INTERROGATORY NO. 7:

Do You contend that any Advance by the Disbursement Agent was improper because there was a failure of a condition precedent to an Advance?

RESPONSE TO INTERROGATORY NO. 7:

Plaintiffs object to Interrogatory No. 7 because the information sought by this interrogatory is encompassed within the information sought in response to Interrogatory Nos. 1, 3 and 5. Plaintiffs further object that their claims and contentions are set out in the operative Complaint in this action, which is incorporated herein. Subject to the foregoing general and specific objections, Plaintiffs respond as follows:

Yes.

INTERROGATORY NO. 8:

If Your response to Interrogatory No. 7 is anything other than an unqualified "No":

(a) identify each Advance for which there was a failure of a condition precedent and each failed condition precedent; and

(b) identify all notifications from a Lender to the Bank Agent or Disbursement Agent of a failure of a condition precedent.

RESPONSE TO INTERROGATORY NO. 8:

Plaintiff objects to Interrogatory No. 8 on the grounds that it is compound and overbroad. Plaintiffs also object to Interrogatory No. 8 to the extent it calls for the revelation of information protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Plaintiffs further object to Interrogatory No. 8 on the grounds that it seeks information that is more readily available to BofA than Plaintiffs or information that is available from other, more convenient, sources. Plaintiffs further object to Interrogatory No. 8 because the

information sought by this interrogatory is encompassed within the information sought in response to Interrogatory Nos. 2, 4 and 6. Subject to the foregoing general and specific objections, Plaintiffs respond as follows:

Plaintiffs incorporate their response to Interrogatory No. 2 herein by reference.

INTERROGATORY NO. 9:

Do You contend there was a Material Adverse Effect?

RESPONSE TO INTERROGATORY NO. 9:

Plaintiffs object to Interrogatory No. 9 as vague and ambiguous to the extent it is not limited in time. Plaintiffs further object to Interrogatory No. 9 because the information sought by this interrogatory is encompassed within the information sought in response to Interrogatory Nos. 1, 3, 5 and 7. Plaintiffs further object that their claims and contentions are set out in the operative Complaint in this action, which is incorporated herein. Subject to the foregoing general and specific objections, Plaintiffs respond as follows:

Yes.

INTERROGATORY NO. 10:

If Your response to Interrogatory No. 9 is anything other than an unqualified "No," identify the Material Adverse Effect, identify each event or circumstance giving rise to that Material Adverse Effect, provide a detailed explanation of how that event or circumstance resulted in the claimed Material Adverse Effect and state the Date each Material Adverse Effect occurred.

RESPONSE TO INTERROGATORY NO. 10:

Plaintiff objects to Interrogatory No. 10 on the grounds that it is compound and overbroad. Plaintiffs also object to Interrogatory No. 10 to the extent it calls for the revelation of information protected by the attorney-client privilege, attorney work product doctrine or any

other applicable privilege or doctrine. Plaintiffs further object to Interrogatory No. 10 on the grounds that it is unduly burdensome to the extent it requires Plaintiffs to provide every month, day and year on which a Material Adverse Effect occurred to the extent such an occurrence was continuing in nature. Plaintiffs further object to Interrogatory No. 10 because the information sought by this interrogatory is encompassed within the information sought in response to Interrogatory Nos. 2, 6, and 8. Subject to the foregoing general and specific objections, Plaintiffs respond as follows:

Plaintiffs incorporate their response to Interrogatory No. 2 herein by reference.

INTERROGATORY NO. 11:

Do you contend that BANA acted with bad faith or gross negligence, or committed fraud or willful misconduct, in performing its duties as Disbursement Agent?

RESPONSE TO INTERROGATORY NO. 11:

Plaintiffs object that their claims and contentions are set out in the operative Complaint in this action, which is incorporated herein. Subject to the foregoing general and specific objections, Plaintiffs respond as follows:

Yes.

INTERROGATORY NO. 12:

If Your response to Interrogatory No. 11 is anything other than an unqualified "No," identify each event or incident supporting your contention, the Date of each such event or incident, and identify all documents supporting your contention.

RESPONSE TO INTERROGATORY NO. 12:

Plaintiff objects to Interrogatory No. 12 on the grounds that it is compound and overbroad. Plaintiffs also object to Interrogatory No. 12 to the extent it calls for the revelation of information protected by the attorney-client privilege, attorney work product doctrine or any

other applicable privilege or doctrine. Plaintiffs further object to Interrogatory No. 12 on the grounds that it seeks information that is more readily available to BofA than Plaintiffs or information that is available from other, more convenient, sources. Plaintiffs object to Interrogatory No. 12 on the grounds that it is unduly burdensome to the extent it purports to require Plaintiffs to provide every month, day and year of all incidents supporting Plaintiffs contention when BofA's bad faith, gross negligence, fraud and/or willful misconduct was continuing in nature. Plaintiffs object to Interrogatory No. 12 as oppressive and unduly burdensome to the extent it purports to require Plaintiffs to identify all documents supporting their contention. Plaintiffs will provide a list of categories of documents supporting their contention; BofA has access to all such documents. Subject to the foregoing general and specific objections, Plaintiffs respond as follows:

In the face of the Defaults, Events of Default and the failure of multiple conditions precedent, BofA continued to advance funds and failed to issue Stop Funding Notices. In doing so, BofA acted with bad faith, gross negligence, and/or willful misconduct. As set forth in Plaintiffs' response to Interrogatory No. 2 above, incorporated herein by reference, BofA at all times knew (and, consistent with its obligation under the Disbursement Agreement to exercise commercially reasonable efforts and to utilize commercially prudent practices in administering the construction loan and in disbursing funds, should have known) of the Defaults and the failures of the conditions precedent.

BofA continued to process Advance Requests containing known false certifications in order to maintain a profitable relationship with the directors and officers of the Fontainebleau entities so long as BofA's own money was not on the line. Once BofA risked any significant exposure as a Revolver Lender, BofA terminated its commitments under the Credit Facility and thereby doomed the Project to failure.

In addition to knowing of the Defaults, as early as 2008, BofA had information, through IVI and otherwise, indicating that the Borrowers were not presenting all relevant information regarding project costs to BofA. BofA, however, ignored the information it had and failed to reconcile the inconsistent and/or contradictory information that was being provided by the Borrowers and continued to disburse funds, acting with gross negligence and bad faith.

By March 2009 BofA knew of several defaults, failed conditions precedent, and events that called into question the Borrowers' ability to complete the Project and their honesty in dealing with BofA. Despite this knowledge, BofA processed the March Advance Request that did not even meet the deadlines for submission of Advance Requests. The March 11, 2009 Advance Request, with a Scheduled Advance Date of March 25, 2009, was rejected by IVI because IVI did not believe the information contained in the Request was accurate. The Borrowers then submitted a revised Advance Request on March 24, 2009, which IVI approved. Following additional discussions with BofA, the Borrowers further revised the Advance Request on March 25, 2009, the same day as the Scheduled Advance Date. The In Balance Report included with this Advance Request showed that the Project was in balance by a razor thin margin of $14,084,701. BofA then rushed to approve the Advance Request on the same day the Advance was scheduled.

This was not permitted under the Disbursement Agreement. Under Section 2.4.1, "[e]ach Advance Request shall be delivered to the Disbursement Agent, each Funding Agent and the Construction Consultant not later than the 11th day of each calendar month, but in any event not later than ten Banking Days prior to the Scheduled Advance Date." The Advance Request delivered on March 11, 2009 met this deadline but it was rejected. Under Section 2.4.4, BofA as Disbursement Agent was required to assure that IVI's review and its own review of the materials "is finalized, in each case not less than three Banking Days prior to the Scheduled Advance

Date." The submission of the Advance Request on March 24, with a Scheduled Advance Date of March 25, precluded BofA and IVI from reasonably approving the Advance Request as they could not do so within the required time.

In breach of these sections, BofA, with gross negligence and bad faith, approved the second revised Advance Request on the same day as the Scheduled Advance Date. BofA's actions were particularly egregious given that by this time, BofA knew that the likelihood of the Borrowers being able to complete the Project had significantly decreased given that there were significant cost overruns, the Borrowers had not been forthright with BofA or IVI about the costs being incurred, several lenders had failed to fund creating holes in the financing, the Borrowers were having trouble arranging replacement financing, and there was a recession. Despite this information, and despite the fact that the Project was only purportedly in balance by a razor-thin cushion, BofA disbursed the Term Lenders' funds. These funds repaid the outstanding loans under the Revolver, including BofA's portion.

At the same time BofA internally recognized the serious risks of investing in the Project as demonstrated by the involvement of BofA's Special Assets Group, the downgrading of the risk rating of the Project in February 2009 to 8 (which corresponds to the "special mention" category in United States banking regulations), and then projecting on March 21, 2009 a downgrade to 9 (which corresponds to the "substandard" designation), which was implemented in early April, 2009.

Documents supporting this contention include all exhibits attached to the Expert Report of Donald R. Boyken and the following deposition exhibits: 8, 11-46, 49-51, 53, 54, 56, 58-83, 201-206, 209-212, 214-224, 229-234, 236, 237, 239-256, 258-274, 277, 279, 284-288, 290, 291-B, 294-298, 400, 401, 404-408, 411, 412, 455, 456, 458-460, 469-482, 484-496, 498, 499, 600-

604, 606-616, 618-642, 644, 646-655, 658, 660, 664-699, 800-835, 851-862, 864-868, 875-878, 882, 884-886, 888.

INTERROGATORY NO. 13:

State the amount of Initial Term Loan and Delay Draw Term Loan You own, the date on which you acquired Initial Term Loans and Delay Draw Term Loans, and identify each Term Lender to whom You are a successor-in-interest.

RESPONSE TO INTERROGATORY NO. 13:

Plaintiffs object to Interrogatory No. 13 on the grounds that it is overbroad and unduly burdensome. Plaintiffs further object to Interrogatory No. 13 on the grounds that it seeks information that is readily available to BofA or information that is available from other, more convenient, sources. As the former Administrative Agent, BofA has knowledge of the information requested by Interrogatory No. 13 because, pursuant to Section 10.6(c) of the Credit Agreement, it was required to "maintain at its office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the loans and L/C Obligations owing to, each Lender pursuant to the terms" of the Credit Agreement. Further, the information sought by Interrogatory No. 13 is contained in the documents produced in this action.

INTERROGATORY NO. 14:

State the amount of damages You are seeking, and identify all documents supporting your claimed damages.

RESPONSE TO INTERROGATORY NO. 14:

Plaintiffs object to Interrogatory No. 14 on the grounds that it is overbroad and unduly burdensome. Plaintiffs further object to Interrogatory No. 14 on the grounds that it seeks information that is readily available to BofA or information that is available from other, more

convenient, sources. Plaintiffs object to Interrogatory No. 14 as oppressive to the extent it purports to require Plaintiffs to identify all documents supporting their claimed damages. All such documents have been or will be produced in this action and are equally available to BofA. Plaintiffs further object that the time for submission of expert reports has not come and therefore presentation of expert damages analysis at this point is premature. Subject to the foregoing general and specific objections, Plaintiffs respond as follows:

Damages for each type of claim (i.e. Term Loan and Delayed Draw) are based on the difference between the value that Term Loan Lenders and Delay Draw Lenders would have received, and or retained, if BofA had fulfilled its obligations under the Fontainebleau Las Vegas Credit Facility transaction documents and the value that Term Loan Lenders and Delay Draw Lenders actually received. Damages attributable to a specific plaintiff shall be based upon the difference described in the preceding sentence and such plaintiff's Term Loan claim amount and

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Delayed Draw claim amount. Damages shall include prejudgment interest and attorney's fees and costs where applicable. The calculation of the actual amount of each party's damages is the subject of expert analysis and testimony and will be provided in connection with expert reports and testimony.

DATED: June 6, 2011

By: _____

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Attorneys for Plaintiffs Avenue CLO Fund, LTD., et al.

PROOF OF SERVICE

I declare as follows:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 865 South Figueroa Street, Suite 2900, Los Angeles, California 90017. On June 6, 2011, I served the foregoing document described as **AVENUE TERM LENDER PLAINTIFFS' RESPONSES TO SECOND SET OF INTERROGATORIES BY BANK OF AMERICA, N.A.** on the interested parties in this action as follows:

☒ by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☒ by electronic transmission. I caused the document(s) listed above to be transmitted by electronic mail to the individuals on the service list as set forth below.

VIA EMAIL SERVICE Bradley J. Butwin, Esq. Daniel L. Cantor, Esq. Jonathan Rosenberg, Esq. William J. Sushon, Esq. Ken Murata, Esq. Asher Rivner, Esq. **O'MELVENY & MYERS LLP** Times Square Tower 7 Times Square New York, NY 10036 Tele: (212) 326-2000 Fax: (212) 326-2061 Email: bbutwin@omm.com jrosenberg@omm.com dcantor@omm.com wsushon@omm.com kmurata@omm.com arivner@omm.com	Attorneys for Defendant Bank of America, N.A.

VIA U.S. MAIL SERVICE	
Craig V. Rasile, Esq. Kevin Michael Eckhardt, Esq. **HUNTON & WILLIAMS** 1111 Brickell Avenue Suite 2500 Miami, FL 33131 Tele: (305) 810-2579 Fax: (305) 810-2460 Email: crasile@hunton.com keckhardt@hunton.com	Attorneys for Defendant Bank of America, N.A.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postal meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 6, 2011 at Los Angeles, California.

☐ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Olivette Sasser

Olivette Sasser

Cantor Declaration Ex. 30

Filed Under Seal

Cantor Declaration Ex. 31

Filed Under Seal

Cantor Declaration Ex. 32

Filed Under Seal

Cantor Declaration Ex. 33

Filed Under Seal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA
This document relates to Case No.: 09-23835-CIV-GOLD/McALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106
_____/

ORDER DISMISSING PARTIES WITHOUT PREJUDICE PURSUANT TO NOTICE OF VOLUNTARY DISMISSAL [DE 65]; DIRECTING CLERK TO TAKE ACTION

THIS CAUSE is before the Court upon a Notice of Voluntary Dismissal **[DE 65]** filed by certain Plaintiffs regarding their participation in Case Number 09-CV-23835 ("the Nevada action"). Having considered the Notice, the record, and being otherwise duly advised, it is hereby ORDERED AND ADJUDGED that:

1. The following parties are hereby DISMISSED WITHOUT PREJUDICE from the Nevada Action:

   a. Aberdeen Loan Funding, Ltd.;

   b. Armstrong Loan Funding, Ltd.;

   c. Brentwood CLO, Ltd.;

   d. Eastland CLO, Ltd.;

   e. Gleneagles CLO, Ltd;

   f. Grayson CLO, Ltd;

   g. Greenbriar CLO, Ltd.;

   h. Highland Credit Opportunities CDO, Ltd.;

   i. Highland Loan Funding V, Ltd.;

   j. Highland Offshore Partners, L.P.;

   k. Jasper CLO, Ltd.;

l. Liberty CLO, Ltd.;

m. Loan Funding IV LLC;

n. Loan Funding VII LLC;

o. Loan Star State Trust;

p. Red River CLO, Ltd.;

q. Rockwall CDO, Ltd.;

r. Rockwall CDO II, Ltd.;

s. Southfork LLO, Ltd.;

t. Stratford CLO, Ltd.; and

u. Westchester CLO, Ltd..

2. The clerk is directed to correct the dockets so that the above-referenced parties are no longer listed as plaintiffs in the Nevada Action.

DONE and ORDERED IN CHAMBERS at Miami, Florida this 30th day of April, 2010.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Bandstra
Counsel of record

3 of 32 DOCUMENTS

The Associated Press

September 15, 2008 Monday

SECTION: BUSINESS NEWS

LENGTH: 1352 words

HEADLINE: Lehman Brothers files for Chapter 11 protection

BYLINE: By VINNEE TONG and JOE BEL BRUNO, AP Business Writer

DATELINE: NEW YORK

BODY:

Lehman Brothers, a 158-year-old investment bank choked by the credit crisis and falling real estate values, filed for Chapter 11 protection in the biggest bankruptcy filing ever on Monday and said it was trying to sell off key business units.

The filing was made in the U.S. Bankruptcy Court in the Southern District of New York by Lehman Brothers Holdings Inc., the bank's holding company. The case had been assigned to Judge James M. Peck.

Lehman fell under the weight of $60 billion in soured real estate holdings, and the credit market's dislocation ultimately forced it to seek court protection. The credit crisis has caused global banks to write down more than $300 billion in asset value since last year, and caused the shotgun sales of Merrill Lynch & Co. and Bear Stearns Cos.

Lehman's bankruptcy filing marks the end of a Wall Street firm that started the U.S. cotton trade before the Civil War and financed the railroads that built a nation.

The company's roots began in 1844 when Henry Lehman immigrated from Rimpar, Germany, to Alabama, where he established a dry goods store that catered to local cotton farmers in Montgomery. Lehman Brothers evolved from merchandising to a commodities broker, and then later into underwriting where the firm helped finance construction of the Pennsylvania Railroad, among others.

Chairman and Chief Executive Richard S. Fuld, who joined Lehman as a college student in 1969 and was the longest serving CEO on Wall Street, now has the dubious task of winding down the company's $639 billion of assets. It has about 25,000 employees worldwide, joining the swell of unemployed bankers and traders hurt by the credit crisis.

Many Lehman employees seen entering its headquarters in midtown Manhattan tucked their chins down to avoid talking to the media and others who had lined up behind metal barriers in front of the building.

Some carried empty shopping, tote bags or gym bags in to the office. Some walked in with ties undone or wore more casual clothes like polo shirts than they may have otherwise.

Lehman's filing is the biggest corporate bankruptcy in history in terms of assets held, Mike Bickford of Jupiter eSources said. The next biggest bankruptcy was Worldcom Inc., with $126 billion in assets, and Enron Corp., with $81 billion. The figures are not adjusted for inflation.

Lehman plans an orderly liquidation of its assets in the coming months, and possibly years.

"It is going to be big, it's going to be complicated, it's going to involve a phenomenal number of professionals and it will be very expensive," John Penn of Haynes & Boone LLP said about the case.

Martin Bienenstock, a partner at Dewey & LeBoeuf who was the lead lawyer on the Enron case, said that while Lehman's case was is the largest ever in terms of asset size, it could end up being far less complicated than Enron and get wrapped up within three to four months.

"It's in a race against time because its franchise is really its people," Bienenstock said, adding that Lehman's main mission would be to sort out its case before its employees find new jobs and move on.

In Washington, the Securities and Exchange Commission said its examiners will remain at the offices of Lehman Brothers to oversee an "orderly transfer" of assets in retail customer accounts to one or more brokerage firms that are insured by the Securities Investor Protection Corp.

The SEC noted in a statement that Lehman's decision to file for bankruptcy protection does not affect the SIPC protection covering the firm's retail securities customers.

The SEC also said it is coordinating with overseas regulators to protect Lehman's customers and to maintain orderly markets.

"We are committed to using our regulatory and supervisory authorities to reduce the potential for dislocations from Lehman's unwinding, and to maintain the smooth functioning of the financial markets," SEC Chairman Christopher Cox said in a statement.

In London, the administrators who have taken control of key Lehman Brothers' businesses in the United Kingdom said it could take years to dispose of the company's assets to pay off creditors.

Tony Lomas of PriceWaterHouseCoopers said liquidating those assets will be more complex than disposing of Enron's European assets, which took six years after the U.S. energy company's 2001 bankruptcy.

Lehman's last hope of surviving outside of court protection faded Sunday after British bank Barclays PLC withdrew its bid to buy the investment bank. The troubled investment bank learned at a last-minute meeting on Friday with federal officials that it would not be getting any emergency funding to give it the liquidity it needed, Chief Financial Officer Ian Lowitt said in an affidavit.

Lowitt said the company had hoped to "restructure operations, reduce overall cost structure, and improve performance." There was a plan in place to sell a majority stake in its investment management business, which includes money manager Neuberger Berman, and to spin-off of its troubled real estate assets into a publicly traded company. It says it is exploring the sale of its broker-dealer operations and is in "advanced discussions" to sell its investment management unit.

"Management believed that divorcing the real estate assets from the rest of the company would relieve the pressure on the company," he said in the affidavit.

Investors didn't buy the plan, sending shares down 75 percent last week. The stock was worth pennies in electronic trading on Monday, an astonishing descent from the $67.73 it was worth one year ago.

"It's a weird case because ordinarily you think of bankruptcy as giving you breathing space it's not clear it will here," said David Skeel, a bankruptcy law historian at the University of Pennsylvania. "They've used up a lot of their lives already. They desperately tried to find a solution. They've tumbled into bankruptcy kind of having run out of near-term options. This is a company that is in free-fall."

The filing had been made so hastily that the company had not yet filed motions by Monday morning that are typically made on the first day, such as asking the court for permission to continue paying employees.

Filing for Chapter 11 protection allows a company to restructure while creditor claims are held at bay. The company most likely chose to file under Chapter 11, rather than a Chapter 7 liquidation, so that it could retain more control over the selling off of assets, said Stephen Lubben, the Daniel J. Moore professor of law at Seton Hall Law School. In a Chapter 7 filing, the court would immediately appoint a trustee to take over the case.

"I'm sure they think they could conduct a better liquidation themselves, and that's probably true," Lubben said.

The investment bank had said earlier that none of its broker-dealer subsidiaries or other units would be included in the Chapter 11 filing. That means customers of its broker-dealers will not be subject to claims by creditors in the bankruptcy case.

Penn of Haynes & Boone said leaving some entities out of the bankruptcy filing allows the market to deal with them contractually rather than have the bankruptcy case "walk in and stop everything."

"There are so many types of securities vehicles that are carved out of bankruptcy protection completely," he said.

In its bankruptcy petition, Lehman listed Citigroup among its biggest unsecured creditors, with about $138 billion in bonds as of July 2. The Bank of New York Mellon Corp. was listed as holding about $17 billion in debt.

Citi and Bank of New York both said Monday they serve as trustees for Lehman debt, not that they are creditors themselves. Citi issued a statement to say that its role is "administrative in nature and does not represent exposure for Citi to Lehman." Bank of New York said, "In this situation, our role has been to serve as a trustee for certain Lehman Brothers bond offerings. We have no outstanding loans to Lehman."

Lehman said that as of May 31, it had assets of $639 billion and debt of $613 billion.

AP Business Writers Candice Choi and Sara Lepro in New York, Marcy Gordon in Washington, and Bob Barr in London contributed to this report.

LOAD-DATE: September 16, 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
CASE No.: 09-02106-MD-GOLD/BANDSTRA

IN RE :	
FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION	
MDL NO. 2106	
This document relates to Case Number:	
09-CV-23835-ASG	

ANSWER OF DEFENDANT BANK OF AMERICA, N.A.

Defendant Bank of America, N.A. ("BANA"), by its undersigned attorneys, hereby answers the Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief (the "Avenue Complaint") and responds, with knowledge as to its own acts and upon information and belief as to the acts of others, as follows:

1. BANA admits that the United States District Court for the Southern District of Florida has jurisdiction over this matter under 12 U.S.C. § 632, and that BANA is a national banking association organized under the laws of the United States. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 1's remaining allegations.

2. BANA admits that the United States District Court for the District of Nevada is a proper venue for this action.

3. BANA states that no response is necessary because Avenue CLO Fund, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 3's allegations.

4. BANA states that no response is necessary because Avenue CLO Fund II, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 4's allegations.

5. BANA states that no response is necessary because Avenue CLO Fund III, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 5's allegations.

6. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 6's allegations.

7. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 7's allegations.

8. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 8's allegations.

9. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 9's allegations.

10. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 10's allegations.

11. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 11's allegations.

12. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 12's allegations.

13. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 13's allegations.

14. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 14's allegations.

15. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 15's allegations.

16. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 16's allegations.

17. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 17's allegations.

18. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 18's allegations.

19. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 19's allegations.

20. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 20's allegations.

21. BANA states that no response is necessary because Sands Point Funding Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 21's allegations.

22. BANA states that no response is necessary because Copper River CLO Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 22's allegations.

23. BANA states that no response is necessary because Kennetott Funding Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 23's allegations.

24. BANA states that no response is necessary because NZC Opportunities (Funding) II Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 24's allegations.

25. BANA states that no response is necessary because Green Lane CLO Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 25's allegations.

26. BANA states that no response is necessary because 1888 Fund, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 26's allegations.

27. BANA states that no response is necessary because Orpheus Funding LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 27's allegations.

28. BANA states that no response is necessary because Orpheus Holdings LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 28's allegations.

29. BANA states that no response is necessary because LFCQ LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 29's allegations.

30. BANA states that no response is necessary because Aberdeen Loan Funding, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 30's allegations.

31. BANA states that no response is necessary because Armstrong Loan Funding, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 31's allegations.

32. BANA states that no response is necessary because Brentwood CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 32's allegations.

33. BANA states that no response is necessary because Eastland CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 33's allegations.

34. BANA states that no response is necessary because Emerald Orchard Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 34's allegations.

35. BANA states that no response is necessary because Gleneagles CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 35's allegations.

36. BANA states that no response is necessary because Grayson CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 36's allegations.

37. BANA states that no response is necessary because Greenbriar CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 37's allegations.

38. BANA states that no response is necessary because Highland Credit Opportunities CDO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 38's allegations.

39. BANA states that no response is necessary because Highland Loan Funding V, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 39's allegations.

40. BANA states that no response is necessary because Highland Offshore Partners, L.P. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 40's allegations.

41. BANA states that no response is necessary because Jasper CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 41's allegations.

42. BANA states that no response is necessary because Liberty CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 42's allegations.

43. BANA states that no response is necessary because Loan Funding IV LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 43's allegations.

44. BANA states that no response is necessary because Loan Funding VII LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 44's allegations.

45. BANA states that no response is necessary because Loan Star State Trust has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 45's allegations.

46. BANA states that no response is necessary because Longhorn Credit Funding, LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 46's allegations.

47. BANA states that no response is necessary because Red River CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 47's allegations.

48. BANA states that no response is necessary because Rockwall CDO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 48's allegations.

49. BANA states that no response is necessary because Rockwall CDO II, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 49's allegations.

50. BANA states that no response is necessary because Southfork CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 50's allegations.

51. BANA states that no response is necessary because Stratford CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 51's allegations.

52. BANA states that no response is necessary because Westchester CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 52's allegations.

53. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 53's allegations.

54. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 54's allegations.

55. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 55's allegations.

56. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 56's allegations.

57. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 57's allegations.

58. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 58's allegations.

59. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 59's allegations.

60. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 60's allegations.

61. BANA states that no response is necessary because Carlyle High Yield Partners 2008-1, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 61's allegations.

62. BANA states that no response is necessary because Carlyle High Yield Partners VI, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 62's allegations.

63. BANA states that no response is necessary because Carlyle High Yield Partners VII, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 63's allegations.

64. BANA states that no response is necessary because Carlyle High Yield Partners VIII, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 64's allegations.

65. BANA states that no response is necessary because Carlyle High Yield Partners IX, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 65's allegations.

66. BANA states that no response is necessary because Carlyle High Yield Partners X, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 66's allegations.

67. BANA states that no response is necessary because Carlyle Loan Investment, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 67's allegations.

68. BANA states that no response is necessary because Centurion CDO VI, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 68's allegations.

69. BANA states that no response is necessary because Centurion CDO VII, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 69's allegations.

70. BANA states that no response is necessary because Centurion CDO 8, Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 70's allegations.

71. BANA states that no response is necessary because Centurion CDO 9, Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 71's allegations.

72. BANA states that no response is necessary because Cent CDO 10 Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 72's allegations.

73. BANA states that no response is necessary because Cent CDO XI Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 73's allegations.

74. BANA states that no response is necessary because Cent CDO 12 Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 74's allegations.

75. BANA states that no response is necessary because Cent CDO 14 Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 75's allegations.

76. BANA states that no response is necessary because Cent CDO 15 Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 76's allegations.

77. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 77's allegations.

78. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 78's allegations.

79. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 79's allegations.

80. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 80's allegations.

81. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 81's allegations.

82. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 82's allegations.

83. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 83's allegations.

84. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 84's allegations.

85. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 85's allegations.

86. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 86's allegations.

87. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 87's allegations.

88. BANA states that no response is necessary because ARES Enhanced Loan Investment Strategy III, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 88's allegations.

89. BANA states that no response is necessary because Primus CLO I, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 89's allegations.

90. BANA states that no response is necessary because Primus CLO II, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 90's allegations.

91. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 91's allegations.

92. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 92's allegations.

93. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 93's allegations.

94. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 94's allegations.

95. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 95's allegations.

96. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 96's allegations.

97. BANA states that no response is necessary because Rosedale CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 97's allegations.

98. BANA states that no response is necessary because Rosedale CLO II Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 98's allegations.

99. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 99's allegations.

100. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 100's allegations.

101. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 101's allegations.

102. BANA denies paragraph 102's allegations, except admits that (i) BANA is a national banking association with its main office in Charlotte, North Carolina, (ii) BANA is a Revolving Facility lender, an Issuing Lender and a Swing Line Lender, (iii) BANA served as Administrative Agent under the Credit Agreement and as Disbursement Agent under the Disbursement Agreement, and (iv) BANA agreed to fund $100 million under the Revolving Facility. BANA respectfully refers the Court to the governing loan agreements for their true and correct contents.[1]

103. BANA denies paragraph 103's allegations, except admits that (i) Merrill Lynch Capital Corporation is a Delaware Corporation with a principal place of business in New York and is indirectly owned by Bank of America Corporation, and (ii) that Merrill Lynch Capital Corporation agreed to fund $100 million under the Revolving Facility. BANA respectfully refers the Court to the governing loan agreements for their true and correct contents.

104. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 104's allegations, except admits that J.P. Morgan Chase Bank, N.A. agreed to fund $90 million under the Revolving Facility.

105. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 105's allegations, except admits that Barclays Bank PLC agreed to fund $100 million under the Revolving Facility.

[1] Capitalized terms not otherwise defined herein have the meaning used in the Credit Agreement or, if applicable, the Disbursement Agreement.

106. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 106's allegations, except states that Deutsche Bank Trust Company Americas agreed to fund $100 million under the Revolving Facility.

107. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 107's allegations, except admits that The Royal Bank of Scotland PLC agreed to fund $90 million under the Revolving Facility.

108. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 108's allegations, except admits that Sumitomo Mitsui Banking Corporation agreed to fund $90 million under the Revolving Facility.

109. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 109's allegations, except admits that Bank of Scotland agreed to fund $72.5 million under the Revolving Facility.

110. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 110's allegations, except admits that HSH Nordbank AG agreed to fund $40 million under the Revolving Facility.

111. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 111's allegations, except admits that MB Financial Bank, N.A. agreed to fund $7.5 million under the Revolving Facility.

112. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 112's allegations, except admits that Camulos Master Fund, L.P. agreed to fund $20 million under the Revolving Facility.

113. BANA denies paragraph 113's allegations, except admits that the Project is being constructed on the north end of the Las Vegas Strip on approximately 24.4 acres and includes a

63-story skyscraper, a 100-foot high three-level podium and a 353,000 square-foot convention center.

114. BANA denies paragraph 114's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

115. BANA admits that on June 6, 2007, numerous lenders, including Plaintiffs and Defendants entered into the Credit Agreement. BANA denies paragraph 115's remaining allegations, and respectfully refers the Court to the governing loan agreements for their true and correct contents.

116. BANA denies the allegations in paragraph 116's first sentence, and respectfully refers the Court to the governing loan agreements for their true and correct contents. BANA states that paragraph 116's second and third sentences contain legal conclusions as to which no response is required. To the extent a response is required, BANA denies the allegations in paragraph 116's second and third sentences and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

117. BANA denies knowledge or information sufficient to form a belief as to the allegations in paragraph 117's first sentence. BANA states that no response is required for the allegations in paragraph 117's second sentence. BANA admits the allegations in paragraph 117's third sentence. BANA states that no response is required for the allegations in paragraph 117's fourth sentence. BANA denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 117's fifth sentence, and states that BANA was a Term Lender. BANA denies paragraph 117's remaining allegations, except admits that BANA was Administrative Agent under the Credit Agreement and Disbursement Agent under the Disbursement Agreement.

118. BANA denies paragraph 118's allegations and respectfully refers the Court to the Credit Agreement for its true and correct contents.

119. BANA denies paragraph 119's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

120. BANA denies paragraph 120's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

121. BANA denies paragraph 121's allegations and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

122. BANA denies paragraph 122's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

123. BANA denies paragraph 123's allegations and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

124. BANA denies paragraph 124's allegations and respectfully refers the Court to the Credit Agreement and Disbursement Agreement for their true and correct contents.

125. BANA denies paragraph 125's allegations and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

126. BANA denies paragraph 126's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

127. BANA denies the allegations in paragraph 127's first sentence, except admits that Lehman Brothers Holdings, Inc. was a Retail Lender and Retail Agent and respectfully refers the Court to the governing loan agreements for their true and correct contents. BANA admits that as of the Closing Date, approximately $125 million of the Retail Facility was advanced leaving $189.6 million to be advanced. BANA denies the allegations in paragraph 127's third sentence.

BANA denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 127's last sentence.

128. BANA admits that in September 2008, Lehman filed for bankruptcy protection. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 128's second sentence. BANA denies the allegations in paragraph 128's third sentence. BANA denies the allegations in paragraph 128's first bullet point and respectfully refers the Court to the Disbursement Agreement for its true and correct contents. BANA states that the allegations in paragraph 128's sub-bullet point to the first bullet point contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 128's sub-bullet point to the first bullet point. BANA denies the allegations in paragraph 128's second bullet point and respectfully refers the Court to the governing loan agreements for their true and correct contents, except denies knowledge or information sufficient to form a belief as to the truth of the final sentence in paragraph 128's second bullet point. BANA states that the allegations in paragraph 128's sub-bullet point to the second bullet point contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 128's sub-bullet point to the second bullet point. BANA denies the allegations in paragraph 128's third bullet point and respectfully refers the Court to the Disbursement Agreement for its true and correct contents. BANA states that the allegations in paragraph 128's sub-bullet point to the third bullet point contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 128's sub-bullet point to the third bullet point. BANA denies the allegations in paragraph 128's fourth bullet point and respectfully refers the Court to the Disbursement Agreement for its true and correct contents. BANA states that the allegations in

paragraph 128's sub-bullet point to the fourth bullet point contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 128's sub-bullet point to the fourth bullet point.

129. BANA denies paragraph 129's allegations.

130. BANA denies paragraph 130's allegations, except admits that BANA was the agent and a lender under a loan facility for the Fontainebleau Hotel in Miami. BANA also admits that BANA made loans to Turnberry Associates (of which Soffer is a principal), and the Borrower's chief financial officer, prior to taking that position, worked for eight years at Banc of America Securities.

131. BANA denies paragraph 131's allegations, except denies knowledge or information as to whether on November 6, 2008, Moody's announced that it had downgraded the Project's debt facilities.

132. BANA denies paragraph 132's allegations.

133. BANA denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 133's first and second sentences, except admits that First National Bank of Nevada was closed on or around July 25, 2008. BANA admits that First National Bank of Nevada had made a commitment of $1,666,666.67 under the Delay Draw and a commitment of $3,333,333.33 under the Initial Term Loan. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 133's remaining allegations.

134. BANA states that paragraph 134 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 134's allegations, and respectfully refers the Court to the governing loan agreements for their true and correct contents.

135. BANA denies paragraph 135's allegations.

136. BANA denies paragraph 136's allegations, except admits that Merrill Lynch Capital Corporation is a wholly-owned indirect subsidiary of Bank of America Corporation and that it was a Revolving Facility Lender.

137. BANA denies paragraph 137's allegations, except denies knowledge or information sufficient to form a belief as to the truth of whether the Borrowers used proceeds of the Initial Term Loan Facility, Second Lien Facility and other proceeds to pay Project Costs, and BANA admits that prior to February 2009, Borrowers did not request any advances under the Revolving Facility and respectfully refers the Court to the February 13, 2009 Advance Request for its true and correct contents.

138. BANA denies paragraph 138's allegations, except admits that BANA, as Administrative Agent, sent a February 20, 2009 letter to the Borrower and respectfully refers the Court to that letter for its true and correct contents.

139. BANA denies paragraph 139's allegations, except admits that the Borrower sent to BANA, as Administrative Agent, a letter on February 23, 2009 and respectfully refers the Court to that letter for its true and correct contents.

140. BANA denies paragraph 140's allegations, except admits that BANA, as Disbursement Agent, approved the Borrower's February 24, 2009 Advance Request.

141. BANA denies paragraph 141's allegations, except admits that the Borrower issued Notices of Borrowing on March 2, 2009 and March 3, 2009, and respectfully refers the Court to the Notices for their true and correct contents.

142. BANA denies paragraph 142's allegations and respectfully refers the Court to the Credit Agreement for its true and correct contents.

143. BANA admits paragraph 143's first sentence. BANA states that paragraph 143's second sentence contains legal conclusions as to which no response is required and avers that the Court has already determined, in its May 28, 2010 Amended MDL Order Number Eighteen; Granting in Part and Denying in Part Motions to Dismiss [DE 35]; [DE 36]; Requiring Answer to Complaints; Vacating Final Judgment ("Amended MDL Order Number Eighteen"), that "'fully drawn . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing." To the extent that a response is required, BANA denies the allegations in paragraph 143's second sentence. BANA denies paragraph 143's remaining allegations, except admits that BANA participated in an *ad hoc* steering committee made up of certain Revolving Lenders and respectfully refers the Court to the correspondence between BANA and the Lenders for its true and correct contents.

144. BANA denies paragraph 144's allegations, avers that the Court has already determined in Amended MDL Order Number Eighteen that "'fully drawn' . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing" and respectfully refers the Court to the correspondence between BANA and the Borrower for their true and correct contents.

145. BANA denies paragraph 145's allegations, except admits that BANA, as Administrative Agent, sent the Borrowers letters on March 3, 2009 and March 4, 2009, and respectfully refers the Court to those letters for their true and correct contents.

146. BANA denies the allegations in paragraph 146's first sentence. BANA states that paragraph 146's remaining allegations contain legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 146's remaining

allegations and respectfully refers the Court to the Credit Agreement and Disbursement Agreement for their true and correct contents.

147. BANA denies paragraph 147's allegations and respectfully refers the Court to the Advance Requests and In Balance Reports for their true and correct contents.

