herein.

46. Both before and continuing beyond formation of the Contract, Fontainebleau repeatedly represented to CCCS that it would compensate CCCS with an Incentive Recovery Fee, as well as other moving and monthly payments, in the event that CCCS determined that Fontainebleau did or would issue various entities significant and unjustified overpayments.

47. Fontainebleau repeatedly assured CCCS that based upon past practice and the suspected prior cost overruns at the Project, CCCS would be able to obtain compensation through the proposed Incentive Recovery Fee.

48. Fontainebleau also represented that the Project was completely designed, and all bidding documentation was satisfactory and complete.

49. Fontainebleau also repeatedly assured CCCS that there was sufficient financing in place to justify ongoing construction, even when information given to CCCS to conduct various auditing functions appeared to establish significant cost overruns that could potentially jeopardize completion of the Project.

50. Contrary to its representations to CCCS, Fontainebleau in fact had never obtained appropriate financing to complete the Project.

51. Nor did Fontainebleau and its representatives completely design or provide complete bidding documentation to the various subcontractors and suppliers as promised to serve as the basis for forecasting various Project costs and potential overruns and over-billings.

52. Fontainebleau also had no present intention to comply with the agreed upon Incentive Recovery Fee for the discovery of Project various cost overruns.

53. Fontainebleau knew and failed to disclose that there was insufficient financing, design/bid documentation and planning for the Project.

54. Fontainebleau knew and failed to disclose that it did not intend to comply with the Incentive Recovery Fee as represented.

55. Fontainebleau knew and failed to disclose that various payments made to the Project's contractors and suppliers lacked objective scrutiny.

56. Fontainebleau issued these representations with the intention of inducing CCCS to believe that Fontainebleau had previously performed the complete Project designs, were capable of building the Project on budget, had ample financing available, and were experienced at handling similar cost overruns on prior projects.

57. In fact, contrary to their representations, Fontainebleau had never before experienced any event similar to the Project, which was a construction project that did not have a

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completed design/bid documentation, lacked appropriate financing, and failed to appropriately consider the previously agreed to cost overruns.

58. Fontainebleau made each representation and material omission with the intention of inducing CCCS to forego other opportunities and to enter into the Contract.

59. Fontainebleau knew that its affirmative misrepresentations were false when they were made, or it made the misrepresentations with reckless disregard as to their truth or falsity.

60. In reasonable reliance on Fontainebleau's misrepresentations and omissions, CCCS entered into the Contract.

61. If Fontainebleau had not made all the foregoing misrepresentations and omissions, CCCS would not have entered into the Contract but would have exercised other options, including continuing to work on a prior lucrative construction contract in a different state, or negotiate a wholly different contract with Fontainebleau.

62. In further reliance on Fontainebleau's misrepresentations and omissions, CCCS began providing the requested construction management and auditing services, which have now saved Fontainebleau more than $40 million.

63. During the investigation into the millions of dollars spent on contractor overpayment, CCCS began discovering sensitive financial issues, including known and intentional overpayments to various subcontractors and suppliers. This knowledge ultimately led to CCCS's wrongful discharge from the Project.

64. After these transactions were brought to the attention of Fontainebleau representatives, CCCS was wrongfully terminated for questioning Fontainebleau's questionable financial transactions, even when CCCS was brought to the Project to perform various auditing functions.

65. Following this wrongful termination, it became clear that Fontainebleau never had any intention of performing pursuant to what CCCS believed were the terms of the parties' Contract, including payment on the Incentive Recovery Fee, as well as payment for overseeing and managing other cost management entities and employees.

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66. Because CCCS was induced to enter into the Contract by Fontainebleau's fraud, CCCS may elect to void the Contract.

67. As a direct and proximate result of Fontainebleau's misrepresentations, CCCS continues to suffer further damages, including attorney's fees and costs incurred in pursuing this matter.

68. As a foreseeable, direct and/or proximate result of Fontainebleau's misrepresentations, CCCS has incurred and continues to incur damages in excess of $1 million, including but not limited to:

a. Lack of payment on what CCCS perceived were agreed to terms and rates;

b. Investment of time and resources to relocate to a separate state and construction project with a severe reduction in its return due to the fact that the Fontainebleau did not perform as promised, and even wrongfully terminated CCCS;

c. Delays in Project work resulting in extra Project costs;

d. Additional costs incurred in attempting to remedy the significant cost overruns, including but not limited to the cost of hiring and overseeing independent contractors to assist in remedying the drastic cost problems;

e. Lost use of resources;

f. Lost use of capital;

g. Damage to reputation;

h. Cost of financing the Project; and

i. Lost business opportunities and profits.

WHEREFORE, CCCS demands judgment against Defendants, jointly and severally, as follows:

1. For general damages in excess of $75,000, plus pre and post-judgment interest;

2. For punitive and exemplary damages, plus pre and post-judgment interest;

3. For reasonable attorney's fees and costs of suit incurred herein; and

4. For such other and further relief as the Court deems just and proper.

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JURY DEMAND

CCCS hereby demands a trial by jury of all issues and claims properly submitted to a jury.

DATED this 12th day of May, 2009.

