

Dep. Ex. 804

From: Wampler, Jay T. Sent:2/13/2009 2:24 PM.
To: Fuszard, Joseph.
Cc: Biaggi, Thomas; Yu, Henry; Keyston, Douglas.
Bcc: .
Subject: FW: Fountainbleu.

Joe:

Per my VM. Call me to discuss as needed.

Jay T. Wampler

Bank of America, N.A.
901 Main Street, 66th Floor
Dallas, TX 75202

Ph - 214-209-3711
Fx - 214-290-9475

From: Wampler, Jay T
Sent: Thursday, February 05, 2009 12:21 PM
To: Biaggi, Thomas
Cc: Yu, Henry
Subject: RE: Fountainbleu

60+ story Hotel / Condo / Casino deal in Vegas. Still under construction. Plan was that at completion there would be \$1.8Bn in debt that would very quickly be paid down to \$1.0-1.1Bn from the quick sale of the condos and the project would throw off \$300MM in stabilized EBITDA. Condos not selling.

We are the Agent on the REV which at this point is unfunded. We are also the disbursement Agent on the larger project and for another bank group that is funding the build out of retail space within the project (Lehman is the Agent on this credit and stopped funding in December). Their funding obligation is being met by one of the participants stepping up and funding Lehman's share.

As a condition of our advance on the overall project the retail portion has to be funded first. If two consecutive monthly fundings are missed the project goes into default. At this point BAC has nothing funded.

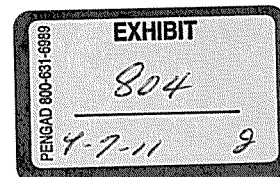
Don't know where DB is in the CAP structure but several tranches of debt have already funded. Will send around the detailed info as soon as I get it.

When this comes I'll get Henry on it.

Jay T. Wampler

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Dallas, TX 75202

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From: Biaggi, Thomas
Sent: Thursday, February 05, 2009 11:26 AM
To: Wampler, Jay T
Subject: FW: Fountainbleu

Looks like this will be coming into your area. Let me know what the situation is so I can call Cohen

From: Keyston, Douglas
Sent: Wednesday, February 04, 2009 1:22 PM
To: Biaggi, Thomas
Subject: RE: Fountainbleu

Tom,
Jeff Susman told me this morning that I will get the Annual Review on Fontainebleau Las Vegas today or tomorrow. We agreed a week or two ago that this name was going to RR 8, and that is the document which will accomplish that. Of course that action will also make it SAG advisory. We did not rush to downgrade the name to RR 8 in 4Q (we did project the d/g for 1Q) given there are no utilizations of the senior bank revolver. Also, there are none expected for another 60 days +. (Note that FB Miami is RR 6 minus and early returns on its recent opening appear positive.)

Note that Jeff - who of course is the team lead for CDP Gaming - was let go yesterday morning. He will be leaving the bank 2/16. Given the stress this sector has been experiencing for 18 months, the timing is definitely awkward. The entire CDP team in Dallas was already working long hours and six days a week. Oh well.

You know Jeff and how capable he is. If there are any opportunities in SAG I'd really like to see him stay with the institution.

PS. Recall that your friend from DB is likely in Vegas each week because they own and are building the Cosmopolitan.

Doug

Douglas Keyston
Senior Risk Manager
Gaming & Sports
douglas.keyston@bankofamerica.com
+1 (415) 913-5808 (office)
+1 (415) 640-0152 (mobile)

From: Biaggi, Thomas
Sent: Wednesday, February 04, 2009 9:05 AM
To: Keyston, Douglas
Subject: FW: Fountainbleu

Hi Doug,

Is SAG advising on this one?

From: Mark B Cohen [mailto:mark.b.cohen@db.com]

Sent: Wednesday, February 04, 2009 11:34 AM
To: Biaggi, Thomas
Subject: Fountainbleu
Tom,

Who is covering this for you guys ? Probably need a steering committee to discuss next steps etc.

By the way, I am in Vegas almost every week....

Hope all is well.

mark

Mark B. Cohen
Managing Director, Deutsche Bank
(212) 250-6038 T
(212) 797-5695 F

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Deutsche Bank does not render legal or tax advice, and the information contained in this communication should not be regarded as such.