148. BANA states that paragraph 148 contains legal conclusions as to which no response is required and avers that the Court has already determined in Amended MDL Order Number Eighteen that "'fully drawn' . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing." To the extent that a response is required, BANA denies paragraph 148's allegations.

149. BANA states that paragraph 149 contains legal conclusions as to which no response is required and avers that the Court has already determined in Amended MDL Order Number Eighteen that "'fully drawn' . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing." To the extent that a response is required, BANA denies paragraph 149's allegations, except BANA denies knowledge or information sufficient to form a belief as to the parties' intent in drafting the Credit Agreement and other loan documents.

150. BANA denies paragraph 150's allegations, except admits that BANA did not issue a Stop Funding Notice on or after March 3, 2009.

151. BANA denies paragraph 151's allegations, except admits that on March 9, 2009, the Borrower submitted a Notice of Borrowing and respectfully refers the Court to the Notice and the attached letter for its true and correct contents.

152. BANA denies paragraph 152's allegations, except admits that $68,000,000.00 was advanced to the Borrowers in February 2009, and respectfully refers to the Court to the Credit Agreement and the February Notice of Borrowing for their true and correct contents.

153. BANA denies the allegations in paragraph 153's first sentence. BANA denies the allegations in paragraph 153's second sentence and respectfully refers the Court to the March 10, 2009 Delay Draw Update posted on Intralinks for its true and correct contents. BANA states that paragraph 153's remaining allegations contain legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 153's remaining allegations.

154. BANA states that the allegations in paragraph 154's first sentence contain legal conclusions as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 154's first sentence. BANA denies paragraph 154's remaining allegations, except admits that the Revolving Lenders were repaid $68 million outstanding under the Revolver Facility.

155. BANA denies paragraph 155's allegations, except admits that (i) the Borrower sent BANA a letter on March 16, 2009, and (ii) certain Term Lenders sent BANA a letter on March 19, 2009, and respectfully refers the Court to the letters for their true and correct contents.

156. BANA denies paragraph 156's allegations, except admits that (i) the Borrowers sent BANA, as Administrative Agent, the March 25, 2009 Advance Request on March 11, 2009, (ii) BANA, as Administrative Agent, sent the Borrower a letter on March 16, 2009, and (iii) that none of the March 25 Advance Request funds were Revolving Loan proceeds, and respectfully refers the Court to those documents for their true and correct contents.

157. BANA denies the allegations in paragraph 157's first sentence. BANA denies the allegations in paragraph 157's second sentence and respectfully refers the Court to the Credit Agreement for its true and correct contents. BANA admits the allegations in paragraph 157's third sentence. BANA states that the allegations paragraph 157's last sentence contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies the allegations paragraph 157's last sentence.

158. BANA states that paragraph 158 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 158's allegations, and respectfully refers the Court to the governing loan agreements for their true and correct contents.

159. BANA states that paragraph 159 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 159's allegations and respectfully refers the Court to the governing loan documents for their true and correct content.

160. BANA denies paragraph 160's allegations.

161. BANA states that the allegations in paragraph 161's first sentence contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies paragraph 161's allegations. BANA denies paragraph 161's remaining allegations, except admits that on March 23, 2009, the Borrower submitted the March 25, 2009 Advance Request showing the In Balance Test to be positive $13,785,184 and respectfully refers the Court to that Advance Request and the Disbursement Agreement for their true and correct contents.

162. BANA denies paragraph 162's allegations.

163. BANA denies paragraph 163's allegations, except admits that BANA, as Administrative Agent, sent a March 23, 2009 letter and respectfully refers the Court to that letter for its true and correct contents.

164. BANA denies paragraph 164's allegations, except admits that the Borrower sent to the Lenders on April 3, 2009, a letter and attached Interim Agreement, and respectfully refers the Court to the March 23, 2009 letter and April 3, 2009 letter for their true and correct contents.

165. BANA denies paragraph 165's allegations.

166. BANA denies paragraph 166's allegations, except admits that the Borrowers sent BANA, as Disbursement Agent and Bank Agent, and others, a letter on April 13, 2009, and respectfully refers the Court to that letter for its true and correct contents.

167. BANA denies paragraph 167's allegations, except admits that BANA, as Administrative Agent, sent a letter to the Borrower on April 20, 2009, and respectfully refers the Court to that letter for its true and correct contents.

168. BANA denies paragraph 168's allegations, except admits that BANA, as Administrative Agent, sent a letter to the Borrower on April 20, 2009, and respectfully refers the Court to that letter for its true and correct contents.

169. BANA denies paragraph 169's allegations, except admits that the Borrower submitted Notice of Borrowing on April 21, 2009, the Borrower's counsel sent a letter to BANA on April 21, 2009, and Defendants did not provide funding in response to the April 21 Notice, and respectfully refers the Court to those documents for their true and correct contents.

170. BANA denies paragraph 170's allegations.

171. BANA denies paragraph 171's allegations, except admits that on May 7, 2009, BANA, as Administrative Agent and Disbursement Agent, sent a letter to the Borrower and

others announcing its resignation as Administrative Agent and Disbursement Agent and respectfully refers the Court to the May 7, 2009 letter for its true and correct contents.

172. BANA denies paragraph 172's allegations.

COUNT I

Breach of the Disbursement Agreement Against BofA

173. BANA repeats and incorporates by reference all the answers set forth in paragraphs 1 through 172 as if fully set forth herein.

174. BANA states that paragraph 174 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 174's allegations, except admits that BANA acted as Bank Agent and Disbursement Agent under the Disbursement Agreement and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

175. BANA states that paragraph 175 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 175's allegations and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

176. BANA denies paragraph 176's allegations.

177. BANA denies paragraph 177's allegations.

178. BANA denies paragraph 178's allegations.

COUNT II

Breach of the Credit Agreement Against All Defendants

179-188. BANA states that no response is required to the allegations in paragraphs 179-188 because the Court has dismissed Count II by Amended MDL Order Number Eighteen.

COUNT III

For Breach of the Implied Covenant of Good Faith and Fair Dealing Against BofA

189-193. BANA states that no response is required to the allegations in paragraphs 189 through 193 because the Court has dismissed Count III by Amended MDL Order Number Eighteen.

COUNT IV

Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants

194-200. BANA states that no response is required to the allegations in paragraphs 194 through 200 because the Court has dismissed Count IV by Amended MDL Order Number Eighteen.

COUNT V

For Declaratory Relief Against BofA

201. BANA repeats and incorporates by reference all the answers set forth in paragraphs 1 through 172 as if fully set forth herein.

202. BANA denies paragraph 202's allegations, except admits there is a dispute between the Plaintiffs and BANA, and that BANA contends that it has acted in good faith and in compliance with its obligations under the Disbursement Agreement.

203. BANA states that paragraph 203 contains legal conclusions as to which no response is required. To the extent a response is required, BANA denies paragraph 203's allegations.

COUNT VI

For Declaratory Relief Against All Defendants

204-206. BANA states that no response is required to the allegations in paragraphs 204 through 206 because the Court has dismissed Count VI by Amended MDL Order Number Eighteen.

DEFENSES

First Defense

The Avenue Complaint fails to state a claim upon which relief can be granted.

Second Defense

The Avenue Plaintiffs' claims against BANA are barred, in whole or in part, by the doctrines of laches, waiver, and/or acquiescence.

Third Defense

The Avenue Plaintiffs' claims against BANA are barred or limited, in whole or in part, by their failure to mitigate, minimize, or avoid their alleged damages.

Fourth Defense

The Avenue Plaintiffs' claims against BANA are barred, in whole or in part, by the doctrine of equitable estoppel.

Fifth Defense

The Avenue Plaintiffs' claims against BANA are barred by the doctrine of unclean hands.

Sixth Defense

The Avenue Plaintiffs' claims against BANA are barred or limited, in whole or in part, because their own acts and/or omissions caused, or in the alternative, contributed to their alleged damages.

Seventh Defense

The Avenue Plaintiffs' claims may be barred or limited, in whole or in part, by the doctrine of frustration of purpose.

Eighth Defense

To the extent that the Avenue Plaintiffs failed to mitigate, minimize or avoid any loss or damage referred to in the Avenue Complaint, any recovery against BANA must be reduced by that amount.

Ninth Defense

The Avenue Complaint does not describe the claims made against BANA with sufficient particularity to enable BANA to determine all defenses (including defenses based upon the terms of the Credit Agreement and/or Disbursement Agreement and related documents) it has to this suit. BANA reserves the right to assert other defenses as discovery proceeds.

WHEREFORE, BANA respectfully requests that the Court enter an order:

1. dismissing the Avenue Plaintiffs' claims with prejudice and entering judgment in BANA's favor;

2. awarding BANA its reasonable attorney's fees and costs of suit; and

3. awarding such other, different, or further relief as the Court may deem just and proper.

Date: Miami, Florida
June 18, 2010

Respectfully submitted,

By: /s/ Craig V. Rasile

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ATTORNEYS FOR DEFENDANT BANK OF AMERICA, N.A.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service list either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: June 18, 2010

By: */s Craig V. Rasile*
Craig V. Rasile

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Bloomberg

Highland Shuts Funds Amid `Unprecedented' Disruption (Update3)

By Pierre Paulden - Oct 16, 2008

Oct. 16 (Bloomberg) -- Highland Capital Management LP will close its flagship Highland Crusader Fund and another hedge fund after losses on high-yield, high-risk loans and other types of debt, according to a person with knowledge of the decision.

Highland, whose total assets under management has shrunk to about $35 billion from $40 billion in March, will wind down the Crusader fund and the Highland Credit Strategies Fund over the next three years, said the person, who declined to be named because the decision isn't public. The hedge funds had combined assets of more than $1.5 billion.

The Highland Credit Strategies fund suffered from ``unprecedented market volatility and disruption,'' according to a letter to investors that was obtained by Bloomberg News. Barclays Capital Inc. seized $642 million of leveraged loans from Highland yesterday and is offering the debt for sale in an auction today, according to a person with knowledge of the situation.

Highland, founded by James Dondero and Mark Okada in Dallas in 1993, follows firms including Sailfish Capital Partners LLC and Peloton Partners LLP in closing funds after the seizure in financial markets choked off credit and sent asset values plummeting. The average price of actively traded high-yield, or leveraged, loans has dropped to 71.2 cents on the dollar from 100 cents in June last year, according to Standard & Poor's.

CLOs

Highland, the world's largest non-bank buyer of leveraged loans last year, also manages collateralized loan obligations and in March raised $1 billion to buy distressed loans. CLOs are created by bundling together loans and repackaging them into new securities. Leveraged loans are rated below Baa3 by Moody's Investors Service and BBB- by S&P and are used to fund private-equity acquisitions.

The Markit LCDX, a benchmark credit-default swap index used to hedge against losses on leveraged loans, dropped 1.5 percentage point to a mid-price of 82.5 percent of face value today,

according to Goldman Sachs Group Inc. The index falls as credit risk increases. The index series fell to a record low of 81 on Oct. 10.

Bids for the Barclays auction were due by 2 p.m. today in New York, according to documents obtained by Bloomberg News. The sale will close at 4:30 p.m.

Barclays spokesman Brandon Ashcraft declined to comment.

`Highly Constrained'

The firm plans to sell 20 percent of the Highland Credit Strategies Fund's assets in the next six months and a further 20 percent in the following six months, the letter said. Closing the fund will avoid forced sales that would result in lower prices, the person said.

``The environment is one where the fundamental tools to manage the Credit Strategies funds' trading, hedging, shorting and financing are highly constrained, and in some cases unavailable," the letter said.

Highland has a separate closed-end retail fund that is also called the Highland Credit Strategies Fund, which isn't being shut down, the person said. The investment firm manages about $7 billion in mutual funds, including the Highland Distressed Opportunities fund.

The Crusader fund is down more than 30 percent this year, the person said. The fund slumped 14 percent in January after reporting 40 percent gains in 2006 and a 4.5 percent loss in 2007.

Hedge Funds Fall

Hedge funds fell 4.7 percent in September, the worst month for the $1.9 trillion industry since the collapse of Long-Term Capital Management LP in 1998, according to Hedge Fund Research Inc. The drop has dragged the Chicago-based research firm's Weighted Composite Index down 9.4 percent so far this year, on pace for the biggest annual loss since HFR started keeping records in 1990.

Citadel Investment Group Inc.'s biggest hedge fund fell as much as 30 percent this year because of losses on convertible bonds, stocks and corporate debt, two people familiar with the Chicago-based firm said yesterday. Kenneth Griffin, who founded Citadel in 1990, said in a letter to investors this week that returns for the $10 billion Kensington Global Strategies Fund may swing wildly as markets are battered by the global credit crunch.

To contact the reporter on this story: Pierre Paulden in New York at ppaulden@bloomberg.net

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION	Case No. 09-CV-01047-KJD-PAL
MDL No. 2106	
AVENUE CLO FUND, LTD., et al.,	
Plaintiffs,	
vs.	
BANK OF AMERICA, N.A., et al.,	
Defendants.	

SECOND AMENDED COMPLAINT FOR BREACH OF CONTRACT, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

This action is brought by the Plaintiffs, each of which is a lender under a June 6, 2007 Credit Agreement (the "Credit Agreement"), by and among, *inter alia*, Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (together, the "Borrower"), the lenders referred to therein, and Bank of America N.A, in various capacities (in all capacities, "BofA"), against Defendants Bank of America, N.A., Merrill Lynch Capital Corporation, J.P. 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, HSH Nordbank AG, MB Financial Bank, N.A., and Camulos Master Fund, L.P. ("Defendants"), in their capacities as lenders under the Credit Agreement, as well as Bank of America, NA, in its capacities as

Administrative Agent under the Credit Agreement and as Disbursement Agent under the related Master Disbursement Agreement.[1] Plaintiffs allege for their complaint as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 12 U.S.C. § 632 because defendants BofA, JPMorgan Chase Bank, N.A. and MB Financial Bank, N.A. are national banking associations organized under the laws of the United States and the action arises out of transactions involving international or foreign banking or other international or foreign financial operations, within the meaning of 12 U.S.C. § 632.

2. Venue in the United States District Court for the District of Nevada is proper because the Project is located in Nevada and many of the acts and transactions at issue occurred in Nevada.

PARTIES

Plaintiffs

3. Plaintiff Avenue CLO Fund, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

4. Plaintiff Avenue CLO II, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

5. Plaintiff Avenue CLO III, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

6. Plaintiff Avenue CLO IV, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

7. Plaintiff Avenue CLO V, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

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[1] Capitalized terms not otherwise defined herein have the meaning used in the Credit Agreement or, if applicable, the Disbursement Agreement.

8. Plaintiff Avenue CLO VI, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

9. Plaintiff Brigade Leveraged Capital Structures Fund, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

10. Plaintiff Battalion CLO 2007-I Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

11. Plaintiff Canpartners Investments IV, LLC is a limited liability company formed under the laws of California.

12. Plaintiff Canyon Special Opportunities Master Fund (Cayman), Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

13. Plaintiff Canyon Capital CLO 2004 1 Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

14. Plaintiff Canyon Capital CLO 2006 1 Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

15. Plaintiff Canyon Capital CLO 2007 1 Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

16. Plaintiff Caspian Corporate Loan Fund, LLC is a limited liability company formed under the laws of Delaware.

17. Plaintiff Caspian Capital Partners, L.P. is a limited partnership formed under the laws of Delaware.

18. Plaintiff Caspian Select Credit Master Fund, Ltd. is a company with limited liability formed under the laws of the Cayman Islands.

19. Plaintiff Mariner Opportunities Fund, LP is a limited partnership formed under the laws of Delaware.

20. Plaintiff Mariner LDC is company with limited duration formed under the laws of the Cayman Islands.

21. Plaintiff Sands Point Funding Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

22. Plaintiff Copper River CLO Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

23. Plaintiff Kennecott Funding Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

24. Plaintiff NZC Opportunities (Funding) II Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

25. Plaintiff Green Lane CLO Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

26. Plaintiff 1888 Fund, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

27. Plaintiff Orpheus Funding LLC is a limited liability company formed under the laws of Delaware.

28. Plaintiff Orpheus Holdings LLC is a limited liability company formed under the laws of Delaware.

29. Plaintiff LFCQ LLC is a limited liability company formed under the laws of Delaware.

30. Plaintiff Aberdeen Loan Funding, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

31. Plaintiff Armstrong Loan Funding, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

32. Plaintiff Brentwood CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

33. Plaintiff Eastland CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

34. Plaintiff Emerald Orchard Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

35. Plaintiff Gleneagles CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

36. Plaintiff Grayson CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

37. Plaintiff Greenbriar CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

38. Plaintiff Highland Credit Opportunities CDO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

39. Plaintiff Highland Loan Funding V, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

40. Plaintiff Highland Offshore Partners, L.P. is a limited partnership formed under the laws of Bermuda.

41. Plaintiff Jasper CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

42. Plaintiff Liberty CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

43. Plaintiff Loan Funding IV LLC is a limited liability company formed under the laws of Delaware.

44. Plaintiff Loan Funding VII LLC is a limited liability company formed under the laws of Delaware.

45. Plaintiff Loan Star State Trust is a trust formed under the laws of the Cayman Islands.

46. Plaintiff Longhorn Credit Funding, LLC is a limited liability company formed under the laws of Delaware.

47. Plaintiff Red River CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

48. Plaintiff Rockwall CDO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

49. Plaintiff Rockwall CDO II, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

50. Plaintiff Southfork CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

51. Plaintiff Stratford CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

52. Plaintiff Westchester CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

53. Plaintiff ING Prime Rate Trust is a business trust formed under the laws of Massachusetts.

54. Plaintiff ING Senior Income Fund is a statutory trust formed under the laws of Delaware.

55. Plaintiff ING International (II) - Senior Bank Loans Euro is a SICAV (Société d'Investissement à Capital Variable) formed under the laws of Luxembourg.

56. Plaintiff ING Investment Management CLO I, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

57. Plaintiff ING Investment Management CLO II, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

58. Plaintiff ING Investment Management CLO III, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

59. Plaintiff ING Investment Management CLO IV, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

60. Plaintiff ING Investment Management CLO V, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

61. Plaintiff Carlyle High Yield Partners 2008-1, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

62. Plaintiff Carlyle High Yield Partners VI, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

63. Plaintiff Carlyle High Yield Partners VII, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

64. Plaintiff Carlyle High Yield Partners VIII, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

65. Plaintiff Carlyle High Yield Partners IX, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

66. Plaintiff Carlyle High Yield Partners X, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

67. Plaintiff Carlyle Loan Investment, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

68. Plaintiff Centurion CDO VI, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

69. Plaintiff Centurion CDO VII, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

70. Plaintiff Centurion CDO 8, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

71. Plaintiff Centurion CDO 9, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

72. Plaintiff Cent CDO 10 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

73. Plaintiff Cent CDO XI Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

74. Plaintiff Cent CDO 12 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

75. Plaintiff Cent CDO 14 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

76. Plaintiff Cent CDO 15 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

77. Plaintiff Venture II CDO 2002, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

78. Plaintiff Venture III CDO is a company with limited liability incorporated under the laws of the Cayman Islands.

79. Plaintiff Venture IV CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

80. Plaintiff Venture V CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

81. Plaintiff Venture VI CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

82. Plaintiff Venture VII CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

83. Plaintiff Venture VIII CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

84. Plaintiff Venture IX CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

85. Plaintiff Vista Leveraged Income Fund is a company with limited liability incorporated under the laws of the Cayman Islands.

86. Plaintiff Veer Cash Flow, CLO, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

87. Plaintiff Genesis CLO 2007-1 Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

88. Plaintiff ARES Enhanced Loan Investment Strategy III, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

89. Plaintiff Primus CLO I, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

90. Plaintiff Primus CLO II, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

91. Plaintiff Cantor Fitzgerald Securities is a general partnership formed under the laws of New York.

92. Plaintiff Olympic CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

93. Plaintiff Shasta CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

94. Plaintiff Whitney CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

95. Plaintiff San Gabriel CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

96. Plaintiff Sierra CLO II Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

97. Plaintiff Rosedale CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands, BWI.

98. Plaintiff Rosedale CLO II Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands, BWI.

99. Plaintiff SPCP Group, LLC is a limited liability company formed under the laws of Delaware.

100. Plaintiff Stone Lion Portfolio L.P. is a limited partnership formed under the laws of the Cayman Islands.

101. Plaintiff Venor Capital Master Fund, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

Defendants

102. Defendant BofA is a nationally chartered bank with its main office in Charlotte, North Carolina. Under the Credit Agreement and other Loan Documents, BofA acted in several capacities, including as a Revolving Facility lender, as Issuing Lender, and as Swing Line Lender. In addition, BofA served as Administrative Agent to all of the Lenders under the Credit Agreement and as Disbursement Agent to all of the Lenders under the Disbursement Agreement. BofA agreed to fund $100 million under the Revolving Facility.

103. Defendant Merrill Lynch Capital Corporation is a Delaware corporation with a principal place of business in New York. Merrill Lynch Capital Corporation, which is now indirectly owned by BofA, agreed to fund $100 million under the Revolving Facility.

104. Defendant J.P. Morgan Chase Bank, N.A. is a nationally chartered bank with its headquarters in New York, New York. J.P. Morgan Chase Bank, N.A. agreed to fund $90 million under the Revolving Facility.

105. Defendant Barclays Bank PLC is a public limited company in the United Kingdom with its principal place of business in London, England. Barclays Bank PLC agreed to fund $100 million under the Revolving Facility.

106. Defendant Deutsche Bank Trust Company Americas is a New York State-chartered bank with its principal office in New York, New York. Deutsche Bank Trust Company Americas agreed to fund $80 million under the Revolving Facility.

107. Defendant The Royal Bank of Scotland PLC is a banking association organized under the laws of the United Kingdom with a branch in New York, New York. The Royal Bank of Scotland PLC agreed to fund $90 million under the Revolving Facility.

108. Defendant Sumitomo Mitsui Banking Corporation is a Japanese corporation with offices in New York, New York. Sumitomo Mitsui Banking Corporation agreed to fund $90 million under the Revolving Facility.

109. Defendant Bank of Scotland is chartered under the laws of Scotland, with its principal place of business in Edinburgh, Scotland. Bank of Scotland agreed to fund $72.5 million under the Revolving Facility.

110. Defendant HSH Nordbank AG is a German banking corporation with a branch in New York, New York. HSH Nordbank AG agreed to fund $40 million under the Revolving Facility.

111. Defendant MB Financial Bank, N.A. is a nationally chartered bank with its main office in Chicago, Illinois. MB Financial Bank, N.A. agreed to fund $7.5 million under the Revolving Facility.

112. Defendant Camulos Master Fund, L.P. is a Delaware corporation with its principal place of business in Stamford, Connecticut. Camulos Master Fund LP agreed to fund $20 million under the Revolving Facility.

FACTUAL BACKGROUND

THE FONTAINEBLEAU PROJECT

113. Between March and June 2007, Plaintiffs or their predecessors were approached by a syndicate of investment bankers, led by Banc of America Securities and including other affiliates of the Defendants, to participate in a $1.85 billion bank financing (the "Credit Agreement Facility") for the development and construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada (the "Project"). The Project is designed to be a destination casino-resort on the north end of the Las Vegas Strip, situated on approximately 24.4 acres. The Project consists of a 63-story glass skyscraper featuring over 3,800 guest rooms, suites and

condominium units; a 100-foot high three-level podium complex (the "Podium") housing casino/gaming areas, restaurants and bars, a spa and salon, a live entertainment theater and rooftop pools; a parking garage with space for more than 6,000 vehicles; and a 353,000 square-foot convention center. The Project is also designed to feature retail space (the "Retail Space") of approximately 286,500 square-feet, including retail shops, restaurants, and a nightclub. The Retail Space is being developed by indirect subsidiaries of the Borrower's parent company (the "Retail Borrowers").

114. The total Project costs were to be funded primarily from cash provided by the developers of the Project, the proceeds of the $1.85 billion bank financing, the proceeds of a $675 million 2nd Mortgage Note offering (the "Second Lien Facility"), and proceeds of a $315 million facility (the "Retail Facility") provided to the Retail Borrowers to finance construction of the retail portion of the Project (including $83 million in certain "Shared Costs" for construction improvements to the Podium which was to be owned by Borrower following completion of construction).

THE CREDIT AGREEMENT AND DISBURSEMENT AGREEMENT

115. On June 6, 2007, the Credit Agreement was entered into among numerous lenders, including Plaintiffs and Defendants, and the Borrower. BofA and its counsel served as the principal architects of the Credit Agreement and related Loan Documents, including the Disbursement Agreement. The Credit Agreement included commitments for three kinds of loans: (a) a $700 million initial term loan facility (the "Initial Term Loan Facility"); (b) a $350 million delay draw term facility (the "Delay Draw Facility," and together with the Initial Term Loan Facility, the "Term Loan Facility"); and $800 million revolving loan facility (the "Revolving Facility"). The Initial Term Loan Facility was funded upon the closing of the Credit Agreement in June 2007. The related Second Lien Facility and Retail Facility closed at the same time.

116. Obligations outstanding under the Term Loan Facility and the Revolving Facility are equally and ratably collateralized by mortgages on the real property comprising the Project

and by security interests on all personal property of the Borrower. The personal property security interests as well as statutory and/or common law rights of setoff also extend to deposit accounts, including the Bank Proceeds Account and the Bank Funding Account established pursuant to the terms of a Master Disbursement Agreement (the "Disbursement Agreement"). The Disbursement Agreement governs disbursement of all funds under the Credit Agreement, the Second Lien Facility and the Retail Facility.

117. Plaintiffs are each lenders under the Term Loan Facility. Lenders under the Term Loan Facility are referred to herein as "Term Lenders." Defendants, including BofA, are each lenders under the Revolving Facility. Lenders under the Revolving Facility are referred to herein as "Revolving Lenders." Although certain of the Revolving Lenders are also Term Lenders, BofA is not a Term Lender. In addition to its capacity as a Revolving Lender, BofA also served as Administrative Agent to all of the Lenders under the Credit Agreement, and as Disbursement Agent to all of the Lenders under the Disbursement Agreement.

118. Each of the lenders who agreed to providing financing under the Credit Agreement relied upon the obligation of the other lenders to comply with their funding obligations under the Credit Agreement. The loans available under the Credit Agreement were the principal source of construction financing for the Project and, along with a completion guaranty and the Retail Facility, were intended to be virtually the only source of construction financing remaining after junior sources (equity and second mortgage bonds) were utilized. Because all lenders would suffer if the amount of financing available for construction proved to be insufficient to complete the Project (and, as a result, their collateral value would be destroyed), the Credit Agreement requires that, in the absence of a Stop Funding Notice (described below) or the termination of a Facility by the Required Lenders following an Event of Default, each Lender is required to continue to make Loans into the Bank Proceeds Account.

119. Consistent with that agreement among the Lenders, the Credit Agreement and other Loan Documents create a two-step mechanism for the Borrower to obtain loan proceeds under the Term Loan Facility and the Revolving Facility prior to the Opening Date of the

Project. Under the first step, the Borrowers must submit to the Administrative Agent a notice of borrowing (the "Notice of Borrowing") specifying the requested loans and designated borrowing date. The Credit Agreement requires that the Administrative Agent promptly notify each lender of a Notice of Borrowing. Once notified, each lender is contractually required to make its pro-rata share of the requested loans available to the Administrative Agent prior to 10:00 AM on the designated borrowing date, subject only to identified conditions precedent. Although Revolving Loans made after construction is completed (referred to in the Credit Agreement as "Direct Loans") are expressly subject to conditions precedent in Section 5.3 of the Credit Agreement (including the requirement that each representation and warranty under the Loan Documents be true and correct and the absence of a Default or Event of Default), Revolving Loans made during construction (referred to as "Disbursement Agreement Loans") and Delay Draw Term Loans are expressly conditioned "**only**" upon the conditions precedent in Section 5.2 of the Credit Agreement (which, unlike Section 5.3, does not include the requirement that each representation and warranty under the Loan Documents be true and correct, nor the absence of a Default or Event of Default). The proceeds of Delay Draw Term Loans and Revolving Loans are, under the first step, deposited into the Bank Proceeds Account.[2]

120. Under the second step, in order to access those funds from the Bank Proceeds Account to pay for the cost of the Project, the Borrowers must submit an advance request (typically monthly) pursuant to the Disbursement Agreement (the "Advance Request"). The Disbursement Agreement establishes: (a) the conditions precedent, which are set forth in Section 3.3 of the Disbursement Agreement, to be satisfied prior to approval of the Advance Request by the Disbursement Agent; (b) the relative sequencing of disbursements from the proceeds of

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[2] With respect to the $700 million Initial Term Facility, the funds were deposited into the Bank Proceeds Account on the Closing Date (June 6, 2007), and thus, were made subject to different conditions precedent that those applicable to the Delay Draw Term Loans and Revolving Term Loans.

various facilities and debt instruments; and (c) the obligations of the various agents to make disbursements to the Borrowers of loan proceeds from the Bank Proceeds Account.

121. The Term Lenders are intended third-party beneficiaries of the Disbursement Agreement, which, in pertinent part, governs the disbursement of the funds loaned by the Term Lenders. The Disbursement Agreement expressly provides that BofA is granted security interests in the Bank Proceeds Account, for the benefit of the lenders. (Disbursement Agreement, § 2.3). The Disbursement Agreement states that the provisions of Article 9 (which governs the duties and obligations of BofA as Disbursement Agent) are for the benefit of the Lenders (which includes the Plaintiffs), and that BofA is responsible and liable to the Term Lenders as a consequence of its performance under the Disbursement Agreement. (Disbursement Agreement, § 9.10).

122. As Disbursement Agent and Administrative Agent, BofA assumed responsibility for the proper administration of the construction loans and disbursement of funds to be used by the Borrower to construct the Project. BofA agreed to exercise commercially reasonable efforts and utilize commercially prudent practices in the performance of its duties. Disbursement Agreement, § 9.1. BofA's duties included ensuring that funds were disbursed to the Bank Funding Account only if all of the conditions precedent to disbursement of funds under Section 3 of the Disbursement Agreement were satisfied, including that, as of the Advance Date: (a) each representation and warranty of each Project Entity in Article 4 was true and correct as if made on such date; (b) there was no Default or Event of Default under any of the Financing Agreements; (c) the In Balance Test was satisfied; (d) there had been no development or event since the Closing Date that could reasonably be expected to have a Material Adverse Effect on the Project; and (e) the Retail Agent and Retail Lenders under the Retail Facility had made all Advances required of them under the Advance Request. (Disbursement Agreement, §§ 3.3.2, 3.3.3, 3.3.8, 3.3.11, 3.3.23).

123. If all of the applicable conditions precedent for the advance of funds were satisfied, the Disbursement Agreement provided for the Disbursement Agent and the Borrower

to execute an Advance Confirmation Notice and, with respect to the use of funds in the Bank Proceeds Account advanced by the Term Lenders, to deliver the notice to BofA as Administrative Agent. Upon receipt of such notice, BofA would make the advances contemplated under the Advance Confirmation Notice. (Disbursement Agreement, § 2.4.6).

124. If not all of the conditions precedent to an Advance were satisfied, or if the Administrative Agent notified the Disbursement Agent that a Default or Event of Default had occurred, then the Disbursement Agent was required to provide notice (a "Stop Funding Notice") to the Borrowers and each Funding Agent, including the Administrative Agent. (Disbursement Agreement, § 2.5.1). If a Stop Funding Notice were issued, no disbursements could be made, and the funds would remain safely in the Bank Proceeds Account until all of the conditions precedent were satisfied, including the absence of any Default or Event of Default. In addition, the lenders have no obligation to fund until the circumstances associated with the Stop Funding Notice have been resolved. (Credit Agreement § 2.4(e)).

125. Under Section 9.2.3 of the Disbursement Agreement, "if the Disbursement Agent is notified that an Event of Default or a Default has occurred and is continuing, the Disbursement Agent shall promptly and in any event within five Business Days provide notice to each of the Funding Agents of the same and otherwise shall exercise such of the rights and powers vested in it by this Agreement and the documents constituting or executed in connection with this Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the reasonable administration of its own affairs." As noted above, among the powers and duties vested in BofA under the Disbursement Agreement upon receiving notice of a Default or Event of Default was the power and duty to issue a Stop Funding Notice.

LEHMAN'S FAILURE TO FUND UNDER THE RETAIL FACILITY

126. As evidenced by the terms of the Disbursement Agreement, the three "Financing Agreements" covered by that agreement – the Credit Agreement, the Second Mortgage Indenture, and the Retail Facility Agreement – are closely interrelated, and the proceeds

available under each facility were integral to the construction, completion and ultimate success of the Project.

127. As a result of the syndication of the Retail Facility, Lehman Brothers Holdings, Inc. ("Lehman"), which served as Retail Agent, was the largest Retail Lender, responsible for $215 million, or 68.25%, of the Retail Facility. As of the Closing Date, $125.4 million of the Retail Facility was advanced, leaving $189.6 million to be advanced. Much of that sum was earmarked to pay Shared Costs to complete the Podium and to complete the Retail component of the Project. Thus, the successful completion of the overall Project depended heavily on the proceeds to be made available pursuant to Lehman's commitment under the Retail Facility.

128. In September 2008, Lehman filed for bankruptcy protection. According to a proof of claim filed by the Retail Borrower in Lehman's bankruptcy case, beginning in September 2008 and on four occasions thereafter, Lehman failed to honor "its obligation to fund a total of $14,259,409.74 under the Retail Facility," and thereby defaulted in its lending obligations under the Retail Facility Agreement (the "Lehman Defaults"). Those defaults prevented satisfaction of numerous conditions precedent to the approval of Advance Requests, including the following:

- Section 3.3.23 of the Disbursement Agreement requires that "[i]n the case of each Advance from the Bank Proceeds Account made concurrently with or after Exhaustion of the Second Mortgage Proceeds Account, the Retail Agent and the Retail Lenders shall, on the date specified in the relevant Advance Request, make any Advances required of them pursuant to that Advance Request."
    - Lehman, as Retail Agent and as a Retail Lender, did not make the Advances required of it pursuant to at least five Advance Requests between September 2008 and March 2009.
- Section 3.3.3 of the Disbursement Agreement provides that "[n]o Default or Event of Default shall have occurred and be continuing." A "Default" or "Event of Default" under the Credit Agreement constitutes a "Default" or "Event of

Default" under the Disbursement Agreement. (Disbursement Agreement, Ex. A). Under Section 8(j) of the Credit Agreement, the breach by "any Person" of a "Material Agreement" constitutes an Event of Default (and, prior to the expiration of any notice or other grace period, a Default) if such breach could reasonably be expected to result in a Material Adverse Effect. Schedule 4.24 of the Credit Agreement lists, as Material Agreements, "[t]he 'Financing Agreements' as defined in the Disbursement Agreement." Credit Agreement, Schedule 4.24. That definition of "Financing Agreements" includes the "Facility Agreements," which in turn includes the "Retail Facility Agreement." As stated above, the failure of the Project Entities to receive material amounts of funding and the resulting uncertainty over receiving the balance of Lehman's commitment threatened completion of the Project.

- Accordingly, Lehman's breach of the Retail Facility was a Default, based upon Section 8(j) of the Credit Agreement.

- Section 3.3.2 requires that each representation and warranty by each Project Entity in Article 4 be true and correct as if made on such date. One such representation is that "[t]here is no default or event of default under any of the Financing Agreements." (Disbursement Agreement, at § 4.9.1).
  - That representation was not true and correct when made on or after September 2008, based upon the Lehman Defaults under the Retail Facility (one of the Financing Agreements).
- Section 3.3.11 requires that, prior to any disbursement, there has been no change in the economics or feasibility of constructing and/or operating the Project, or in the financing condition, business or property of the Borrowers, any of which could reasonably be expected to have a Material Adverse Effect.
  - Lehman's bankruptcy filing, and the uncertainty that Lehman would fulfill its loan commitment or that any other lender would assume Lehman's

commitment under the Retail Facility, threatened the successful completion of the Project and thus could reasonably be expected to have a Material Adverse Effect.

129. BofA, as Disbursement Agent, received notice of the Lehman Defaults from one or more of the Term Lenders. In September and October 2008, at least one of the Term Lenders wrote to BofA and expressed the position that Lehman's failure to comply with its funding obligations under the Retail Facility meant that certain of the conditions precedent to disbursement of funds under Section 3.3 of the Disbursement Agreement were not satisfied. In response, BofA refused to do anything, instead asserting that its function as Disbursement Agent was purely administrative in nature.

130. BofA refused to address the Lehman Defaults in large part because it wished to preserve its ongoing business relationship with the Borrower and its principal indirect owners, including Jeffrey Soffer. For example, BofA was the agent and a lender under a loan facility used to renovate the Fontainebleau Hotel in Miami, which was indirectly owned by the Borrower's indirect parent. BofA also made loans to Turnberry Associates (of which Soffer is a principal) or its affiliates. The close relationship between BofA on the one hand, and the Borrower and related parties on the other, was further evidenced by the fact that the Borrower's chief financial officer, prior to taking that position, worked for eight years at Banc of America Securities (which served as an co-lead arranger and joint underwriter of the Credit Agreement).

131. BofA's refusal to address the Lehman Defaults continued even after Moodys Investment Service announced on November 6, 2008 that it had downgraded the Credit Agreement Facility to B3 from B1. In that announcement, Moodys expressed its opinion that the outlook was "negative" in recognition of the challenges faced by the Borrowers' parent in resolving the potential funding shortfall related to the Lehman Default.

132. In wrongful and willful derogation of its duties and responsibilities as Disbursement Agent and Administrative Agent, BofA approved Advance Requests and issued Advance Confirmation Notices after, and despite notice of, the Lehman Defaults. Likewise,

BofA, as Administrative Agent, made Advances to the Borrowers pursuant to the Advance Requests. In total, those Advances (excluding debt service paid to the Lenders) exceeded $680 million, the last made on or about March 25, 2009 (the "March 25 Advance"). Each approval and/or Advance by BofA following the date it received notice of the Lehman Defaults was improper and constituted bad faith, gross negligence and/or willful misconduct on the part of BofA.

DEFAULT BY FIRST NATIONAL BANK

OF NEVADA UNDER CREDIT AGREEMENT

133. On July 25, 2008, First National Bank of Nevada, was closed by the Office of the Comptroller of the Currency. The Federal Deposit Insurance Company ("FDIC") subsequently was appointed as receiver. First National Bank of Nevada had made a commitment of $1,666,666 under the Term Loan Facility and a commitment of $10,000,000 under the Revolving Facility. According to the Borrower, FDIC has repudiated the commitments of First National Bank of Nevada under the Credit Agreement. As a result, beginning in January 2009, the Borrower's calculation of Available Funds under the In Balance Test was therefore reduced by the amount of the total commitment by First National Bank of Nevada ($11,666,666).