Respectfully submitted,

JOLLEY URGA WIRTH WOODBURY & STANDISH

By */s/ William R. Urga*
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EXHIBIT L

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

GENERAL JURISDICTION DIVISION

CASE NO. 09-75602-CA-15

FIDELITY NATIONAL TITLE INSURANCE COMPANY; LAWYERS TITLE INSURANCE CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; TRANSNATION TITLE INSURANCE COMPANY; ALAMO TITLE INSURANCE, CHICAGO TITLE AND TRUST COMPANY; TICOR TITLE INSURANCE COMPANY; TICOR TITLE INSURANCE COMPANY OF FLORIDA; SECURITY UNION TITLE INSURANCE COMPANY; and FIRST AMERICAN TITLE INSURANCE COMPANY,

Plaintiffs,

vs.

FONTAINEBLEAU RESORTS, LLC; TURNBERRY WEST CONSTRUCTION, INC.; and TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P.,

Defendants.
_____/

ANGELA MOORER

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MIAMI-DADE COUNTY, FL.
CIVIL DIVISION

AMENDED COMPLAINT

Plaintiffs Fidelity National Title Insurance Company, Lawyers Title Insurance Corporation, Commonwealth Land Title Insurance Company, Transnation Title Insurance Company, Alamo Title Insurance, Chicago Title and Trust Company, Ticor Title Insurance Company, Ticor Title Insurance Company of Florida, Security Union Title Insurance Company, and First American Title Insurance Company (collectively, "Title Companies") sue defendants

Fontainebleau Resorts, LLC, Turnberry West Construction, Inc., and Turnberry Residential Limited Partner, L.P., and allege:

PARTIES

The Plaintiffs

1. Plaintiff Fidelity National Title Insurance Company is a California corporation transacting business in Florida as a duly licensed title insurer.

2. Plaintiff Lawyers Title Insurance Corporation is a Nebraska corporation transacting business in Florida as a duly licensed title insurer.

3. Plaintiff Commonwealth Land Title Insurance Company is a Nebraska corporation transacting business in Florida as a duly licensed title insurer.

4. Plaintiff Transnation Title Insurance Company is a Nebraska corporation transacting business in Florida as a duly licensed title insurer.

5. Plaintiff Alamo Title Insurance is a Texas corporation transacting business in Florida as a duly licensed title insurer.

6. Plaintiff Chicago Title and Trust Company is an Illinois corporation transacting business in Florida as a duly licensed title insurer.

7. Plaintiff Ticor Title Insurance Company is a California corporation transacting business in Florida as a duly licensed title insurer.

8. Plaintiff Ticor Title Insurance Company of Florida is a Nebraska corporation transacting business in Florida as a duly licensed title insurer.

9. Plaintiff Security Union Title Insurance Company is a California corporation transacting business in Florida as a duly licensed title insurer.

10. Plaintiff First American Title Insurance Company is a California corporation transacting business in Florida as a duly licensed title insurer.

The Defendants

11. Defendant Turnberry West Construction, Inc. ("TWC") is a Nevada corporation created for the sole purpose of performing general contractor services to benefit defendant Fontainebleau Resorts (as defined below) and the Borrowers (also defined below) at the Fontainebleau Project. TWC has a principal place of business at 19501 Biscayne Boulevard, Suite 400, Aventura, Florida 33180. TWC – through Jeffrey Soffer – signed the Indemnity Agreement in favor of plaintiff Title Companies that is the subject of this action.

12. Defendant Turnberry Residential Limited Partner, L.P. ("Turnberry Residential") is a Delaware limited partnership that was formed on August 31, 2004. Turnberry Residential also has a principal place of business at 19501 Biscayne Boulevard, Suite 400, Aventura, Florida 33180. Turnberry Residential owns a 99.99% limited partnership interest in Turnberry Residential Developers, L.P. ("TRD"), which was created to form a holding company for residential and commercial development entities. Turnberry Residential also owns and/or controls the following entities by ownership of a majority voting interest: Turnberry Investment Company, L.P., TRD and its subsidiaries, Turnberry Residential Management, L.P., Turnberry Lansing, LP, Turnberry Houston Tower, L.P., Sea Breeze Ocean Developers, Ltd., Sea Breeze Ocean Developers S, Ltd, G-Site, Limited Partnership, 1881 Rosslyn Associates, LLC, Turnberry/MGM Grand Towers, LLC (MGM/The Residences), Turnberry Pavilion Partners, L.P. (Turnberry Place), and Turnberry Towers, L.P. (Turnberry Towers, Las Vegas).

13. Turnberry Residential – also through Jeffrey Soffer – signed the Indemnity Agreement in favor of plaintiff Title Companies that is the subject of this action. As set forth in more detail below, at the same time, Turnberry Residential – again through Jeffrey Soffer – also signed a Completion Guaranty dated June 6, 2007 in favor of Bank of America, as disbursement agent, and Wells Fargo Bank, as Trustee under the Indenture Agreement (now assigned to U.S.

Bank, as successor trustee). The Completion Guaranty was attached to and incorporated in the Indemnity Agreement that is the subject of this action.

14. Defendant Fontainebleau Resorts, LLC ("Fontainebleau Resorts") is a Delaware limited liability company that was formed on February 16, 2005, having its principal place of business at 19950 West Country Club Drive 8th, Aventura, Florida 33180. Fontainebleau Resorts also signed the Indemnity Agreement in favor of plaintiff Title Companies that is the subject of this action.