Dep. Ex. 805

From: Fuszard, Joseph. Sent: 2/17/2009 2:43 PM.
To: Yu, Henry.
Cc:
Bcc:
Subject: RE: Fontainebleau Las Vegas.

I am accomplished in litigation, but find avoiding it to be the most rewarding. This is where you and I can help this team. I am available to participate in calls to the extent necessary. Most of what is needed on this deal will occur in the next 30-40 days.

Joe

From: Yu, Henry
Sent: Tuesday, February 17, 2009 10:53 AM
To: Fuszard, Joseph
Subject: FW: Fontainebleau Las Vegas

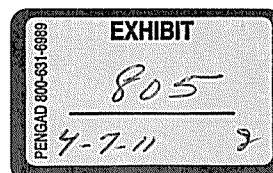
Hi Joe;

Interesting. I love litigation. What would you like your role to be going forward?

Best regards,

Henry

From: Keyston, Douglas
Sent: Friday, February 13, 2009 1:12 PM
To: Yu, Henry
Cc: Sieke, Eric -Legal; 'Fuszard, Joseph'
Subject: RE: Fontainebleau Las Vegas



Until Joe Fuszard tells me that he is not handling this, I am assuming he continues to.

Doug

Douglas Keyston

Senior Risk Manager

Gaming & Sports

douglas.keyston@bankofamerica.com

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+1 (415) 640-0152 (mobile)

From: Yu, Henry
Sent: Friday, February 13, 2009 10:35 AM
To: Keyston, Douglas
Cc: Sieke, Eric -Legal
Subject: RE: Fontainebleau Las Vegas

Hi Doug;

Deutsche has proposed a conference call involving their officers Mary Kay Coyle and Valerie Shapiro, their outside counsel Bingham, us and our outside counsel. What would be a good time for you Tuesday? Thanks.

Best regards,

Henry

From: Keyston, Douglas
Sent: Friday, February 13, 2009 12:16 PM
To: Yu, Henry
Cc: Sieke, Eric -Legal
Subject: Fontainebleau Las Vegas

Yes, Bill Scott at Sheppard Mullin who has been outside counsel on Gaming deals for the last 10 years +, including FB Miami and FB LV.

I've been working with Joe Fuszard on FB with conversations starting at least 3 – 4 months ago.

Doug

Douglas Keyston

Senior Risk Manager

Gaming & Sports

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From: Yu, Henry
Sent: Thursday, February 12, 2009 11:20 AM
To: Keyston, Douglas
Cc: Sieke, Eric -Legal
Subject: RE: Fountainbleu

Hi Doug;

Do we have outside counsel on this? Thanks.

Best regards,

Henry

From: Wampler, Jay T
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To: Biaggi, Thomas
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Subject: RE: Fountainbleu

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Mark B. Cohen
Managing Director, Deutsche Bank
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Dep. Ex. 808

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

<p>In re:</p> <p>FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Debtors.</p>
<p>FONTAINEBLEAU LAS VEGAS LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BANK OF AMERICA, N.A., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>

Bankr. Case No. 09-21481-BKC-AJC

Chapter 11

(Jointly Administered)

Adv. Pro. No. 09-01621-ap-AJC

DECLARATION OF HENRY YU

I, Henry Yu, being duly sworn, hereby declare as follows:

1. I am a Senior Vice President at Bank of America. I am a member of the Special Assets Group that works out large, troubled, corporate debt. I started working at Bank of America in 1976 and joined the Special Assets Group in 1986. My business address is 2 Lois Lane, Lafayette, California 94549. I submit this declaration in Support of Defendants' Opposition to Fontainebleau's Motion for Partial Summary Judgment.

2. All of the facts in this declaration are known to me personally or from my review of relevant Bank of America business records. If called as a witness I could and would testify competently to all facts set forth herein.



3. This declaration sets forth facts regarding the June 6, 2007 Credit Agreement (the "Credit Agreement") among Fontainebleau, Bank of America, N.A. ("Bank of America") and the other defendants, Fontainebleau's March 2, 2009 borrowing request under the Credit Agreement, and information provided to Bank of America by Fontainebleau under that agreement. A Copy of the Credit Agreement and the attendant Disbursement Agreement, without Exhibits, are attached as Exhibits A and B, respectively, to the June 10, 2009 Freeman Affidavit.¹ True and correct copies of Exhibits A and C-1 to the Disbursement Agreement are attached hereto as composite Exhibit 1.