134. The FDIC's repudiation of First National Bank of Nevada's commitment constituted, as a matter of law, a breach of that bank's obligation under the Credit Agreement. Such a breach by a party to a Material Agreement (which the Credit Agreement was) was a Default, based upon Section 8(j) of the Credit Agreement. It also prevented the Borrower from satisfying Section 3.3.2 of the Disbursement Agreement, which conditioned any disbursement upon the truth of the Borrower's representations and warranties under Article 4, in particular the representation and warranty pursuant to Section 4.9.1 that there existed no defaults or events of default under any of the Financing Documents.

135. Notwithstanding the fact that the conditions precedent for disbursement under Section 3.3 of the Disbursement Agreement by virtue of the Default resulting from the FDIC's repudiation of the Credit Agreement were not satisfied, BofA wrongfully and willfully continued

to issue Advance Confirmation Notices, and failed to issue a Stop Funding Notice. Instead, the amounts requested by the Borrower continued to be disbursed by BofA.

BofA'S CHANGE OF APPROACH AS DISBURSEMENT AGENT

136. As a result of BofA's acquisition of Merrill Lynch that closed in December 2008, BofA effectively (through its indirect ownership of Merrill Lynch) doubled its level of commitment as a Revolving Lender, and became responsible for $200 million – or 25% – of the total original Revolving Loan commitment.

137. Prior to February 2009, the Borrowers did not request any advances under the Revolving Facility (other than for letters of credit), and instead used proceeds of the Initial Term Loan Facility, the Second Lien Facility and other proceeds to pay Project Costs. As explained above, during that period of time, BofA willfully and wrongfully disregarded its obligations as Disbursement Agent and Administrative Agent, taking the position that its role was purely administrative in nature. That passive approach changed dramatically after February 13, 2009, when the Borrower submitted an Advance Request that included the first request for an Advance under the Revolving Facility, in the amount of $68 million.

138. As a Revolving Lender, BofA was required to finance a portion of that Advance Request, and thus for the first time faced the prospect of sharing loan exposure with the Term Lenders if the Project failed. In response to the Advance Request in February 2009, BofA wrote a detailed letter to the Borrower on Friday, February 20, 2009. BofA began the letter by insisting upon "strict compliance" with the deadline of the 11th day of the month to submit Advance Requests established under Section 2.4.1 of the Disbursement Agreement, despite the fact that three of the previous four Advance Requests, each of which had been accepted, were submitted late, including as recently as October 16, 2008 and November 17, 2008. Commenting on the submission of the Advance Request "at a time of continued deterioration of both the national economy and the Las Vegas marketplace," BofA also raised numerous questions. Among those questions was a request to "comment on the status of the Retail Facility, and the commitments of the Retail Lenders to fund under the Retail Facility, in particular, whether you anticipate that

Lehman Brothers Holdings, Inc. will fund its share of requested loans, and whether the other Lenders under the Retail Facility intend to cover any shortfalls." With the Borrower insisting upon disbursement of funds no later than February 25, 2009, BofA demanded that the Borrower supply detailed written responses to the questions by no later than Monday, February 23, 2009 – the very next business day.

139. On February 23, 2009, the Borrower sent a response to BofA. In that letter, the Borrower sidestepped BofA's request for comment on whether it anticipated that Lehman would fund its share of the Retail Facility, or on whether the other Retail Lenders intended to cover any shortfalls. But the Borrower did not (nor could it) deny that Lehman was in default of its obligations.

140. Notwithstanding the unanswered questions, and the fact that numerous conditions to approval of the Advance Request were not satisfied, BofA did not issue a Stop Funding Notice. Instead, it approved the Advance Request and issued an Advance Confirmation Notice. The amounts requested by the Borrower accordingly were disbursed.

THE MARCH 2 AND MARCH 3 NOTICES OF BORROWING

141. On March 2, 2009, the Borrowers issued a notice of borrowing to borrow the entire amount of $350 million available under the Delay Draw Facility and to borrow $670 million available under the Revolving Facility (the "March 2 Notice"). The next day, the Borrowers issued another notice of borrowing to correct a "scrivener's error" made in calculating the amount sought under the Revolving Facility (the "March 3 Notice"), reducing the requested amount to approximately $656 million. Both notices caused the Delay Draw Facility to be fully drawn.

142. As described above, the lenders under the Credit Agreement expressly agreed among themselves and with the Borrower that the Revolving Loans (those that were Disbursement Agreement Loans) and Delay Draw Loans are not, at the time of the borrowing request, conditioned on the absence of any Defaults or Events of Default (as that term is defined in the Credit Agreement), nor conditioned on the truth and correctness of the representations and

warranties in the Loan Documents. Rather, the Delay Draw Facility lenders and the Revolving Facility lenders could refuse to fund their obligations only if their commitments were validly terminated by the Required Lenders of a loan facility in accordance with section 8 of the Credit Agreement following an Event of Default, or pursuant to Section 2.4 of the Credit Agreement, if BofA as Disbursement Agent issued a Stop Funding Notice to the Administrative Agent.

143. As of March 2 and March 3, the Revolving Lenders had not terminated their commitment, and BofA had not issued a Stop Funding Notice. Accordingly, because the Delay Draw Facility was fully drawn, the Revolving Lenders were obligated to fund their commitment. Although BofA submitted the March 2 Notice and the March 3 Notice to the Lenders, it stated that the notices did not comply with the terms of the Credit Agreement. BofA advised the lenders that an *ad hoc* steering committee formed by BofA supported BofA's position.

144. In its correspondence to the Borrowers, BofA took the position that the March 2 Notice and the March 3 Notice did not comply with the Credit Agreement because they contained simultaneous requests for borrowing under both the Delay Draw Facility and the Revolving Facility. A simultaneous request for loans under the two facilities, however, is not prohibited under and is consistent with the Credit Agreement.

145. The pretext for BofA's position was Section 2.1(c)(iii) of the Credit Agreement, which provides that no more than $150 million of Revolving Loans can be outstanding unless the Delay Draw Facility has been "fully drawn." BofA asserted that "fully drawn" meant "fully funded" rather than "fully requested." According to BofA, borrowing under the Revolving Facility is limited to $150 million unless and until each of the Term Lenders fully funded its commitment under the Delay Draw Facility.

146. Significantly, the interpretation of Section 2.1(c)(iii) put forward by BofA in early March 2009 was completely at odds with BofA's historical approval of each prior Advance Request. As noted above, a condition precedent to BofA's approval of any Advance Request is the satisfaction of the "In Balance Test," a critical calculation that demonstrates whether the remaining available financing is sufficient to cover the remaining anticipated costs required to

complete the Project. The In Balance Test is satisfied when "Available Funds" exceed "Required Costs." (Disbursement Agreement, Ex. A). One component of "Available Funds" is "Bank Revolving Availability," defined to mean "***as of each date of determination***, the aggregate principal amount ***available to be drawn on that date*** under the Bank Revolving Facility." (Disbursement Agreement, Ex. A) (emphasis added).

147. Each of the prior Advance Requests approved by BofA was supported by an In Balance Report that included "Bank Revolving Availability" equal to the full amount of the Revolving Facility – $800 million (reduced to $790 million in January 2009 after First National Bank of Nevada went into receivership) – despite the fact that, at such time, the Delay Draw Facility was not fully funded. Had the full amount of the Revolving Facility not been included in each of the prior In Balance Report calculations, the resulting calculations would have demonstrated that the Project was at all times enormously out of balance. As a result, BofA would have been prevented from making any of the prior Advance Requests, and the Project never could have been constructed.

148. In order to allow the full amount of the Revolving Facility to be included in the In Balance calculation, however, BofA had to conclude that the entire Revolving Facility was "available to be drawn on th[e] date" of the In Balance Test determination. BofA could not reach this conclusion unless it interpreted "drawn" to mean "requested." "Drawn" could not mean "funded" because, by virtue of the fact that the Borrower had never previously requested the full amount of the Revolving Facility (an obvious condition precedent to its funding), that amount was never available to be funded as of the date of any Advance Request. On the other hand, because the Revolving Facility at all times remained unfunded, the entire amount was always available to be requested. Thus, the term "drawn," as used in the definition of Bank Revolving Availability, and as applied by BofA when it approved all prior Advance Requests, can only mean "requested."

149. Similarly, only if BofA understood the term "drawn," as used under Section 2.1(c)(iii) in referring to the Delay Draw Facility, to mean "requested" rather than "funded,"

would it have been justified in concluding (as it repeatedly did) that the full amount of the Revolving Facility was "available to be drawn" as of the date of each Advance Request. If BofA understood "drawn" as used in Section 2.1(c)(iii) to mean "funded" rather than "requested," then the Bank Revolving Availability – the amount "available to be drawn on th[e] date" of each In Balance Test – could not have exceeded $150 million unless and until the Delay Draw Loans were fully funded. Until that occurred (which it never did), the In Balance Test would never be satisfied, and there would never be disbursements to fund construction of the Project. That was not the intent of the parties who drafted the Credit Agreement and other Loan Documents.

150. Notwithstanding the fact that satisfaction of the In Balance Test is a condition precedent to any Advance (past, present or future) under the Disbursement Agreement, BofA did not issue a Stop Funding Notice on March 3 or at any time thereafter. Under BofA's new, after-the-fact position that "drawn" means "funded," however, the Borrower had never satisfied the In Balance Test and all prior disbursements were improper. BofA was therefore obligated to (but did not) issue a Stop Funding Notice.

151. Faced with BofA's refusal to process the March 2 Notice and the March 3 Notice, the Borrower issued a revised Borrowing Notice on March 9, 2009, directed solely to the Delay Draw Facility lenders for the full amount of their $350 million commitment (a figure that included the $1,666,666 portion committed by First National Bank of Nevada). That Borrowing Notice was attached to a letter from the Borrower to BofA in which the Borrower asserted that the Lenders were, by their actions or inactions in response to the March 2 Notice and March 3 Notice, in default of the Loan Documents. The Borrower also reiterated its concern that BofA was acting in its own self-interest and against the interest of the Borrower and several of the other lenders.

152. Under section 2.1(b)(iii) of the Credit Agreement, any proceeds of the Delay Draw Facility must be used first to repay any "then outstanding" Revolving Loans. At the time of the March 9 Borrowing Notice, $68 million had been advanced by the Revolving Lenders in February 2009. Thus, as a Revolving Lender, BofA stood to benefit by failing to issue a Stop

Funding Notice prior to March 9, 2009, because such notice would have suspended any Delay Draw Loans otherwise to be used to repay BofA's 25% share of the $68 million of then "outstanding" Revolving Loans.

153. Acting at all times in bad faith and with gross negligence and willful misconduct, BofA processed the March 9 Notice and sent it to all Delay Draw Facility lenders. BofA advised the Lenders that the revised Borrowing Notice complied with the Credit Agreement and that the Delay Draw Lenders were required to fund. In the absence of any Stop Funding Notice that would have suspended their obligation to fund, the Delay Draw Term Lenders could not rely on the failure to fund by the Revolving Lenders, or by any individual Delay Draw Term Lenders or upon the Lehman default. That is because, under Section 2.23(g) of the Credit Agreement, "the obligations of the Lenders to make Term Loans and Revolving Loans . . . are several and not joint. The failure of any Lender to make any Loan . . . shall not relieve any other Lender of its corresponding obligation to do so . . . ." Thus, the Delay Draw Term Lenders were left with no choice but to fund, or else face a claim for breach of contract.

154. Accordingly, on or about March 10, 2009 or thereafter, Plaintiffs complied with their Delay Draw Facility commitments and honored their obligations to fund the Delay Draw Facility. BofA used a portion of those funds to immediately repay itself and the other Revolving Lenders the then-outstanding balance of the $68 million under the Revolving Facility, thereby unjustly enriching BofA and the other Defendants, to the detriment of the Plaintiffs.

155. On March 16, 2009, the Borrower sent another letter to BofA in which it stated its continued belief that the lenders who had not funded were in default of their funding obligations. Shortly thereafter, on March 19, 2009, certain Term Lenders wrote to BofA to demand that the Revolving Lenders, including BofA, honor the March 2 and 3 Notice of Borrowing. They explained why BofA's newly-minted interpretation of "fully drawn" was wrong. They also noted the conflict of interest that BofA had as a result of its Revolving Commitment exposure. The Term Lenders demanded that BofA either correct its conduct or resign. At that time, BofA refused to do either.

THE MARCH 25 ADVANCE

156. On March 11, 2009, the Borrowers sent BofA the March 25 Advance Request, requesting disbursement in the amount of $138 million (of which about $4 million was for debt service under the Credit Agreement). In response, BofA sent correspondence in which it once again reserved the right to demand "strict conformity" with the Disbursement Agreement, and expressed to the Borrower the need to conclude "our review of the substance of those documents." Because BofA used the proceeds of the Delay Draw Loans to repay to itself and the other Revolving Lenders the full amount of the then-outstanding $68 million in Revolving Loans, none of the funds to be disbursed under the March 25 Advance Request included funds to be loaned by the Revolving Lenders. Without its own money on the line, BofA reverted to the laissez-faire approach that it had employed before February 2009, prior to the Borrowers' first request for Revolving Loans.

157. As of no later than March 23, 2009, BofA was on notice, from the Borrower and otherwise, that certain of the Delay Draw Lenders had not funded their portion of the commitment under the Delay Draw Facility in response to the March 9 Notice. Section 1.1 of the Credit Agreement defines a "Lender Default" as "the failure or refusal (which has not been retracted in writing) of a Lender to make available (i) its portion of any Loan required to be made by such Lender hereunder . . . ." As of March 25, the amount of the unfunded commitment totaled about $23.3 million (of which $1.67 million was attributable to First National Bank of Nevada).[3] That unfunded commitment precluded BofA from disbursing any funds pursuant to the March 25 Advance Request for a number of independent reasons.

158. First, because the Credit Agreement, along with the Retail Facility, is one of the Material Agreements on Schedule 4.24, the failure of any Delay Draw Lender to fund its commitment was a Default by virtue of Section 8(j) of the Credit Agreement. (The same was, of

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[3] A portion of that amount was subsequently funded, thereby curing any breach with respect to those Term Lenders.

course, true of the failure of the Revolving Lenders to fund on March 3). That meant that at least one of the conditions precedent for disbursement of funds, Section 3.3.3 of the Disbursement Agreement, clearly had not been satisfied.

159. Second, the Borrower could not, based on the failure as of March 25 to fund the $23,333,333 in Term Loans, represent and warrant to be true and correct that no default existed under the Financing Agreements (here, the Credit Agreement), as required under Section 4.9.1 of the Disbursement Agreement. (The same is true based on the failure of the Revolving Lenders to fund). Thus, the Borrower could not satisfy the conditions under Section 3.3.2 of the Disbursement Agreement.

160. Third, under the new interpretation of Section 2.1(c)(iii) of the Credit Agreement adopted by BofA and the other Revolving Lenders, the Revolving Lenders claimed to be relieved of any obligation to fund more than $150 million of their $800 million commitment until the Delay Draw Facility was fully "funded." The position of BofA and the other Revolving Lenders that no more than $150 million of the Revolving Facility was available to fund the Project if any Delay Draw Lender failed to fund its commitment, and the Revolving Lenders' ongoing refusal to fund, clearly constituted a change in the economics or feasibility of constructing the Project that could reasonably be expected to have a Material Adverse Effect, thereby precluding satisfaction of Section 3.3.11 of the Credit Agreement.

161. Fourth, the Borrower could not satisfy the In Balance Test. On March 23, 2009, the Borrowers advised BofA that it would be submitting a calculation of the In Balance Test reflecting a razor-thin cushion of only $13.8 million. That cushion included Available Funds with two components that are, as explained below, incompatible: (a) $750 million in "Bank Revolving Availability"; and (b) $21,666,666 under "Delay Draw Term Loan Availability," which represented the unfunded portion of the Delay Draw Loans (excluding First National Bank of Nevada's portion). Depending on whether "fully drawn" was interpreted to mean "fully funded" or "fully requested," either the $750 million or the $21,666,666 could be included as Available Funds – ***but not both***. If "fully drawn" meant "fully funded," then the "Bank

Revolving Availability" under the In Balance Test could not exceed $150 million unless and until the Delay Draw Facility was in fact fully funded, thereby causing the In Balance Test to fail by a spectacular margin. If, on the other hand, "fully drawn" meant "fully requested," then the $21,666,666 in Term Loans that were requested but not funded would be excluded. That is because "Delay Draw Term Loan Availability" is defined to mean, "as of each date of determination, the ***then undrawn*** portion of the Delay Draw Term Loans." (Disbursement Agreement, Ex. A)(emphasis added). If "drawn" meant "requested," then the "undrawn portion of the Delay Draw Term Loans" was zero as of March 25, 2009. Either way, the Borrower could not satisfy the In Balance Test, a condition to disbursement under Section 3.3.8 of the Disbursement Agreement.

162. In short, there was a myriad of facts – all known to BofA, and none requiring any investigation, additional facts, or exercise of discretion by BofA – that precluded satisfaction of the conditions precedent necessary for BofA to approve the March 25 Advance Request and disburse the proceeds that had been advanced by the Term Lenders. Yet BofA knowingly and intentionally chose to disregard those facts and to shirk its obligations as Disbursement Agent.

163. Instead, in a March 23 letter to Fontainebleau lenders posted on Intralinks, BofA flip-flopped yet again and took an entirely new position: "since the Borrower had requested all of the Delay Draw Term Loans and ***almost*** all of the loans had funded," the Borrowers could now request Revolving Loans in excess of $150 million. Under BofA's new position, "fully drawn" now meant "almost fully funded." Because "almost all" of the Delay Draw Term Loans had funded, BofA opined the entire amount of the Revolving Loan Facility could be used to calculate "Bank Revolving Availability." The letter read in pertinent part:

> Bank of America's position is that since the Borrower has requested all of the Delay Draw Term Loans**, and almost all of the loans have funded** (whether or not the outstanding $21,666,667 is ultimately received), Section 2.1 (c)(iii) ***now*** permits the Borrower to request Revolving Loans **which result in the aggregate amount outstanding under the Revolving Commitments being in excess of $150,000,000**. As a result, we would permit the relevant portion of the Revolving Commitment to be reflected in Available Funds. (Emphasis added)

164. Notably, in its third interpretive iteration, BofA proposed to redefine "fully drawn" to mean "almost fully funded" even though few, if any, of the other Revolving Lenders had indicated that they agreed with BofA's position, let alone unconditionally waived any argument that they were not required to fund the full amount of their commitment because of the failure of certain Delay Draw Term Lenders to fund. The March 23 letter itself recognizes the "divergence of opinions" as of that date among the Revolving Lenders. Indeed, within a week of the disbursement under the March 25 Advance Request, BofA negotiated an Interim Agreement with the Borrower, dated April 1, 2009 and circulated to Term Lenders on April 3, 2009, under which any consent of the Revolving Lenders to treat the Delay Draw Term Loans as "fully drawn" was conditioned upon the Borrowers' agreement to limit any requests under the Revolving Loans in April and May 2009 to the amount of the Advance Requests plus $5 million for each month. Under the Interim Agreement, "Bank Revolving Availability" on the dates of those Advance Requests would have been capped at an amount far less than the total amount of the Commitment.

165. By virtue of the inability of the Borrowers to satisfy numerous conditions under Section 3.3 of the Disbursement Agreement, BofA was not authorized to approve the March 25 Advance Request nor issue an Advance Confirmation Notice, and was instead obligated to issue a Stop Funding Notice. In breach of its duties as Disbursement Agent, BofA issued the Advance Confirmation Notice and, as Administrative Agent, disbursed $134 million in proceeds that had been advanced by the Term Lenders, including Plaintiffs.

EVENTS SUBSEQUENT TO THE MARCH 25 ADVANCE

166. On or about April 13, 2009, shortly after Plaintiffs' funding of the Delay Draw Facility and the release of approximately $134 million of those funds from the Bank Proceeds Account, the Borrowers advised BofA and the Lenders that it could not meet the In Balance Test, based upon a substantial increase in the figure they used to calculate Required Costs.

167. On April 20, 2009, BofA, in its capacity as Administrative Agent, sent a letter to the Borrower, the Lenders and other parties, in which BofA advised that "the Required Facility

Lenders under the Revolving Credit Facility have determined that one or more Events of Default have occurred and are continuing . . . ." BofA did not, in that letter or in response to a letter sent by certain Term Lenders the following day, identify those Events of Default that had been determined to have occurred. To the extent any Events of Default (or Defaults) had in fact occurred and were continuing on that date, any such Events of Default (or Defaults) were known or should have been known to BofA long before March 2009, and BofA breached its duties as Disbursement Agent and Administrative Agent by failing to communicate them to the Term Lenders, failing to issue a Stop Funding Notice, or failing to take any other required action.

168. Pursuant to Section 8 of the Credit Agreement, BofA provided notice that the Revolving Facility commitment was "terminated effectively immediately." Notably, BofA did not purport to make its termination retroactive to a date prior to the March 2 Notice and March 3 Notice, reflecting BofA's understanding that such retroactive termination was not a remedy available under the Credit Agreement or applicable law.

169. On April 21, 2009, the Borrower submitted a Notice of Borrowing (the "April 21 Notice") to BofA, drawing $710 million under the Revolving Facility. In a separate letter sent that same day by Borrower's counsel to BofA, the Borrower disputed the existence of any Events of Default under the Credit Agreement. If the Borrower were able to demonstrate that no Events of Default under the Credit Agreement had occurred or were continuing as of April 20, 2009, then Defendants were not authorized to terminate the commitment, and were obligated to fund $710 million in response to the April 21 Notice. Defendants did not provide such funding.

170. BofA's failure to issue a Stop Funding Notice and its approval of the prior Advance Requests was in bad faith and constituted gross negligence and willful misconduct. BofA promoted its own self-interest, to the detriment of the Term Lenders, by: 1) causing the Revolving Lenders to refuse to fund their Revolving Loans, thereby reducing the collateral available to the Term Lenders; 2) causing the Delay Draw Lenders to fund their Loans, thereby enabling the repayment of $68 million in Revolving Loans and increasing the collateral available to the Revolving Lenders on account of their existing claims arising from previously issued

letters of credit under the Revolving Facility; and 3) causing disbursements to be made from the Bank Proceeds Account to allow for construction to continue on the Project. All of those events dramatically improved the negotiating leverage of BofA and other Revolving Lenders and reduced the negotiating leverage of the Term Lenders, thereby positioning BofA to seek concessions from both the Borrower and the Term Lenders in exchange for providing the funds that already had been committed. Indeed, BofA applied that leverage to negotiate a term sheet with the Borrower, circulated to the Term Lenders in mid-May 2009, under which the Revolving Lenders would have obtained numerous concessions adverse to the interests of the Term Lenders. That proposal failed only because certain of the Revolving Lenders other than BofA were unwilling to advance funds even on those concessionary terms.

171. On or about May 6, 2009, after having succeeded in maximizing its leverage against the Term Lenders, BofA notified the lenders of its resignation as Disbursement Agent and Administrative Agent.

172. As a consequence of Defendants' wrongful and willful refusal to fund and their termination of the Revolving Facility commitments, the Project has been derailed and the value of the collateral securing Plaintiffs' loans has been substantially diminished. Moreover, BofA's failure to perform its obligations as Disbursement Agent and Administrative Agent not only reduced the amount and value of the collateral securing Plaintiffs' loans, but also required Plaintiffs to advance Delay Draw Loans that, but for BofA's failure to satisfy its duties, would have been suspended and ultimately terminated. Accordingly, Plaintiffs have suffered substantial damages in an amount based upon their *pro rata* share of the funds wrongfully disbursed from the Bank Proceeds Account and their *pro rata* share of the Delay Draw Loans for which they seek compensation.

COUNT I
Breach of the Disbursement Agreement Against BofA

173. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

174. The Disbursement Agreement is a valid and binding contract, pursuant to which BofA agreed to act as Bank Agent and Disbursement Agent. The Disbursement Agreement was intended to directly benefit Plaintiffs.

175. Pursuant to the terms of the Disbursement Agreement, BofA had a duty to exercise commercially reasonable efforts and use commercially prudent practices in performing its obligations under the Disbursement Agreement, including its duty to fund Advance Requests if, but only if, all conditions precedent to such funding were met and its corresponding duty to issue Stop Funding Notices if all such conditions were not met or if there existed any Defaults or Events of Default.

176. Beginning with Advance Requests made in September 2008, and continuing through the March 25 Advance Request, BofA materially breached its duties under the Disbursement Agreement by improperly approving Advance Requests that failed to meet one or more of the conditions precedent under Section 3.3 of the Disbursement Agreement, improperly issuing Advance Confirmation Notices, improperly failing to issue Stop Funding Notices as a result of the failure of conditions precedent to these Advance Requests and Defaults, and improperly disbursing funds from the Bank Proceeds Account pursuant to such deficient Advance Requests.

177. In breaching its duties under the Disbursement Agreement as set forth herein, BofA's actions constituted bad faith, gross negligence and willful misconduct, and favored its own interests over those of the Term Lenders.

178. Plaintiffs have suffered injury as a result of those breaches because, as a result of BofA's approval of the Advance Requests and failure to issue Stop Funding Notices, the amount and value of Plaintiffs' collateral has been and continues to be diminished, and Plaintiffs have been required to fund the Delay Draw Loans. BofA's liability to Plaintiffs is not limited under Section 9.10 of the Disbursement Agreement by virtue of the fact that: (a) the limitation of liability does not apply to claims asserted by Plaintiffs; (b) the limitation of liability does not

apply to the conduct of BofA for which BofA is liable; and (c) BofA's bad faith, gross negligence and willful misconduct are not subject to any limitation on liability.

COUNT II
Breach of the Credit Agreement Against All Defendants

179. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

180. The Credit Agreement is a valid and binding contract, pursuant to which the Defendants agreed to fund $790 million under the Revolving Facility.

181. The March 2 Notice and March 3 Notice complied with all applicable conditions under the Credit Agreement. Plaintiffs have performed all obligations required of them under the Credit Agreement.

182. The Revolving Loan Lenders had an obligation, not just to the Borrowers, but also to their co-lenders, to fund in response to the Notices of Borrowing.

183. Pursuant to the terms of the Credit Agreement, the Defendants were, and continue to be, obligated to honor the Notices of Borrowing.

184. In the alternative, in the event that it is judicially determined that, prior to April 21, 2009, no Events of Default under the Credit Agreement occurred that would authorize termination of the Revolving Facility commitment, then Defendants also were required to fund the sum of $710 million under the April 21 Notice.

185. The Defendants' failure to honor the Notices of Borrowing constitutes a material breach of their obligations under the Credit Agreement.

186. By repudiating their obligations to fund under the Revolving Facility, the Defendants have breached the Credit Agreement.

187. Plaintiffs, as parties to the Credit Agreement, are entitled to seek damages against Defendants for their breach of the Credit Agreement.

188. Plaintiffs have suffered injury as a result of the breach because, as a result of the Defendants' refusal to honor their obligation to fund the Revolving Facility, the amount and value of Plaintiffs' collateral has been and continues to be diminished.

COUNT III
For Breach of the Implied Covenant of Good Faith and Fair Dealing Against BofA

189. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

190. The Disbursement Agreement contained an implied covenant of good faith which prohibited BofA, in its capacities as Administrative Agent and Disbursement Agent, from preferring its own interests and the interests of the Revolving Lenders over the interests of the Term Lenders.

191. Defendants owed the implied covenant of good faith to Plaintiffs, who are intended third-party beneficiaries under the Disbursement Agreement.

192. BofA breached the implied covenant of good faith by: (a) preferring its own interests and the interests of the Revolving Lenders (including BofA) over the interests of Term Lenders when it improperly approved Advance Requests, issued Advance Confirmation Notices, failed to issue Stop Funding Notices, and caused the disbursement of funds from the Bank Proceeds Account; and (b) failing to communicate information to the Term Lenders regarding Events of Default that were known of should have been known to BofA.

193. Plaintiffs have suffered injury as a result of BofA's breach of the implied covenant of good faith. BofA's liability to Plaintiffs is not limited under Section 9.10 of the Disbursement Agreement by virtue of the fact that: (a) the limitation of liability does not apply to claims asserted by Plaintiffs; (b) the limitation of liability does not apply to the conduct of BofA for which BofA is liable; and (c) BofA's bad faith, gross negligence and willful misconduct are not subject to any limitation on liability.

COUNT IV
Breach of the Implied Covenant of
Good Faith and Fair Dealing Against All Defendants

194. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

195. The Credit Agreement is a valid and binding contract, pursuant to which the Defendants agreed to fund $790 million under the Revolving Facility.

196. The Credit Agreement contains an implied covenant of good faith and fair dealing. The covenant is intended to prevent parties to a contract from destroying or injuring the right of other parties to enjoy the fruits of the contract.

197. Defendants owed Plaintiffs a duty of good faith and fair dealing as parties to the same Credit Agreement.

198. BofA as Administrative Agent and the other Defendants breached the implied covenant by adopting a contrived construction of the Credit Agreement in order to justify their refusal to fund the March 2 Notice and the March 3 Notice.

199. Plaintiffs have performed all obligations required of them under the Credit Agreement.

200. Plaintiffs have suffered injury as a result of the breach of the covenant because, as a result of the Defendants' refusal to honor their obligation to fund under the Revolving Facility, the amount and value of Plaintiffs' collateral has been and continues to be diminished. Furthermore, Plaintiffs have been prevented from receiving the benefits of their bargain under the contract because their ability to obtain repayment on their loans has been endangered.

COUNT V
For Declaratory Relief Against BofA

201. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

202. A dispute has arisen between Plaintiffs and BofA regarding BofA's obligations to Plaintiffs as intended third-party beneficiaries under the Disbursement Agreement. Plaintiffs

contend that BofA has breached that agreement by approving the Advance Requests and by failing to issue a Stop Funding Notice. Plaintiffs are informed and believe and thereon allege that BofA contends that it has acted in good faith and in compliance with its obligations under the Disbursement Agreement.

203. A judicial determination is therefore necessary to resolve this dispute and ascertain the respective rights of the parties with regard to the actions and agreements referenced in this complaint.

COUNT VI
For Declaratory Relief Against All Defendants

204. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

205. A dispute has arisen between Plaintiffs and Defendants regarding their respective rights and obligations under the Credit Agreement. Plaintiffs contend that Defendants have breached this agreement by failing to fund and by terminating their loan commitments under the Revolving Facility. Plaintiffs are informed and believe and thereon allege that Defendants contend that they have acted in good faith and in compliance of their obligations under the Credit Agreement.

206. A judicial determination is therefore necessary to resolve this dispute and ascertain the respective rights of the parties with regard to the actions and agreements referenced in this complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them,

(a) For compensatory damages in an amount subject to proof at trial.

(b) For a declaration that BofA has breached its contractual duties under the Disbursement Agreement as set forth above entitling Plaintiffs to damages in an amount subject to proof at trial.

(c) For a declaration that Defendants have breached their contractual duties under the Credit Agreement as set forth above entitling Plaintiffs to damages in an amount subject to proof at trial.

(d) For a declaration that Plaintiffs are excused from performance of any obligations owing to Defendants under the Credit Agreement.

(e) For a declaration that any claims asserted by Defendants against the Borrower should be disallowed pursuant to 11 U.S.C. § 502(b).

(e) For an award of the costs of suit including attorneys' fees to the extent available.

(f) For any further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury for all issues so triable.

DATED: January 15, 2010

Respectfully submitted,

/s/ David A. Rothstein
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771957

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
CASE No.: 09-02106-MD-GOLD/BANDSTRA

IN RE :	
FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION	
MDL NO. 2106	
This document relates to Case Number:	
09-CV-23835-ASG	

ANSWER OF DEFENDANT BANK OF AMERICA, N.A.

Defendant Bank of America, N.A. ("BANA"), by its undersigned attorneys, hereby answers the Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief (the "Avenue Complaint") and responds, with knowledge as to its own acts and upon information and belief as to the acts of others, as follows:

1. BANA admits that the United States District Court for the Southern District of Florida has jurisdiction over this matter under 12 U.S.C. § 632, and that BANA is a national banking association organized under the laws of the United States. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 1's remaining allegations.

2. BANA admits that the United States District Court for the District of Nevada is a proper venue for this action.

3. BANA states that no response is necessary because Avenue CLO Fund, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 3's allegations.

4. BANA states that no response is necessary because Avenue CLO Fund II, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 4's allegations.

5. BANA states that no response is necessary because Avenue CLO Fund III, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 5's allegations.

6. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 6's allegations.

7. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 7's allegations.

8. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 8's allegations.

9. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 9's allegations.

10. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 10's allegations.

11. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 11's allegations.

12. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 12's allegations.

13. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 13's allegations.

14. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 14's allegations.

15. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 15's allegations.

16. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 16's allegations.

17. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 17's allegations.

18. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 18's allegations.

19. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 19's allegations.

20. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 20's allegations.

21. BANA states that no response is necessary because Sands Point Funding Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 21's allegations.

22. BANA states that no response is necessary because Copper River CLO Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 22's allegations.

23. BANA states that no response is necessary because Kennetott Funding Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 23's allegations.

24. BANA states that no response is necessary because NZC Opportunities (Funding) II Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 24's allegations.

25. BANA states that no response is necessary because Green Lane CLO Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 25's allegations.

26. BANA states that no response is necessary because 1888 Fund, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 26's allegations.

27. BANA states that no response is necessary because Orpheus Funding LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 27's allegations.

28. BANA states that no response is necessary because Orpheus Holdings LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 28's allegations.

29. BANA states that no response is necessary because LFCQ LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 29's allegations.

30. BANA states that no response is necessary because Aberdeen Loan Funding, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 30's allegations.

31. BANA states that no response is necessary because Armstrong Loan Funding, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 31's allegations.

32. BANA states that no response is necessary because Brentwood CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 32's allegations.

33. BANA states that no response is necessary because Eastland CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 33's allegations.

34. BANA states that no response is necessary because Emerald Orchard Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 34's allegations.

35. BANA states that no response is necessary because Gleneagles CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 35's allegations.

36. BANA states that no response is necessary because Grayson CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 36's allegations.

37. BANA states that no response is necessary because Greenbriar CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 37's allegations.

38. BANA states that no response is necessary because Highland Credit Opportunities CDO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 38's allegations.

39. BANA states that no response is necessary because Highland Loan Funding V, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 39's allegations.

40. BANA states that no response is necessary because Highland Offshore Partners, L.P. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 40's allegations.

41. BANA states that no response is necessary because Jasper CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 41's allegations.

42. BANA states that no response is necessary because Liberty CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 42's allegations.

43. BANA states that no response is necessary because Loan Funding IV LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 43's allegations.

44. BANA states that no response is necessary because Loan Funding VII LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 44's allegations.

45. BANA states that no response is necessary because Loan Star State Trust has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 45's allegations.

46. BANA states that no response is necessary because Longhorn Credit Funding, LLC has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 46's allegations.

47. BANA states that no response is necessary because Red River CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 47's allegations.

48. BANA states that no response is necessary because Rockwall CDO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 48's allegations.

49. BANA states that no response is necessary because Rockwall CDO II, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 49's allegations.

50. BANA states that no response is necessary because Southfork CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 50's allegations.

51. BANA states that no response is necessary because Stratford CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 51's allegations.

52. BANA states that no response is necessary because Westchester CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 52's allegations.

53. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 53's allegations.

54. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 54's allegations.

55. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 55's allegations.

56. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 56's allegations.

57. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 57's allegations.

58. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 58's allegations.

59. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 59's allegations.

60. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 60's allegations.

61. BANA states that no response is necessary because Carlyle High Yield Partners 2008-1, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 61's allegations.

62. BANA states that no response is necessary because Carlyle High Yield Partners VI, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 62's allegations.

63. BANA states that no response is necessary because Carlyle High Yield Partners VII, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 63's allegations.

64. BANA states that no response is necessary because Carlyle High Yield Partners VIII, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 64's allegations.

65. BANA states that no response is necessary because Carlyle High Yield Partners IX, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 65's allegations.

66. BANA states that no response is necessary because Carlyle High Yield Partners X, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 66's allegations.

67. BANA states that no response is necessary because Carlyle Loan Investment, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 67's allegations.

68. BANA states that no response is necessary because Centurion CDO VI, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 68's allegations.

69. BANA states that no response is necessary because Centurion CDO VII, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 69's allegations.

70. BANA states that no response is necessary because Centurion CDO 8, Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 70's allegations.

71. BANA states that no response is necessary because Centurion CDO 9, Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 71's allegations.

72. BANA states that no response is necessary because Cent CDO 10 Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 72's allegations.

73. BANA states that no response is necessary because Cent CDO XI Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 73's allegations.

74. BANA states that no response is necessary because Cent CDO 12 Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 74's allegations.

75. BANA states that no response is necessary because Cent CDO 14 Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 75's allegations.

76. BANA states that no response is necessary because Cent CDO 15 Limited has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 76's allegations.

77. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 77's allegations.

78. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 78's allegations.

79. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 79's allegations.

80. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 80's allegations.

81. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 81's allegations.

82. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 82's allegations.

83. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 83's allegations.

84. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 84's allegations.

85. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 85's allegations.

86. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 86's allegations.

87. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 87's allegations.

88. BANA states that no response is necessary because ARES Enhanced Loan Investment Strategy III, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 88's allegations.

89. BANA states that no response is necessary because Primus CLO I, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 89's allegations.

90. BANA states that no response is necessary because Primus CLO II, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 90's allegations.

91. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 91's allegations.

92. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 92's allegations.

93. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 93's allegations.

94. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 94's allegations.

95. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 95's allegations.

96. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 96's allegations.

97. BANA states that no response is necessary because Rosedale CLO, Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 97's allegations.

98. BANA states that no response is necessary because Rosedale CLO II Ltd. has filed a Notice of Voluntary Dismissal. To the extent a response is required, BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 98's allegations.

99. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 99's allegations.

100. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 100's allegations.

101. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 101's allegations.