15. Fontainebleau Resorts wholly owns Fontainebleau Resort Holdings, LLC ("Holdings"), which wholly owns (i) Fontainebleau Resort Properties I, LLC ("FBRP I"); (ii) Fontainebleau Resort Properties II, LLC ("FBRP II") and (iii) Fontainebleau Resorts Enterprises, LLC ("Enterprises"). FBRP I, in turn, owns 99% of Fontainebleau Las Vegas, LLC and wholly owns Fontainebleau Las Vegas II, LLC. Both Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC signed the Indemnity Agreement that is the subject of this action, but neither is being sued herein because, after Fontainebleau Las Vegas II, LLC merged into Fontainebleau Las Vegas, LLC, it (Fontainebleau Las Vegas, LLC) filed a Chapter 11 Petition in the United States Bankruptcy Court for the Southern District of Florida, in the consolidated matter entitled *In re Fontainebleau Las Vegas Holdings, LLC et al.*, Case No. 09-21481-BKC-AJC.

16. Fontainebleau Resorts also wholly owns Fontainebleau Florida Hotel Properties, LLC ("FBFHP"). FBFHP, in turn, wholly owns (i) Fontainebleau Florida Tower 2, LLC ("FB II"); (ii) Fontainebleau Florida Tower 3, LLC ("FB III"); (iii) Fontainebleau Tower 3 Garage Restaurant, LLC ("FBGR III"); (iv) Fontainebleau Florida Tower 4, LLC ("FB IV"); and (v) Fontainebleau Florida Hotel, LLC ("FB I"). Soffer Fontainebleau Associates Limited Partnership ("SFALP"), a Florida limited partnership controlled principally by Jeffrey Soffer,

owns 82.4% of defendant Fontainebleau Resorts' outstanding Class A Units with the remaining Class A Units held by other executives of Fontainebleau Resorts and other investors.

Jeffrey Soffer and his and the defendants' shell game with the entities

17. Jeffrey Soffer ("Soffer") is an individual having his principal place of business at 19501 Biscayne Boulevard, Suite 400, Aventura, Florida 33180. Soffer is the Chairman and Chief Executive Officer of defendant Fontainebleau Resorts and a member of its Board of Managers. Soffer is the 70% owner and managing member of Soffer GP, LLC ("Soffer GP"), which is the general partner of defendant Turnberry Residential. Soffer is also the President, Secretary, Treasurer, and Director of defendant TWC. As stated above, Soffer signed the Indemnity Agreement in favor of plaintiff Title Companies that is the subject of this action on behalf of several of the indemnitors. Soffer also signed the Completion Guaranty that is attached to and incorporated in the Indemnity Agreement.

18. Title Companies are informed and believe that Soffer used the various entities that he owned and/or controlled as alter-egos of each other. Title Companies are informed and believe that there exists a unity of interest and ownership between and among the various entities. In other words, the assets and management of the various entities have been intermingled, formalities have not been maintained, and the assets have been manipulated by and among the defendants (including undercapitalization) to assist them in evading obligations and debt payments. Title Companies are informed and believe that these entities were created and manipulated to evade liability and collectively operated as a single enterprise.

19. For example, Title Companies are informed and believe that defendant Turnberry Residential operates with grossly inadequate capital and presently does not have sufficient assets to meet its obligations on all projects, including Turnberry/MGM Grand Towers, Turnberry Pavilion Partners and Turnberry Towers. Defendant Turnberry Residential's capital appears to

be illusory or is trifling compared to the obligations that it has assumed, not the least of which is representing and warranting to Title Companies – in the Indemnity Agreement that is the subject of this action – that it had and would maintain "Consolidated Net Worth" of not less than $200 million and Marketable Investments of not less than $75 million until June 30, 2008 and of not less than $85 million thereafter.

20. Indeed, defendant TWC – which is a party to the Indemnity Agreement – is a mere shell, created through the issuance of 1000 shares having a par value of $1.00, each totaling $1,000. TWC was grossly undercapitalized, and appears to have been created to shield liabilities, obligations and debts.

21. In contrast, Title Companies are informed and believe that TRD – which was *not* a party to the Indemnity Agreement – is the actual entity with assets exceeding $1 billion. Defendant Turnberry Residential, however, is the 99.99% limited partner and owner of TRD, and one of Turnberry Residential's main purposes was to own TRD.

22. Title Companies are informed and believe that Soffer, as Managing Member and owner of Soffer GP, defendant Turnberry Residential's general partner, caused Turnberry Residential to be created and incorporated solely for the purpose to exist as a limited partner in TRD. As such, these corporate and partnership entities are a fiction, created to deceive lenders, title companies and members of the public, and to hide assets and avoid liabilities. Title Companies are further informed and believe that there are multiple "Organization Charts" for the "Fontainebleau Companies" and the "Turnberry Companies," some of which are inconsistent with each other and/or misleading.

23. Title Companies are informed and believe that the corporate defendants maintain the use of the same office or business location and employ the same employees and attorneys. Title Companies are further informed and believe that the daily operations of the entities are not

maintained separately. For example, Soffer GP, Turnberry Residential, TWC, and TRD all use the office located at 19501 Biscayne Boulevard, Suite 400, Aventura, Florida 33180.