4. Bank of America has served as the Administrative Agent under the Credit Agreement and as the Disbursement Agent under the Disbursement Agreement throughout 2009. It resigned both roles on May 7, 2009. The references to Bank of America below describe actions taken in its role as Administrative Agent, unless otherwise specified.

5. The Credit Agreement provides for \$1.85 billion in financing through three senior secured credit facilities: (i) a \$700 million seven-year maturity term loan; (ii) a \$350 million six-year maturity delay draw term loan (the "Delay Draw Loan"); and (iii) an \$800 million revolving loan (the "Revolver"). Fontainebleau planned to use the Senior Credit Facility to finance, in part, the construction of a 63-story, 3,800-room luxury hotel and casino project—including 1,018 condominium units and 286,500 square feet of retail space—at the Las Vegas Strip's north end (the "Project"). In addition to the Senior Credit Facility, the Project's construction was expected to be financed with funds from the sale of condominium units, equity contributions by Fontainebleau and its affiliates, a \$315 million Retail Credit Facility and the public sale of \$675 million of 10.25% Second Mortgage Notes (the "Second Mortgage Notes").

¹ The Freeman Affidavit was submitted in support of Plaintiff's motion for partial summary judgment.

6. To obtain a loan under the Credit Agreement, Fontainebleau must submit a "Notice of Borrowing" to Bank of America specifying the amount and type of loan to be borrowed and the requested Borrowing Date. (Credit Agmt. § 2.4(a).) After receiving a Notice of Borrowing, Bank of America notifies each lender under the relevant credit facility, and each lender then transfers to Bank of America funds representing its *pro rata* share of the requested loans (based on the lender's total commitment under the relevant credit facility). (*Id.* § 2.4(b).) Then, upon satisfaction or waiver of the Credit Agreement's conditions, Bank of America transfers the funds to the Bank Proceeds Account. (*See id.* § 2.1(c), 2.4(c).) Under the Disbursement Agreement, Fontainebleau cannot directly access funds in the Bank Proceeds Account. (Disbursement Agmt. § 2.2.2.)

7. To access funds in the Bank Proceeds Account, Fontainebleau must submit an Advance Request to cover Project Expenses. (*Id.* §§ 2; 3.3.4.) Each Advance Request must, among other things, state the amount of funds Fontainebleau is requesting, make certain contractually required certifications and representations, and enclose exhibits providing supporting information regarding the request, the status of the project, and the remaining costs and available funds to complete the project. (*Id.* §§ 3.3, Ex. C-1.)

8. As part of each Advance Request, Fontainebleau is required to submit an "In Balance Report" demonstrating that the "In Balance Test" is satisfied. (*Id.* § 3.3.8.) The "In Balance Test" requires Fontainebleau to show that it has adequate funds available under its existing sources of financing to complete construction on the Project—*i.e.*, that "Available Funds" equal or exceed the "Remaining Costs." (*Id.* Ex. A at 15.) Fontainebleau also must submit a "Remaining Costs Report" providing the amount of "remaining anticipated Project Costs through the Final Completion Date," a breakdown of those remaining costs, a true and

accurate listing of Project Costs previously incurred, and any modifications to the Project budgets. (*Id.* § 4.17.2, Ex. C-1, Appendix VIII.)

9. In May 2007, the lenders retained Inspection & Valuation International, Inc. (“IVI”) as a construction consultant to oversee the Fontainebleau project. IVI has prepared periodic reports with updates regarding, among other things, Fontainebleau’s progress in building the project and actual and anticipated future costs. IVI’s reports are prepared on the basis of financial information provided by Fontainebleau. IVI also reviews Fontainebleau’s Advance Requests. (*See* Disbursement Agmt. § 2.4.4(b).)