102. BANA denies paragraph 102's allegations, except admits that (i) BANA is a national banking association with its main office in Charlotte, North Carolina, (ii) BANA is a Revolving Facility lender, an Issuing Lender and a Swing Line Lender, (iii) BANA served as Administrative Agent under the Credit Agreement and as Disbursement Agent under the Disbursement Agreement, and (iv) BANA agreed to fund $100 million under the Revolving Facility. BANA respectfully refers the Court to the governing loan agreements for their true and correct contents.[1]

103. BANA denies paragraph 103's allegations, except admits that (i) Merrill Lynch Capital Corporation is a Delaware Corporation with a principal place of business in New York and is indirectly owned by Bank of America Corporation, and (ii) that Merrill Lynch Capital Corporation agreed to fund $100 million under the Revolving Facility. BANA respectfully refers the Court to the governing loan agreements for their true and correct contents.

104. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 104's allegations, except admits that J.P. Morgan Chase Bank, N.A. agreed to fund $90 million under the Revolving Facility.

105. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 105's allegations, except admits that Barclays Bank PLC agreed to fund $100 million under the Revolving Facility.

[1] Capitalized terms not otherwise defined herein have the meaning used in the Credit Agreement or, if applicable, the Disbursement Agreement.

106. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 106's allegations, except states that Deutsche Bank Trust Company Americas agreed to fund $100 million under the Revolving Facility.

107. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 107's allegations, except admits that The Royal Bank of Scotland PLC agreed to fund $90 million under the Revolving Facility.

108. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 108's allegations, except admits that Sumitomo Mitsui Banking Corporation agreed to fund $90 million under the Revolving Facility.

109. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 109's allegations, except admits that Bank of Scotland agreed to fund $72.5 million under the Revolving Facility.

110. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 110's allegations, except admits that HSH Nordbank AG agreed to fund $40 million under the Revolving Facility.

111. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 111's allegations, except admits that MB Financial Bank, N.A. agreed to fund $7.5 million under the Revolving Facility.

112. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 112's allegations, except admits that Camulos Master Fund, L.P. agreed to fund $20 million under the Revolving Facility.

113. BANA denies paragraph 113's allegations, except admits that the Project is being constructed on the north end of the Las Vegas Strip on approximately 24.4 acres and includes a

63-story skyscraper, a 100-foot high three-level podium and a 353,000 square-foot convention center.

114. BANA denies paragraph 114's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

115. BANA admits that on June 6, 2007, numerous lenders, including Plaintiffs and Defendants entered into the Credit Agreement. BANA denies paragraph 115's remaining allegations, and respectfully refers the Court to the governing loan agreements for their true and correct contents.

116. BANA denies the allegations in paragraph 116's first sentence, and respectfully refers the Court to the governing loan agreements for their true and correct contents. BANA states that paragraph 116's second and third sentences contain legal conclusions as to which no response is required. To the extent a response is required, BANA denies the allegations in paragraph 116's second and third sentences and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

117. BANA denies knowledge or information sufficient to form a belief as to the allegations in paragraph 117's first sentence. BANA states that no response is required for the allegations in paragraph 117's second sentence. BANA admits the allegations in paragraph 117's third sentence. BANA states that no response is required for the allegations in paragraph 117's fourth sentence. BANA denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 117's fifth sentence, and states that BANA was a Term Lender. BANA denies paragraph 117's remaining allegations, except admits that BANA was Administrative Agent under the Credit Agreement and Disbursement Agent under the Disbursement Agreement.

118. BANA denies paragraph 118's allegations and respectfully refers the Court to the Credit Agreement for its true and correct contents.

119. BANA denies paragraph 119's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

120. BANA denies paragraph 120's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

121. BANA denies paragraph 121's allegations and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

122. BANA denies paragraph 122's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

123. BANA denies paragraph 123's allegations and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

124. BANA denies paragraph 124's allegations and respectfully refers the Court to the Credit Agreement and Disbursement Agreement for their true and correct contents.

125. BANA denies paragraph 125's allegations and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

126. BANA denies paragraph 126's allegations and respectfully refers the Court to the governing loan agreements for their true and correct contents.

127. BANA denies the allegations in paragraph 127's first sentence, except admits that Lehman Brothers Holdings, Inc. was a Retail Lender and Retail Agent and respectfully refers the Court to the governing loan agreements for their true and correct contents. BANA admits that as of the Closing Date, approximately $125 million of the Retail Facility was advanced leaving $189.6 million to be advanced. BANA denies the allegations in paragraph 127's third sentence.

BANA denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 127's last sentence.

128. BANA admits that in September 2008, Lehman filed for bankruptcy protection. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 128's second sentence. BANA denies the allegations in paragraph 128's third sentence. BANA denies the allegations in paragraph 128's first bullet point and respectfully refers the Court to the Disbursement Agreement for its true and correct contents. BANA states that the allegations in paragraph 128's sub-bullet point to the first bullet point contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 128's sub-bullet point to the first bullet point. BANA denies the allegations in paragraph 128's second bullet point and respectfully refers the Court to the governing loan agreements for their true and correct contents, except denies knowledge or information sufficient to form a belief as to the truth of the final sentence in paragraph 128's second bullet point. BANA states that the allegations in paragraph 128's sub-bullet point to the second bullet point contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 128's sub-bullet point to the second bullet point. BANA denies the allegations in paragraph 128's third bullet point and respectfully refers the Court to the Disbursement Agreement for its true and correct contents. BANA states that the allegations in paragraph 128's sub-bullet point to the third bullet point contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 128's sub-bullet point to the third bullet point. BANA denies the allegations in paragraph 128's fourth bullet point and respectfully refers the Court to the Disbursement Agreement for its true and correct contents. BANA states that the allegations in

paragraph 128's sub-bullet point to the fourth bullet point contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 128's sub-bullet point to the fourth bullet point.

129. BANA denies paragraph 129's allegations.

130. BANA denies paragraph 130's allegations, except admits that BANA was the agent and a lender under a loan facility for the Fontainebleau Hotel in Miami. BANA also admits that BANA made loans to Turnberry Associates (of which Soffer is a principal), and the Borrower's chief financial officer, prior to taking that position, worked for eight years at Banc of America Securities.

131. BANA denies paragraph 131's allegations, except denies knowledge or information as to whether on November 6, 2008, Moody's announced that it had downgraded the Project's debt facilities.

132. BANA denies paragraph 132's allegations.

133. BANA denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 133's first and second sentences, except admits that First National Bank of Nevada was closed on or around July 25, 2008. BANA admits that First National Bank of Nevada had made a commitment of $1,666,666.67 under the Delay Draw and a commitment of $3,333,333.33 under the Initial Term Loan. BANA denies knowledge or information sufficient to form a belief as to the truth of paragraph 133's remaining allegations.

134. BANA states that paragraph 134 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 134's allegations, and respectfully refers the Court to the governing loan agreements for their true and correct contents.

135. BANA denies paragraph 135's allegations.

136. BANA denies paragraph 136's allegations, except admits that Merrill Lynch Capital Corporation is a wholly-owned indirect subsidiary of Bank of America Corporation and that it was a Revolving Facility Lender.

137. BANA denies paragraph 137's allegations, except denies knowledge or information sufficient to form a belief as to the truth of whether the Borrowers used proceeds of the Initial Term Loan Facility, Second Lien Facility and other proceeds to pay Project Costs, and BANA admits that prior to February 2009, Borrowers did not request any advances under the Revolving Facility and respectfully refers the Court to the February 13, 2009 Advance Request for its true and correct contents.

138. BANA denies paragraph 138's allegations, except admits that BANA, as Administrative Agent, sent a February 20, 2009 letter to the Borrower and respectfully refers the Court to that letter for its true and correct contents.

139. BANA denies paragraph 139's allegations, except admits that the Borrower sent to BANA, as Administrative Agent, a letter on February 23, 2009 and respectfully refers the Court to that letter for its true and correct contents.

140. BANA denies paragraph 140's allegations, except admits that BANA, as Disbursement Agent, approved the Borrower's February 24, 2009 Advance Request.

141. BANA denies paragraph 141's allegations, except admits that the Borrower issued Notices of Borrowing on March 2, 2009 and March 3, 2009, and respectfully refers the Court to the Notices for their true and correct contents.

142. BANA denies paragraph 142's allegations and respectfully refers the Court to the Credit Agreement for its true and correct contents.

143. BANA admits paragraph 143's first sentence. BANA states that paragraph 143's second sentence contains legal conclusions as to which no response is required and avers that the Court has already determined, in its May 28, 2010 Amended MDL Order Number Eighteen; Granting in Part and Denying in Part Motions to Dismiss [DE 35]; [DE 36]; Requiring Answer to Complaints; Vacating Final Judgment ("Amended MDL Order Number Eighteen"), that "'fully drawn . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing." To the extent that a response is required, BANA denies the allegations in paragraph 143's second sentence. BANA denies paragraph 143's remaining allegations, except admits that BANA participated in an *ad hoc* steering committee made up of certain Revolving Lenders and respectfully refers the Court to the correspondence between BANA and the Lenders for its true and correct contents.

144. BANA denies paragraph 144's allegations, avers that the Court has already determined in Amended MDL Order Number Eighteen that "'fully drawn' . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing" and respectfully refers the Court to the correspondence between BANA and the Borrower for their true and correct contents.

145. BANA denies paragraph 145's allegations, except admits that BANA, as Administrative Agent, sent the Borrowers letters on March 3, 2009 and March 4, 2009, and respectfully refers the Court to those letters for their true and correct contents.

146. BANA denies the allegations in paragraph 146's first sentence. BANA states that paragraph 146's remaining allegations contain legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 146's remaining

allegations and respectfully refers the Court to the Credit Agreement and Disbursement Agreement for their true and correct contents.

147. BANA denies paragraph 147's allegations and respectfully refers the Court to the Advance Requests and In Balance Reports for their true and correct contents.

148. BANA states that paragraph 148 contains legal conclusions as to which no response is required and avers that the Court has already determined in Amended MDL Order Number Eighteen that "'fully drawn' . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing." To the extent that a response is required, BANA denies paragraph 148's allegations.

149. BANA states that paragraph 149 contains legal conclusions as to which no response is required and avers that the Court has already determined in Amended MDL Order Number Eighteen that "'fully drawn' . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing." To the extent that a response is required, BANA denies paragraph 149's allegations, except BANA denies knowledge or information sufficient to form a belief as to the parties' intent in drafting the Credit Agreement and other loan documents.

150. BANA denies paragraph 150's allegations, except admits that BANA did not issue a Stop Funding Notice on or after March 3, 2009.

151. BANA denies paragraph 151's allegations, except admits that on March 9, 2009, the Borrower submitted a Notice of Borrowing and respectfully refers the Court to the Notice and the attached letter for its true and correct contents.

152. BANA denies paragraph 152's allegations, except admits that $68,000,000.00 was advanced to the Borrowers in February 2009, and respectfully refers to the Court to the Credit Agreement and the February Notice of Borrowing for their true and correct contents.

153. BANA denies the allegations in paragraph 153's first sentence. BANA denies the allegations in paragraph 153's second sentence and respectfully refers the Court to the March 10, 2009 Delay Draw Update posted on Intralinks for its true and correct contents. BANA states that paragraph 153's remaining allegations contain legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 153's remaining allegations.

154. BANA states that the allegations in paragraph 154's first sentence contain legal conclusions as to which no response is required. To the extent that a response is required, BANA denies the allegations in paragraph 154's first sentence. BANA denies paragraph 154's remaining allegations, except admits that the Revolving Lenders were repaid $68 million outstanding under the Revolver Facility.

155. BANA denies paragraph 155's allegations, except admits that (i) the Borrower sent BANA a letter on March 16, 2009, and (ii) certain Term Lenders sent BANA a letter on March 19, 2009, and respectfully refers the Court to the letters for their true and correct contents.

156. BANA denies paragraph 156's allegations, except admits that (i) the Borrowers sent BANA, as Administrative Agent, the March 25, 2009 Advance Request on March 11, 2009, (ii) BANA, as Administrative Agent, sent the Borrower a letter on March 16, 2009, and (iii) that none of the March 25 Advance Request funds were Revolving Loan proceeds, and respectfully refers the Court to those documents for their true and correct contents.

157. BANA denies the allegations in paragraph 157's first sentence. BANA denies the allegations in paragraph 157's second sentence and respectfully refers the Court to the Credit Agreement for its true and correct contents. BANA admits the allegations in paragraph 157's third sentence. BANA states that the allegations paragraph 157's last sentence contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies the allegations paragraph 157's last sentence.

158. BANA states that paragraph 158 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 158's allegations, and respectfully refers the Court to the governing loan agreements for their true and correct contents.

159. BANA states that paragraph 159 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 159's allegations and respectfully refers the Court to the governing loan documents for their true and correct content.

160. BANA denies paragraph 160's allegations.

161. BANA states that the allegations in paragraph 161's first sentence contain a legal conclusion as to which no response is required. To the extent that a response is required, BANA denies paragraph 161's allegations. BANA denies paragraph 161's remaining allegations, except admits that on March 23, 2009, the Borrower submitted the March 25, 2009 Advance Request showing the In Balance Test to be positive $13,785,184 and respectfully refers the Court to that Advance Request and the Disbursement Agreement for their true and correct contents.

162. BANA denies paragraph 162's allegations.

163. BANA denies paragraph 163's allegations, except admits that BANA, as Administrative Agent, sent a March 23, 2009 letter and respectfully refers the Court to that letter for its true and correct contents.

164. BANA denies paragraph 164's allegations, except admits that the Borrower sent to the Lenders on April 3, 2009, a letter and attached Interim Agreement, and respectfully refers the Court to the March 23, 2009 letter and April 3, 2009 letter for their true and correct contents.

165. BANA denies paragraph 165's allegations.

166. BANA denies paragraph 166's allegations, except admits that the Borrowers sent BANA, as Disbursement Agent and Bank Agent, and others, a letter on April 13, 2009, and respectfully refers the Court to that letter for its true and correct contents.

167. BANA denies paragraph 167's allegations, except admits that BANA, as Administrative Agent, sent a letter to the Borrower on April 20, 2009, and respectfully refers the Court to that letter for its true and correct contents.

168. BANA denies paragraph 168's allegations, except admits that BANA, as Administrative Agent, sent a letter to the Borrower on April 20, 2009, and respectfully refers the Court to that letter for its true and correct contents.

169. BANA denies paragraph 169's allegations, except admits that the Borrower submitted Notice of Borrowing on April 21, 2009, the Borrower's counsel sent a letter to BANA on April 21, 2009, and Defendants did not provide funding in response to the April 21 Notice, and respectfully refers the Court to those documents for their true and correct contents.

170. BANA denies paragraph 170's allegations.

171. BANA denies paragraph 171's allegations, except admits that on May 7, 2009, BANA, as Administrative Agent and Disbursement Agent, sent a letter to the Borrower and

others announcing its resignation as Administrative Agent and Disbursement Agent and respectfully refers the Court to the May 7, 2009 letter for its true and correct contents.

172. BANA denies paragraph 172's allegations.

COUNT I

Breach of the Disbursement Agreement Against BofA

173. BANA repeats and incorporates by reference all the answers set forth in paragraphs 1 through 172 as if fully set forth herein.

174. BANA states that paragraph 174 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 174's allegations, except admits that BANA acted as Bank Agent and Disbursement Agent under the Disbursement Agreement and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

175. BANA states that paragraph 175 contains legal conclusions as to which no response is required. To the extent that a response is required, BANA denies paragraph 175's allegations and respectfully refers the Court to the Disbursement Agreement for its true and correct contents.

176. BANA denies paragraph 176's allegations.

177. BANA denies paragraph 177's allegations.

178. BANA denies paragraph 178's allegations.

COUNT II

Breach of the Credit Agreement Against All Defendants

179-188. BANA states that no response is required to the allegations in paragraphs 179-188 because the Court has dismissed Count II by Amended MDL Order Number Eighteen.

COUNT III

For Breach of the Implied Covenant of Good Faith and Fair Dealing Against BofA

189-193. BANA states that no response is required to the allegations in paragraphs 189 through 193 because the Court has dismissed Count III by Amended MDL Order Number Eighteen.

COUNT IV

Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants

194-200. BANA states that no response is required to the allegations in paragraphs 194 through 200 because the Court has dismissed Count IV by Amended MDL Order Number Eighteen.

COUNT V

For Declaratory Relief Against BofA

201. BANA repeats and incorporates by reference all the answers set forth in paragraphs 1 through 172 as if fully set forth herein.

202. BANA denies paragraph 202's allegations, except admits there is a dispute between the Plaintiffs and BANA, and that BANA contends that it has acted in good faith and in compliance with its obligations under the Disbursement Agreement.

203. BANA states that paragraph 203 contains legal conclusions as to which no response is required. To the extent a response is required, BANA denies paragraph 203's allegations.

COUNT VI

For Declaratory Relief Against All Defendants

204-206. BANA states that no response is required to the allegations in paragraphs 204 through 206 because the Court has dismissed Count VI by Amended MDL Order Number Eighteen.

DEFENSES

First Defense

The Avenue Complaint fails to state a claim upon which relief can be granted.

Second Defense

The Avenue Plaintiffs' claims against BANA are barred, in whole or in part, by the doctrines of laches, waiver, and/or acquiescence.

Third Defense

The Avenue Plaintiffs' claims against BANA are barred or limited, in whole or in part, by their failure to mitigate, minimize, or avoid their alleged damages.

Fourth Defense

The Avenue Plaintiffs' claims against BANA are barred, in whole or in part, by the doctrine of equitable estoppel.

Fifth Defense

The Avenue Plaintiffs' claims against BANA are barred by the doctrine of unclean hands.

Sixth Defense

The Avenue Plaintiffs' claims against BANA are barred or limited, in whole or in part, because their own acts and/or omissions caused, or in the alternative, contributed to their alleged damages.

Seventh Defense

The Avenue Plaintiffs' claims may be barred or limited, in whole or in part, by the doctrine of frustration of purpose.

Eighth Defense

To the extent that the Avenue Plaintiffs failed to mitigate, minimize or avoid any loss or damage referred to in the Avenue Complaint, any recovery against BANA must be reduced by that amount.

Ninth Defense

The Avenue Complaint does not describe the claims made against BANA with sufficient particularity to enable BANA to determine all defenses (including defenses based upon the terms of the Credit Agreement and/or Disbursement Agreement and related documents) it has to this suit. BANA reserves the right to assert other defenses as discovery proceeds.

WHEREFORE, BANA respectfully requests that the Court enter an order:

1. dismissing the Avenue Plaintiffs' claims with prejudice and entering judgment in BANA's favor;

2. awarding BANA its reasonable attorney's fees and costs of suit; and

3. awarding such other, different, or further relief as the Court may deem just and proper.

Date: Miami, Florida
June 18, 2010

Respectfully submitted,

By: /s/ Craig V. Rasile

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service list either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: June 18, 2010

By: */s Craig V. Rasile*
Craig V. Rasile

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV-GOLD/MCALILEY

IN RE: FONTAINBLLEAU LAS VEGAS CONTRACT LITIGATION	§	**Case No. 09-CV-01047-KJD-PAL**
MDL No. 2106	§	
AVENUE CLO FUND, LTD., et al.,	§	
Plaintiffs,	§	
vs.	§	
BANK OF AMERICA, N.A., et al.,	§	
Defendants.	§	

EXPERT REPORT OF SAUL SOLOMON

I have been retained by Hennigan Dorman LLP on behalf of the Plaintiffs in the above referenced matter to provide an analysis of economic damages due to the alleged wrongful acts of BofA (as defined below). I am a Managing Director with Berkeley Research Group, LLC A copy of my current curriculum vita is attached as Exhibit A, and a listing of trial testimony and depositions during the past five years is attached as Exhibit B. Berkeley Research Group, LLC is being compensated for time I devote to this engagement at my standard hourly rate of $685 per hour. This compensation is not contingent upon either the substance of my opinions or the outcome of this dispute.

SUMMARY OF OPINIONS

Based upon my review and analysis of the documents provided, it is my opinion that the Plaintiffs incurred economic damages and prejudgment interest of approximately [redacted] or

$763 million (under different assumptions) due to the alleged wrongful conduct of Bank of America, N.A. (in all capacities, "BofA"). I understand that the total damages and prejudgment interest would be shared pro-rata among the Plaintiffs commensurate with their participation interest in the $1.85 billion June 6, 2007 Credit Agreement ("Credit Agreement")[1] whether assumed, assigned or otherwise acquired. The Credit Agreement was entered into among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC ("Borrowers"). BofA served as Administrative Agent, Issuing Lender and Swing Line Lender; Banc of America Securities LLC, Deutsche Bank Trust Company Americas, Barclays Bank PLC, and Merrill Lynch, Pierce, Fenner & Smith Incorporated served as Joint Lead Arrangers and Joint Book Managers; Deutsche Bank Trust Company Americas served as Syndication Agent and Barclay's Bank PLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated served as Documentation Agents for the Credit Agreement.[2]

My analysis is based on my review of documents listed in Exhibit C. I reserve the right to supplement this report should additional information become available.

BACKGROUND

It is my understanding that between March and June 2007, the Plaintiffs or their predecessors were approached to participate in a $1.85 billion bank financing arrangement for the development and construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada ("Project").[3] The Project consists of a 63-story glass skyscraper with over 3,800 guest rooms, suites and condominium units; a 100-foot high three-level podium complex housing casino/gaming areas, restaurants, bars, a spa and salon, live entertainment theater, and rooftop pools; a 6,000 space parking garage; and a 353,000 square-foot convention center.[4] The Project was also designed to feature a 286,500 square-foot retail space that includes retail shops,

[1] June 6, 2007 Credit Agreement, p. 22, 38
[2] June 6, 2007 Credit Agreement, p.1
[3] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 11
[4] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 11-12

restaurants and a nightclub.[5] The Project costs were to be paid primarily from cash provided by the developers of the Project, proceeds from the Credit Agreement, proceeds from a $675 million 2nd Mortgage Note Offering and proceeds from a $315 million credit facility provided to the Retail Borrowers to finance the construction of the retail space ("Retail Facility").[6] The Credit Agreement includes a $700 million commitment from an Initial Term Loan facility ("Initial Term Loan"),[7] a $350 million commitment from a delay draw term loan facility ("Delay Draw Term Loan")[8] and an $800 million commitment from a revolving loan facility ("Revolving Facility")[9] with the proceeds of the Initial Term Loan facility fully funded but not advanced to the Borrowers when the Credit Agreement was executed.[10] It is my understanding that the obligations under the Initial Term Loan and the Revolving Facility were equally and ratably collateralized by mortgages on the real property comprising the Project and security interests on all personal property of the Borrower.[11] It is also my understanding that the personal property security interests extend to deposit accounts including the Bank Proceeds Account and the Bank Funding Account established under the terms of the Master Disbursement Agreement.[12] The Bank Proceeds Account and the Bank Funding Account were maintained by BofA.[13] BofA served as the Disbursement Agent under the Master Disbursement Agreement and Administrative Agent under the Credit Agreement. The Plaintiffs fully funded the Initial Term Loan sending $700 million to the Bank Proceeds Account on June 6, 2007.[14]

Moody's Investors Service ("Moody's) is a provider of credit ratings, research, and risk analysis covering debt instruments and securities.[15] On July 17, 2008, Moody's changed the rating outlook for Fontainebleau Las Vegas Holdings, LLC and Fontainebleau Las Vegas, LLC (collectively, "Fontainebleau") to negative due to slowing demand for condo-hotel units and

[5] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 12
[6] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 12
[7] June 6, 2007 Credit Agreement, p. 22
[8] June 6, 2007 Credit Agreement, p. 38
[9] June 6, 2007 Credit Agreement, p. 38
[10] June 6, 2007 Credit Agreement, p. 41
[11] June 6, 2007 Credit Agreement Exhibit F-2, p. 3, 4, 6-7
[12] June 6, 2007 Master Disbursement Agreement, p. 5-6
[13] June 6, 2007 Master Disbursement Agreement Exhibit A, p. 3
[14] June 6, 2007 Credit Agreement, p. 41
[15] www.moodys.com

noted the Las Vegas real estate market was under significant stress.[16] Moody's maintained Fontainebleau's credit rating of B2 based upon the liquidity in restricted cash balances (Initial Term Loan proceeds and other sources), access to $350 million Delay Draw Term Loan, and availability under its committed $800 million revolver to complete the project.[17]

On September 15, 2008, Lehman Brothers Holdings Inc. ("Lehman") who served as the Retail Agent for the Retail Facility, filed for Chapter 11 Bankruptcy protection ("Lehman Bankruptcy").[18] The Plaintiffs allege that after Lehman declared bankruptcy, Lehman failed to fund approximately $14 million under the Retail Facility thus defaulting on their obligations under that agreement.[19] The Plaintiffs further allege that BofA, as Disbursement Agent and Administrative Agent, did not adequately address the Lehman defaults and continued to approve Advance Requests, issued Advance Confirmation Notices and made Advances to the Borrowers.[20]

On November 6, 2008, Moody's downgraded by two notches the Corporate Family rating and Probability of Default rating for the Borrowers from B2 to Caa1, the second mortgage notes were downgraded to Caa3 from Caa1, and first lien bank facilities (Credit Agreement) for Fontainebleau Las Vegas II, LLC were lowered from B1 to B3 while maintaining the negative rating outlook.[21] Moody's states:

"The negative rating outlook recognizes the challenges faced by a subsidiary of FLVH's [Fontainebleau Las Vegas Holdings, LLC] parent (Fontainebleau Resorts, LLC) to resolve a potential funding shortfall for the retail component of the project. A Lehman Brothers affiliate,

[16] Moody's Investors Service: Global Credit Research, *Moody's changes Fontainebleau's rating outlook to negative: Approximately $2.4 billion of rated debt affected*, July 17, 2008
[17] Moody's Investors Service: Global Credit Research, *Moody's changes Fontainebleau's rating outlook to negative: Approximately $2.4 billion of rated debt affected*, July 17, 2008
[18] Lehman Brothers Press Release, *Lehman Brothers Holdings Inc. announces it intends to file Chapter 11 bankruptcy petition; No other Lehman Brothers' U.S. subsidiaries or affiliates including its broker-dealer and investment management subsidiaries, are included in the filing*, September 15, 2008
[19] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 17
[20] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 19-20
[21] Moody's Investors Service: Global Credit Research, *Moody's downgrades Fontainebleau's CFR to Caa1; outlook negative: Approximately $2.5 billion of rated debt affected*, November 6, 2008

currently in bankruptcy, is a large lender under the retail credit facilities. A failure to fund the retail loan could ultimately result in a default under FLVH's credit facilities."[22]

I understand the Plaintiffs allege multiple defaults occurred starting September 2008 with the Lehman Bankruptcy and extending through March 2009 all of which BofA had knowledge of prior to disbursing funds. The alleged defaults include:

- Lehman filed for bankruptcy and did not fund its share of advances required of it under the Retail Facility;[23]
- The Borrower had not fully disclosed all costs It anticipated would be required to complete the Project;[24]
- First National Bank of Nevada had repudiated and failed to fund its lending commitments under the Credit Agreement;[25] and
- Certain Delayed Draw Term Lenders had failed to fund their commitments under the Credit Agreement.[26]

Further, it is my understanding that on April 20, 2009, BofA sent a letter to the Borrowers, Lenders and other parties indicating that the Required Facility Lenders under the Revolving Credit Facility had determined to terminate their commitments because of the occurrence and continuance of events of default.[27] It is also my understanding that on May 6, 2009, BofA resigned as Disbursement Agent and Administrative Agent for the Credit Agreement.[28]

[22] Moody's Investors Service: Global Credit Research, *Moody's downgrades Fontainebleau's CFR to Caa1; outlook negative: Approximately $2.5 billion of rated debt affected*, November 6, 2008
[23] Avenue Term Lender Plaintiff's Responses to Second Set of Interrogatories From Defendant Bank of America, N.A., p. 6
[24] Avenue Term Lender Plaintiff's Responses to Second Set of Interrogatories From Defendant Bank of America, N.A., p. 9
[25] Avenue Term Lender Plaintiff's Responses to Second Set of Interrogatories From Defendant Bank of America, N.A., p. 9-10; March 23, 2009 Letter from Henry Yu to Fontainebleau Las Vegas Lenders
[26] Avenue Term Lender Plaintiff's Responses to Second Set of Interrogatories From Defendant Bank of America, N.A., p. 10
[27] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 30-31
[28] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 32

On June 9, 2009, Fontainebleau filed for Chapter 11 Bankruptcy protection resulting in Moody's withdrawing their ratings coverage.[29]

DISBUREMENT OF INITIAL TERM LOAN AND DELAY DRAW TERM LOAN PROCEEDS UNDER CREDIT AGREEMENT AND MASTER DISBURSEMENT AGREEMENT

The Credit Agreement and Disbursement Agreement created a two-step mechanism for the Borrowers to obtain proceeds from the Initial Term Loan Facility and the Delay Draw Term Loan Facility prior to the opening date of the Project.

Under the first step, the Borrowers must submit a notice of borrowing ("Notice of Borrowing") specifying the requested loans and borrowing date.[30] The Administrative Agent then notifies each lender of the borrowing and each lender was contractually required to make its pro-rata share of the requested loans available by 10:00 AM for funding on the designated borrowing date as long as the conditions to lend were met.[31]

Under the second step, the Borrowers must submit an advance request pursuant to the Disbursement Agreement ("Advance Request").[32] The Disbursement Agreement outlined: a) the conditions precedent that had to be satisfied prior to the approval of the Advance Request by the Disbursement Agent;[33] b) the sequencing of disbursements from the proceeds of various facilities and debt instruments;[34] and c) the obligations of agents to make disbursements to Borrowers from the Bank Proceeds Account.[35]

[29] Moody's Investors Service: Global Credit Research, *Moody's downgrades Fontainebleau's PDR to D: Approximately $2.53 billion of rated debt securities affected*, June 10, 2009
[30] June 6, 2007 Credit Agreement, p. 43
[31] June 6, 2007 Credit Agreement, p. 43
[32] June 6, 2007 Master Disbursement Agreement, p. 7
[33] June 6, 2007 Master Disbursement Agreement, p. 33
[34] June 6, 2007 Master Disbursement Agreement, p. 16-19
[35] June 6, 2007 Master Disbursement Agreement, p. 12

It is my understanding that part of BofA's duties as the Disbursement Agent and Administrative Agent was to ensure the conditions precedent, as outlined in the Disbursement Agreement, were satisfied before the disbursement of funds.[36] These conditions include:

1. Each representation and warranty of each Project under Article 4 was true and correct,[37] including that there were no defaults or events of default under the Financing Agreements, there was no Defaults or Events of Default under the Disbursement Agreement;[38] the In Balance Test was satisfied,[39] and each Remaining Cost Report was true and correct with respect to Project Costs previously incurred and set forth the amount of all reasonably anticipated Project Costs required to achieve Final Completion;[40]
2. there was no Default or Event of Default under any of the financing arrangements;[41]
3. an Advance Request, together with all the required attachments, exhibits and certificates, was delivered to the Disbursement Agent, each Funding Agent and the Construction Consultant;[42]
4. the In Balance Test was satisfied;[43]
5. there had been no development or event since the Closing Date that could reasonably expect to have a Material Adverse Effect on the Project;[44]
6. the Bank Agent was not aware of any information or other matter affecting any Loan Party, Turnberry Residential, the Project or the transactions contemplated that was inconsistent in a material and adverse manner with the information or other matter disclosed to it;[45]
7. the Retail Agent (Lehman) and Retail Lenders under the Retail Facility had made all Advances required;[46] and

[36] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 15
[37] June 6, 2007 Master Disbursement Agreement, p. 33
[38] June 6, 2007 Master Disbursement Agreement, p. 54
[39] June 6, 2007 Master Disbursement Agreement, p. 56
[40] June 6, 2007 Master Disbursement Agreement, p. 58-59
[41] June 6, 2007 Master Disbursement Agreement, p. 33
[42] June 6, 2007 Master Disbursement Agreement, p. 34
[43] June 6, 2007 Master Disbursement Agreement, p. 34
[44] June 6, 2007 Master Disbursement Agreement, p. 34-35
[45] June 6, 2007 Master Disbursement Agreement, p. 38
[46] June 6, 2007 Master Disbursement Agreement, p. 40

8. the Bank Agent received documents and evidence as are customary as the Bank Agent reasonably requested in order to evidence the satisfaction of the other conditions.[47]

If any of the conditions were not satisfied, the Disbursement Agent was required to issue notice to the Borrowers, each Funding Agent and the Administrative Agent ("Stop Funding Notice").[48] If a Stop Funding Notice was issued, no disbursement from the Bank Proceeds Account could be made until all conditions precedent were satisfied, including the absence of any Default or Event of Default.[49]

It is my understanding that after the Lehman Bankruptcy in September 2008, several of the conditions precedent had not been satisfied. At this time, the Plaintiffs alleged that BofA should have issued a Stop Funding Notice and not disbursed funds from the Bank Proceeds Account.[50] Further, I have noted that Moody's Investor Service issued two (2) press releases first downgrading the outlook for Project from stable to negative on July 17, 2008 then later downgrading the credit ratings on November 6, 2008. Additionally, in the November 6, 2008 press release, Moody's recognized the liquidity challenges caused by the Lehman Bankruptcy.

I have been asked to determine damages to the Plaintiffs related to the improper disbursement to the Borrowers from the Bank Proceeds Account and the Revolving Facility.

ANALYSIS OF ECONOMIC DAMAGES

The Plaintiffs allege BofA, as Disbursement Agent and Administrative Agent, was responsible for the proper administration of the construction loans and the disbursement of proceeds from the Bank Proceeds Account.[51] The Plaintiffs allege that multiple defaults occurred, and the conditions precedent could no longer be met for BofA to approve Advance Requests, issue

[47] June 6, 2007 Master Disbursement Agreement, p. 40
[48] June 6, 2007 Master Disbursement Agreement, p. 10
[49] June 6, 2007 Master Disbursement Agreement, p. 10-11
[50] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 16, 19-20
[51] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 15

Advance Confirmation Notices, make Advances and disburse funds to the Borrowers.[52] From September 2008 through March 2009, BofA is alleged to have improperly disbursed approximately $788 million of which $720 million came from the Bank Proceeds Account and $68 million from the Revolving Facility (see Schedule 2 and 3). Had BofA not made these allegedly improper disbursements, these funds would have been available to disburse to the secured parties in the event of default, subject to the security interest of the Credit Agreement Lenders.

I have also calculated prejudgment interest related to damages for the Plaintiffs as of the date of disbursement until the date of trial at a rate of 9% simple interest (under different scenarios).

I have calculated damages and prejudgment interest incurred by the Initial Term Loan Lenders and Delay Draw Lenders under two scenarios.

SCENARIO I

Under Scenario I, assuming damages began in September 2008 with the Lehman Bankruptcy and Lehman's failure to fund causing defaults, I have assumed the Delay Draw Lenders would not have been requested to fund the Delay Draw Term Loan. Therefore, the Delay Draw Lenders would be due 100% of their funded amounts net of any principal repayments already received. The Delay Draw Lenders are due approximately $284 million, which is the outstanding balance of the Delay Draw Term Loans net of any principal repayments already received outside this litigation (see Schedule 2), and approximately [redacted] in prejudgment interest, which is net of any interest or fees received outside this litigation (see Schedule 2). The related prejudgment interest is calculated as of the date of funding of the Delay Draw Term Loan. After the allocation to the Delay Draw Term Lenders, the remaining improper disbursement amounts and prejudgment interest of approximately $503 million and [redacted], respectively, are to be shared pro-rata by the Initial Term Lenders (see Schedule 2).

[52] Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, p. 33

The Plaintiffs hold approximately $487 million or 82.36% of the outstanding Initial Term Loans and approximately $210 million or 73.73% of the outstanding Delay Draw Term Loans (see Schedule 4). Accordingly, the Plaintiffs holding Initial Term Loans are due their pro-rata share of damages and prejudgment interest which total approximately $415 million and [redacted], respectively (see Schedule 2). The Plaintiffs holding Delay Draw Term Loans are due their pro-rata share of damages and prejudgment interest which total approximately $210 million and [redacted] respectively (see Schedule 2).

SCENARIO II

Under Scenario II, the Initial Term Loan Lenders and Delay Draw Lenders share pro-rata in the improper disbursements and prejudgment interest which totals approximately $960 million (see Schedule 3). The Plaintiffs hold approximately $697 million or 79.56% of the approximately $876 million outstanding Initial Term Loans and Delay Draw Term Loans, which is net of any principal repayments already received outside this litigation (see Schedule 4). As such, the Plaintiffs are due their pro-rata share of damages and prejudgment interest which total approximately $627 million and $137 million, respectively (see Schedule 3).

Should additional information become available, I reserve the right to supplement this report.

* * * * *

Respectfully submitted,

Saul Solomon

Attachments

EXHIBIT A

Curriculum Vita

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EDUCATION

B.B.A. in Accounting with Highest Honors University of Texas at Austin, 1977

PRESENT EMPLOYMENT

Director, Berkeley Research Group, LLC

PREVIOUS POSITIONS

Managing Director, UHY Advisors FLVS, Inc., 1981-2010
National Practice Leader of the Forensic, Litigation and Valuation Services Group and a member of its Executive Committee. Also a member of the Management Committee for UHY Advisors, Inc. and a Partner with UHY LLP, a licensed CPA firm

Senior Auditor, Ernst & Young, Houston Texas, 1977-1981
Planned, supervised, and conducted audits on a diverse range of companies and industries

CERTIFICATIONS AND DESIGNATIONS

Certified Public Accountant (CPA)

Certified Fraud Examiner (CFE)

Certified in Financial Forensics (CFF)

Accredited in Business Valuation (ABV)

Certified Valuation Analyst (CVA)

EXHIBIT A

PROFESSIONAL AFFILIATIONS

American Institute of Certified Public Accountants

Texas Society of Certified Public Accountants

Houston Chapter of TSCPA

National Association of Certified Valuation Analysts

Association of Certified Fraud Examiners

BUSINESS AND NOT-FOR-PROFIT AFFILIATIONS

Member, Finance Committee and Investment Committee, Children's Museum of Houston, 2009 – Present

SELECTED SPEAKING ENGAGEMENTS AND PROFESSIONAL PUBLICATIONS

- "Calculating Lost Profits for Emerging Companies: A Case Study," presented for the AICPA, September 2004
- "Case Studies, Calculating Damages for Emerging Businesses," presented for the NLSSA, May 2004
- "Case Studies, Damage Calculations," presented for the NLSSA (November 2002)
- "Claims Against Fiduciaries – The CPA's Role, American Institute of CPAs," presented at the National Advanced Litigation Services Conference, October 1999
- Business Valuations Seminar, NLSSA, January 1999

PROFESSIONAL EXPERIENCE

In connection with his previous employment in public accounting over a 33 year time, Mr. Solomon has been responsible for the financial reporting of privately owned, public, and nonprofit organizations in a variety of industries including energy, manufacturing and distribution, retail, construction and real estate, healthcare, financial, professional services, and technology. He served as prior local practice leader for audit and financial reporting engagements, developed an audit and financial reporting department and was primarily responsible for technical compliance on financial reporting engagements, including compliance with the peer review process.