24. Title Companies are informed and believe that the corporate entities each have common managers, directors, officers, and owners. For example, Title Companies are informed and believe that:

a. Soffer is the 70% managing member and owner of Soffer GP.

b. Soffer GP, as managed and primarily owned by Soffer, is the general partner and owner of Turnberry Residential. Turnberry Residential is a 99.99% owner and limited partner of TRD, which is also managed by Soffer.

c. Soffer is also the President, Secretary, Treasurer, and Director of TWC.

d. Soffer is also the President, Chairman and Manager of Fontainebleau Resorts.

e. According to consolidated notes to financial statements filed by Fontainebleau Resorts, "Jeffrey Soffer is a significant owner and officer of the group of related individuals and companies, collectively referred to as the 'Turnberry Group' of companies."

f. According to the declaration of Howard C. Karawan, filed in the *In re Fontainebleau Las Vegas Holdings, LLC et al.* bankruptcy proceeding: "All major decisions in respect to the Project (defined below) have been made by the Board of Managers of Fontainebleau Resorts, LLC. The Board of Managers has continuously exercised its ultimate control over the management, business activities (including the design and development of the Project) and capital structure/financing .... I report directly to the Board of Managers ... including the ultimate controlling person of the Fontainebleau family of companies and Chairman of Fontainebleau Resorts, LLC, Jeffrey Soffer ...." (Howard Karawan Declaration, filed June 10, 2009, at ¶ 12.)

25. Title Companies are informed and believe that these entities do not maintain adequate minutes or adequate corporate records, and there is a confusion of the records of the separate entities. Attached as Exhibit 2 are organizational charts of these entities. Title Companies are informed and believe that these organizational charts are conflicting and inconsistent. Likewise, during the August 21, 2009 pre-motion hearing on a contemplated Motion to Remand an action pending in the Southern District of New York entitled *Deutsche Bank Trust Company Americas v. Jeffrey Soffer et al.*, 09-CIV-7089, counsel for Soffer and Turnberry Residential described Soffer as "the ultimate principal of both Fontainebleau and of Turnberry."

GENERAL ALLEGATIONS

26. The Fontainebleau Miami Beach hotel, founded in 1954, is a high-profile and award winning luxury hotel. The iconic hotel is regularly featured in films (*e.g.*, Goldfinger, Scarface) and television shows (*e.g.*, Top Chef, The O.C.), and recently reopened after receiving a one-billion dollar renovation and makeover.

27. Seeking to leverage the "Fontainebleau" brand name that his father helped to create, Soffer, then 39-years-old, conceived of the construction of a $2.8 billion Fontainebleau Las Vegas casino and resort (the "Project" or "Property") situated on 24.4 acres on the Las Vegas Strip. The Project as designed consists of a 68-story glass skyscraper featuring over 3,800 guest rooms, suites and condominium units; a 100-foot high three-level podium complex containing casino and gaming areas, restaurants and bars, a spa and salon, a live entertainment theatre, and a seven-acre rooftop pool deck; and a 353,000 square-foot convention center. The Project also included retail space of 286,500 square-feet, containing retail shops, restaurants and a nightclub.

28. The Project is situated on two parcels of land. Soffer caused to be created two limited liability companies – Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC – each taking title to one of the parcels. (Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC are collectively referred to as "Borrowers.")[1] The Borrowers were subsidiaries of defendant Fontainebleau Resorts and managed by Holdings. (A true and correct copy of the legal description of the Property is attached as Exhibit A to Exhibit 1.)

Soffer needs $2.8 billion in financing, and
the Banks won't do it without title insurance

29. In order to procure $2.8 billion in financing for the Project, the Soffer group of companies determined it necessary to negotiate and structure a credit facility involving multiple parties and numerous integrated agreements.

a. The Borrowers approached Bank of America, N.A. ("Bank of America") as agent for a syndicate of lenders and negotiated the terms of a Credit Agreement (the "Credit Agreement") whereby the lenders agreed to loan $1.85 billion. The first tranche was a $700 million term loan (the "Term Loan") with a seven-year maturity date. The second tranche was a $350 million delay draw term loan (the "Delay Draw") with a seven-year maturity date. The third tranche was an $800 million revolving loan (the "Revolver Loan") with a six-year maturity date. As partial security, the Borrowers agreed to execute a deed of trust, as trustors, in favor of Bank of America, as beneficiary, to be recorded in first priority position.

b. The Borrowers also negotiated with Wells Fargo Bank, as trustee, for the issuance of certain notes (the "Notes") in the principal amount of $675 million under the terms of the Indenture Agreement. As security, the Borrowers agreed to execute a deed of trust, as

[1] As stated above, after Fontainebleau Las Vegas II, LLC merged into Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas, LLC filed a Chapter 11 Petition in United States Bankruptcy Court for the Southern District of Florida in the consolidated matter entitled *In re Fontainebleau Las Vegas Holdings, LLC et al.*, Case No. 09-21481-BKC-AJC.

trustors, in favor of Wells Fargo Bank, as Trustee and beneficiary, to be recorded in second priority position.