10. On January 30, 2009, IVI issued Project Status Report No. 21 (“Report No. 21”). (Declaration of Robert Barone, Ex. 1 (hereinafter, “Barone Ex. 1”).) Report No. 21 raised questions regarding the Project’s costs, including that “[w]hile the Anticipated Cost Report indicates the Project is expected to stay within budget, IVI is concerned that all the subcontractor claims have not been fully incorporated into the report and potential acceleration impact to meet the schedule has not been included.” (Barone Ex. 1 at 7.) IVI also observed that “it appears that the anticipated LEED credits are tracking behind projections, possibly in excess of \$15,000,000.” (*Id.* at 22.) LEED credits are Nevada state sales tax credits for the purchase of building materials for new construction that satisfy the LEED (“Leadership in Energy and Environmental Design”) standards for sustainable construction. Fontainebleau can recover a percentage of its Nevada state sales tax through this program. LEED credit savings were anticipated to decrease Project costs by \$50 million. (*See* Disbursement Agmt., Ex. C-1, Appendix VII.) Any LEED credit shortfall would therefore increase the Project’s cost.

11. On February 13, 2009, Fontainebleau submitted its February Advance Request. A true and correct copy of the February Advance Request is attached hereto as Exhibit 2. The

February Advance Request's "In Balance Report" represented that Available Funds exceeded Remaining Costs by \$115,984,214. (Ex. 2, Appendix X.)

12. Beginning in February 2009, Bank of America became increasingly concerned about the Project's financial condition and projected costs. On February 20, 2009, Bank of America requested additional information from Fontainebleau regarding the Project's costs. Bank of America sought this information because of issues raised by the IVI report and worsening macroeconomic conditions in the country generally, and the Las Vegas market in particular. Bank of America asked Fontainebleau about "whether any additional costs exist that are not included in the budget and the Remaining Cost Report . . . [and] the impact of any additional costs upon the ability to satisfy the In-Balance Test." It also requested "updated projections reflecting currently anticipated project and interest costs, and updated expectations as to anticipated condominium sales and operating results." A true and correct copy of the February 20, 2009 letter from Maurice Washington to Jim Freeman is attached hereto as Exhibit 3.

13. On February 23, 2009, Fontainebleau responded to Bank of America's letter and represented that "[i]f all of these anticipated costs materialized and there were no offsetting cost savings, the In Balance test would continue to be satisfied." A true and correct copy of the February 23, 2009 letter from Jim Freeman to Maurice Washington is attached hereto as Exhibit 4.

14. That same day, Bank of America sent Fontainebleau a letter requesting a conference call among Fontainebleau and the lenders because the lenders had "questions about the Project." A true and correct copy of the February 23, 2009 letter from Brian Corum to Jim Freeman is attached hereto as Exhibit 5.

15. Fontainebleau responded the next day, refusing to participate “in an open-forum call with lenders . . . where we do not have an opportunity to review questions.” A true and correct copy of the February 24, 2009 letter from Jim Freeman to Brian Corum is attached hereto as Exhibit 6. Fontainebleau asserted that the lenders’ “proposed call is not required as a condition to the requested Advances and has not been part of the procedure we have followed over the past 20 or so months since our financing closed.” (Ex. 6 at 1.)

16. On February 24, 2009, Fontainebleau sent Bank of America a Notice of Borrowing under Credit Agreement Section 2.4, requesting a \$68 million Revolver Loan. A true and correct copy of the February 24, 2009 Notice of Borrowing is attached hereto as Exhibit 7.

17. On March 2, 2009, Fontainebleau sent Bank of America a Notice of Borrowing, under Credit Agreement Section 2.4, requesting a \$350 million Delay Draw Loan and a \$670 million Revolver Loan. A true and correct copy of the March 2, 2009 Notice of Borrowing is attached hereto as Exhibit 8. On March 3, 2009, Fontainebleau sent Bank of America a Notice of Borrowing correcting a scrivener’s error in the March Notice and reducing its Revolving Loan request to \$656,522,698. A true and correct copy of the March 3, 2009 Notice of Borrowing is attached hereto as Exhibit 9. Prior to submitting this billion-dollar request, Fontainebleau had borrowed only \$68 million under the Revolver (all of it in February 2009) and had not borrowed any Delay Draw Loan funds.²

18. On March 3, 2009, IVI issued Project Status Report No. 22 (“Report No. 22”). (See Declaration of Robert Barone, Ex. 2 (hereinafter, “Barone Ex. 2”).) Report No. 22 states that “[t]he Anticipated [Contingency] Summary anticipates a balance contingency of \$15,545,478; however, IVI is concerned that the anticipated balance may drop substantially in