Mr. Solomon has also provided a variety of financial consulting to corporate clients, including:

- Financial Analysis, Budgeting, and Forecasting
- Tax Planning
- Assistance with Financing
- Merger and Acquisition Services, Including Financial Due Diligence
- Establishing Inventory Control and Desired Levels
- Internal Accounting Controls and Development of Policies and Procedures

- Analysis of Budgetary Controls and Compliance

Mr. Solomon specializes in forensic financial investigations, financial and economic analysis in disputes, and valuation of businesses. His experience includes the following areas:

- Damages Calculations – Lost Profits, Fraud, Punitive
- Forensic and Investigative Accounting, Fraud Investigations
- Valuation of Business Entities
- Intellectual Property, Trade Secrets Matters
- Evaluation of Accounting and Auditing Issues, Financial Reporting, Application of Generally Accepted Accounting Principles, and Auditing Standards
- Bankruptcy Matters – Forensic and Fraud Investigations, Solvency Analysis
- Securities Fraud Including State and Federal Class Action
- Class Certifications Financial Analysis
- Purchase Price and Earnout Disputes
- ERISA Class Action Damages
- Accounting and Financial Reporting Fraud
- Oil and Gas Royalty Disputes
- Class Action Claims Administration
- Alter Ego and Piercing the Corporate Veil Investigations
- Personal Injury, Wrongful Death, Wrongful Termination, Discrimination and Damage Calculations
- Family Law and Estate Matters

TESTIMONY EXPERIENCE

Mr. Solomon has provided testimony in State District Courts, Family Law Courts, and Federal Courts and has testified in excess of 175 times in over 125 cases, involving a variety of financial, accounting, forensic, or economic issues. Mr. Solomon has also served as a third party neutral arbitrator and has actively participated in mediations and arbitration proceedings, both as an expert and consultant.

TRIALS

Case	Date	Judge/Court	(P or D) Client	Attorney - Plaintiff	Attorney - Defense
1) In the Arbitration Matter of Bee Thermo-Electric Corp n/k/a Bee Thermo Limited, Bee Thermo Electric Mold Corp., Hy-Ten Corporation, Udo Fritsch and Franz Fritsch and Igloo Products Corp.	1/06	Arbitration Number 70 133 00721 03	P	Geoffrey H. Bracken – Gardere Wynne Sewell, LLP	In-House Counsel for Igloo Corp.
2) Hexion Specialty Chemicals, Inc. as successor in interest to Resolution Performance Products, LLC vs. Formosa Plastics Corporation, et al.	5/06	333rd Judicial District Court Harris County, TX	P	Steven Zager – Akin Gump Strauss Hauer & Feld LLP	Graham Kerin Blair – Baker & McKenzie, LLP
3) QORVIS Communications, LLC and Christopher S. Wilson, et al.	6/06	Arbitration Case No. 1410003759	P	Debra McGuire Mercer and Sanford M. Saunders – Greenberg Traurig, LLP	Michael Lorenger – Hogan & Hartson
4) Trans Texas Gas Corporation, et al., Debtors; U.S. Bank National Association vs. John R. Stanley, et al.	8/06	U.S. Bankruptcy Court Southern District of Texas Corpus Christi Division	D	Frank Jones – Fulbright & Jaworski	Alexander C. Chae – Gardere Wynne Sewell, LLP
5) Flying Diamond-West Madisonville Limited Partnership, et al. vs. GW Petroleum, Inc., et al.	10/06	278th Judicial District Madison County, Texas	P	Howard L. Close – Wright Brown & Close, LLP	Judith R. Richman – Sonnenfeld & Richman Barry Cannaday and Martin Averill – Baker & McKenzie, LLP
6) Ponderosa Pine Energy, LLC v. Tenaska Energy, Inc., et al.	1/07	Ad Hoc Arbitration Dallas, Texas	D	Frank H. Penski and Constance M. Boland – Nixon Peabody LLP	Bradley C. Weber – Locke Liddell & Sapp LLP
7) Lloyd Snyder vs. Cunningham Lindsey Claims Management, Inc. and Glenda Higgins	12/07	215th Judicial District Court Harris County, Texas	D	Michael P. Doyle – Doyle & Raizner LLP	Robert Hoffman – Gardere Wynne Sewell, LLP

TRIALS

	Case	Date	Judge/Court	(P or D) Client	Attorney - Plaintiff	Attorney - Defense
8)	Cyrus II, LP, Bahar Development, Inc., Mondona Rafizadeh, et al., Debtors, Rodney D. Tow, as the Chapter 7 Trustee for Cyrus II, L.P., et al. vs. Schumann Rafizadeh, et al.	3/08	U.S. Bankruptcy Court Southern District of Texas Houston Division	P	Nan Roberts Eitel – Jones Walker Kyung Lee – Diamond McCarthy Taylor Finley & Lee, LLP	Stephen H. Kupperman – Barrasso Usdin Kupperman Freeman & Sarver, LLC
9)	Sven-Peter Mannsfeld vs. Phenolchemie, Inc.; Phenolchemie GmbH & Co. KG, et al.	10/08	Circuit Court Mobile County, Alabama	P	George W. Finkbohner III and Michael A. Worel – Cunningham, Bounds, Crowder, Brown and Breedlove, LLC Victor T. Hudson – Hudson & Watts, LLP David A. Bagwell – Solo Practitioner	James C. Johnston and J. Michael Druhan, Jr. – Johnston Druhan LLP James C. Grant and Sarah C. Hsia – Alston & Bird LLP
10)	Don Brieger, et al., individually and on behalf of all others similarly situated v. Tellabs, Inc., et al.	4/09	U.S. District Court Northern District of Illinois	P	Edward W. Ciolko, Joseph H. Meltzer, Mark K. Gyandoh, and Joseph A. Weeden - Schiffrin Barroway Topaz & Kessler, LLP	Debra Davidson and Charles Jackson – Morgan Lewis & Bockius
11)	Premier Entertainment Biloxi LLC (d/b/a Hard Rock Hotel & Casino Biloxi), et al. v. U.S. Bank National Association, et al.	3/10	U.S. Bankruptcy Court Southern District of Mississippi Gulfport Division	D	Robert A. Byrd - Byrd & Wiser Martin Sosland - Weil Gotshal & Manges LLP	Sidney Levinson and Thomas Watson - Hennigan Bennett & Dorman
12)	LBV Asset Management LLP, Emmanuel de Figueiredo, and LBV Partners against SGAM Newedge Management, Inc. and SGAM AI Edge Inc.	6/10	JAMS Arbitration	P	John J. Kenney, Sheryl Galler and Tai-Heng Cheng - Hoguet Newman Regal & Kenney, LLP	Thomas K. Cauley, Jr. and Matthew B. Kilby - Sidley Austin LLP

TRIALS

Case	Date	Judge/Court	(P or D) Client	Attorney - Plaintiff	Attorney - Defense
13) Jeffrey D. Henning v. Tecsis Tecnologia e Sistemas Avancados, Ltds.	12/10	United States District Court Southern District of Texas Houston Division	D	Michael L. Wilson Rider & Wilson	James G. Munisteri Gardere Wynne & Sewell LLP
14) Beach Capital Partnership, L.P. vs. DeepRock Venture Partners, L.P.	2/11	55th Judicial District Court Harris County, Texas	D	Robert Louis Theriot Liskow & Lewis	Sean R. O'Brien Arkin Kaplan Rice LLP
15) George A. Dishman, et al. v. BBV Compass Bank	4/11	United States District Court Eastern District of Texas Beaumont Division	D	Kathleen S. Rose Wright & Close, LLP	Barrett H. Reasoner Gibbs & Bruns LLP

DEPOSITIONS (In Addition to Above)

	Case	Date	Judge/Court	(P or D) Client	Attorney - Plaintiff	Attorney - Defense
1)	Mark Newby, et al. vs. Enron Corporation, et al.	5/06	U.S. District Court Southern District of Texas Houston Division	P	G. Paul Howes – Lerach Coughlin Stoia Geller Rudman & Robbins LLP	Various
2)	Key Energy Services, Inc., et al. vs. John Crisp, et al.	6/06	385th Judicial District Court Midland County, Texas	P	Harper A. Estes – Lynch, Chappell & Alsup, PC	John Allen Davis, Jr. – Turner Davis & Gerald PC
3)	Kenneth Darden and Paula Neil, et al. vs. Heart of Texas Health Care & Rehabilitation Center – Del Mar, et al.	5/06	319th Judicial District Court Nueces County, Texas	P	David T. Marks – Marks Balette & Giessel	Randall Jones – Sheehy Serpe & Ware David Coates – Kroger Meyers Frisby & Hirsch
4)	Janie Denmon, et al. vs. Northway Healthcare Center, et al	8/06	61st Judicial District Court Harris County, Texas	P	David T. Marks - Marks Balette & Giessel	Joe Drago - Brackett & Ellis
5)	Praxair, Inc. vs. Enron Gas Processing Company n/k/a Oneok Bushton Processing, Inc.	08/06	District Court Ellsworth County, Kansas	P	David B. Weinstein and Matthew E. Coveler - Pillsbury Winthrop Shaw Pittman LLP	Lynn W. Hursh and Christine L. Schlomann - Armstrong Teasdale LLP
6)	Joe Zepeda, et al. vs. Pasadena Care Center, in its Assumed or Common Name, et al.	8/06	333rd Judicial District Court Harris County, Texas	P	David T Marks – Marks Balette & Giessel	Joe Drago – Brackett & Ellis
7)	Wells Fargo Bank, N.A., Trustee (successor-by-merger to Wells Fargo Bank Minnesota, N.A.), by and through its Master and Special Services, et al. vs. Flash VOS, Inc., et al.	11/06	24th Judicial District Court Parrish of Jefferson State of Louisiana	P	Nan Roberts Eitel – Jones Walker Waechter Poitevent Carrère & Denègre, LLP	Jon Bohn – Bohn & Ducloux
8)	Water Resource Solutions, Inc. vs. Schlumberger Oilfield Holdings Limited	11/06	Uncitral Arbitral Proceeding	P	Tim Riley – Riley Law Firm	Hugh E Tanner and Susan Harvin Lawhon – Fulbright & Jaworski, LLP

DEPOSITIONS (In Addition to Above)

	Case	Date	Judge/Court	(P or D) Client	Attorney - Plaintiff	Attorney - Defense
9)	Willa Clements, et al. vs. Living Centers of Texas, Inc. d/b/a Holiday Lodge Nursing Home, et al.	4/07	188th Judicial District Court Gregg County, Texas	P	David T. Marks, Jacques G. Balette, Jason N. Young, and Henry P. Giessel – Marks Balette & Giessel David Hill – Attorney at Law	Henri J. Dussault – Brackett & Ellis, PC J. Scott Howard – Flowers & Davis Mary Olga Lovett – Greenberg Traurig LLP
10)	Allstate Life Insurance Company, et al. vs. Bank of America Corporation, et al.	8/07	U.S. District Court Southern District of New York	P	Robert L. Palmer – Hennigan Bennett & Dorman LLP	R. Matthew Pearson – Helms Mulliss & Wicker, PLLC
11)	Cyrus II, LP, Bahar Development, Inc., et al., Debtors, Rodney D. Tow, as the Chapter 7 Trustee for Cyrus II, L.P., et al. vs. Schumann Rafizadeh, et al.	9/07	U.S. Bankruptcy Court Southern District of Texas Houston Division	P	Nan Roberts Eitel – Jones Walker Kyung Lee – Diamond McCarthy Taylor Finley & Lee, LLP	Stephen H. Kupperman – Barrasso Usdin Kupperman Freeman & Sarver, LLC
12)	Highland Crusader Offshore Partners, L.P., et al. vs. Motient Corporation	11/07	101st Judicial District Court Dallas County, Texas	D	Scott Drake and Layne Kruse – Fulbright & Jaworksi	T. Ray Guy, Angela Zambrano, and Alaina Brooks – Weil, Gotshal & Manges, LLP
13)	Kenneth Buhler, et al., v. Stanford Financial Group Co., et al.	1/08	164th Judicial District Court Harris County, Texas	D	Randall O. Sorrels and Clyde J. Jackson – Abraham Watkins Nichols Sorrels & Friend Brent C. Perry – Law Offices of Brent C. Perry	Matthew E. Coveler – Hogan & Hogan, LLP
14)	UCC Management of Delray, Inc. vs. Buy Direct, LLC d/b/a Direct Buy of Northwest Houston	1/08	American Arbitration Association	D	Lane Odom – Berry Odom & Rabinowitz	M. Kevin Powers – Cogdell Law Firm

DEPOSITIONS (In Addition to Above)

Case	Date	Judge/Court	(P or D) Client	Attorney - Plaintiff	Attorney - Defense
15) Cyrus II, LP, Bahar Development, Inc., et al., Debtors, Rodney D. Tow, as the Chapter 7 Trustee for Cyrus II, L.P., et al. vs. Schumann Rafizadeh, et al.	3/08	U.S. Bankruptcy Court Southern District of Texas Houston Division	P	Nan Roberts Eitel – Jones Walker Kyung Lee – Diamond McCarthy Taylor Finley & Lee, LLP	Stephen H. Kupperman – Barrasso Usdin Kupperman Freeman & Sarver, LLC
16) John Hancock Life Insurance Company, et al. vs. Bank of America Corporation, et al.	5/08	U.S. District Court District of Massachusetts	P	Robert L. Palmer, J. Michael Hennigan, Bruce R. MacLeod, and Allison K. Chock – Hennigan Bennett & Dorman LLP	Peter J. Covington, John H. Cobb, and Matthew J. Hoefling – Helms Mulliss & Wicker, PLLC
17) IN RE Nortel Networks Corp. "ERISA" Litigation	6/08	U.S. District Court Middle District of Tennessee Nashville Division	P	Ron Kilgard, Gary Gotto, Lynn Lincoln Sarko and David Copley – Keller Rohrback LLP	Tai H. Park – Shearman & Sterling Gerald D. Neenam – Neal & Harwell, PLC Howard Shapiro and Rene Thorne – Proskauer Rose, LLP
18) Sven-Peter Mannsfeld vs. Phenolchemie, Inc.; Phenolchemie GmbH & Co. KG, et al.	6/08	Circuit Court Mobile County, Alabama	P	George W. Finkbohner III and Michael A. Worel – Cunningham, Bounds, Crowder, Brown and Breedlove, LLC Victor T. Hudson – Hudson & Watts, LLP David A. Bagwell – Solo Practitioner	James C. Johnston and J. Michael Druhan, Jr. – Johnston Druhan LLP James C. Grant, Esq. and Sarah C. Hsia, Esq. – Alston & Bird LLP
19) Glazier Foods Company vs. Chris Stone, Gary Walker, Dan Roberts, Todd Richards and Ben E. Keith Food Company	10/09	334th Judicial District Court Harris County, Texas	D	Chamberlain, Hrdlicka, White, Williams & Martin	Juan Garcia - Thompson & Knight, LLP

DEPOSITIONS (In Addition to Above)

Case	Date	Judge/Court	(P or D) Client	Attorney - Plaintiff	Attorney - Defense
20) Beck & Masten Automotive Group, Inc. dba Beck & Masten Kia of Tomball, Applicant, Kia Motors America, Inc. Intervenor v. Joe Myers Motors-Three, Inc. dba Joe Myers Kia, Protestant	11/09	Texas Department of Transportation Motor Vehicle Division	P	Billy Donley - Baker & Hostetler LLP	William T. Green, III - Attorney at Law
21) Gregory S. Huddle v. Schnur Trust, et al;	1/10	129th Judicial District Court Harris County, Texas	P	Shawn L. Raymond - Susman Godfrey L.L.P.	Justin Brett Strother and Macon D. Strother - Strother Law Firm
22) Glazier Foods Company vs. Chris Stone and Garv Walker	4/10	334th Judicial District Court of Harris County, Texas	D	Chamberlain Hrdlicka	Juan C. Garcia - Thompson & Knight, LLP
23) Ebrahim Shanehchian, Anita Johnson, Donald Snyde, and Joseph Stengel v. Macy's, Inc. et al.	4/10	United States District Court, Souther District of Ohio, Wesern Division	P	Robert I. Harwood and Jeffrey M. Norton – Harwood Feffer LLP Lori G. Feldman and Bob Khurana – Milberg LLP	Jones Day and Morgan Lewis
24) SP Syntax LLC, SP3 Syntax LLC vs. James Ching Hua Li, et al.	6/10	Superior Court of the State of California County of Los Angeles	P	Marc M. Seltzer, Steven G. Sklaver, and Kyle A Casazza - Susman Godfrey L.L.P.	Garrett & Tully, APC, Irell & Manella, LLP, Munger, Tolles & Olson LLP Bingham McCutchen LLP, and Hastings, Janofsky & Walker LLP
25) Linett M. Wilkerson, et al. v. Dennis J. Wilkerson, Sr., et al.	8/10	151st Judicial District Court Harris County, Texas	P	William L. Maynard, Roger L. McCleary, Pamela C. Hicks, Bruce R. Wilkin, and Scott R. Davis - Beirne Maynard & Parsons L.L.P.	Neal S. Manne, Robert Rivera, Jr., Alexandra G. White, and Joe G. Conley - Susman Godfrey L.L.P.
26) Creekstone Builders, Inc. vs. Nationwide Concrete Construction, LLC, Nationwide Concrete Construction, Inc., Juan Silva, Jack Withem, and Terrill Bell	9/10	165th Judicial District Court Harris County, Texas	D	Leonard J. Meyer Zimmerman, Axelrad, Meyer, Stern & Wise, P.C.	Jeffry P. O'Dea Burt Barr & O'Dea, L.L.P.

DEPOSITIONS (In Addition to Above)

Case	Date	Judge/Court	(P or D) Client	Attorney - Plaintiff	Attorney - Defense
27) Sonic Petroleum Services, Ltd. and Lonnie's Well Service Co., General Partner v. Brian Shoemaker, Blowout Tools, Inc. and Superior Energy Services, LLC	10/10	358th Judicial District Court of Ector County, Texas	D	Ken Nunley - The Nunley Firm Randal Patterson - Randal Patterson Attorney	Blue Hyatt Lynch, Chappell & Alsup PC
28) Board of Trustees of the Aftra Retirement Fund, in its capacity as a fiduciary of the AFTRA Retirement Fund, individually and on behalf of all others similarly situated v. JPMorgan Chase Bank, N.A.	11/10	United States District Court Southern District of New York	P	Joseph H. Meltzer and Peter H. LeVan, Jr. - Barroway Topaz Kessler Meltzer & Check LLP	Lewis Richard Clayton and Jonathan H. Hurwitz Paul, Weiss, Rifkind, Wharton & Garrison LLP
29) William S. Harris, Reginald E. Howard, and Peter M Thornton, Sr. on Behalf of Themselves and All Others Similarly Situated v. James E. Koenig; State Street Bank and Trust Company; Waste Management Retirement Savings Plan et al.	1/11	United States District Court District of Columbia	P	Gregory Y. Porter - Bailey & Glasser LLP Ellen M. Doyle - Stember Feinstein Doyle Payne & Cordes, LLC	O'Melveny & Myers, LLP
30) Gary Sawyer, et al., v E. I. DuPont de Nemours and Company	1/11	United States District Court Southern District of Texas Galveston Division	P	Michael P. Cash and Wade Howard - Gardere Wynne Sewell LLP	Russell Manning - Manning Ward Harriosn Venicia & Rodriguez
31) In RE Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation	5/11	United States District Court District of New Jersey	P	Keller Rohrback, P.L.C. and Barroway Topaz Kessler Meltzer & Check LLP	Cravath Swaine & Moore LLP

EXHIBIT C

DOCUMENTS REVIEWED

1 Second Amended Compliant for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief
2 Avenue Term Lender Plaintiffs' Responses to Second Set of Interrogatories From Defendant Bank of America, N.A.
3 Master Disbursement Agreement
4 Loan Agreement Dated June 6, 2007
5 Credit Agreement Dated as of June 6, 2007
6 Collateral Account Notification and Acknowledgment (Bank Proceeds Account)
7 Various documents related to the acquisition of interests in the Initial Term Loans and Delayed Draw Term Loans by the following entities:

Battalion CLO 2007-I Ltd
Brigade Leveraged Capital Structures Fund, Ltd
Canpartners Investments IV, LLC
Cantor Fitzgerald Securities
Canyon Special Opportunities Master (Cayman) Ltd.
Caspian Alpha Long Credit Fund, L.P.
Caspian Capital Partners, L.P.
Caspian Corporate Loan Fund, LLC
Caspian Select Credit Master Fund, Ltd.
Caspian Solitude Master Fund, L.P.
Genesis CLO 2007-1 Ltd.
ING International (II) - Senior Bank Loans
ING Investment Management CLO I, Ltd
ING Investment Management CLO II, Ltd
ING Investment Management CLO III, Ltd
ING Investment Management CLO IV, Ltd
ING Investment Management CLO V, Ltd
ING Investment Management CLO VI, B.V.
ING Prime Rate Trust
ING Senior Income Fund
Mariner LDC
Monarch Master Funding Ltd
Normandy Hill Master Fund L.P.
Olympic CLO I Ltd.
Phoenix CLO I, Ltd. (fka Avenue CLO IV, Ltd.)
Phoenix CLO II, Ltd. (fka Avenue CLO V, Ltd.)
Phoenix CLO III, Ltd. (fka Avenue CLO VI, Ltd.)
San Gabriel CLO I Ltd.
Scoggin International Fund, LTD.
Scoggin Capital Management II LLC
Scoggin Worldwide Fund, Ltd.
Shasta CLO I Ltd.
Sierra CLO II Ltd.
Sola, Ltd.
Solus Core Opportunities Master Fund Ltd.
SPCP Group, LLC
Stone Lion Portfolio L.P.
Veer Cash Flow CLO, Ltd.
Veer Loan Opportunity Fund
Venor Capital Master Fund Ltd.
Venture II CDO 2002

EXHIBIT C

DOCUMENTS REVIEWED

Venture III
Venture IV CDO Limited
Venture IX CDO Limited
Venture V
Venture VI CDO Limited
Venture VII
Venture VIII CDO Limited
Vista Leveraged Income Fund
Whitney CLO I Ltd.

8 Plaintiffs' Holdings Summary

9 Cash Journal Report of Initial Term Loan for the following participants:
Whitney CLO I Ltd.
Shasta CLO I Ltd.
Sierra CLO II Ltd.
Olympic CLO I Ltd.

10 Cash Journal Report of Delayed Draw Term Loan for the following participants:
Whitney CLO I Ltd.
Shasta CLO I Ltd.
Sierra CLO II Ltd.
Olympic CLO I Ltd.

11 June 20, 2008 letter to Jeanne Brown

12 July 21, 2008 letter to Jeanne Brown

13 February 24, 2009 Notice of Borrowing

14 February 13, 2009 Notice of Borrowing

15 March 23, 2009 from Bank of America to Fontainebleau Las Vegas

16 Estimated Debt Service - October 2009

17 Fontainebleau Las Vegas Invoice Summary for Advance Dates from July 2007 and September 2008 through March 2009

18 Construction Consultant Advance Certificate (Exhibit C-2) for Advance Dates from August 2007, July 2008, October 2008, and January 2009 through March 2009

19 Advance Request (Exhibit C-1) for Advance Dates from July 2007 through May 2008 and August 2008 through March 2009

20 Requested Cost Report for Advance Dates from July 2007 through March 2009

21 Shared Cost Allocation Report for Advance Dates from December 2007 through March 2009

22 Current Available Sources Report for Advance Dates from July 2007 through March 2009

23 Funding Order Report for Advance Dates from July 2007 through March 2009

24 Advance Request Transfer Report for Advance Dates from July 2007 through March 2009

25 Detailed Remaining Cost Report for Advance Dates from July 2007 through March 2009

26 Remaining Cost Report for Advance Dates from July 2007 through March 2009

27 Retail Remaining Cost Report for Advance Dates from July 2007 through March 2009

28 In Balance Report for Advance Dates from July 2007 through March 2009

29 Lien Release Summary for February 25, 2009 Advance Date

30 Title Insurance Endorsement Chart for Advance Dates from August 2007 and October 2007 through March 2009.

31 Inventory of Unincorporated Materials for Advance Dates from July 2007 through August 2008, October 2008, February 2009, and March 2009

32 Architect Advance Certificate for Advance Dates from August 2007 through August 2008 and October 2008 through March 2009

33 General Contractor's Advance Certificate for Advance Dates from July 2007 through June 2008, August 2008, and October 2008 through March 2009

34 List of Additional Contracts for Advance Dates from July 2007 through April 2008 and September 2008 through March 2009

EXHIBIT C

DOCUMENTS REVIEWED

35 List of Scope Changes for Advance Dates from July 2007 through March 2009
36 Advance Confirmation Notice (Exhibit E) for Advance Dates from July 2007 through May 2008 and August 2008 through March 2009
37 Budget/Schedule Amendment Certificate (Exhibit M-4) for Advance Dates from February 2008 and June 2008 through March 2009
38 Amendment 1 to Resort Budget (Appendix I of Budget/Schedule Amendment Certificate) for Advance Dates from February 2008 and June 2008 through March 2009
39 Existing Resort Budget (Appendix II of Budget/Schedule Amendment Certificate) for Advance Dates from February 2008, June 2008, July 2008, and September 2008 through March 2009
40 Revised Resort Budget (Appendix III of Budget/Schedule Amendment Certificate) for Advance Dates from February 2008 and June 2008 through March 2009
41 Revised Remaining Cost Report (Appendix VI of Budget/Schedule Amendment Certificate) for Advance Dates from February 2008, June 2008, July 2008, and September 2008 through March 2009

42 GC Budget Amendment Certificate (Attachment A of Budget/Schedule Amendment Certificate) for Advance Dates from February 2008 and June 2008 through March 2009
43 Moody's Investors Service: Global Credit Research, *Moody's assigns B2 CFR to Fontainebleau Las Vegas Holdings, LLC; ratings outlook stable: Approximately $1.8 billion of rated debt affected* , April 3, 2007.
44 Moody's Investors Service: Global Credit Research, *Moody's changes Fontainebleau's rating outlook to negative: Approximately $2.4 billion of rated debt affected* , July 17, 2008.
45 Moody's Investors Service: Global Credit Research, *Moody's downgrades Fontainebleau's CFR to Caa1; outlook negative: Approximately $2.4 billion of rated debt affected,* November 6, 2008.

46 Moody's Investors Service: Global Credit Research, *Moody's downgrades Fontainebleau to Caa3: Approximately $2.4 billion of rated debt affected,* March 4, 2009.
47 Moody's Investors Service: Global Credit Research, *Moody's downgrades Fontainebleau's PDR to D: Approximately $2.53 billion of rated debt securities affected,* June 10, 2009.
48 Finnegan, Amanda. "Moody's: Fontainebleau could default on debt." Las Vegas Sun, March 4, 2009.

49 Lehman Brothers Press Release, *Lehman Brothers Holdings Inc. announces it intends to file Chapter 11 bankruptcy petition; No other Lehman Brothers' U.S. subsidiaries or affiliates including its broker-dealer and investment management subsidiaries, are included in the filing,* September 15, 2008.

50 March 10, 2009 email from Mr. Brandon Bolio regarding funding of Delayed Draw Term Loan
51 April 9, 2009 email from Mr. Ronaldo Naval regarding funding of Delayed Draw Term Loan
52 February 26, 2009 email from Mr. Brandon Bolio regarding funding of Revolving Loan
53 February 25, 2009 email from Mr. Brandon Bolio regarding funding of Revolving Loan

Bank Statements	**Beg Date**	**End Date**
54 Columbia Funds account [redacted] (Liquidity Account)	6/1/07	7/31/07
	9/1/07	9/30/07
	1/1/08	5/31/08
	10/1/08	10/31/08
	12/1/08	1/31/09
55 Columbia Funds account [redacted]	6/1/07	7/31/07
	9/1/07	9/30/07
	1/1/08	5/31/08
	10/1/08	10/31/08
	12/1/08	1/31/09
	3/1/09	3/31/09

EXHIBIT C

DOCUMENTS REVIEWED

56	Columbia Funds account [redacted]	6/1/07	7/31/07
		9/1/07	9/30/07
		1/1/08	5/31/08
		10/1/08	10/31/08
		12/1/08	1/31/09
		3/1/09	3/31/09
57	Columbia Funds account [redacted] (Bank Proceeds Account)	6/1/07	7/31/07
		9/1/07	9/30/07
		1/1/08	5/31/08
		10/1/08	10/31/08
		12/1/08	1/31/09
		3/1/09	3/31/09
58	Columbia Funds account [redacted] (Equity Funding Account)	6/1/07	7/31/07
		6/1/08	6/30/08
		10/1/08	10/31/08
		12/1/08	1/31/09
		3/1/09	3/31/09
59	Columbia Funds account [redacted]	4/1/08	5/31/08
		10/1/08	10/31/08
		12/1/08	1/31/09
		3/1/09	3/31/09
60	Columbia Funds account [redacted]	4/1/08	5/31/08
		3/1/09	3/31/09
61	Columbia Funds account [redacted]	4/1/08	5/31/08
		10/1/08	10/31/08
		12/1/08	1/31/09
		3/1/09	3/31/09
62	Columbia Funds account [redacted]	4/1/08	5/31/08
		3/1/09	3/31/09
63	Columbia Funds account [redacted]	4/1/08	5/31/08
		3/1/09	3/31/09

Schedule 1

Avenue CLO Fund, Ltd., et al. vs. Bank of America, N.A., et al

Summary of Damages

Scenario I - Delay Draw Does Not Fund

Damages owed to Initial Term Lenders		
Disbursements	$	414,665,484.69
Prejudgment Interest		[redacted]
Subtotal	$	[redacted]
Damages owed to Delay Draw Term Lenders		
Disbursements	$	209,750,767.44
Prejudgment Interest		[redacted]
Subtotal	$	[redacted]
Total	**$**	[redacted]

Scenario II - Delay Draw Funded

Damages owed to all Initial Term and Delay Draw Lenders		
Disbursements	$	626,904,307.67
Prejudgment Interest		136,545,795.71
Total	**$**	**763,450,103.38**

Schedule 2

Avenue CLO Fund, Ltd., et al. vs. Bank of America, N.A., et al

Analysis of Disbursements from Bank Proceeds Account after 9/1/08

Scenario I - Delay Draw Does Not Fund

Prejudgment Interest Rate: [1] 9.00%

Estimated Trial Date: May 31, 2011

Date of Improper Disbursement to Borrowers[2]	Source		Disbursement Amount		Prejudgment Interest		Total
September 25, 2008	Initial Term Loan	$	99,332,189.81	$	23,988,723.84	$	123,320,913.65
October 28, 2008	Initial Term Loan		101,914,293.51		23,771,508.96		125,685,802.47
November 25, 2008	Initial Term Loan		143,838,250.93		32,579,363.84		176,417,614.77
December 30, 2008	Initial Term Loan		102,800,125.34		22,359,027.26		125,159,152.60
January 28, 2009	Initial Term Loan		88,801,951.38		18,715,011.25		107,516,962.63
February 25, 2009	Initial Term Loan		50,241,078.79		10,249,180.07		60,490,258.86
March 26, 2009	Initial Term Loan		32,925.87		6,461.70		39,387.57
March 26, 2009	Delay Draw Term Loan		133,003,371.99		26,101,911.75		159,105,283.74
	Subtotal		*719,964,187.62*		*157,771,188.67*		*877,735,376.29*
February 26, 2009	Revolving Loan		68,000,000.00 [3]		13,855,000.00		81,855,000.00
	Total	**$**	**787,964,187.62**	**$**	**171,626,188.67**	**$**	**959,590,376.29**

Allocation to Delay Draw Term Lenders [4]

Plaintiffs' Participation	**73.73%** [5]		**209,750,767.44**	[redacted]	[redacted]
Other Delayed Draw Term Lenders	26.27%		74,734,201.28	[redacted]	[redacted]
Total Allocation to Delay Draw Term Lenders	100.00%	$	284,484,968.72 [6]	$ [redacted] [6]	$ [redacted]

Allocation to Initial Term Lenders

Plaintiffs' Participation	**82.36%** [7]		**414,665,484.69**	[redacted]	[redacted]
Other Initial Term Lenders	17.64%		88,813,734.21	[redacted]	[redacted]
Total Allocation to Initial Term Lenders	100.00%	$	503,479,218.90	$ [redacted]	$ [redacted]

Notes:

1) Assumed New York statutory prejudgment interest rate of 9%.

2) Disbursement date as reflected in the account statement. To the extent that account statements were not provided, disbursement date is assumed to be the same as the Requested Advance Date.

3) The Revolver Draw Loan was requested on the February 25, 2009 Advance Date and assumed to have been distributed on February 26, 2009.

4) Assumes Delay Draw Term Loan proceeds would not have been funded into Bank Proceeds Account. $284,484,968.72 is the net amount owed to Delayed Draw Lenders.

5) See Schedule 4.

6) See Schedule 6.

7) See Schedule 4.

Avenue CLO Fund, Ltd., et al. vs. Bank of America, N.A., et al

Analysis of Disbursements from Bank Proceeds Account after 9/1/08

Scenario II - Delay Draw Funded

Prejudgment Interest Rate: [1] 9.00%

Estimated Trial Date: May 31, 2011

Date of Improper Disbursement to Borrowers[2]	Source	Disbursement Amount	Prejudgment Interest	Total
September 25, 2008	Initial Term Loan	$ 99,332,189.81	$ 23,988,723.84	$ 123,320,913.65
October 28, 2008	Initial Term Loan	101,914,293.51	23,771,508.96	125,685,802.47
November 25, 2008	Initial Term Loan	143,838,250.93	32,579,363.84	176,417,614.77
December 30, 2008	Initial Term Loan	102,800,125.34	22,359,027.26	125,159,152.60
January 28, 2009	Initial Term Loan	88,801,951.38	18,715,011.25	107,516,962.63
February 25, 2009	Initial Term Loan	50,241,078.79	10,249,180.07	60,490,258.86
March 26, 2009	Initial Term Loan	32,925.87	6,461.70	39,387.57
March 26, 2009	Delay Draw Term Loan	133,003,371.99	26,101,911.75	159,105,283.74
	Subtotal	*719,964,187.62*	*157,771,188.67*	*877,735,376.29*
February 26, 2009	Revolving Loan	68,000,000.00 [3]	13,855,000.00	81,855,000.00
	Total	**$ 787,964,187.62**	**$ 171,626,188.67**	**$ 959,590,376.29**
Plaintiffs' Participation in the Term Loans [4]		**$ 626,904,307.67**	**$ 136,545,795.71**	**$ 763,450,103.38**

Notes:

1) Assumed New York statutory prejudgment interest rate of 9%.

2) Disbursement date as reflected in the account statement. To the extent that account statements were not provided, disbursement date is assumed to be the same as the Requested Advance Date.

3) The Revolver Draw Loan was requested on the February 25, 2009 Advance Date and assumed to have been distributed on February 26, 2009.

4) Plaintiffs' participation in the Term Loans 79.56% (see Schedule 4)

Avenue CLO Fund, Ltd., et al. vs. Bank of America, N.A., et al

Supporting Calculations

Plaintiffs' Percentage Participation

	Plaintiffs' Participation [1]	Outstanding Balance [2]	Plaintiffs' Percentage Participation
Initial Term Loan	$ 487,147,428.44	$ 591,503,400.14	**82.36%**
Delayed Draw Loan	209,764,757.85	284,484,968.72	**73.73%**
Total	$ 696,912,186.29	$ 875,988,368.86	**79.56%**

Notes:

1) See Schedule 5.