30. Bank of America, as agent under the first Credit Facility, and disbursing agent under the Disbursement Agreement, expressly conditioned the funding of the $1.85 billion financing package on the issuance of an ALTA Loan Policy in the amount of $1.85 billion providing coverage against any recorded mechanic's lien asserting priority over Bank of America's first deed of trust. A similar express condition was imposed by Wells Fargo Bank, as Trustee under the contemplated Indenture Agreement for the Notes. As an integral part of the transaction, plaintiff Title Companies were thus requested to provide title insurance protection consistent with the requirements of Bank of America and Wells Fargo Bank – *i.e.*, agreeing to insure the priority of the contemplated deeds of trust in favor of these lenders in first and second priority position.

The Title Companies won't issue title insurance without a bullet-proof Indemnity Agreement

31. Title Companies conditioned the issuance of the two ALTA loan policies on execution of an express written indemnification agreement by the Borrowers and other entities holding sufficient assets and capital to indemnify Title Companies from the risk of multiple recorded mechanics' liens. Thus, plaintiff Title Companies and defendants Turnberry Residential, TWC, the Borrowers, and defendant Fontainebleau Resorts negotiated the terms of a written indemnity agreement (the "Indemnity Agreement"), which was executed on June 5, 2007. (Defendants Turnberry Residential, TWC and Fontainebleau Resorts are referred to collectively as the "defendant Indemnitors.") A copy of the Indemnity Agreement (and the exhibits attached to it) is attached as Exhibit 1.

32. The Indemnity Agreement was executed by Soffer as "Authorized Signatory" on behalf of defendants and Indemnitors TWC and Turnberry Residential. Title Companies are informed and believe that Soffer executed the Indemnity Agreement in the State of Florida. Title Companies allege, on information and belief, that former manager Glenn Schaeffer also executed the Indemnity Agreement, on behalf of defendant Fontainebleau Resorts, in the State of Florida.

33. The Indemnity Agreement specifically recognizes that without the title insurance provided by Title Companies (which was conditioned on receipt of the Indemnity Agreement and the various representations contained therein), the Soffer entities would not have been able to secure their $2.8 billion in funding:

> Each of the Indemnitors acknowledges that it will receive a direct and material benefit from the signing of this Indemnity Agreement, it being expressly understood that without execution of this Indemnity Agreement, the Title Companies would not issue the Title polices. Further, it being expressly understood that without issuance of the Title Policies, the lenders shown as the insureds in the Title Policies would not advance funds for construction of improvements on the Property that will ultimately benefit each of the Indemnitors. (Ex. 1 at ¶ C.)

34. The Indemnity Agreement provides that the defendant Indemnitors: (1) jointly and severally agree to hold harmless Title Companies from liability, loss or damage incurred by Title Companies arising from mechanics' liens filed against the Property, including attorneys' fees incurred by the Title Companies; (2) shall cause to be filed a Notice of Completion covering the Project on the subject matter property; (3) shall cause to be recorded a statutory mechanic's lien release bond or surety bond releasing the property from each recorded mechanic's lien upon demand by the Title Companies; and (4) pay for and provide a defense against all actions relating to mechanics' liens, all for the protection of the Title Companies.

35. Under the Indemnity Agreement, the defendant Indemnitors further:

a. Warranted the accuracy and truthfulness of all financial statements and other information submitted to Title Companies (Ex. 1 at ¶ 2.C.); and

b. Agreed to promptly advise Title Companies in writing of any material adverse change to the financial condition of any defendant Indemnitor. (Ex. 1 at ¶ 2.C.)

36. Importantly, Turnberry Residential represented in the Indemnity that it had – and would maintain – "Consolidated Net Worth" (as that phrase is defined in the Completion Guaranty), of not less than $200 million and Marketable Investments (as also defined in the Completion Guaranty), of not less than $75 million until June 30, 2008, and of not less than $85 million thereafter. Turnberry Residential's Completion Guaranty was attached to and incorporated by reference as Exhibit "C" to the Indemnity Agreement (Exhibit 1 hereto).

37. The Completion Guaranty dated June 6, 2007 was executed as a condition of the Credit Agreement and related lender financing agreements for the Project. Soffer also executed the Completion Guaranty (through Soffer GP, an owner and sole general partner of Turnberry Residential). Because the Completion Guaranty's phrases (*i.e.*, "Consolidated Net Worth" and "Marketable Investments") are used in the Indemnity Agreement, and because the Completion Guaranty was referred to, attached to, and incorporated in the Indemnity Agreement, it was always understood that the Completion Guaranty and the Indemnity Agreement would be construed and interpreted together. The Completion Guaranty's definition of "Consolidated Net Worth" is: "the consolidated partners' capital of Completion Guarantor [Turnberry Residential] as of that date, determined in accordance with generally accepted accounting principles, consistently applied."[2]

[2] The Completion Guaranty defines "Marketable Investments" as: "cash, cash equivalents and liquid investments which are reasonably approved by the Disbursement Agent [Bank of America] which are owned by the Completion Guarantor [Turnberry Residential] and not subject to any Liens."