² Fontainebleau had also requested and received “letters of credit in the aggregate face amount of approximately \$13 million” under the Revolver. Under Credit Agreement Section 2.1(c)(1), the outstanding letter of credit obligations reduced the available Revolver funds dollar for dollar. (Credit Agmt. § 2.1.)

order to meet the aggressive schedule. The concern specifically, is that all of the subcontractors have not fully disclosed the potential costs to meet the schedule.” (Barone Ex. 2 at 23.) The contingency is unallocated funds included in the budget—initially \$111,039,860 and then reduced as the Project is completed—to cover Project changes and cost increases without increasing the overall Project cost or budget. The balance contingency reflects the amount of funds remaining in the contingency after all anticipated Fontainebleau change orders are funded. Decreases in the balance contingency may be caused by increases in Project costs and reflect an increased likelihood that the Project will exceed its budget. IVI also expressed concern that (i) “[w]hile the Anticipated Cost Report indicates the Project is expected to stay within budget, IVI is concerned that all the subcontractor claims have not been fully incorporated into the report and potential acceleration impact to meet the schedule has not been included;” (ii) “the LEED credits are tracking behind projections and the Developer has begun a detailed audit” whose “findings will be presented at the April 2009 quarterly meeting;” and (iii) “it appears that the work in the podium may need to be accelerated to meet the aggressive target for that part of the Project.” (*Id.* at 7.) Along with the tower and garage, the podium is one of the Project’s three main sections.

19. On March 3, 2009, Bank of America declined to process Fontainebleau’s March 2 Notice of Borrowing because it “d[id] not comply with the provisions of Section 2.1(c) of the Credit Agreement which states that: ‘(iii) unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans . . . shall not exceed \$150,000,000.’” A true and correct copy of the March 3, 2009 letter from Ronaldo Naval to Jim Freeman is attached hereto as Exhibit 10. Mr. Freeman’s reply to Ronaldo Naval is attached hereto as Exhibit 11.

20. On March 4, 2009, IVI supplemented Report No. 22 by providing Bank of America with information from IVI's March 1 and 2, 2009 Project site visit. A true and correct copy of the March 4, 2009 letter from Paul Bonvicino to Brandon Bolio is attached hereto as Exhibit 12. IVI reported that Fontainebleau had "acknowledged . . . a [LEED credit] short-fall of \$3,000,000 to \$5,000,000[,] . . . [but] IVI still believes that the credits are tracking behind projections in excess of \$15,000,000." (Ex. 12 at 2.)

21. On March 4, 2009, Bank of America sent Fontainebleau a letter requesting that "members of the Fontainebleau senior management team" meet with it and the lenders who were members of a newly-formed ad hoc steering committee on March 9 or 10, 2009, to discuss the Project's status and Fontainebleau's financial condition.³ A true and correct copy of the March 4, 2009 letter from Henry Yu to Jim Freeman is attached hereto as Exhibit 13.

22. On March 5, 2009, IVI wrote to Fontainebleau requesting (i) "to see the finalized schedule" for opening the podium portion of the Project, (ii) information regarding change orders and anticipated cost reports, and (iii) expedition of Fontainebleau's LEED Credit audit. (See Declaration of Robert Barone, Ex. 3.) IVI also noted that "[b]ased upon [its] review of the Turnberry West Construction Requisition for the month of February 2009 (received last week) and the Anticipated Costs for Fontainebleau dated January 2009 . . . there appears to be a delay in the execution of Owner Change Orders, which seems to have gotten larger recently," and asked Fontainebleau to "update the [Anticipated Cost Report] to show the potential exposures to [Fontainebleau] and a better indication of the current contingency." (Barone Ex. 3 at 2.)

³ The ad hoc steering committee was comprised of Bank of America, JPMorgan Chase Bank, Barclays Capital, Deutsche Bank, The Royal Bank of Scotland, Sumitomo Mitsui Banking Corporation, Bank of Scotland, and Highland Capital. These lenders represent over half the Credit Agreement lenders by commitment size. (See Ex. 13.)

23. On March 6, 2009, I emailed Fontainebleau CFO Jim Freeman asking to meet with him and to take a tour of the Project site. I also called and, not reaching him, left a voicemail restating that request.