2) [redacted]

Avenue CLO Fund, Ltd., et al. vs. Bank of America, N.A., et al

Summary of Plaintiffs' Holdings

	Initial Term Loan - $591,503,400.14 Outstanding Balance		Delayed Draw Term Loan - $284,484,968.72 Outstanding Balance	
Plaintiff	**Amount**	**Percentage**	**Amount**	**Percentage**
Brigade Leveraged Capital Structures Fund, Ltd	$ 80,950,857.23	13.685611476%	$ 28,419,770.23	9.989902226%
Battalion CLO 2007-I Ltd	2,496,202.56	0.422009841%	1,248,101.28	0.438723106%
Canpartners Investments IV, LLC	32,580,148.94	5.508023949%	16,290,074.49	5.726163522%
Canyon Special Opportunities Master (Cayman) Ltd.	17,869,409.82	3.021015570%	6,822,192.77	2.398085495%
Caspian Alpha Long Credit Fund, L.P.	2,936,320.21	0.496416456%	1,695,873.24	0.596120508%
Caspian Capital Partners, L.P.	19,594,673.22	3.312689867%	8,640,243.09	3.037152763%
Caspian Select Credit Master Fund, Ltd.	37,568,179.98	6.351304144%	15,289,064.93	5.374296226%
Caspian Solitude Master Fund, L.P.	7,121,250.64	1.203923872%	3,468,792.34	1.219323593%
Mariner LDC	4,927,441.80	0.833036936%	2,983,622.20	1.048780263%
Olympic CLO I Ltd.	1,513,441.53	0.255863539%	756,720.77	0.265996749%
San Gabriel CLO I Ltd.	2,017,922.04	0.341151385%	1,008,961.03	0.354662335%
Shasta CLO I Ltd.	2,270,162.30	0.383795308%	1,135,081.15	0.398995123%
Sierra CLO II Ltd.	2,017,922.04	0.341151385%	1,008,961.03	0.354662335%
Whitney CLO I Ltd.	2,270,162.30	0.383795308%	1,135,081.15	0.398995123%
Genesis CLO 2007-1 Ltd.	1,675,642.04	0.283285276%	844,901.20	0.296993265%
Cantor Fitzgerald Securities	54,576.39	0.009226724%	457,409.97	0.160785288%
ING Senior Income Fund	1,690,009.72	0.285714287%	845,004.86	0.297029703%
ING Prime Rate Trust	1,070,339.49	0.180952381%	535,169.74	0.188118811%
ING Investment Management CLO I, Ltd	845,004.86	0.142857143%	422,502.43	0.148514851%
ING Investment Management CLO II, Ltd	1,126,673.14	0.190476190%	563,336.57	0.198019803%
ING Investment Management CLO III, Ltd	1,126,673.14	0.190476190%	-	0.000000000%
ING Investment Management CLO IV, Ltd	1,126,673.14	0.190476190%	563,336.57	0.198019803%
ING Investment Management CLO V, Ltd	1,690,009.71	0.285714286%	281,668.28	0.099009900%
ING International (II) - Senior Bank Loans Euro	5,070,029.15	0.857142859%	2,535,014.56	0.891089106%
Phoenix CLO I, Ltd. (fka Avenue CLO IV, Ltd.)	3,098,351.15	0.523809524%	1,549,175.56	0.544554451%
Phoenix CLO II, Ltd. (fka Avenue CLO V, Ltd.)	4,506,692.58	0.761904763%	2,253,346.28	0.792079206%
Phoenix CLO III, Ltd. (fka Avenue CLO VI, Ltd.)	3,380,019.43	0.571428571%	1,690,009.72	0.594059406%
Venture II CDO 2002	1,690,009.71	0.285714286%	845,004.86	0.297029703%
Venture III	2,253,346.29	0.380952381%	1,126,673.14	0.396039603%
Venture IV CDO Limited	2,535,014.57	0.428571429%	1,267,507.29	0.445544555%
Venture V	2,253,346.29	0.380952381%	1,126,673.14	0.396039603%
Venture VI CDO Limited	2,253,346.29	0.380952381%	1,126,673.14	0.396039603%
Venture VII	2,816,682.85	0.476190476%	1,408,341.43	0.495049506%
Venture VIII CDO Limited	3,098,351.15	0.523809524%	1,549,175.57	0.544554455%
Venture IX CDO Limited	2,253,346.28	0.380952380%	1,126,673.15	0.396039606%
Veer Cash Flow CLO, Ltd.	563,336.57	0.095238094%	281,668.29	0.099009903%
Vista Leveraged Income Fund	1,690,009.71	0.285714286%	845,004.86	0.297029703%
Monarch Master Funding Ltd	95,766,371.47	16.190333216%	47,223,507.03	16.599649269%
Normandy Hill Master Fund L.P.	18,139,281.92	3.066640347%	11,393,405.51	4.004923551%
Scoggin International Fund, LTD.	3,000,000.00	0.507182207%	1,500,000.00	0.527268631%
Scoggin Worldwide Fund, Ltd.	1,666,666.67	0.281767893%	833,333.33	0.292927016%
Scoggin Capital Management II LLC	2,000,000.00	0.338121471%	1,000,000.00	0.351512421%
SPCP Group, LLC	35,553,471.60	6.010696065%	6,629,069.69	2.330200333%
Sola, Ltd.	13,449,088.74	2.273712837%	6,550,911.23	2.302726664%
Solus Core Opportunities Master Fund Ltd.	13,431,940.19	2.270813691%	6,568,059.84	2.308754613%
Stone Lion Portfolio L.P.	12,778,574.04	2.160355128%	-	0.000000000%
Venor Capital Master Fund Ltd.	27,360,455.55	4.625578745%	14,919,660.90	5.244446115%
Total	**$ 487,147,428.44**	**82.357502640%**	**$ 209,764,757.85**	**73.734917812%**

Avenue CLO Fund, Ltd., et al. vs. Bank of America, N.A., et al

Calculation of Prejudgment Interest for Delayed Draw Term Loan

Prejudgment Interest Rate: [1]	9.00%
Date of Principal Paydown:	December 28, 2009
Estimated Trial Date:	May 31, 2011

Date of Funding	Loan Amount	Prejudgment Interest	Total
March 10, 2009	$ 261,923,188.71 [2]	$ 18,858,469.59 [5]	$ 280,781,660.30
March 12, 2009	59,410,144.96 [3]	4,247,825.36 [5]	63,657,973.32
March 12, 2009	3,666,666.33 [3]	262,166.64 [5]	3,928,835.97
March 12, 2009	1,666,666.68 [3]	119,166.67 [5]	1,785,836.35
April 9, 2009	10,000,000.00 [4]	647,500.00 [5]	10,647,504.00
Total	*$ 336,666,666.68*	*$ 24,135,128.26*	*$ 360,801,809.94*
December 2009 Paydown	(52,181,697.96) [6]		
Delayed Draw Term Loan Balance After Paydown	*284,484,968.72*	*36,485,197.24* [7]	
Gross Amount Due to Delayed Draw Term Lenders	$ 284,484,968.72	$ 60,620,325.50	$ 345,105,294.22
Interest and Fees Paid to Delayed Draw Term Lenders Since September 15, 2008		[redacted]	[redacted]
Net Amount Due to Delayed Draw Term Lenders	**$ 284,484,968.72**	[redacted]	[redacted]

Notes:

1) Assumed New York statutory prejudgment interest rate of 9%.

2) Per March 10, 2009 email from Mr. Brandon Bolio (BANA_FB00863808).

3) Per March 2009 account statement of Bank of America account number [redacted] (Bank Proceeds Account).

4) Per April 9, 2009 email from Mr. Ronaldo Naval (BANA_FB00219519).

5) Prejudgment interest is calculated as of the date of funding to the December 28, 2009 paydown.

6) See Schedule 7.

7) Prejudgment interest is calculated as of the December 28, 2009 paydown to the estimated trial date.

Avenue CLO Fund, Ltd., et al. vs. Bank of America, N.A., et al

Transactions Related to Delayed Draw Term Loan Since September 15, 2008

Plaintiff:	Whitney CLO I, Ltd.
Delayed Draw Term Loan Participation: [1]	0.398995123%
Prejudgment Interest Rate: [2]	9.00%
Estimated Trial Date:	May 31, 2011

Date [3]	Description [3]	Amount To Whitney [3]	Whitney's Participation	Implied Total Amount to All Lenders	
				Draw/Paydown	Fee/Interest
June 30, 2008	Accrued Unfunded Fee	$ 6,791.04	0.398995123%		
September 30, 2008	Accrued Unfunded Fee	6,865.67	0.398995123%		$ 280,555.49 [4]
December 31, 2008	Accrued Unfunded Fee	6,865.67	0.398995123%		1,720,740.33
March 10, 2009	Prime Borrowing	(1,343,283.58)	0.398995123%	$ (336,666,666.68)	
March 31, 2009	Accrued Unfunded Fee	5,149.25	0.398995123%		1,290,554.62
March 31, 2009	Prime Interest	3,864.24	0.398995123%		968,493.04
March 31, 2009	Unused fee	74.63	0.398995123%		18,704.49
April 28, 2009	LIBOR Interest	3,936.85	0.398995123%		986,691.26
May 28, 2009	LIBOR Interest	4,880.60	0.398995123%		1,223,222.97
June 29, 2009	LIBOR Interest	5,153.73	0.398995123%		1,291,677.44
July 6, 2009	Prime Interest	220.81	0.398995123%		55,341.53
November 10, 2009	Prime Interest	20,314.87	0.398995123%		5,091,508.35
December 28, 2009	Prime Paydown	208,202.43	0.398995123%	52,181,697.96	
[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
			Total		**$** [redacted]

Notes:

1) See Schedule 5.

2) Assumed New York statutory prejudgment interest rate of 9%.

3) Per Cash Journal Report of Delayed Draw Term Loan for Whitney CLO I LTD.

4) It is assumed that the Unfunded Fee will cease to accrue on September 15, 2008, the date of the Lehman Bankruptcy. The Implied Total Amount has been prorated to reflect the amount of Unfunded Fee accrued between September 15, 2008 and September 30, 2008.

Cantor Opp. Declaration Ex. 32

Filed Under Seal

Cantor Opp. Declaration Ex. 33

Filed Under Seal

Cantor Opp. Declaration Ex. 34

Filed Under Seal

From: Albert Kotite
To: Doug Pardon
CC: Glenn Schaeffer; Jim Freeman
Sent: 11/5/2008 6:43:32 PM
Subject: RE: Miami Grand Opening

Doug,

Consider it done, my pleasure. Just make sure you RSVP for accommodations for Friday and Saturday nights. I hope you saw the great article that appeared on the front page of the Style Section of last Sunday's *Times*. In case you didn't, a copy is pasted below.

Look forward to seeing you on the 14th.

Best regards,
Sonny

Albert E. Kotite / EVP Corporate Development & Acquisitions
Fontainebleau Resorts LLC
akotite@fontainebleau.com / fontainebleau.com
O 305 682 4200 / C 917 499 2626 / F 305 682 4201
19950 West Country Club Drive / Aventura FL 33180

THE STAGE IS YOURS. LIVE YOUR PART.

please take note of my new email address

From: Doug Pardon [mailto:DP@brigadecapital.com]
Sent: Wed 11/5/2008 3:25 PM
To: Albert Kotite
Subject: Miami Grand Opening

Sonny,

Hope things are well. Was very pleased to see the Q2 financials get reported and we also appreciated Glenn being on the call. Don and I found it very helpful and I think the market appreciated it as well. I thought the call went as well as can be expected given the current state of the economy/las vegas and the Lehman issue.

On a more positive note I'm coming down for the grand opening so just wanted to say thanks once again for including me. I did have one additional request (if possible). The invitation to the fashion show is a separate invite according to the firm handling the reservations so just thought I'd ask if there is anything you could to get me an invite for that as well. There's no doubt it's highly sought after so I understand if its not doable but figured there was no harm in trying. Anything you could do would be hugely appreciated.

Thanks again and good luck w/ the grand opening and continued good luck in Las Vegas.

Best,

Doug

Doug Pardon
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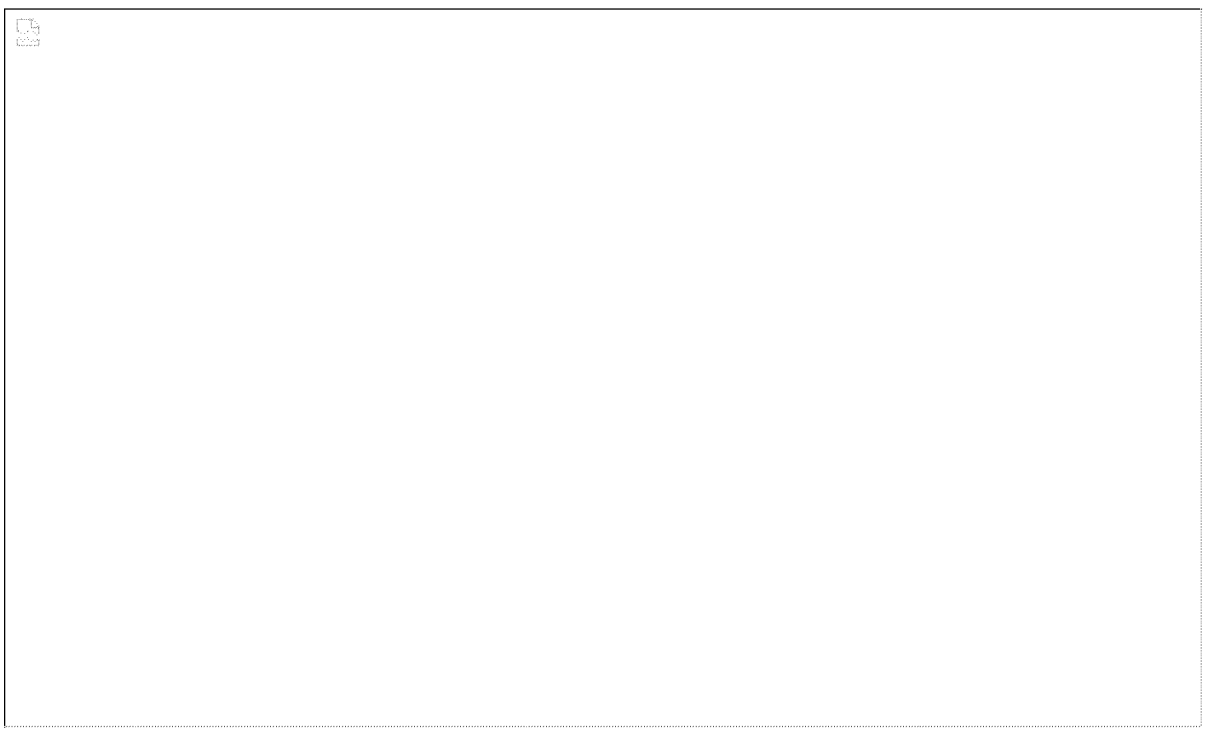
212-745-9701 (F)
dp@brigadecapital.com

Flamboyance Gets A Face-Lift



Barbara P. Fernandez for The New York Times

FAUX FRENCH Built in 1954, the Fontainebleau hotel in Miami Beach has recently undergone a $500 million restoration.

By RUTH LA FERLA
Published: October 31, 2008

Miami Beach

Related

Times Topics: Morris Lapidus

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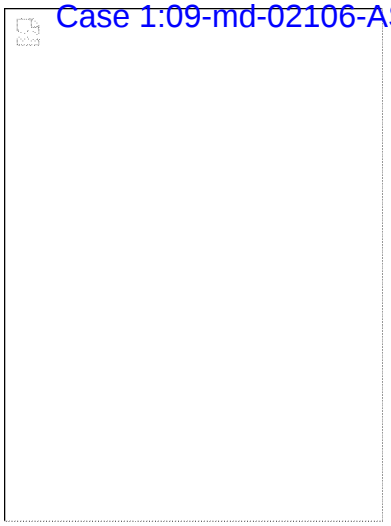
MARILYN RUBINSON recalls her stays at the Fontainebleau hotel as a series of high-fashion snapshots. There were afternoons at the cabana, “a blue hotel towel wrapped around my head like a turban and wearing high-heeled Lucite shoes,” she said. There were evenings at the Gigi Room, rubbing shoulders with New York’s dashing mayor, John V. Lindsay; and she remembers sweeping down the dramatic lobby staircase in a form-fitting, stone-colored gown. “In those days everyone made an entrance,” Mrs. Rubinson, 84, said. “I made lots of entrances.”

In that heady era the hotel was the diadem of Miami resorts, a 560-foot-long, sickle-shaped showplace dominating the Collins Avenue waterfront, where

Miamians like the Rubinsons, who own a chain of clothing stores, and well-to-do snowbirds came in the winter to roost.

“Everyone who was anyone was there,” Mrs. Rubinson said. “People wore black tie and jewelry. Everyone was young.”

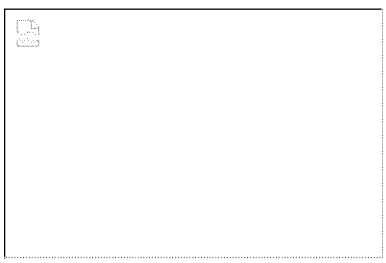
And everyone lived large at the flamboyant resort, conceived from its outset to evoke a modern Versailles. “It was the place for entertainment, for glamour — an icon even among the locals,” said Cathy Leff, the director of the Wolfsonian museum of design here. “Even now if one asks, ‘Within the city of Miami Beach, what is the most important landmark in the popular imagination?’ it would be the Fontainebleau.”



Barbara P. Fernandez for The New York Times, top; Sam Shere/Hulton Archive/Getty Images

THEN AND NOW The new lobby of the Fontainebleau, top, echoes highlights of the original, bottom, like the bow tie floor pattern and the striated columns.

Enlarge This Image



20th Century Fox/Everett Collection

Frank Sinatra and Jill St. John visited in the 1967 film “Tony Rome.”

Enlarge This Image

Fontainebleau Resorts, LLC

A rendering of one of the V.I.P. cabanas.

Can an icon of the past be restored to its former glory? New owners and architects of the Fontainebleau have invested $1 billion to buy and restore it in the conviction that it can. Its original fusion of Modernist rigor and Hollywood cheek, dreamed up by the maverick architect Morris Lapidus, was derided as Bronx baroque, until the singular style of Miami Beach was rediscovered by the Ian Schrager generation.

“In its day in the ’50s and ’60s, the Fontainebleau was state of the art in glamour,” said Jeffrey Beers, the New York architect responsible for an extensive update of the interior. “We would like to restore that in spirit.”

When the refurbished resort is officially unveiled on Nov. 14 with a series of parties and a taping for television of a Victoria’s Secret fashion show — perfect! — visitors will be able to judge for themselves if the mission succeeded. Even recently, as the hotel was still a construction site, it was clear that the old duchess had flounced out her skirts.

“How many places like this can you go in America that are not in the desert?” said Jeffrey Soffer, executive chairman and majority partner of Fontainebleau Resorts, which is building a Fontainebleau in Las Vegas. Indeed, as he strolled the raised oceanfront walkway that overlooks the property, it was obvious the resort had much in common with over-the-top hotels on the Strip.

Visible from the walkway is a pool complex fanning out across the lawns, and a new 40,000-square-foot glass-walled spa, its steam rooms and reflecting pools worthy of the emperor Hadrian. Crescent-shaped rows of cabanas edge the pools and echo the undulating outlines of the Chateau, the hotel’s original building.

Several towers, two of them new, flank the Chateau, for a combined 1,500 guest rooms, twice the number of the Fontainebleau’s largest competitor, Loews in South Beach. There are also shops, 11 restaurants and lounges, and about 200,000 square feet of meeting and convention space — all sprawling over 22 acres.

The three-year renovation was conceived, in part, to lure back fashionable crowds, which have drifted down to South Beach.

With renovated rooms from $399 and suites from $509, the Fontainebleau is reopening at a challenging time for tourism. Hotel occupancy rates in Miami-Dade County were down by 6 percent in September from a year earlier, and room revenues fell by 4 percent, said John Lancet, a senior executive in Miami for HVS, a national hotel consulting company.

But Mr. Lancet viewed the Fontainebleau development as only mildly risky. “It is my impression that the owners went through adequate planning so that the risk could be mitigated,” he said.

THE hotel has some $30 million in bookings through early next year, said Howard C. Karawan, the chief operating officer of Fontainebleau Resorts, who was brought in by the new owners to oversee renovations and operations for the company.

Rumors are widespread that the $500 million face-lift was made in anticipation that the city would legalize casino gambling. The developers deny this, and gambling has yet to win acceptance with local lawmakers.

At the hub of the resort is the Chateau’s 45,000-square-foot lobby, an elaboration on the original free-form elliptical shape completed by Lapidus in 1954.

Its original curvaceous outlines were accentuated by three enormous chandeliers, striated Greek-style columns, swirling carpets and a mural of a Piranesi print. The lobby’s famous focal point was a “staircase to nowhere,” which actually led from a discreet cloakroom, where ladies could shed their wraps before descending divalike down the white marble steps.

The new lobby, like its predecessor, is a chambered nautilus, all undulating walls and recesses. Mr. Beers stripped away ’70s-era carpeting to expose the original marble floor with its signature bow tie design. He covered the wall at the staircase in gold tile and added a light installation by the artist James Turrell and a lounge with a blue reflective floor. The staircase to nowhere is back, the jewel in a set piece expected to draw crowds who want to see and be seen.

And perhaps to retrace the footsteps of previous guests. Those who stayed at the hotel in Miami Beach’s golden age recall a resort that Lapidus, who died in 2001 at 98, had envisioned as a laboratory. It was a place, he wrote, “where I could enlarge upon all the theories I had been developing about human nature and the emotional hunger that the average man had for visual excitement.”

At bars and supper clubs — the Gigi Room, the Poodle Lounge — “women would sit with their little fur stoles and white gloves on to eat,” recalled Deborah Desilets, a Miami architect and former associate of Lapidus. Sheathed in slinky gowns, “they would stop at the mezzanine, put on their jewelry and wave at their husbands in the lobby below,” she said.

Michelle Oka Doner, an artist and a frequent guest as a girl — her father, Kenneth Oka, was mayor of Miami Beach in the late ’50s and early ’60s — remembers the resort, where she had a prom and her wedding, “as my stage and my launching pad.”

The Fontainebleau was a decadent paradise of “flashy diamonds, illicit sex and overflowing ice cream sodas,” she said. To get to her family’s cabana, “you had to walk through the downstairs shops and past a dance studio where they had all these gorgeous guys giving cha-cha lessons to all these overdressed matrons from

Scarsdale.

“People came for the half-naked girls and the revues,” she said. And, of course, for trysts. “I knew something illicit was going on, but I couldn’t put my finger on what it was.”

The lobby was a hub for celebrity spotting, the hotel itself a backdrop against which the Rat Pack played poker and James Bond sprang from the high dive in “Goldfinger.”

“The floor was like a mirror, so shiny you could see yourself,” said Levi Forte, a bellman at the Fontainebleau since the ’60s. “Danny Thomas couldn’t keep his eyes off that floor. He’d sit there and comb his hair and ask, ‘Levi, how do I look?’ ”

Mel Dick, who moved to Miami from Brooklyn in the ’60s, visited on his honeymoon. He recalled being drawn to a sign outside the hotel barbershop that beckoned, “Come and have your shoes shined by the former lightweight champion of the world.” It was Sidney Walker, known as Beau Jack, recalled Mr. Dick, a wine company executive. “I sat down in the seat and I gave him five dollars. I told him: ‘I don’t want you to shine my shoes. I just want to look at you.’ ”

Mrs. Rubinson was just as enthralled by her frequent star sightings. “How many times driving up to the Fontainebleau I would see Frank Sinatra walking up the drive with a glass in his hand,” she said.

“We had a more glamorous lifestyle in those days,” she added wistfully. “But then, of course, things changed.”

In succeeding decades the resort lost its sparkle. Like other supersize hotels lining Collins Avenue north of 44th Street, including the neighboring Eden Roc, another shiny Lapidus edifice, it became as dated as Grandma’s minaudière.

Fast forward to the current renovation. “We kept asking ourselves, ‘What would Morris do?’ ” Mr. Karawan said.

John Nichols, a Miami architect responsible for the adjacent Fontainebleau residential towers, the second of which has just been completed, was hired to gut and redesign the hotel. He preserved Lapidus embellishments like the perforated “Swiss cheese” outer walls. “We had to get down into a very high level of detail,” Mr. Nichols said. “You don’t just go in there and take off the eyebrows.”

Ms. Oka Doner admires the renovation, to a point. “The property is kind of post-postmodern,” she said. “Morris Lapidus had real passion,” but in its current incarnation, “irony has trumped passion.”

But Ms. Desilets, the former Lapidus associate, who visited the site last month, was over the moon. “They used incredible engineering to laser trace what was there and rebuilt it with accuracy,” she said. “It’s going to be like a Ravenna mosaic. It’s a wow type of extravagance.”

The exuberant aesthetic of the original has been resurrected in three ballrooms, lavish restaurants and five swimming and reflecting pools.

The pool cabanas have wraparound sofas and flat-panel televisions. Perched on the property’s topmost tier is a V.I.P. pool deck with six additional teak cabanas, a bar and a D.J. booth.

Mr. Forte, the bellman, recently viewed the improvements. “The place is so pretty, the first time I saw it I thought I was in the wrong hotel,” he said. “I said to my wife, ‘Just take a look at what money can do.’ ”

CIVIL COVER SHEET

Clark County, Nevada

Case No. A-11-637835-B

(Assigned by Clerk's Office)

XI

I. Party Information

Plaintiff(s) (name/address/phone): Brigade Leveraged Capital Structures Fund, Ltd., et al.	Defendant(s) (name/address/phone): Fontainebleau Resorts, LLC, et al.
Attorney (name/address/phone): Randolph Law Firm, P.C. Taylor L. Randolph, Esq., 2945 Village Centre Circle, Suite 100, Las Vegas, NV 89134 702-877-1313	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence

- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** (also check applicable civil case box)
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☒ Other Business Court Matters

3/25/11

Date

Signature of initiating party or representative

COMP
TAYLOR L. RANDOLPH
Bar No. 10194
RANDOLPH LAW FIRM, P.C.
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Las Vegas, Nevada 89134
Tel. (702) 233-5597
tr@randolphlawfirm.com

Attorney for Plaintiffs

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

BRIGADE LEVERAGED CAPITAL STRUCTURES FUND, LTD.; BATTALION CLO 2007-I LTD.; CANPARTNERS INVESTMENTS IV, LLC; CANYON SPECIAL OPPORTUNITIES MASTER FUND (CAYMAN), LTD.; CASPIAN CORPORATE LOAN FUND, LLC; CASPIAN CAPITAL PARTNERS, L.P.; CASPIAN SELECT CREDIT MASTER FUND, LTD.; MARINER LDC; CASPIAN ALPHA LONG CREDIT FUND, L.P.; CASPIAN SOLITUDE MASTER FUND, L.P.; OLYMPIC CLO I LTD.; SHASTA CLO I LTD.; WHITNEY CLO I LTD.; SAN GABRIEL CLO I LTD.; SIERRA CLO II LTD.; ING PRIME RATE TRUST; ING SENIOR INCOME FUND; ING INTERNATIONAL (II) - SENIOR LOANS; ING INVESTMENT MANAGEMENT CLO I, LTD.; ING INVESTMENT MANAGEMENT CLO II, LTD.; ING INVESTMENT MANAGEMENT CLO III, LTD.; ING INVESTMENT MANAGEMENT CLO IV, LTD.; ING INVESTMENT MANAGEMENT CLO V, LTD.; PHOENIX CLO I, LTD.; PHOENIX CLO II, LTD.; PHOENIX CLO III, LTD.; VENTURE II CDO 2002 LIMITED; VENTURE III CDO LIMITED; VENTURE IV CDO LIMITED; VENTURE V CDO LIMITED; VENTURE VI CDO LIMITED; VENTURE VII CDO LIMITED; VENTURE VIII CDO LIMITED; VENTURE IX CDO LIMITED; VISTA LEVERAGED INCOME FUND; VEER CASH FLOW, CLO, LIMITED; MONARCH MASTER FUNDING LTD.; NORMANDY HILL MASTER FUND, L.P.; GENESIS CLO 2007-1 LTD.; SCOGGIN CAPITAL MANAGEMENT II

Case No. A-11-637835-B

Dept, No. XI

COMPLAINT AND JURY DEMAND FOR FRAUD, BREACH OF FIDUCIARY DUTY, NEGLIGENCE AND CONSPIRACY

BUSINESS COURT REQUESTED

LLC; SCOGGIN INTERNATIONAL FUND LTD; SCOGGIN WORLDWIDE FUND LTD; SPCP GROUP, LLC; SOLA LTD; SOLUS CORE OPPORTUNITIES MASTER FUND LTD.; STONE LION PORTFOLIO L.P.; VENOR CAPITAL MASTER FUND, LTD.,

Plaintiffs,

vs.

FONTAINEBLEAU RESORTS, LLC; TURNBERRY LTD.; TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P.; TURNBERRY WEST CONSTRUCTION, INC.; JEFFREY SOFFER; ANDREW KOTITE; RAY PARELLO; BRUCE WEINER; GLENN SCHAEFFER; JAMES FREEMAN; DEVEN KUMAR; HOWARD KARAWAN; WHITNEY THIER; UNION LABOR LIFE INSURANCE COMPANY; CROWN LIMITED; CROWN SERVICES (US) LLC; JAMES PACKER; and DOES 1 through 20,

Defendants.

COMPLAINT FOR MISREPRESENTATION, BREACH OF FIDUCIARY DUTY, NEGLIGENCE AND CONSPIRACY

Plaintiffs, by and through their undersigned counsel, allege upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, as follows:

I. INTRODUCTION

1. This action seeks to recover for the misrepresentations, negligence and breaches of fiduciary duties committed by Defendants on Plaintiffs and their predecessors-in-interest ("Plaintiffs").

2. Plaintiffs are lenders under a June 6, 2007 Credit Agreement (the "Credit Agreement") for the development and construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada (the "Project"). The Project was to include a sixty-three story glass skyscraper featuring over 3,800 guest rooms, suites and condominium units; a 100-foot high, three level podium complex housing casino/gaming areas, restaurants and bars, a spa and salon, a live entertainment theater and rooftop pools; a 353,000 square-foot convention center; a high-end retail space including shops and restaurants; and a nightclub.

3. The borrowers under the Credit Agreement were Fontainebleau Las Vegas, LLC ("FBLV") and Fontainebleau Las Vegas II, LLC (the "Borrowers"). The Borrowers were wholly-owned indirect subsidiaries of Defendant Fontainebleau Resorts, LLC ("FBR"), a company founded and substantially owned by Defendant Jeffrey Soffer to develop and operate the Fontainebleau hotels in Miami and Las Vegas. Soffer, FBR and the other individual Defendants who were officers, directors and/or managers of FBR and FBLV (collectively, the "FBR Defendants") directed and controlled the activities of the Borrowers.

4. The general contractor responsible for the construction of the Project was Defendant Turnberry West Construction ("TWC"), an affiliate of Defendant Turnberry Residential Limited Partners, L.P. ("TRLP"). TWC and TRLP were also founded and substantially owned by Soffer and controlled by Soffer, the FBR Defendants and the officers and the individual Defendants who were officers, directors and/or managers of TWC and TRLP (the "Turnberry Defendants").

5. Beginning in March 2007, Soffer and the FBR Defendants solicited Plaintiffs to

participate in the Credit Agreement. In various oral and written communications, Soffer and the FBR Defendants repeatedly misrepresented the status of the Project and its anticipated costs. In particular, Defendants represented that the Project budget provided to the lenders, including Plaintiffs, accurately represented all of the anticipated costs to complete the Project, that the construction drawings for the Project were substantially complete, and that Defendants had committed construction contracts in hand for the majority of the work to complete the Project. In fact, none of this was true. As Defendants knew but failed to disclose, their own internal budget for the Project was nearly $100 million more than what was reflected in the budgets provided to the Plaintiffs, the construction drawings were not substantially complete (indeed were never complete), and that the "committed contracts" provided to the Plaintiffs substantially understated the known costs for the work. Had Plaintiffs known the true facts, they would not have agreed to participate in the Credit Agreement.

6. Defendants' breaches of their duties to Plaintiffs continued after the Credit Agreement closed. Defendants had a duty to exercise reasonable care to ensure that the Project was managed competently, that it accurately reported the financial condition and progress of construction and that the Project was completed in accordance with the budgets and cost reports provided to Plaintiffs. Defendants did not do so. Instead, Defendants failed to oversee the Project and failed to ensure that lenders received accurate information about its financial condition.

7. By 2008, Defendants knew or should have known that the actual cost to complete the Project had escalated by hundreds of millions of dollars, well in excess of the financing available to complete the Project. As Defendants knew, these cost overruns caused numerous conditions precedent to disbursement of funds under the Credit Agreement to fail. Rather than apprise the lenders of these cost overruns and thereby eliminate future funding, the FBR and Turnberry Defendants and others, including defendants James Packer and his companies Crown Limited and Crown Services (US) LLC (the "Packer Defendants"), conspired and agreed to keep this information from the lenders. They accomplished this, in part, through false certifications to the lenders and an elaborate set of double books that hid the true progress, scope and cost of the Project from the lenders.

8. When Lehman Brothers Holdings, Inc. ("Lehman"), the biggest lender under the Retail Facility, filed for bankruptcy in September 2008, the FBR and Turnberry Defendants further conspired with each other and with Union Labor Life Insurance Company ("ULLICO") to have ULLICO front Defendants' payment of Lehman's portion of draw requests under the Retail Facility in order to create the false impression that an existing, institutional lender had or would be willing to step in to take over Lehman's commitment. As Defendants knew, such payments by Defendants caused additional conditions precedent to disbursement of funds under the Credit Agreement to fail. Again, had the true facts been disclosed to the lenders, financing under the Credit Agreement would have come to a halt.

9. Defendants committed these acts and engaged in these conspiracies at a time when the Borrowers were insolvent and thus when their controlling entities, officers and directors owed fiduciary duties to the creditors of the Borrowers, including Plaintiffs. In reliance on Defendants' misrepresentations, Plaintiffs funded hundreds of millions of dollars of Loans that they would not have funded, and would not have been required to fund, had they known the true facts.

10. In early 2009, Defendants' scheme began to unravel. In April 2009, certain of the lenders declared a default under the Credit Agreement, and the Borrowers filed for bankruptcy protection shortly thereafter.

11. Plaintiffs bring this action to recover the damages they have incurred as a result of Defendants' misrepresentations and breaches of fiduciary duties.

II. JURISDICTION AND VENUE

12. Jurisdiction is proper in this court because it is a case that is excluded by law from the original jurisdiction of justices' courts. Nev. Const. Art. 6, § 6. The amount in controversy exceeds $10,000, the jurisdictional threshold for District Court. Nev. Rev. Stat. Ann. § 4.370.

13. Venue is proper because at least one of the defendants resides in this county. Nev. Rev. Stat. Ann. § 13.040.

III. PARTIES

A. Plaintiffs

14. Unless otherwise noted, the term "Plaintiff" and "Plaintiffs" shall include Plaintiffs'

predecessors in interest.

15. Plaintiff Brigade Leveraged Capital Structures Fund, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

16. Plaintiff Battalion CLO 2007-I Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

17. Plaintiff Canpartners Investments IV, LLC is a limited liability company formed under the laws of California.

18. Plaintiff Canyon Special Opportunities Master Fund (Cayman), Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

19. Plaintiff Caspian Corporate Loan Fund, LLC is a limited liability company formed under the laws of Delaware.

20. Plaintiff Caspian Capital Partners, L.P. is a limited partnership formed under the laws of Delaware.

21. Plaintiff Caspian Select Credit Master Fund, Ltd. is a company with limited liability formed under the laws of the Cayman Islands.

22. Plaintiff Mariner LDC is company with limited duration formed under the laws of the Cayman Islands.

23. Plaintiff Caspian Alpha Long Credit Fund, L.P. is a limited partnership formed under the laws of Delaware.

24. Plaintiff Caspian Solitude Master Fund, L.P. is a limited partnership formed under the laws of Delaware.

25. Plaintiff Olympic CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

26. Plaintiff Shasta CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

27. Plaintiff Whitney CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

28. Plaintiff San Gabriel CLO I Ltd. is a company with limited liability incorporated

under the laws of the Cayman Islands.

29. Plaintiff Sierra CLO II Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

30. Plaintiff ING Prime Rate Trust is a business trust formed under the laws of Massachusetts.

31. Plaintiff ING Senior Income Fund is a statutory trust formed under the laws of Delaware.

32. Plaintiff ING International (II) - Senior Loans is a SICAV (Société d'Investissement à Capital Variable) formed under the laws of Luxembourg.

33. Plaintiff ING Investment Management CLO I, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

34. Plaintiff ING Investment Management CLO II, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

35. Plaintiff ING Investment Management CLO III, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

36. Plaintiff ING Investment Management CLO IV, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

37. Plaintiff ING Investment Management CLO V, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

38. Plaintiff Phoenix CLO I, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

39. Plaintiff Phoenix CLO II, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

40. Plaintiff Phoenix CLO III, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

41. Plaintiff Venture II CDO 2002 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

42. Plaintiff Venture III CDO Limited is a company with limited liability incorporated

under the laws of the Cayman Islands.

43. Plaintiff Venture IV CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

44. Plaintiff Venture V CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

45. Plaintiff Venture VI CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

46. Plaintiff Venture VII CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

47. Plaintiff Venture VIII CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

48. Plaintiff Venture IX CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

49. Plaintiff Vista Leveraged Income Fund is a company with limited liability incorporated under the laws of the Cayman Islands.

50. Plaintiff Veer Cash Flow, CLO, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

51. Plaintiff Monarch Master Funding Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

52. Plaintiff Normandy Hill Master Fund, L.P. is an exempted limited partnership formed under the laws of the Cayman Islands.

53. Plaintiff Genesis CLO 2007-1 Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

54. Plaintiff Scoggin Capital Management II LLC is a limited liability company formed under the laws of Delaware.

55. Plaintiff Scoggin International Fund Ltd is a limited liability company formed under the laws of the Cayman Islands.

56. Plaintiff Scoggin Worldwide Fund Ltd is a limited liability company formed under the

laws of the Cayman Islands.

57. Plaintiff SPCP Group, LLC is a limited liability company formed under the laws of Delaware.

58. Plaintiff Sola Ltd is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

59. Plaintiff Solus Core Opportunities Master Fund Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

60. Stone Lion Portfolio L.P. is a limited partnership formed under the laws of the Cayman Islands.

61. Plaintiff Venor Capital Master Fund, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

B. Defendants

62. Defendant Fontainebleau Resorts, LLC ("FBR") is a Delaware corporation with its principal place of business in Florida.

63. Defendant Turnberry Residential Limited Partner, L.P. ("TRLP") is a Delaware limited partnership.

64. Defendant Turnberry West Construction, Inc. ("TWC") is a Nevada corporation.

65. Defendant Turnberry Ltd. is a Florida limited partnership.

66. Defendant Jeffrey Soffer is a citizen of the State of Florida. Soffer was, at all relevant times, the Chairman and CEO of FBR and a member of its Board of Managers. Soffer is also one of two members of the Board of Directors of Fontainebleau Las Vegas Corp. Soffer owns or controls the Turnberry companies. He was, at all relevant times, President, Treasurer, Secretary and Director of TWC. Soffer is the manager of the general partner of both TRLP and Turnberry Ltd.

67. Defendant Albert Kotite is a citizen of the State of Florida. Kotite is the Executive Director of FBR and a member of its Board of Managers. Kotite is also one of two members of the Board of Directors of Fontainebleau Las Vegas Corp.

68. Defendant Ray Parello is a citizen of the State of Florida. Parello is a member of the Board of Managers of FBR. Parello currently serves as Director of Finance for Turnberry

Associates.

69. Defendant Bruce Weiner is a citizen of the State of Florida. Weiner is a member of the Board of Managers of FBR.

70. Defendant Glenn Schaeffer is a citizen of the State of Nevada. Schaeffer was a member of its Board of Managers of FBR until May 2009.

71. Defendant James Freeman is a citizen of the State of Nevada. Freeman was the Senior Vice President and Chief Financial Officer or FBR.

72. Defendant Deven Kumar is a citizen of Nevada. Kumar was the Senior Vice President of Development and Finance at FBR.

73. Defendant Howard Karawan is a citizen of the State of Nevada. Karawan was the Chief Operating Officer of FBR and was later Chief Restructuring Office of FBLV.