38. In other words, although the "Consolidated Net Worth" representation in the Indemnity Agreement came from Turnberry Residential, it was predicated on all of Turnberry Residential's "consolidated partners' capital." Indeed, no other interpretation is possible, because Turnberry Residential does not itself hold any material assets, apart from its ownership interests in various other entities that themselves hold title to the underlying assets. To that end, in connection with the negotiation and execution of the Indemnity Agreement, the defendant Indemnitors provided Title Companies with financial statements (which, as set forth above, the defendant Indemnitors warranted the accuracy and truthfulness of). Those financial statements were on behalf of Turnberry Residential "and subsidiaries" and Fontainebleau Resorts "and subsidiaries." Those financial statements – with the consolidated "partners' capital" included therein – show a partners' capital of slightly over $200 million. Copies of the financial statements that Title Companies received are attached as Composite Exhibit 3.

39. At the same time, defendant TWC (which, again, was the Soffer general contractor that was helping to build the Project), through Soffer (TWC's President, Secretary and Treasurer), executed an Affiliated Subordination Agreement. This was a critical agreement, because in it, TWC agreed that all sums due to it were contractually subordinated to the debt owed under the Credit Agreement to Bank of America, as agent, for all the lenders, and to Wells Fargo Bank, as Trustee for the noteholders under the Indenture Agreement. In other words, because Title Companies were insuring against mechanics' liens (based on the Indemnity Agreement), Soffer's entity, TWC, was agreeing that any mechanics' liens that it had by virtue of being the Project's general contractor would be subordinated to the debts owed to Bank of America (as agent for all the lenders) and Wells Fargo Bank (as Trustee for the noteholders).

With the title insurance in place, Soffer proceeds to close the transaction, and billions of dollars begin to flow

40. The transaction closed on June 6, 2007, the day after the Indemnity Agreement was provided to Title Companies:

a. The Credit Agreement was executed by Soffer on behalf of the Borrowers as "Executive Chairman."

b. Soffer, on behalf of Borrowers, and Bank of America, Wells Fargo Bank, and others, executed a 100-page Disbursement Agreement (the "Master Disbursement Agreement"), which set forth the order of funding under the Credit Facility, the Notes, and certain retail financing.

c. Numerous affiliated agreements were executed by Soffer including the following: Affiliated Subordination Agreement, Guaranty, Completion Guaranty, Credit Enhancement Fee Agreement, Affiliated Deferred Payment Agreement and Letter of Credit Reimbursement Agreement (and Guaranty).

d. Soffer executed, on behalf of the Borrowers, two deeds of trust, as trustors, in favor of the beneficiaries, Bank of America (whose deed of trust was recorded in first priority position) and Wells Fargo Bank (whose deed of trust was recorded in second priority position).

e. Title Companies caused to be issued two separate ALTA Loan policies in connection with loans advanced under the Credit Agreement by Bank of America, in its capacity as Agent, and by Wells Fargo Bank, in its capacity as Mortgage Notes and Indenture Trustee under the Indenture Agreement dated June 6, 2007. (Copies of the Proforma Policies are attached as Composite Exhibit B to Exhibit 1.)

f. Loan disbursements and construction proceeded from June 2007 through March 10, 2009.

The Project fails; the Banks terminate the funding; and Soffer tries to undermine the Indemnity Agreement

41. On April 20, 2009, Bank of America, on behalf of itself and other revolver lenders, terminated any further obligation to fund proceeds of the Revolver Loan under the Credit Agreement, asserting various conditions of default under the agreements. On June 9, 2009, pursuant to decisions made by defendant Fontainebleau Resorts' Board of Managers, Fontainebleau Las Vegas, LLC (after Fontainebleau Las Vegas II, LLC merged into it) filed a Chapter 11 Petition in United States Bankruptcy Court for the Southern District of Florida in the consolidated matter entitled *In re Fontainebleau Las Vegas Holdings, LLC et al.*, Case No. 09-21481-BKC-AJC.

42. The Board of Managers for defendant Fontainebleau Resorts (as well as defendants Turnberry Residential and Fontainebleau Resorts) well understood that substantial monies were owed to third party subcontractors of labor and materials by defendant TWC, as general contractor and related affiliated entity, and that the decision to file Chapter 11 Petitions would lead to the recordation of mechanics' liens asserting that monies were due and payable in excess of $600 million dollars. Nonetheless, in a clear conflict of interest, defendant Fontainebleau Resorts caused the Chapter 11 Petitions to be filed.

43. To make matters worse and exacerbate the clear conflicts of interest, Soffer (as President, Secretary and Treasurer of defendant TWC) thereafter caused to be recorded a mechanic's lien in favor of TWC in the amount of $668,990,933.27 and later filed a Complaint against Bank of America, Wells Fargo Bank (U.S. Bank as its successor), and all lenders and noteholders as Adversary Proceeding No. 09-01621, claiming that the Affiliated Subordination

Agreement – an Agreement ***that he signed*** on behalf of all parties (*i.e.*, TWC, Fontainebleau Resorts and Turnberry Resort) – was "void" and "unenforceable," and that the mechanic's lien recorded by defendant TWC "took priority over" and was "senior to" the interests secured under the first and second deeds of trust. These allegations reveal the corporate shell game perpetrated by Soffer and the various entities, especially given the well recognized law that prohibits an owner or its affiliate from recording a mechanic's lien against its own property.

44. It is important to note that, during this entire time, no party to the Indemnity Agreement has ever advised Title Companies, in writing or otherwise, of any material adverse change to the financial condition of any defendant Indemnitor, as was clearly required under the Indemnity Agreement. (Ex. 1 at ¶ 2.C.)