24. Fontainebleau never responded to my request. Instead Jim Freeman sent me a letter on March 6 saying that “[w]e are deeply troubled by your letter of March 4, 2009, which purports to be in response to ours of March 3 . . . Again, when funding is provided consistent with your obligations pursuant to Section 2.1 of the Credit Agreement, the Company will be happy to meet with representatives of all constituents of the Senior Lenders . . . ” A true and correct copy of the letter is attached hereto as Exhibit 14.

25. On March 9, 2009, Fontainebleau submitted a revised Notice of Borrowing requesting only a \$350,000,000 Delay Draw Loan. A true and correct copy of the March 9, 2009 Notice of Borrowing and its cover letter are attached hereto as Exhibit 15. Bank of America processed, and the Delay Draw Lenders funded, this Notice of Borrowing.

26. On March 10, 2009, Bank of America requested that under Section 9.2.1 of the Disbursement Agreement and Section 6.6 of the Credit Agreement, Fontainebleau “attend a bank meeting in Las Vegas on Tuesday, March 17.” A true and correct copy of the March 10, 2009 letter from Henry Yu to Jim Freeman is attached hereto as Exhibit 16. Bank of America’s letter also pointed out that Fontainebleau had failed to return Bank of America’s telephone calls and had “refused to conduct a meeting or conference call with Bank of America or the other Lenders . . . in spite of [Bank of America’s] continued requests.” (Ex. 16 at 2.)

27. On March 11, 2009, Fontainebleau submitted its March Advance Request. A true and correct copy of the March Advance Request is attached hereto as Exhibit 17. The March

Advance Request's "In Balance" Report represented that Available Funds exceeded Remaining Costs by \$42,005,669. (Ex. 17, Appendix X.)

28. On March 11, 2009, Fontainebleau sent Bank of America a proposed "pre-negotiation agreement." A true and correct copy of the March 11, 2009 e-mail from Whitney Thier to Henry Yu with the annexed pre-negotiation agreement is attached hereto as Exhibit 18. Fontainebleau indicated that only parties executing this agreement would be invited to the meeting. The proposed agreement provided for a "Standstill Period" during which Bank of America and the lenders would "temporarily forbear [sic] from exercising [their] default-related rights and remedies" under the Credit Agreement and Fontainebleau would "temporarily forbear [sic] from initiating any formal legal proceeding in respect of any claims, actions, causes of action and suits against any [lender] arising out of or in connection with the Loan Documents." (Ex. 18, proposed Pre-Negotiation Agreement § 1.)

29. Bank of America reviewed the Pre-negotiation Agreement with the steering committee. The committee agreed that lenders should not have to sign any such agreement to meet with Fontainebleau. I informed Fontainebleau of that decision.

30. On March 16, 2009, Fontainebleau wrote to the lenders, proposing that a meeting be held on March 20, 2009. Fontainebleau also stated that it "disagree[s] with any contention that the requested meeting is a pre-condition to the funding demanded by our Notices of Borrowing or our right to draw upon such funds." The letter did not mention the Pre-negotiation Agreement. A true and correct copy of the March 16, 2009 letter from Jim Freeman to Henry Yu is attached hereto as Exhibit 19.

31. On March 16, 2009, Bank of America accepted Fontainebleau's proposed meeting date and stated that its "position is that a meeting between the Lenders and the Company is both

required by the terms of the Credit Agreement and the other Loan Documents, and desirable." A true and correct copy of the March 16, 2009 letter from Henry Yu to Jim Freeman is attached hereto as Exhibit 20.

32. On March 20, 2009, Fontainebleau met with the lenders in Las Vegas and presented an update on the Project's status. A true and correct copy of the Fontainebleau Lender Update, as of March 20, 2009, is attached hereto as Exhibit 21. Fontainebleau's Update represented that with construction 75.6% completed, the Project had \$1,011,749,043 in remaining costs and that Available Funds exceeded those costs by \$42,005,669. (*See Ex. 21 at 25-26.*) During the meeting Fontainebleau refused to answer questions about the future operating prospects of the project on the grounds that the Pre-negotiation Agreement was not executed.

33. On March 24, 2009, Fontainebleau revised its Advance Request and supporting documentation. A true and correct copy of the revised March Advance Request is attached hereto as Exhibit 22. The revisions projected additional costs associated with Fontainebleau's decision to delay the Project's Scheduled Opening Date from October 1, 2009 to November 1, 2009, including: (i) an \$88,854,000 construction cost increase, (ii) a \$21,747,000 debt service increase, and (iii) a \$5 million condo selling cost decrease. (*Ex. 22, Budget/Schedule Amendment Certificate at 1, Appendices I & II to Budget/Schedule Amendment.*) In addition, the revised "In Balance" Report now represented that Available Funds exceeded Remaining Costs by only \$13,785,184. (*Id.*, Appendix X.)