74. Defendant Whitney Thier is a citizen of the State of Nevada. Thier was the general counsel of FBR and later counsel to FBLV.

75. Defendants FBR, Soffer, Kotite, Parello, Weiner, Schaeffer, Freeman, Kumar, Karawan and Thier are collectively referred to as the FBR Defendants.

76. Defendant Union Labor Life Insurance Company ("ULLICO") is a Maryland Corporation, headquartered in Washington, DC.

77. Defendant Crown Limited ("Crown") is an Australian company.

78. Defendant Crown Services (US) LLC ("Crown Services") is a limited liability company formed under the laws of Nevada. Defendant Crown controls Crown Services.

79. Defendant James Packer ("Packer") is a citizen of Australia. Packer is the Executive Chairman of Crown and owns a controlling interest in Crown. Defendants Crown, Crown Services and Packer are collectively referred to as the "Packer Defendants".

80. Each of the Defendants has directly or indirectly conducted substantial, continuous, and systematic business in this district, and/or has caused or directed acts to occur in this district out of which Plaintiffs' claims arise. The individual defendants personally participated in the unlawful acts and misconduct asserted herein.

81. Plaintiffs are ignorant of the true names and capacities of Doe Defendants 1 through

25, inclusive, and therefore sue such defendants by such fictitious names. The Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and the Plaintiffs' harm and damages as herein alleged was proximately caused by such defendants. Each of the Doe Defendants is a joint venturer, co-conspirator, and/or participant in the violations and unlawful and tortious actions alleged herein.

82. Each of the Defendants acted as the agent, co-conspirator and co-venture partner and/or alter ego of each other Defendant in the furtherance of the joint venture, and each shared in the control and management of the conspiracy alleged herein and in furtherance of the joint venture in a common course of conduct alleged herein. Each Defendant was a direct, necessary and substantial participant in the common enterprise and common course of conduct complained of herein and at all relevant times knew (or was deliberately reckless in not knowing) of its overall contribution to, and furtherance of, their illicit common enterprise, and acted within the scope of its agency as a co-venturer. Each Defendant mutually agreed with every other Defendant on an objective, purpose and course of action to accomplish the wrongful conduct set forth herein, with the intent of injuring Plaintiffs, or with reckless disregard toward Plaintiffs, knowing that such injuries would certainly result.

IV. THE FONTAINEBLEAU PROJECT AND ENTITIES

83. Defendant Soffer is the son of Donald Soffer, a prominent real estate developer who developed, among other projects, the City of Aventura, Florida. In 2005, Soffer and his partners purchased the iconic Fontainebleau Miami Hotel. Soffer conceived of The Fontainebleau Resort and Casino in Las Vegas, Nevada as the first step in the development of upscale Fontainebleau resorts throughout the world.

84. The Project was designed to be a destination casino-resort on the north end of the Las Vegas Strip, situated on approximately 24.4 acres. It was to include a 63-story glass skyscraper featuring over 3,800 guest rooms, suites and condominium units; a 100-foot high three-level podium complex housing casino/gaming areas, restaurants and bars, a spa and salon, a live entertainment theater and rooftop pools; a parking garage with space for more than 6,000 vehicles; and a 353,000

square-foot convention center. The Project also was to include approximately 286,500 square-feet of retail space, including retail shops, restaurants, and a nightclub.

85. Soffer and Defendant Schaeffer founded FBR in 2005 to develop and operate the Fontainebleau hotels in Miami and Las Vegas. FBR was controlled by a Board of Managers consisting of Defendants Soffer, Schaeffer, Kotite, Parello and Weiner (the "FBR Board of Managers"). The officers of FBR included Defendants Soffer, Freeman, Karawan, Kumar and Thier (the "FBR Ds & Os" and, collectively with FBR and the FBR Board of Managers, the "FBR Defendants").

86. FBR created several subsidiaries to develop the Project, including the Borrowers, Fontainebleau Las Vegas Capital Corp. and Fontainebleau Las Vegas Holdings, LLC (the "Project Entities"). Each of the Project Entities was wholly owned, directly or indirectly, by FBR and largely controlled by the FBR Board of Managers. The board of directors of Fontainebleau Las Vegas Capital Corp. consisted of Soffer and Kotite.

87. The general contractor for the Project was Defendant Turnberry West Construction ("TWC"). TWC (collectively with TRLP and Turnberry Ltd., the "Turnberry Defendants") is an affiliate of Defendants TRLP and Turnberry Ltd., and was created for the purpose of overseeing the construction of the Project.

88. Through his position on the Board of Managers and in the Turnberry Defendants, as well as his ownership interests in the Fontainebleau and Turnberry entities, Soffer personally exercised substantial control over the Project, including decisions regarding Project development, financing and construction.

V. THE CREDIT AGREEMENT FACILITY

89. The Project costs were funded primarily from cash provided by the developers of the Project and the proceeds of three facilities: a $1.85 billion bank financing (the "Credit Agreement Facility"), a $675 million 2nd Mortgage Note offering, and a $315 million facility to finance construction of the retail portion of the Project (the "Retail Facility"). Each of these facilities closed in June 2007.

90. The Credit Agreement included the following commitments: a $700 million initial

term loan facility (the "Initial Term Loan Facility"); a $350 million delay draw term facility (the "Delay Draw Facility," and together with the Initial Term Loan Facility, the "Term Loan Facility"); and an $800 million revolving loan facility. Plaintiffs are each lenders under the Term Loan Facility and are assignees (direct or indirect) of the original Term Lender, Bank of America, N.A. The Initial Term Loan Facility was funded upon the closing of the Credit Agreement in June 2007.

91. The Credit Agreement and other loan documents created a two-step mechanism for the Borrowers to obtain access to loan proceeds for the payment of "Project Costs" to construct the Project. The Borrowers first were required to submit to the Administrative Agent a Notice of Borrowing specifying the requested loans and designated borrowing date. A proper Notice of Borrowing obligated the lenders to transfer the requested funds into a Bank Proceeds Account. In order to access the funds in the Bank Proceeds Account to pay for the costs of the Project, the Borrowers were required to submit an Advance Request to the Disbursement Agent pursuant to the terms of a Master Disbursement Agreement, which was executed concurrently with the Credit Agreement.

92. Each Advance Request was required to contain, among other things, certifications by the Project Entities, TWC, and others attesting to the accuracy of various information and representations, including: that there was no Default or Event of Default under any of the Financing Agreements; that the Remaining Cost Report set forth all "reasonably anticipated Project Costs required to" complete the Project; that the In Balance Test was satisfied, the critical calculation to determine whether the Borrowers' available resources exceeded the remaining costs to complete the Project, which was the primary security for the loans; that there had been no development or event since the Closing Date that could reasonably be expected to have a Material Adverse Effect on the Project; and that each of the Retail Lenders, including Lehman, had made all advances required of them under the Retail Facility.

VI. DEFENDANTS' PRE-CLOSING MISREPRESENTATIONS AND OMISSIONS

93. In March 2007, Soffer and the other FBR Defendants approached Plaintiffs and their predecessor lenders to secure their participation in the Credit Agreement Facility. In connection with these efforts, Defendants repeatedly represented that (i) the Project budget provided to the lenders

was an accurate, good faith and conservative estimate of the amounts needed to complete the Project, including all Project costs, and that the budget allowed for a financial cushion sufficient to complete the Project even if debt and equity sources were insufficient; (ii) the Project Entities had "committed construction contracts" for a large percentage of the work for the Project; and (iii) the construction drawings for the Project, the documents that would define every aspect of the construction, were substantially complete. Without the representations and assurances provided by the FBR Defendants, Plaintiffs and their predecessor lenders never would have agreed to participate in the Credit Agreement Facility.

94. Defendants knew or should have known that these representations were not true. The FBR Defendants' made these representations both orally and in writing, including in the following written materials provided to prospective lenders, including Plaintiffs (collectively, the "Offering Materials"):

- March 2007 Offering Memorandum. FBR and its arranging banks prepared and provided to potential lenders, including Plaintiffs, a Confidential Offering Memorandum outlining the material facts concerning the Project and related financings. The Offering Memorandum included a letter from FBR, signed by its Senior Vice President and Chief Financial Officer, Jim Freeman, stating in pertinent part that "the information contained in the Confidential Offering Memorandum does not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made as part of the overall transaction, not materially misleading."
- March 6, 2007 Lender Presentation. On March 6, 2007, FBR and its arranging banks held a Prospective Lenders Meeting at the Intercontinental The Barclay Hotel in New York. The meeting was attended by, among others, Defendants Soffer, Schaeffer, Kotite, Freeman and Weiner. During that meeting, Defendants described the Project and the proposed financing to prospective lenders and provided a written Lender Presentation to meeting participants.

95. Defendants knew or should have known that these representations were not true.

A. Defendants Misrepresented that the Budget for the Project Was Sufficient to Complete Construction

96. In the Offering Materials, the FBR Defendants presented a budget for the hard and soft costs to construct the Project of $1.829 billion (the "Construction Budget"). Defendant Freeman presented the Construction Budget at the Lender Meeting. FBR and Freeman represented that the Construction Budget was sufficient to cover all anticipated construction costs, excluding the retail components. FBR explained in the Offering Memorandum that the Construction Budget was the product of "a detailed budgeting and design process" and represented that it was "conservative," with substantial allowance for contingencies.

97. At the closing of the Credit Agreement Facility, the FBR Defendants caused FBLV to deliver budgets, including the Construction Budget, to Plaintiffs and the other lenders. FBLV, as directed by Defendants, repeatedly attested to the accuracy of these Budgets, including in the Disbursement Agreement executed by FBLV, among others. Thus, Recital C of the Disbursement Agreement states that the "Construction Budget includes the costs of all elements of the Project," with certain limited enumerated exceptions. The Disbursement Agreement further provides:

> Each of the Budgets delivered on the Closing Date:
>
> (a) are, to the Project Entities' [including FBLV's] knowledge, as of the date of their delivery, based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein;
>
> (b) are, as of the date of their delivery, consistent with the provisions of the Operative Documents in all material respects;
>
> (c) set forth (for each Line Item Category, and in total), as of the date of their delivery, the amount of all reasonably anticipated Project Costs required to achieve Final Completion; and
>
> (d) fairly represent, as of the date of their delivery, the Project Entities expectations as to the matters covered thereby.

Disbursement Agreement, § 4.17.1.

98. The FBR Defendants also caused FBLV to deliver at closing a Remaining Cost Report based upon the Construction Budget. The Remaining Cost Report, as defined in the Credit Agreement and Disbursement Agreement, set forth, line by line, the anticipated budgets for the construction of the Project. The Remaining Costs set forth in this Report provide a key input into the

"In Balance Test."

99. The In Balance Test measures whether the Available Funds for the project exceed the Remaining Costs. In other words, the In Balance Test establishes whether there are sufficient funds, from cash on hand and funds available from the various loan facilities, to complete the Project. The higher the anticipated costs to complete, as reflected in the Remaining Cost Report, the more cash or financing would be needed to ensure that the In Balance Test did not fail. Thus, the Remaining Cost Report was a crucial document that allowed lenders, including the Plaintiffs, to assess the financial viability and progress of the Project. A failure of the In Balance Test meant that the Lenders' primary source of security was impaired. Accordingly, satisfying the In Balance Test was a condition precedent to Closing and to any Advances under the Disbursement Agreement.

100. At Closing and at the direction of the FBR Defendants, FBLV attested to the accuracy of the Remaining Cost Report. Among other things, FBLV represented that:

- the budget line items included "for each Line Item Category, an amount no less than the total anticipated Project Costs from the commencement through the completion of the work contemplated by such Line Item Category, as determined by the Project Entities";
- the other line items included "the associated anticipated expenses though Final Completion as determined by the Project Entities";
- the listing of costs previously incurred "is true and accurate in all material respects"; and
- the Construction Budget portion of the Remaining Cost Report "sets forth, as of the date of their delivery, and based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, the amount of all reasonably anticipated Project Costs required to achieve Final Completion."

Disbursement Agreement, § 4.17.2.

101. Further, upon Closing, FBLV, at the direction of the FBR Defendants, submitted the Project Entity Closing Certificate, which included similar representations, including:

- all of the representations FBLV had made in the financing documents, including the

Credit Agreement and the Disbursement Agreement, were true;

- "The Project Entities have made available to the Construction Consultant true, correct and complete copies of" documents including the Budgets and Plans and that "[s]uch documents contain all material information (and do not contain any misstatements of material information) pertaining to the Project reasonably necessary for the Construction Consultant" to evaluate the project and prepare its own closing certificate;
- the Remaining Cost Report and other cost reports submitted by FBLV on Closing "accurately reflect the status of the Project as of that date"; and
- "the In Balance Test is satisfied."

102. Soffer and the other FBR Defendants were responsible for ensuring that these representations were accurate and that there had been no change in the economic feasibility of constructing and/or operating the Project, or in the financial condition, business or property of the Project entities, any of which could reasonably be expected to have a material adverse effect on the Project. They did not do so.

103. The FBR Defendants knew or should have known, but failed to disclose to the Lenders, that the representations on Closing were false. Internal cost estimates available to the FBR Defendants, including those set forth in a report FBR commissioned from Cummins LLC in late 2006, showed that the actual costs needed to construct the Project were at least $100 million higher than the budgets provided to the Lenders. The FBR Defendants internally referred to the budget provided to the Lenders as the "Bank Budget" and the actual, higher budget that they hid from the Lenders as "Jeff's Budget," "Soffer's Budget," or the "Real Budget."

104. Soffer told the other FBR Defendants and the Turnberry Defendants that he intended to raise additional equity at some point in the future to cover the anticipated $100 million shortfall. He said that he wanted to wait to do so, however, because he believed that it would be easier and less dilutive of his own equity to raise funds after the financing deal had closed and substantial construction on the Project had been completed.

105. Had the true costs of the Project been reflected in the Remaining Cost Report and the

In Balance Test, the Project would have been out of balance as of the Closing Date, and the Credit Facility would not have closed.

B. Defendants Misrepresented that the Construction Drawings for the Project Were Substantially Complete.

106. In the Offering Materials and at the Lender Meeting, Soffer and the other FBR Defendants also made specific representations about the status of the construction drawings for the Project. Construction drawings are architectural drawings that are used by the contractors to define the work to be done. The drawings typically include renderings of all aspects of the project, including mechanical, structural, electrical, and interior design elements. Construction drawings are used, among other things, to obtain permits and other approvals. Because they define what will actually be built, completed construction drawings is a critical step in the project budgeting and development process. Construction drawings allow contractors to understand exactly what they will be required to do and so ensure that the construction bids and contracts finalized on the basis of the drawings are accurate and complete, which in turn reduces the likelihood of additional, unanticipated costs. As Defendants knew, representing that the construction drawings were substantially complete would give prospective lenders like Plaintiffs further comfort that the Project was well planned and would stay on budget and on schedule.

107. The Offering Memorandum represented the construction drawings for the project as substantially complete:

> Construction Drawings ("CDs") at the Fontainebleau Las Vegas are substantially complete with 80% CDs for tower and garage/convention issued on February 1, 2007. 100% CDs for the tower are expected March 12, 2007. 100% CDs for garage/convention are expected April 4, 2007 and 80% CDs for the podium are expected in April/May 2007.

108. At the March 6, 2007 lender presentation, Soffer and his team again represented that the construction drawings were "substantially complete," with 80-100% of the drawings to be completed before closing. A "Transaction Update" issued April 18, 2007 confirmed that "Construction Drawings ("CDs")" were "substantially complete."

109. At the time of Closing, the FBR Defendants caused FBLV to make further representations regarding the progress and accuracy of construction drawings:

> The Plans and Specifications (a) are, to the Project Entities' knowledge, based on reasonable assumptions as to all legal and factual

> matters material thereto, (b) are, and except to the extent permitted under Sections 6.1 and 6.2 will be from time to time, consistent with the provisions of the Operative Documents in all material respects, (c) have been prepared in good faith with due care, and (d) fairly represent the Project Entities' expectation as to the matters covered thereby. The Final Plans and Specifications (i) have been prepared in good faith with due care, and (ii) are accurate in all material respects and fairly represent the Project Entities' expectation as to the matters covered thereby.

Disbursement Agreement, § 4.31.

110. Contrary to the repeated representations by the FBR Defendants, the construction drawings were not "substantially complete." As the FBR Defendants knew or should have known, delays in the design process prior to Closing caused significant delays in the preparation of completed construction drawings. At the time the Offering Memorandum was issued, less than 50% of the drawings for the podium portion of the Project were complete. Indeed, final construction drawings were not complete even as late as 2009.

111. Instead of acknowledging the delay in development of final construction drawings, the FBR Defendants directed the architect for the Project "to produce false sets of drawings to maintain the permit process" so that Defendants "could commence construction in order to meet the opening date of November 2009." According to the architects, Bergman, Walls and Associates, Ltd. ("BWA"): "Extensive and useless hours were spent by BWA to create these false documents. For more than 12 months BWA was updating and revising two separate and distinct sets of Construction Documents thus doubling our man-hours. These sets consisted of false permit documents and Construction Documents for the Contractor." The FBR Defendants knew or should have known, but failed to disclose to the Lenders that the construction drawings presented to the Lenders were not the actual construction drawings and that the actual construction drawings were not "substantially complete."

C. Defendants Misrepresented that they Had Substantial Committed Contracts for the Construction of the Project.

112. To provide further assurances that the Project would remain on budget and on schedule, Soffer and the other FBR Defendants represented that the Project would enter into "committed contracts" with subcontractors for large portions of the anticipated costs of the Project. The existence of committed contracts was important to prospective lenders because committed

contracts reduce the risk of cost overruns by locking in the cost for those elements.

113. The Offering Materials stated that the Borrowers would "enter into committed contracts totaling no less than 60% of hard costs prior to closing and 95% of hard costs and 50% of certain FF&E costs prior to the initial advance under the Credit Facilities." In the "Transaction Update" issued April 18, 2007, Defendants again reiterated the promise to enter into committed contracts "totaling no less than 60% of hard costs prior to closing and 95% of hard costs and 50% of certain FF&E costs prior to the initial advance."

114. The financing agreements repeated Defendants' representations regarding the committed contracts that the Borrower and its general contractor, Defendant TWC, had entered into. Upon closing, Defendants provided a schedule of the contracts that showed committed contracts totaling more than 60% of Total Hard Costs.

115. But as the FBR Defendants knew or should have known, but failed to disclose to the Lenders, there were not committed contracts in place that covered 60% of the hard costs of the Project, at the Closing Date or at any time prior.

116. For example, two of the largest contracts listed in the schedule of committed contracts included with the Closing documents were with W & W Steel. W & W Steel had two large subcontracts for steel for different parts of the Project, which, taken together, were worth $231 million. Prior to the Closing Date, however, FBLV and TWC knew or should have known that W & W Steel had made crucial miscalculations in the amount of steel needed for the Project, failing to include in their bid ten thousand tons of structural steel needed for construction. Adding the cost of that steel, which was a necessary component of the Project, raised the cost of the W & W Steel contracts by tens of millions of dollars. The FBR Defendants and the Turnberry Defendants had a duty to disclose this information to the lenders prior to Closing, but failed to do so.

VII. DEFENDANTS' POST-CLOSING MISREPRESENTATIONS AND OMISSIONS

A. Defendants' Scheme

117. After the Closing Date, the cost to complete the Project increased dramatically as a result of Defendants' unilateral and undisclosed decisions to upgrade and expand various aspects of the Project. By mid-2008, Soffer, Kumar and others at FBR and TWC calculated the costs required

to complete the construction of the Project at more than $300 million in excess of the Construction Budget provided to the Lenders.

118. The FBR Board of Managers was aware of the substantial cost overruns and, in November 2008, required Soffer to provide a "comfort letter" pursuant to which Soffer agreed (1) not to transfer or dispose of specified assets prior to the completion of the Project, including a yacht valued at $178 million, a Boeing 737 jet valued at $57 million and interests in various companies valued at $116 million, and (2) to invest, at the request of the Board of Managers, "in FBR or an affiliate thereof, an aggregate amount [up to $75 million], which investment shall be used solely to fund the costs of [the Project]."

119. As a result of the cost overruns, the anticipated cost to fund the Project significantly exceeded the funds available to pay these costs. Had these increases been disclosed to the Lenders, it would have revealed, among other things, that the In Balance Test could not be satisfied. This would have prevented Defendants from accessing any funds under the Credit Agreement and brought the Project to an immediate halt. Instead, those funds would have remained in the Bank Proceeds Account and ultimately been returned to the Plaintiffs and other Lenders who maintained a valid, perfected priority lien on those funds while they remained on deposit.

120. Defendants knew or should have known about the substantial cost overruns. Defendants kept the true cost of the Project from the Lenders through two sets of books: one for their own internal use that allowed them to keep track of the actual progress, scope and cost of the Project; and a second set for use with the Lenders that disclosed only the progress, scope and costs that would cause the Project to appear "in balance." In this way, the Defendants were able to secure continued funding under the Credit Agreement Facility while failing to inform the Lenders of the mounting cost overruns.

121. Defendants' scheme involved, first and foremost, the manipulation of change orders for the Project. Change orders are directions from a project owner or a general contractor to perform work that is different from and/or in addition to the original scope. In the normal course, change orders are formally approved and reflected in the project budget before the additional or revised work is begun, and certainly before it is completed.

122. Defendants were required to inform the lenders of all approved change orders. Accordingly, if Defendants formally approved the change orders required for the expanded Project, the lenders would discover the enormous cost increases, and Defendants' scheme would be revealed. Defendants knew or should have known, but failed to disclose to Plaintiffs, that there were hundreds of millions of dollars of change orders for work required to complete the Project that were not reflected in the various reports and certifications Defendants made to the lenders. Defendants "pocketed" these change orders, prevailing upon subcontractors to perform the additional work required to complete the Project before a formal change order was approved while, at the same time, delaying the change order approval process so as not to alert the lenders to the additional scope and costs.

123. Defendants failed to inform the Lenders of the actual scope and increased cost of the Project by keeping a duplicate set of books and entries, one for their own internal use to track the actual scope, progress and cost of the Project and another for presentation to the Lenders to secure advances from the Credit Agreement Facility:

- Change Order Logs. Defendants maintained two sets of change order logs. One set accurately tracked all change orders that Defendants had directed subcontractors to execute, regardless of whether the change orders had been put through the formal approval process (the "Actual Change Order Log"). The Actual Change Order Log was used by the Defendants to plan and monitor the progress of the construction of the Project. Defendants did not provide the Actual Change Order Log to the Lenders. Instead, they provided the Lenders a partial change order log that included only those change orders that would continue to misrepresent the Project to be in balance and within the Bank Budget (the "Bank Change Order Log").
- Anticipated Cost Reports. To track the costs required to complete the Project, Defendants maintained Anticipated Cost Reports ("ACRs"). As with the change order logs, Defendants kept two sets of ACRs. The Real ACRs reflected all of the costs Defendants knew would be required to complete the Project, including the "pocketed" change orders. The Bank ACRs consisted of a subset of the Real ACRs.

- Budgets. The Defendants' manipulation of the change orders and ACRs carried over into their calculation of the Project budgets. The Bank Budget, based on the Bank ACRs, reflected the original budget presented to the Lenders, as modified by formally approved and disclosed change orders. The Soffer Budget or Real Budget, showed all of the items included in the Bank Budget, plus all of the "pocketed" change orders and real anticipated costs reflected in the Real ACR.

124. Defendants tracked the status of the change orders, anticipated costs and budgets in detailed Microsoft Excel spreadsheets. The spreadsheets showed, column by column: (i) the Bank Budget, including changes to the budget that had been formally approved by the lenders; (ii) the additional changes to the Bank Budget contemplated in the Soffer Budget and reflecting the "pocketed" change orders; and (iii) the difference between the two budgets.

B. Defendants' Misrepresentations and Omissions

125. Each month, to obtain release of funds, the Credit Agreement and other loan documents required the Borrower to submit to Plaintiffs' agent, BofA, a "Draw Request," which included budgets, cost reports and various certifications. If the materials provided in the Draw Request showed that the applicable conditions precedent for the advance of funds were satisfied, BofA, the Disbursement Agent, could (assuming it did not have contrary or inconsistent information) release the requested funds to the Borrower. (Disbursement Agreement, § 2.4.6).

126. Beginning no later than mid-2007, in connection with the Draw Requests, Defendants made material misrepresentations regarding the status of the Project and provided false, misleading and incomplete information about change order logs, cost reports and budgets, which they represented to be true and complete. These misrepresentations were contained in documents and reports including the following.

- Advance Request. The Advance Request was the Borrowers' formal request for funds under the financing agreements. Defendant Freeman executed the Advance Requests on behalf of the Borrowers. In the Advance Request, at the Defendants' direction, the Borrowers attested to the accuracy and completeness of the information regarding budgets and costs that were provided with the Draw Request, including the Remaining

Cost Reports, the In Balance Report and the General Contractor's Advance Certificate. Because the information provided by the Borrowers did not disclose the true anticipated costs and budgets for the Project but instead showed the incorrect cost information reflected in the Bank Budget, the Bank Change Order Log and the Bank ACR, Defendants' representations in the Advance Requests were false and omitted material information about the Project.

- Remaining Cost Reports. The Remaining Cost Reports were spreadsheets that were supposed to show the anticipated costs to complete the Project. The Remaining Cost Reports did not reflect Defendants' true estimates of Project costs but instead reflected the false information contained in the Bank Change Order Logs and the Bank ACR.
- In Balance Report. The In Balance Reports were supposed to show the difference between funds available to the Project (from the Credit Agreement Facility and other sources) and the anticipated remaining costs on the Project, as reflected in the Remaining Cost Reports. Defendants submitted In Balance Reports that reflected incorrect budgets and estimates of anticipated costs and failed to show the actual costs Defendants knew would be needed to complete the Project. Accordingly, the In Balance Reports continued to show that the Project was in balance when in fact the anticipated costs greatly exceeded the available funds to pay for them.
- General Contractor Advance Certificate. In the General Contractor Advance Certificates, which were submitted with each Draw Request, TWC certified that its budgets were accurate and complete. Defendant Soffer executed the General Contractor Advance Certificates for October and November 2008. The budgets TWC submitted to the Lenders were based on Defendants' false change orders and cost reports, and the General Contractor Advance Certificates were therefore false and misleading.
- Budget Amendment Certificate. The Borrowers were required to request approval for amendments to the Project budgets by submitting Budget Amendment Certificates. The Budget Amendment Certificates, which Defendant Freeman signed, certified that

the budgets and cost estimates contained therein were accurate and complete, and based on good faith assumptions. The Budget Amendment Certificates did not reflect Defendants' real budgets (*i.e.*, the Soffer Budget) or their actual good faith estimates of project costs but instead reflected the incorrect Bank Budgets, Bank Change Order Logs and Bank ACRs. In fact, the Soffer Budget was hundreds of millions of dollars higher than the budgets Defendants certified as correct in the Budget Amendment Certificates.

- Lender Updates. Defendants periodically held conference calls with Plaintiffs and other lenders in connection with the Draw Requests. On those calls, and in the written "Lender Updates" that Defendants distributed to lenders, Defendants represented that the Bank Budget was the actual budget and failed to inform the lenders of the existence of the Soffer Budget and the fact that, according to Defendants' true cost information, the Project had experienced hundreds of millions of dollars in undisclosed change orders and cost overruns. On these calls, Defendants consistently stated, incorrectly, that the Project was "on time and on budget."

127. If Defendants had incorporated accurate and complete information regarding the budgets and costs to complete the Project into the materials submitted in connection with the Draw Requests, they would have shown that the Project was well over budget and could not be completed without significant additional funds. As a result, the In Balance Test would have failed and Borrowers would not have been able to access additional funding under the Credit and Disbursement Agreements.

VIII. PACKER CONSPIRES WITH SOFFER TO CONCEAL THE COST OVERRUNS ON THE PROJECT

128. Defendant Crown is an Australian gaming and entertainment company that is controlled by Defendant Packer, who is reported to be the wealthiest man in Australia. Defendant Crown Services is a Nevada-based affiliate of Crown that acted on behalf of Crown in connection with the Project. Todd Nisbet, the Executive Vice President for Design and Construction of Crown, and a principal in Crown Services, along with Packer, had primary responsibility for the Packer

Defendants' participation in the Project and was involved on a regular basis in the management and oversight of the Project.

129. In April 2007, Crown purchased a 19.6% interest in FBR for $250 million. Thereafter, the Packer Defendants learned that the Project was significantly over budget, that the existing funding for the Project was insufficient to complete the Project and that the FBR and Turnberry Defendants had been misrepresenting the facts concerning the actual status of the Project to the Lenders in order to secure continued funding for the Project under the Loans. The Packer Defendants recognized that if the Lenders learned the truth about the Project, the Lenders would cease funding, and the value of Crown's investment in FBR would plummet.

130. Accordingly, in late 2007 or early 2008, the Packer Defendants, including Packer, convened a meeting in Las Vegas with the FBR Defendants, including Soffer, to determine how jointly to proceed. At that meeting and thereafter, and at the direction of Packer, the Packer Defendants agreed and conspired with the FBR Defendants to continue to misrepresent the financial status of the Project to the Lenders and to conceal from the Lenders, including the Plaintiffs, the truth regarding the cost overruns on the Project in order to secure the continued financing for the Project.

131. Thereafter, the Packer Defendants continued their involvement in the management and oversight of the Project, including efforts to reduce the cost of the known overruns that were being concealed from the Lenders so as to help delay the Lenders' ultimate discovery of the true facts. As a result, the Packer Defendants actively assisted the FBR Defendants and the Turnberry Defendants in misrepresenting the true financial condition of the Project and in concealing from the lenders the existence and magnitude of the Soffer Budget and the cost overruns.

IX. DEFENDANTS' SCHEME UNRAVELS

132. Without financing sufficient to pay for the true costs of constructing the Project, it was only a matter of time before Defendants' scheme was exposed. Defendants forestalled this result by delaying payment to subcontractors—in some cases until subcontractors threatened to walk off the job—and by raising additional equity. By the summer of 2008, however, as Defendants knew or should have known, the Project was facing a deficit of more than $300 million dollars.

133. At a meeting at Soffer's home in Aspen, Colorado held in October 2008 and attended

by Kumar and TWC's Chief Executive Officer, Bob Ambridge, Soffer acknowledged that an additional $325 million above and beyond all existing financing and equity contributions would be required to complete the Project. Kumar and Ambridge informed Soffer that they believed the shortfall was much greater, as much as $375 million.

134. Again, in January 2009, Soffer acknowledged the existence of the shortfall in a telephone call with Ambridge and Kumar. By mid-February 2009, Kumar and Ambridge explained to Soffer in a meeting in Las Vegas that the shortfall had increased by another $100 million.

135. To make matters worse, in September 2008 Lehman Brothers Holdings, Inc. ("Lehman") filed for bankruptcy protection. Lehman was the largest lender under the Retail Facility that provided financing for the construction of the retail portion of the Project. Lehman's bankruptcy, its resulting failure to pay its portion of draws under the Retail Facility as they came due and the prospect that Lehman would fail to fund its remaining commitment under the Retail Facility prevented satisfaction of numerous conditions precedent to the approval of Advance Requests and the disbursement of funds under the Loans. Had disbursements stopped in September 2008, as they should have, all or nearly all of the funds advanced by Plaintiffs would have remained safely in the Bank Proceeds Account and ultimately been recovered.

136. Unfortunately, this did not happen. Bank of America ("BofA") failed to take the steps required of it as Administrative and Disbursement Agent under the Credit Agreement to ensure that funding and disbursements did not continue in the face of Lehman's breaches and defaults. And while BofA's breaches were not thereby excused or mitigated, the FBR Defendants, aided by ULLICO, actively concealed the full extent of Lehman's impact on the Project from the Lenders in an effort to increase the likelihood that Loans would continue to be funded and disbursed.

137. In September 2008, the FBR Defendants caused FBR (or an affiliate) to pay Lehman's portion of the September 2008 draw request under the Retail Facility. Defendants knew that payment of Lehman's portion of draw requests by FBR would highlight the funding gap created by Lehman's bankruptcy and increase the likelihood that the Lenders would refuse to continue funding. Accordingly, although Freeman advised BofA that FBR had funded Lehman's portion, Thier and the other FBR Defendants took steps to ensure that documents filed publicly during that period,

including documents submitted in connection with the Lehman bankruptcy proceedings, concealed that fact from the other lenders.

138. In December, Lehman notified the FBR Defendants that it would make no further payments under the Retail Facility.

139. In order to further conceal FBR's payment of Lehman's draws, FBR initiated discussions with ULLICO, one of the other lenders under the Retail Facility. ULLICO invested on behalf of union interests and was committed "to serving the needs of unions, union leaders, union employers and union members and their families." Thus, ULLICO's interest in the Project included both its financial commitment as well as the preservation of the jobs of the 3,000 union members working on the Project. Those jobs all would be lost if disbursements under the Loans ceased and the Project was shut down. Although ULLICO was unwilling to take over Lehman's funding obligations under the Retail Facility, in whole or in part, it was willing to make it appear that it had or would in the hopes that BofA might thereby overlook Lehman's breaches and defaults and continue disbursing funds for the Project.

140. In order to accomplish this scheme, beginning in December 2008, ULLICO entered into a series of Guaranty Agreements with Soffer, FBR and TRLP. These agreements provided that ULLICO would pay Lehman's portion of the Retail Facility in the first instance but that Soffer, FBR and TRLP would guaranty such payments and reimburse ULLICO within 30 days. By "fronting" payments on behalf of FBR and Soffer, ULLICO helped create a false impression that an existing, institutional lender had or would be willing to step in to take over Lehman's commitment.

141. ULLICO fronted Lehman's draw obligations under the Retail Facility in December 2008, and January, February and March 2009. Defendants did not disclose the "fronting" arrangement to the Plaintiffs and actively concealed the existence of the Guaranty Agreement from them.

142. Had ULLICO, the FBR Defendants and the Turnberry Defendants disclosed the true nature of their scheme to the Lenders, BofA could not have hidden from the conclusion that the conditions precedent to funding under the Loans had not been satisfied, and the Borrowers would not have been able to access Plaintiffs' funds.

143. By early 2009, Defendants were unable to access additional equity funding, and subcontractors were in revolt over delayed payments for completed work. To access additional needed funds, Defendants were forced to disclose some of the additional change orders they had "pocketed" and kept from the Lenders. But while Defendants at this point revealed some of the additional costs, they expressly decided not to expose what TWC's Chief Executive Officer, Bob Ambridge, characterized to Kumar as the "big lie," namely that the Project was massively over budget. Instead, Defendants informed the Lenders of only $60 million in change orders and additional costs and continued to conceal the remaining undisclosed change orders and additional costs and to submit Draw Requests that they new to be materially false.

144. As 2009 wore on, however, Defendants could no longer conceal that the budgets were inaccurate and that the costs to complete the Project were not in line with the incorrect estimates they had provided to the Lenders. On April 13, 2009, the Borrowers advised the Lenders that they could not meet the In Balance Test, based upon an increase of $157 million in the figure they used to calculate anticipated costs on the Project. On April 20, 2009, BofA, acting on behalf of certain of the Lenders, declared a default under the financing agreements. The Borrowers and certain affiliates filed for bankruptcy on June 10, 2009, which itself constitutes a default under the financing agreements.

COUNT I

Fraud/Aiding and Abetting Against the FBR Defendants and the Turnberry Defendants

145. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set out.

146. To induce Plaintiffs to provide funding for the Project and to enter into the Credit Agreement and Disbursement Agreement, the FBR Defendants misrepresented facts and failed to disclose material facts, as more fully described above. Among other things, the FBR Defendants represented or permitted to be represented:

- that the Bank Budget was an accurate and good faith estimate of the costs the Project would incur to completion and was a "conservative" estimate of such costs;
- that the Bank Budget would support payment of all anticipated construction costs for the Project;

- that the construction drawings for the Project were accurate and "substantially complete"; and
- that FBLV and TWC had entered into committed contracts for 60% of hard costs for the Project.

147. These representations were false. The FBR Defendants omitted the true facts about the Project, including those regarding the existence and nature of the Real Budget, the additional anticipated costs they expected to incur in bringing the Project to completion, the delays in completion of the construction drawings, the fact that the drawings presented to the Plaintiffs were false drawings, and the additional costs that would be incurred under the so-called committed contracts.

148. The Turnberry Defendants were aware of the misrepresentations and omissions made by the FBR Defendants. The Turnberry Defendants intended to and did assist and provide material assistance to the FBR Defendants in making misrepresentations and failing to disclose material facts to Plaintiffs.

149. Unaware of the true facts, and in reliance on the misrepresentations and omissions of the FBR Defendants and the Turnberry Defendants, Plaintiffs provided funding to the Project pursuant to the Credit Agreement and Disbursement Agreement. If Plaintiffs had been aware of the true facts, they would not have agreed to provide the funding and would not have executed the Credit Agreement or the Disbursement Agreement.

150. As a direct and proximate result of the misrepresentations and omissions by the FBR Defendants and the Turnberry Defendants' assistance in these misrepresentations and omissions, Plaintiffs have incurred and continue to incur damages in excess of $10,000.

151. Defendants' acts were performed with oppression, fraud and malice, thereby entitling Plaintiffs to punitive damages in excess of $10,000.

COUNT II

Fraud/Aiding and Abetting Fraud Against the FBR Defendants, the Turnberry Defendants and the Packer Defendants

152. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set out.

153. To induce Plaintiffs to provide funding for the Project through provision of Advances

in response to Notices of Borrowing and Draw Requests, the FBR Defendants and the Turnberry Defendants made intentional misrepresentations of fact and failed to disclose material facts, as more fully described above. Among other things, the FBR Defendants and the Turnberry Defendants represented to Plaintiffs or their agents, in connection with Draw Requests and in other oral and written communications, that:

- the Remaining Cost Reports submitted to lenders, including the Plaintiffs, accurately presented all of the costs they expected the Project to incur to completion;
- they were not aware of additional anticipated costs on the Project;
- the In Balance Report was accurate and the In Balance Test was satisfied;
- the Bank Budget was the true budget that accurately presented the Defendants' good faith estimate of all Project costs; and
- the Project was "on time and on budget."