The bankruptcy and the breaches of the Indemnity Agreement

45. On June 9, 2009, pursuant to decisions made by defendant Fontainebleau Resorts' Board of Managers, Fontainebleau Las Vegas, LLC (after Fontainebleau Las Vegas II, LLC merged into it) filed a Chapter 11 Petition in the United States Bankruptcy Court in the matter entitled *In re Fontainebleau Las Vegas Holdings, LLC et al.*, Case No. 09-21481-BKC-AJC.

46. Thereafter, on July 14, 2009, defendant TWC filed a Complaint in Adversary Proceeding, Case No. 09-21481-AJC, seeking a determination that the Affiliated Subordination Agreement was void and unenforceable and seeking to establish the validity and priority of TWC's recorded mechanic's lien.

47. As of August 17, 2009, there existed 249 recorded mechanics' liens against the Property, totaling $1,177,347,287.59. Several of these mechanic lien claimants had filed civil actions to foreclose their liens in the Clark County District Court, Las Vegas, Nevada.[3]

[3] This total includes the lien filed by TWC in the amount of $668,990,933.27 which may include claims on behalf of sub-contractors.

48. Title Companies have fully complied with their obligations, including their agreement to issue ALTA loan policies dated June 7, 2007 in favor of the first and second trust deed holders, Bank of America and Wells Fargo Bank. On August 17, 2009, Title Companies made a written demand on the defendant Indemnitors to hold harmless, defend and indemnify Title Companies from and against claims, liability, loss or damage suffered as a consequence of the recorded mechanics' liens, the pending foreclosure actions, and TWC's Adversary Proceeding.

a. Pursuant to paragraph 2B of the Indemnity Agreement, Title Companies requested that the defendant Indemnitors retain counsel to defend the lenders, Bank of America and U.S. Bank, as Successor Trustee to Wells Fargo Bank, in connection with all issues relating to the validity, priority, extent and enforcement of the recorded mechanics' liens, including defendant TWC's recorded mechanic's lien and TWC's attempt to void the Affiliated Subordination Agreement, the related mechanic's lien claims currently addressed in the Debtors' Chapter 11 cases, as well as the pending foreclosure actions filed in the Clark County District Court, Las Vegas, Nevada.

b. Pursuant to paragraph 3 of the Indemnity Agreement, Title Companies also demanded that the defendant Indemnitors take all necessary action to record mechanics' lien release bonds, or other appropriate surety bonds, or otherwise cause to release the recorded mechanic's liens from title to the Property.

c. The defendant Indemnitors have failed and continue to fail to honor their obligations under the Indemnity Agreement.

49. Defendant Indemnitors have breached the express terms and conditions of the Indemnity Agreement by failing to record release bonds or other appropriate surety bonds or otherwise causing the release of the recorded liens from title to the Project. Had the defendant

Indemnitors recorded such release bonds or other appropriate surety bonds or otherwise caused the release of the recorded liens from title to the Project, the Title Companies would never have been involved in the litigation related to the mechanics' liens, which was what the Title Companies bargained for under the Indemnity Agreement.

50. Defendant Indemnitors have further breached the Indemnity Agreement by failing to pay for and provide a defense to the insured Lenders for all pending actions related to the recorded mechanics' liens, including TWC's Complaint and the pending proceedings in the Chapter 11 Bankruptcy cases. Defendant Indemnitors have further breached the Indemnity Agreement by failing and refusing to defend and indemnify Title Companies in connection with these same matters.

51. Title Companies are informed and believe that Turnberry Residential and its partners further breached the Indemnity Agreement by failing to maintain a "Consolidated Net Worth" of at least $200 million as required under the Indemnity Agreement.

52. Title Companies are informed and believe that Turnberry Residential and its partners further breached the Indemnity Agreement by failing to maintain "Marketable Investments" of at least $75 million until June 30, 2008, and of not less than $85 million thereafter.

53. Defendant Indemnitors further breached the Indemnity Agreement by failing to promptly advise Title Companies in writing of material adverse changes in the financial condition of defendant Indemnitors, all as required under the Indemnity Agreement.

54. As a further direct and proximate result of the material breaches of the Indemnity Agreement, Title Companies have incurred, and will continue to incur, attorneys' fees and costs relating to the defense of TWC's Complaint, the defense of the mechanic lien claims in the Bankruptcy proceedings, as well as those filed in Las Vegas, Nevada.

55. The Indemnity Agreement includes an attorneys' fee provision which entitles the prevailing party in any dispute to recover its reasonable attorneys' fees, costs and expenses.

56. The Indemnity Agreement provides that it is to be governed and construed in accordance with the laws of the State of Nevada.

COUNT I

(Breach of the Indemnity Agreement against Defendants Turnberry Residential, TWC and Fontainebleau Resorts)

57. Title Companies incorporate by reference each allegation contained in paragraphs 1 through 56 above.

58. Title Companies and Indemnitors entered into a valid and enforceable contract pursuant to which Indemnitors were required, among other things, to record a statutory release of lien bond or surety bond or to otherwise release the Property from any recorded mechanics' liens and to defend and indemnify Title Companies in connection with any suits related to the recorded mechanics' liens.

59. Indemnitors breached the Indemnity Agreement as described herein.

60. As a direct and proximate result of the foregoing breaches of the Indemnity Agreement by the defendant Indemnitors, Title Companies have suffered damages and will continue to suffer damages, potentially exceeding $1 billion.

WHEREFORE, Title Companies request damages according to proof at time of trial or entry of judgment, attorneys' fees, costs of suit, and such further relief as this Court may deem just and proper.

COUNT II

(Specific Performance of the Indemnity Agreement against Defendants Turnberry Residential and Fontainebleau Resorts)

61. Title Companies incorporate by reference each allegation contained in paragraphs 1 through 56 above.

62. Title Companies and Indemnitors entered into a valid and enforceable contract pursuant to which Indemnitors were required, among other things, to record a statutory release of lien bond or surety bond or to otherwise release the Property from any recorded mechanics' liens and defend and indemnify Title Companies in connection with any suits related to the recorded mechanics' liens.

63. Indemnitors breached the Indemnity Agreement as described herein.

64. Title Companies are entitled to specific performance of the Indemnity Agreement, namely paragraphs 2B and 3, because Indemnitors failed to record release bonds or other appropriate surety bonds or to otherwise cause the release of the recorded liens from title to the Property, and Indemnitors further failed and refused to defend and indemnify Title Companies in connection with the actions related to the recorded mechanics' liens.

65. Title Companies have complied in all respects with their covenants and obligations reflected in the Indemnity Agreement.

66. Due to the corporate shell games and financial insolvency of the defendant Indemnitors, Title Companies have no adequate remedy at law.

67. Accordingly, justice requires that this Court exercise its equitable power to enforce the terms of the Indemnity Agreement and require the defendant Indemnitors to record release bonds or other appropriate surety bonds or to otherwise cause the release of the recorded

liens from title to the Property and to provide a defense for Title Companies in the lawsuits related to the recorded mechanics' liens.

WHEREFORE, the Title Companies demand judgment for specific performance of the Indemnity Agreement against the defendant Indemnitors (excluding TWC), plus attorney's fees and costs, and such further relief as this Court deems proper.

REQUEST FOR JURY TRIAL

Plaintiff Title Companies hereby request a trial by jury on all issues so triable.

Dated: November 16th, 2009.

Respectfully submitted,

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EXHIBIT M

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 08-61294-CIV-ALTONAGA-BROWN

ERICK KELECSENY, et al.,

Plaintiffs,

vs.

CHEVRON U.S.A., INC., et al.,

Defendants.
_____/

ORDER ON DISCOVERY

THIS MATTER came before the Court sua sponte. In order to efficiently resolve this matter, the Parties are instructed as follows.

The following rules apply to discovery objections before this Court:

I. Vague, Overly Broad and Unduly Burdensome:

Parties shall not make nonspecific, boilerplate objections. Such objections do not comply with Local Rule 26.1 G 3(a) which provides "Where an objection is made to any interrogatory or sub-part thereof or to any document request under Fed.R.Civ.P. 34, the objection shall state with specificity all grounds." Objections which state that a discovery request is "vague, overly broad, or unduly burdensome" are, by themselves, meaningless, and are deemed without merit by this Court. A party objecting on these bases must explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome. See Fed. R. Civ. P. 33(b)(4); Josephs v. Harris Corp, 677 F.2d 985, 992 (3d Cir. 1982)("the mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory.").

II. Irrelevant and Not Reasonably Calculated to Lead to Admissible Evidence:

As with the previous objection, an objection that a discovery request is irrelevant and not reasonably calculated to lead to admissible evidence must include a specific explanation describing why the request lacks relevance, and why the information sought will not reasonably lead to admissible evidence. Parties are reminded that the Federal Rules allow for broad discovery, which does not need to be admissible at trial. See Fed. R. Civ. P. 26(b)(1); see Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 345 (1978); see also Local Rule 26.1 G 3(a).

III. Formula Objections Followed by an Answer:

Parties shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons, and then state that "notwithstanding the above," the party will respond to the discovery request, subject to or without waiving such objection. Such objection and answer preserves nothing, and constitutes only a waste of effort and the resources of both the parties and the court. Further, such practice leaves the requesting party uncertain as to whether the question has actually been fully answered, or only a portion of it has been answered. Civil Discovery Standards, 2004 A.B.A. Sec. Lit. 18; see also Local Rule 26.1 G 3(a).

IV. Objections Based upon Privilege:

Generalized objections asserting "confidentiality," attorney-client privilege or work product doctrine also do not comply with local rules. Local Rule 26.1 G 3(b) requires that objections based upon privilege identify the specific nature of the privilege being asserted, as well as identifying such things as the nature and subject matter of the communication at issue, the sender and receiver of the communication and their relationship to each other, among others. Parties are instructed to review Local Rule 26.1 G 3 (b) carefully, and refrain from objections in the form of: "Objection. This information is protected by attorney/client and/or work product privilege." If such an objection is

made without a proper privilege log attached, it shall be deemed a nullity.

V. Pre-filing Conferences

COUNSEL SHALL COMPLY WITH LOCAL RULE 7.1.A.3 PRIOR TO FILING ANY DISCOVERY MOTION.

DONE AND ORDERED in Chambers at Miami, Florida, this 17th day of November, 2008.

STEPHEN T. BROWN
UNITED STATES MAGISTRATE JUDGE