These representations were false. The FBR Defendants and Turnberry Defendants omitted and concealed the true facts regarding the existence and magnitude of the Real Budget, the additional costs they incurred and expected to incur on the Project; and the existence and dollar value of change orders that had been agreed to without formal approval or disclosure to the lenders, including Plaintiffs.

154. Each of the FBR Defendants, the Turnberry Defendants and the Packer Defendants was aware of the misrepresentations and omissions made by the other Defendants. Each of the FBR Defendants, the Turnberry Defendants and the Packer Defendants intended to assist the others in defrauding Plaintiffs and did in fact provide material assistance to them in making misrepresentations and failing to disclose material facts to Plaintiffs.

155. Unaware of the true facts, and in reliance on the misrepresentations and omissions of Defendants, Plaintiffs continued to provide funding to the Project through Advances pursuant to the Credit Agreement and Disbursement Agreement. If at any time Plaintiffs and their agents had been aware of the true facts, the conditions precedent to further Advances would not have been satisfied and Plaintiffs would not have been required to provide further funds to the Project.

156. As a direct and proximate result of Defendants' fraud and aiding and abetting fraud,

Plaintiffs have incurred and continue to incur damages in excess of $10,000.

157. Defendants' acts were performed with oppression, fraud and malice, thereby entitling Plaintiffs to punitive damages in excess of $10,000.

COUNT III

Fraud/Aiding and Abetting Fraud Re Retail Facility Against the FBR Defendants, the Turnberry Defendants and ULLICO

158. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set out.

159. To induce Plaintiffs to provide funding for the Project through provision of Advances in response to Notices of Borrowing and Draw Requests, the FBR Defendants and the Turnberry Defendants made intentional misrepresentations of fact and failed to disclose material facts regarding the funding of Lehman's portion of the Retail Facility, as more fully described above. Among other things, ULLICO, the FBR Defendants and the Turnberry Defendants or their agents represented that ULLICO funded the Lehman portion of the Retail Facility. These representations were false.

160. ULLICO, the FBR Defendants and the Turnberry Defendants omitted and concealed the fact that, through the "fronting" arrangement, FBR and Soffer were funding Lehman's portion of the Retail Facility while making it appear that ULLICO was providing such funding.

161. ULLICO, the FBR Defendants and the Turnberry Defendants were aware of the misrepresentations and omissions made by each other. Each ULLICO, the FBR Defendants and the Turnberry Defendants intended to assist each other in defrauding Plaintiffs and did in fact provide material assistance to them in making misrepresentations and failing to disclose material facts to Plaintiffs.

162. Unaware of the true facts, and in reliance on the misrepresentations and omissions of Defendants, Plaintiffs continued to provide funding to the Project through Advances pursuant to the Credit Agreement and disbursement continued to be made under the Disbursement Agreement. If at any time Plaintiffs and their agents had been made aware of the true facts, the conditions precedent to further Advances would not have been satisfied and Plaintiffs would not have provided further funds to the Project.

163. As a direct and proximate result of Defendants' fraud and aiding and abetting fraud, Plaintiffs have incurred and continue to incur damages in excess of $10,000.

164. Defendants' acts were performed with oppression, fraud and malice, thereby entitling Plaintiffs to punitive damages in excess of $10,000.

COUNT IV

Negligent Misrepresentation Against All Defendants

165. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set out.

166. In making the representations described above, and in failing to disclose the material information, Defendants acted with the intent to induce, and did induce, Plaintiffs to provide funding to the Project, to enter into the Credit Agreement and the Disbursement Agreement, and to continue to provide funding pursuant to Advances.

167. Defendants made the representations negligently and recklessly, with no reasonable grounds for believing the statements to be true.

168. As a direct result of Defendants' negligent and reckless misrepresentations, Plaintiffs have incurred and continue to incur damages in excess of $10,000.

169. Defendants' acts were performed with oppression, fraud and malice, thereby entitling Plaintiffs to punitive damages in excess of $10,000.

COUNT V

Negligence Against the FBR Defendants and the Turnberry Defendants

170. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set out.

171. Defendants were responsible for ensuring that the terms and conditions precedent to funding were being met, that the Project was being managed and administered such that the cost of work would not exceed what was budgeted and financially available, and that the Project would be completed within the approved schedule.

172. Defendants also had a duty to ensure that the Project progress was accurately reported, both in terms of cost and schedule, and that the projected cost to complete the work was accurately reflected in the reports to lenders, including the Plaintiffs. Defendants had a duty to ensure accurate reflection of any cost increases or change orders in the various reports provided to Plaintiffs in connection with Draw Requests.

173. Defendants failed to exercise reasonable or ordinary care in the discharge of their

duties in connection with the Project, and, in fact, were negligent and/or reckless in the performance of their duties and/or acted in bad faith.

174. As described in more detail above, among other things, Defendants:

- Failed to ensure that the statements made to Plaintiffs in connection with Draw Requests were accurate and complete;
- Failed to accurately monitor and report on project budgets and costs;
- Failed to ensure the timely reporting of changes to the Project and change orders;
- Failed to monitor subcontractors;
- Failed to exercise reasonable diligence, oversight, monitoring and review of TWC's project administration and management;
- Failed to ensure that Project drawings and plans were substantially complete and updated and that the plans were sufficient to build the Project in accordance with the existing budgets; and
- Failed to ensure that the Project had committed contracts as represented to Plaintiffs, and that the committed contracts were in fact "committed."

175. As a direct and proximate result of Defendants failure to exercise due care, Plaintiffs have been damaged in an amount in excess of $10,000.

COUNT VI

Conspiracy to Commit Fraud/Aiding and Abetting Fraud Against All Defendants

176. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set out.

177. Beginning in 2007, Defendants entered into a conspiracy in which they agreed to misrepresent and omit material facts regarding the Project, and to conceal the true facts. Pursuant to that conspiracy, Defendants engaged in the misrepresentations, omissions and other wrongful conduct, as set out above. Each of the Defendants had knowledge of the object and purpose of the conspiracy and intended to and did materially assist the conspiracy.

178. As co-conspirators, Defendants are jointly and severely liable for the damages incurred by Plaintiffs as a result of their conduct, in an amount in excess of $10,000.

179. Defendants' acts were performed with oppression, fraud and malice, thereby entitling

Plaintiffs to punitive damages in excess of $10,000.

COUNT VII

Breach of Fiduciary Duty – Duty of Loyalty Against the FB D&O Defendants

180. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set out.

181. Defendants Soffer, Kotite, Parello, Weiner, Schaeffer, Freeman, Kumar, Karawan and Thier ("FB D&O Defendants") were directors, managers and/or senior executive officers of the Resort Entities, with management responsibility for those entities. As managers, directors and/or senior executive officers of the Resort Entities, the FB D&O Defendants owed fiduciary duties to the Resort Entities, which fiduciary duties included the duty of loyalty. Additionally, as the Resort Entities were insolvent or within the zone of insolvency, these defendants also owed fiduciary duties to the Resort Entities' creditors, including Plaintiffs.

182. As fiduciaries, the FB D&O Defendants were obligated by their duty of loyalty to act in a manner consistent with the best interests of the Resort Entities and its creditors, and with the highest degree of good faith. By virtue of the acts and omissions described herein, the FB D&O Defendants failed to act honestly and in good faith, thereby violating the duty of loyalty to the Resort Entities. Among other things, the FB D&O Defendants misrepresented the financial condition of the Resort Entities, misstated the budgets and anticipated costs of the Project, and concealed the true facts about the budgets and financial condition of the Project.

183. As a direct and proximate result of the FB D&O Defendants' actions and omissions, the Plaintiffs have been injured and suffered damages in an amount in excess of $10,000. The FB D&O Defendants are jointly and severally liable for Plaintiffs' losses.

184. Defendants' acts were performed with oppression, fraud and malice, thereby entitling Plaintiffs to punitive damages in excess of $10,000.

COUNT VIII

Breach of Fiduciary Duty – Duty of Care Against the FB D&O Defendants

185. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set out.

186. The FB D&O Defendants were directors, managers and/or senior executive officers of the Resort Entities, with management responsibility for those entities. As managers, directors and/or

senior executive officers of the Resort Entities, the FB D&O Defendants owed fiduciary duties to the Resort Entities, which fiduciary duties included the duty of care. Additionally, as the Resort Entities were insolvent or within the zone of insolvency, these defendants also owed fiduciary duties to the Resort Entities' creditors, including Plaintiffs.

187. As fiduciaries, these defendants were obligated by their duty of care to act at all times on an informed basis, using the amount of care that a reasonable person would use under similar circumstances, and to act with the highest degree of good faith. The FB D&O Defendants failed to exercise the care, diligence, and skill that reasonable persons would exercise under comparable circumstances, and instead acted in a grossly negligent manner, thereby violating their fiduciary duties to the Resort Entities. Among other things, the FB D&O Defendants: failed to oversee the construction of the Project in a manner that contained cost overruns; approved and allowed TWC and others to approve, informally and without proper oversight or disclosure, changes to the Project that greatly increased the Resort Entities' liabilities; operated the Project in accordance with the undisclosed Real Budget, which was hundreds of millions of dollars higher than what was presented to the Plaintiffs and the other lenders, thus making it virtually impossible for the Project to be completed with the funds that were available; and repeatedly misrepresented and omitted material facts regarding budgets, cost overruns and anticipated costs to completion.

188. As a direct and proximate result of the FB D&O Defendants' actions and omissions, the Plaintiffs have been injured and suffered damages in an amount in excess of $10,000. The FB D&O Defendants are jointly and severally liable for Plaintiffs' losses.

189. Defendants' acts were performed with oppression, fraud and malice, thereby entitling Plaintiffs to punitive damages in excess of $10,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in favor of Plaintiffs and against Defendants, and each of them, as follows:

(a) For damages in excess of $10,000.

(b) For punitive damages in excess of $10,000.

(c) For prejudgment interest.

(d) For an award of the costs of suit including attorneys' fees to the extent available.

(e) For any further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury for all issues so triable.

DATED this 25th day of March, 2011.

Respectfully submitted,

By: 

TAYLOR L. RANDOLPH
Bar No. 10194
RANDOLPH LAW FIRM, P.C.
2045 Village Center Circle, Suite 100
Las Vegas, Nevada 89134
Tel. (702) 233-5597
tr@randolphlawfirm.com
Attorney for Plaintiffs

U.S. Bankruptcy Court
District of Nevada (Las Vegas)
Adversary Proceeding #: 11-01130-mkn

Assigned to: MIKE K. NAKAGAWA
Demand:

Date Filed: 05/02/11

Nature[s] of Suit: 01 Determination of removed claim or cause

Plaintiff

BRIGADE LEVERAGED CAPITAL STRUCTURES FUND, LTD.
X
X, X

represented by **TAYLOR L. RANDOLPH**
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702-877-1313
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LEAD ATTORNEY

BATTALION CLO 2007-I, LTD.
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X, X

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LEAD ATTORNEY

CANPARTNERS INVESTMENTS IV, LLC.
X
X, X

represented by **TAYLOR L. RANDOLPH**
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LEAD ATTORNEY

CANYON SPECIAL OPPORTUNITIES MASTER FUND (CAYMAN), LTD.
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X, X

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CASPIAN CORPORATE LOAN FUND, LLC.
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X, X

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CASPIAN CAPITAL PARTNERS, L.P.
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X, X

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CASPIAN SELECT CREDIT MASTER FUND, LTD.
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CASPIAN SOLITUDE MASTER FUND, L.P.
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OLYMPIC CLO I LTD.
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SHASTA CLO I LTD.
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WHITNEY CLO I LTD.
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SAN GABRIEL CLO I LTD.
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PRO SE

SIERRA CLO II LTD.
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ING SENIOR INCME FUND
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LEAD ATTORNEY

ING INTERNATIONAL (II) - SENIOR LOANS
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ING INVESTMENT MANAGEMENT CLO I, LTD.
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ING INVESTMENT MANAGEMENT CLO V, LTD.
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PHOENIX CLO I, LTD.
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Venture III CDO Limited
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VENTURE IV CDO LIMITED
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Venture VI CDO Limited
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Venture VII CDO Limited
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Venture VIII CDO Limited
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Venture IX CDO Limited
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X, X

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LEAD ATTORNEY

Vista Leveraged Income Fund
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X, X

represented by **TAYLOR L. RANDOLPH**
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LEAD ATTORNEY

VEER CASH FLOW CLO, LIMITED

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X, X

represented by **TAYLOR L. RANDOLPH**
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LEAD ATTORNEY

MONARCH MASTER FUNDING,

represented by

LTD. X X, X	**TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
NORMANDY HILL MASTER FUND, L.P. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
GENESIS CLO 2007-1 LTD. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
SCOGGIN CAPITAL MANAGEMENT II, LLC. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
SCOGGIN INERNATIONAL FUND, LTD. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
SCOGGIN WORLDWIDE FUND, LTD. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
SPCP GROUP, LLC. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
SOLA, LTD. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
SOLUS CORE OPPORTUNITIES MASTER FUND, LTD. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
STONE LION PORTFOLIO LP. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
VENOR CAPITAL MASTER FUND, LTD. X X, X	represented by **TAYLOR L. RANDOLPH** (See above for address) *LEAD ATTORNEY*
V.	
Defendant ----------	
FONTAINEBLEAU RESORTS, LLC. X	represented by **STEVE MORRIS** MORRIS PICKERING & PETERSON 300 S. 4TH ST #900

X, X	LAS VEGAS, NV 89101 (702) 474-9400 Fax : (702) 474-9422 Email: sm@morrislawgroup.com
TURNBERRY LTD. X X, X	represented by **STEVE MORRIS** (See above for address)
TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P. X X, X	represented by **STEVE MORRIS** (See above for address)
TURNBERRY WEST CONSTRUCTION, INC. X X, X	represented by **STEVE MORRIS** (See above for address)
JEFFREY SOFFER X X, X	represented by **STEVE MORRIS** (See above for address)
ANDREW KOTITE X X, X	represented by **ANDREW KOTITE** PRO SE
RAY PARELLO X X, X	represented by **RAY PARELLO** PRO SE
BRUCE WEINER X X, X	represented by **BRUCE WEINER** PRO SE
GLENN SCHAEFFER X X, X	represented by **GLENN SCHAEFFER** PRO SE
JAMES FREEMAN X X, X	represented by **JAMES FREEMAN** PRO SE
DEVEN KUMAR X X, X	represented by **DEVEN KUMAR** PRO SE
HOWARD KARAWAN X X, X	represented by **JEFFREY R. SYLVESTER** 7371 PRAIRIE FALCON RD., SUITE 120 LAS VEGAS, NV 89128 (702) 952-5200 Fax : (702) 952-5205 Email: jeff@sylvesterpolednak.com
WHITNEY THIER X X, X	represented by **WHITNEY THIER** PRO SE
UNION LABOR LIFE INSURANCE	represented by **UNION LABOR LIFE INSURANCE**

COMPANY X X, X	**COMPANY** PRO SE
CROWN LIMITED X X, X	represented by **CROWN LIMITED** PRO SE
CROWN SERVICES (US) LLC. X X, X	represented by **CRAIG S. DUNLAP** FENNEMORE CRAIG, P.C. 300 S. FOURTH STREET #1400 LAS VEGAS, NV 89101 (702) 692-8000 Email: cdunlap@fclaw.com
JAMES PACKER X X, X	represented by **JAMES PACKER** PRO SE

Filing Date	#	Docket Text
		Notice of Removal of BRIGADE LEVERAGED CAPITAL STRUCTURES FUND, LTD., BATTALION CLO 2007-I, LTD., CANPARTNERS INVESTMENTS IV, LLC., CANYON SPECIAL OPPORTUNITIES MASTER FUND (CAYMAN), LTD., CASPIAN CORPORATE LOAN FUND, LLC., CASPIAN CAPITAL PARTNERS, L.P., CASPIAN SELECT CREDIT MASTER FUND, LTD., MARINER LDC, CASPIAN ALPHA LONG CREDIT FUND, L.P., CASPIAN SOLITUDE MASTER FUND, L.P., OLYMPIC CLO I LTD., SHASTA CLO I LTD., WHITNEY CLO I LTD., SAN GABRIEL CLO I LTD., SIERRA CLO II LTD., ING PRIME RATE TRUST, ING SENIOR INCME FUND, ING INTERNATIONAL (II) - SENIOR LOANS, ING INVESTMENT MANAGEMENT CLO I, LTD., ING INVESTMENT MANAGEMENT CLO II, LTD., ING INVESTMENT MANAGEMENT CLO III, LTD., ING INVESTMENT MANAGEMENT CLO IV, LTD., ING INVESTMENT MANAGEMENT CLO V, LTD., PHOENIX CLO I, LTD., PHOENIX CLO II, LTD., PHOENIX CLO III, LTD., Venture II CDO 2002 Limited, Venture III CDO Limited, VENTURE IV CDO LIMITED, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Venture IX CDO Limited, Vista Leveraged Income Fund, VEER CASH FLOW CLO, LIMITED, MONARCH MASTER FUNDING, LTD., NORMANDY HILL MASTER FUND, L.P., GENESIS CLO 2007-1 LTD., SCOGGIN CAPITAL MANAGEMENT II, LLC., SCOGGIN INERNATIONAL FUND, LTD., SCOGGIN WORLDWIDE FUND, LTD., SPCP GROUP, LLC., SOLA, LTD., SOLUS CORE OPPORTUNITIES MASTER FUND, LTD., STONE LION PORTFOLIO LP., VENOR CAPITAL MASTER FUND,

05/02/2011	1	LTD. against FONTAINEBLEAU RESORTS, LLC., TURNBERRY LTD., TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P., TURNBERRY WEST CONSTRUCTION, INC., JEFFREY SOFFER, ANDREW KOTITE, RAY PARELLO, BRUCE WEINER, GLENN SCHAEFFER, JAMES FREEMAN, DEVEN KUMAR, HOWARD KARAWAN, WHITNEY THIER, UNION LABOR LIFE INSURANCE COMPANY, CROWN LIMITED, CROWN SERVICES (US) LLC., JAMES PACKER. Fee Amount $250. (Attachments: # 1 Exhibit A (coversheet)# 2 Exhibit A# 3 Exhibit B (coversheet)# 4 Exhibit B) (01 (Determination of removed claim or cause) (DUNLAP, CRAIG) (Entered: 05/02/2011)
		Certificate of Service Filed by CRAIG S. DUNLAP on behalf of CROWN SERVICES (US) LLC. (Related document(s) 1 Notice of Removal filed by Plaintiff Venture II CDO 2002 Limited, Plaintiff Venture III CDO Limited, Plaintiff Venture V CDO Limited, Plaintiff Venture VI CDO Limited, Plaintiff Venture VII CDO Limited, Plaintiff Venture VIII CDO Limited, Plaintiff Vista Leveraged Income Fund, Plaintiff Venture IX CDO Limited, Plaintiff BRIGADE LEVERAGED CAPITAL STRUCTURES FUND, LTD., Plaintiff BATTALION CLO 2007-I, LTD., Plaintiff CANPARTNERS INVESTMENTS IV, LLC., Plaintiff CANYON SPECIAL OPPORTUNITIES MASTER FUND (CAYMAN), LTD., Plaintiff CASPIAN CORPORATE LOAN FUND, LLC., Plaintiff CASPIAN CAPITAL PARTNERS, L.P., Plaintiff CASPIAN SELECT CREDIT MASTER FUND, LTD., Plaintiff MARINER LDC, Plaintiff CASPIAN ALPHA LONG CREDIT FUND, L.P., Plaintiff CASPIAN SOLITUDE MASTER FUND, L.P., Plaintiff OLYMPIC CLO I LTD., Plaintiff SHASTA CLO I LTD., Plaintiff WHITNEY CLO I LTD., Plaintiff SAN GABRIEL CLO I LTD., Plaintiff SIERRA CLO II LTD., Plaintiff ING PRIME RATE TRUST, Plaintiff ING SENIOR INCME FUND, Plaintiff ING INTERNATIONAL (II) - SENIOR LOANS, Plaintiff ING INVESTMENT MANAGEMENT CLO I, LTD., Plaintiff ING INVESTMENT MANAGEMENT CLO II, LTD., Plaintiff ING INVESTMENT MANAGEMENT CLO III, LTD., Plaintiff ING INVESTMENT MANAGEMENT CLO IV, LTD., Plaintiff ING INVESTMENT MANAGEMENT CLO V, LTD., Plaintiff PHOENIX CLO I, LTD., Plaintiff PHOENIX CLO II, LTD., Plaintiff PHOENIX CLO III, LTD., Plaintiff VENTURE IV CDO LIMITED, Plaintiff VEER CASH FLOW CLO, LIMITED, Plaintiff MONARCH MASTER FUNDING, LTD., Plaintiff NORMANDY HILL MASTER FUND, L.P., Plaintiff GENESIS CLO 2007-1 LTD., Plaintiff SCOGGIN CAPITAL MANAGEMENT II, LLC., Plaintiff SCOGGIN INERNATIONAL FUND, LTD., Plaintiff SCOGGIN WORLDWIDE FUND, LTD., Plaintiff SPCP GROUP, LLC.,

05/03/2011	2	Plaintiff SOLA, LTD., Plaintiff SOLUS CORE OPPORTUNITIES MASTER FUND, LTD., Plaintiff STONE LION PORTFOLIO LP., Plaintiff VENOR CAPITAL MASTER FUND, LTD..) (Attachments: # 1 Mailing Matrix) (DUNLAP, CRAIG) (Entered: 05/03/2011)
05/03/2011	3	Receipt of Filing Fee for Notice of Removal(11-01130) [cmp,ntcrmvl] (250.00). Receipt number 10642511, fee amount $ 250.00. (U.S. Treasury) (Entered: 05/03/2011)
05/05/2011	4	Stipulation By FONTAINEBLEAU RESORTS, LLC., JEFFREY SOFFER, TURNBERRY LTD., TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P., TURNBERRY WEST CONSTRUCTION, INC. and Between All Parties Filed by STEVE MORRIS on behalf of FONTAINEBLEAU RESORTS, LLC., JEFFREY SOFFER, TURNBERRY LTD., TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P., TURNBERRY WEST CONSTRUCTION, INC. (MORRIS, STEVE) (Entered: 05/05/2011)
05/06/2011	5	Scheduling Conference scheduled for 9/30/2011 at 09:30 AM at MKN-Courtroom 2, Foley Federal Bldg. (ksh) (Entered: 05/06/2011)
05/09/2011	6	Answer to Complaint Filed by JEFFREY R. SYLVESTER on behalf of HOWARD KARAWAN (Related document(s) 1 Notice of Removal(SYLVESTER, JEFFREY) Modified on 5/10/2011 to relate to #1 (DeVaney, HA). (Entered: 05/09/2011)
05/10/2011	7	Certificate of Service Filed by JEFFREY R. SYLVESTER on behalf of HOWARD KARAWAN (Related document(s) 6 Answer to Complaint filed by Defendant HOWARD KARAWAN.) (SYLVESTER, JEFFREY) (Entered: 05/10/2011)
05/10/2011	8	Order Approving Stipulation To Extend Time To Answer Or Otherwise Respond To The Complaint (Related document(s) 4 Stipulation filed by Defendant TURNBERRY WEST CONSTRUCTION, INC., Defendant TURNBERRY LTD., Defendant JEFFREY SOFFER, Defendant FONTAINEBLEAU RESORTS, LLC., Defendant TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P..) (had) (Entered: 05/10/2011)

PACER Service Center

From: Albert Kotite
To: Doug Pardon
CC: Glenn Schaeffer; Jim Freeman
Sent: 11/5/2008 6:43:32 PM
Subject: RE: Miami Grand Opening

Doug,

Consider it done, my pleasure. Just make sure you RSVP for accommodations for Friday and Saturday nights. I hope you saw the great article that appeared on the front page of the Style Section of last Sunday's *Times*. In case you didn't, a copy is pasted below.

Look forward to seeing you on the 14th.

Best regards,
Sonny

Albert E. Kotite / EVP Corporate Development & Acquisitions
Fontainebleau Resorts LLC
akotite@fontainebleau.com / fontainebleau.com
O 305 682 4200 / C 917 499 2626 / F 305 682 4201
19950 West Country Club Drive / Aventura FL 33180

THE STAGE IS YOURS. LIVE YOUR PART.

please take note of my new email address

From: Doug Pardon [mailto:DP@brigadecapital.com]
Sent: Wed 11/5/2008 3:25 PM
To: Albert Kotite
Subject: Miami Grand Opening

Sonny,

Hope things are well. Was very pleased to see the Q2 financials get reported and we also appreciated Glenn being on the call. Don and I found it very helpful and I think the market appreciated it as well. I thought the call went as well as can be expected given the current state of the economy/las vegas and the Lehman issue.

On a more positive note I'm coming down for the grand opening so just wanted to say thanks once again for including me. I did have one additional request (if possible). The invitation to the fashion show is a separate invite according to the firm handling the reservations so just thought I'd ask if there is anything you could to get me an invite for that as well. There's no doubt it's highly sought after so I understand if its not doable but figured there was no harm in trying. Anything you could do would be hugely appreciated.

Thanks again and good luck w/ the grand opening and continued good luck in Las Vegas.

Best,

Doug

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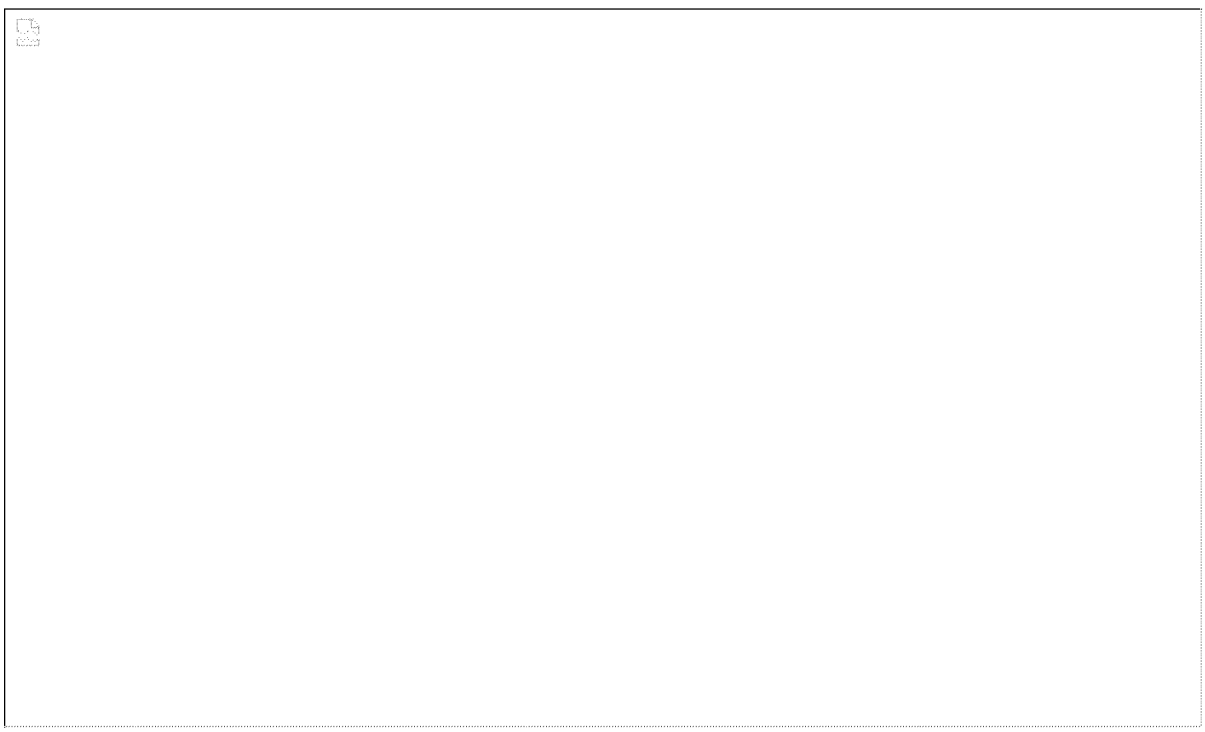
Flamboyance Gets A Face-Lift



Barbara P. Fernandez for The New York Times

FAUX FRENCH Built in 1954, the Fontainebleau hotel in Miami Beach has recently undergone a $500 million restoration.

By RUTH LA FERLA
Published: October 31, 2008

Miami Beach

Related

Times Topics: Morris Lapidus

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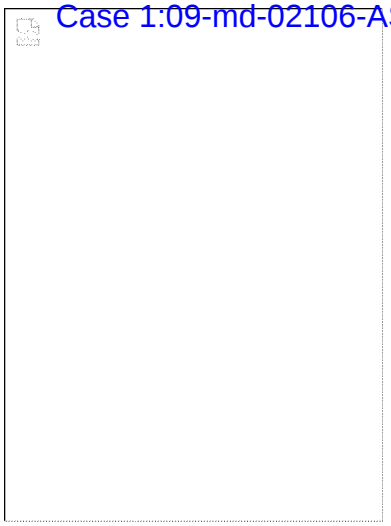
MARILYN RUBINSON recalls her stays at the Fontainebleau hotel as a series of high-fashion snapshots. There were afternoons at the cabana, “a blue hotel towel wrapped around my head like a turban and wearing high-heeled Lucite shoes,” she said. There were evenings at the Gigi Room, rubbing shoulders with New York’s dashing mayor, John V. Lindsay; and she remembers sweeping down the dramatic lobby staircase in a form-fitting, stone-colored gown. “In those days everyone made an entrance,” Mrs. Rubinson, 84, said. “I made lots of entrances.”

In that heady era the hotel was the diadem of Miami resorts, a 560-foot-long, sickle-shaped showplace dominating the Collins Avenue waterfront, where

Miamians like the Rubinsons, who own a chain of clothing stores, and well-to-do snowbirds came in the winter to roost.

“Everyone who was anyone was there,” Mrs. Rubinson said. “People wore black tie and jewelry. Everyone was young.”

And everyone lived large at the flamboyant resort, conceived from its outset to evoke a modern Versailles. “It was the place for entertainment, for glamour — an icon even among the locals,” said Cathy Leff, the director of the Wolfsonian museum of design here. “Even now if one asks, ‘Within the city of Miami Beach, what is the most important landmark in the popular imagination?’ it would be the Fontainebleau.”



Barbara P. Fernandez for The New York Times, top; Sam Shere/Hulton Archive/Getty Images

THEN AND NOW The new lobby of the Fontainebleau, top, echoes highlights of the original, bottom, like the bow tie floor pattern and the striated columns.

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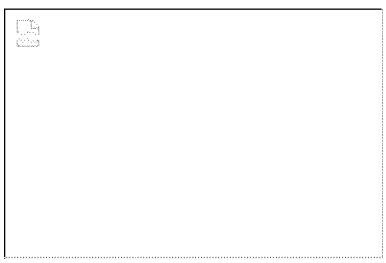

20th Century Fox/Everett Collection

Frank Sinatra and Jill St. John visited in the 1967 film “Tony Rome.”

Enlarge This Image

Fontainebleau Resorts, LLC

A rendering of one of the V.I.P. cabanas.

Can an icon of the past be restored to its former glory? New owners and architects of the Fontainebleau have invested $1 billion to buy and restore it in the conviction that it can. Its original fusion of Modernist rigor and Hollywood cheek, dreamed up by the maverick architect Morris Lapidus, was derided as Bronx baroque, until the singular style of Miami Beach was rediscovered by the Ian Schrager generation.

“In its day in the ’50s and ’60s, the Fontainebleau was state of the art in glamour,” said Jeffrey Beers, the New York architect responsible for an extensive update of the interior. “We would like to restore that in spirit.”

When the refurbished resort is officially unveiled on Nov. 14 with a series of parties and a taping for television of a Victoria’s Secret fashion show — perfect! — visitors will be able to judge for themselves if the mission succeeded. Even recently, as the hotel was still a construction site, it was clear that the old duchess had flounced out her skirts.

“How many places like this can you go in America that are not in the desert?” said Jeffrey Soffer, executive chairman and majority partner of Fontainebleau Resorts, which is building a Fontainebleau in Las Vegas. Indeed, as he strolled the raised oceanfront walkway that overlooks the property, it was obvious the resort had much in common with over-the-top hotels on the Strip.

Visible from the walkway is a pool complex fanning out across the lawns, and a new 40,000-square-foot glass-walled spa, its steam rooms and reflecting pools worthy of the emperor Hadrian. Crescent-shaped rows of cabanas edge the pools and echo the undulating outlines of the Chateau, the hotel’s original building.

Several towers, two of them new, flank the Chateau, for a combined 1,500 guest rooms, twice the number of the Fontainebleau’s largest competitor, Loews in South Beach. There are also shops, 11 restaurants and lounges, and about 200,000 square feet of meeting and convention space — all sprawling over 22 acres.

The three-year renovation was conceived, in part, to lure back fashionable crowds, which have drifted down to South Beach.

With renovated rooms from $399 and suites from $509, the Fontainebleau is reopening at a challenging time for tourism. Hotel occupancy rates in Miami-Dade County were down by 6 percent in September from a year earlier, and room revenues fell by 4 percent, said John Lancet, a senior executive in Miami for HVS, a national hotel consulting company.

But Mr. Lancet viewed the Fontainebleau development as only mildly risky. “It is my impression that the owners went through adequate planning so that the risk could be mitigated,” he said.

THE hotel has some $30 million in bookings through early next year, said Howard C. Karawan, the chief operating officer of Fontainebleau Resorts, who was brought in by the new owners to oversee renovations and operations for the company.

Rumors are widespread that the $500 million face-lift was made in anticipation that the city would legalize casino gambling. The developers deny this, and gambling has yet to win acceptance with local lawmakers.

At the hub of the resort is the Chateau’s 45,000-square-foot lobby, an elaboration on the original free-form elliptical shape completed by Lapidus in 1954.

Its original curvaceous outlines were accentuated by three enormous chandeliers, striated Greek-style columns, swirling carpets and a mural of a Piranesi print. The lobby’s famous focal point was a “staircase to nowhere,” which actually led from a discreet cloakroom, where ladies could shed their wraps before descending divalike down the white marble steps.

The new lobby, like its predecessor, is a chambered nautilus, all undulating walls and recesses. Mr. Beers stripped away ’70s-era carpeting to expose the original marble floor with its signature bow tie design. He covered the wall at the staircase in gold tile and added a light installation by the artist James Turrell and a lounge with a blue reflective floor. The staircase to nowhere is back, the jewel in a set piece expected to draw crowds who want to see and be seen.

And perhaps to retrace the footsteps of previous guests. Those who stayed at the hotel in Miami Beach’s golden age recall a resort that Lapidus, who died in 2001 at 98, had envisioned as a laboratory. It was a place, he wrote, “where I could enlarge upon all the theories I had been developing about human nature and the emotional hunger that the average man had for visual excitement.”

At bars and supper clubs — the Gigi Room, the Poodle Lounge — “women would sit with their little fur stoles and white gloves on to eat,” recalled Deborah Desilets, a Miami architect and former associate of Lapidus. Sheathed in slinky gowns, “they would stop at the mezzanine, put on their jewelry and wave at their husbands in the lobby below,” she said.

Michelle Oka Doner, an artist and a frequent guest as a girl — her father, Kenneth Oka, was mayor of Miami Beach in the late ’50s and early ’60s — remembers the resort, where she had a prom and her wedding, “as my stage and my launching pad.”

The Fontainebleau was a decadent paradise of “flashy diamonds, illicit sex and overflowing ice cream sodas,” she said. To get to her family’s cabana, “you had to walk through the downstairs shops and past a dance studio where they had all these gorgeous guys giving cha-cha lessons to all these overdressed matrons from

Scarsdale.

“People came for the half-naked girls and the revues,” she said. And, of course, for trysts. “I knew something illicit was going on, but I couldn’t put my finger on what it was.”

The lobby was a hub for celebrity spotting, the hotel itself a backdrop against which the Rat Pack played poker and James Bond sprang from the high dive in “Goldfinger.”

“The floor was like a mirror, so shiny you could see yourself,” said Levi Forte, a bellman at the Fontainebleau since the ’60s. “Danny Thomas couldn’t keep his eyes off that floor. He’d sit there and comb his hair and ask, ‘Levi, how do I look?’ ”

Mel Dick, who moved to Miami from Brooklyn in the ’60s, visited on his honeymoon. He recalled being drawn to a sign outside the hotel barbershop that beckoned, “Come and have your shoes shined by the former lightweight champion of the world.” It was Sidney Walker, known as Beau Jack, recalled Mr. Dick, a wine company executive. “I sat down in the seat and I gave him five dollars. I told him: ‘I don’t want you to shine my shoes. I just want to look at you.’ ”

Mrs. Rubinson was just as enthralled by her frequent star sightings. “How many times driving up to the Fontainebleau I would see Frank Sinatra walking up the drive with a glass in his hand,” she said.

“We had a more glamorous lifestyle in those days,” she added wistfully. “But then, of course, things changed.”

In succeeding decades the resort lost its sparkle. Like other supersize hotels lining Collins Avenue north of 44th Street, including the neighboring Eden Roc, another shiny Lapidus edifice, it became as dated as Grandma’s minaudière.

Fast forward to the current renovation. “We kept asking ourselves, ‘What would Morris do?’ ” Mr. Karawan said.

John Nichols, a Miami architect responsible for the adjacent Fontainebleau residential towers, the second of which has just been completed, was hired to gut and redesign the hotel. He preserved Lapidus embellishments like the perforated “Swiss cheese” outer walls. “We had to get down into a very high level of detail,” Mr. Nichols said. “You don’t just go in there and take off the eyebrows.”

Ms. Oka Doner admires the renovation, to a point. “The property is kind of post-postmodern,” she said. “Morris Lapidus had real passion,” but in its current incarnation, “irony has trumped passion.”

But Ms. Desilets, the former Lapidus associate, who visited the site last month, was over the moon. “They used incredible engineering to laser trace what was there and rebuilt it with accuracy,” she said. “It’s going to be like a Ravenna mosaic. It’s a wow type of extravagance.”

The exuberant aesthetic of the original has been resurrected in three ballrooms, lavish restaurants and five swimming and reflecting pools.

The pool cabanas have wraparound sofas and flat-panel televisions. Perched on the property’s topmost tier is a V.I.P. pool deck with six additional teak cabanas, a bar and a D.J. booth.

Mr. Forte, the bellman, recently viewed the improvements. “The place is so pretty, the first time I saw it I thought I was in the wrong hotel,” he said. “I said to my wife, ‘Just take a look at what money can do.’ ”