34. On March 25, 2009, Fontainebleau submitted a second revision to the supporting documentation for its March 2009 Advance Request. A true and correct copy of these revisions to the March 2009 Advance Request is attached hereto as Exhibit 23. The revised Advance

Request's "In Balance" Report represented that Available Funds exceeded Remaining Costs by \$14,084,701. (Ex. 23, Appendix X.) Included in Available Funds was Z Capital Finance LLC's commitment of \$11,666,667. To this day Z Capital has not funded this amount. If this amount is excluded from the calculation, Available Funds exceeded Remaining Costs by only \$2,418,034.

35. Despite having requested (and been refused) a \$656 million Revolver loan in early March, Fontainebleau did not submit a monthly Notice of Borrowing for a Revolver loan on April 1, its next opportunity to do so. In fact, Fontainebleau did not submit another Notice of Borrowing until after the Revolver was terminated. In addition, Fontainebleau did not submit an April Advance Request.

36. On April 13, 2009, Fontainebleau notified Bank of America that it did not expect to be able to satisfy the "In Balance" test. A true and correct copy of the April 13, 2009 notice is attached hereto as Exhibit 24. Fontainebleau stated that it had "learned that (i) the April Advance request under the Retail Loan may not be fully funded, and (ii) the Remaining Costs may exceed the Available Funds." (Ex. 24 at 2.)

37. On April 14, 2009, Fontainebleau provided IVI with a worksheet containing a "Preliminary Analysis" of "Anticipated Costs as of April 14, 2009." A true and correct copy of the April 14, 2009 e-mail from Robert Barone to Brandon Bolio attaching the worksheet is attached hereto as Exhibit 25. This worksheet reflected \$186,932,975 in additional costs that were not included in the March 2009 Advance Request. IVI requested Fontainebleau provide this information after receiving Fontainebleau's April 13, 2009 notice (*see* Ex. 24) reflecting "significant extra construction costs . . . which were not disclosed previously to [IVI]." (*See* Ex. 25, April 14, 2009 e-mail from Robert Barone to Deven Kumar.)

38. On April 17, 2009, Fontainebleau and the Lenders met to discuss the Project. At this meeting, Fontainebleau revealed the existence of a "Base Plan" and an "Enhanced Plan." The "Enhanced Plan" included restaurants, retail, nightclubs, and pool deck gaming and bar area, not included in the "Base Plan." Fontainebleau revealed that the "Base Plan" had a \$180 million construction deficit—*i.e.*, the Project was "Out of Balance" by \$180 million. Fontainebleau also estimated that to complete the "Enhanced Plan" would require an additional \$203 million over the cost of completing the Base Plan—a total shortfall of \$383 million. Fontainebleau also proposed further delaying the Project's opening from November 2009 until February 2010. During this meeting, Fontainebleau also disclosed that it faced a risk of insolvency. It made a proposal to restructure its finances—a plan that included extinguishing the Second Mortgage Notes and converting a substantial portion of the senior secured credit facilities to equity.

39. Fontainebleau's statement that the project could not be finished without eliminating the \$675 million Second Mortgage Notes and converting a substantial portion of the senior credit facilities into equity suggested that Fontainebleau was already insolvent insofar as the Project's liabilities exceeded its assets and Fontainebleau could not satisfy its debt obligations when they became due. This also suggested that a Material Adverse Effect had occurred.

40. During the April 17, 2009 meeting, one of the lenders asked Mr. Freeman why Fontainebleau had not made an April Advance Request. He responded that Fontainebleau could not make the contractually required representations consistent with the terms and provisions of the Credit Agreement and Distribution Agreement. Under the Distribution Agreement, Fontainebleau is required to make representations concerning its financial conditions as of the time it submits Advance Requests, including that: the "In Balance Test" is satisfied; no Material

Adverse Effect⁴ has occurred since the Closing Date; there has been no Event of Default under either the Disbursement Agreement or any other financing agreement; and that Fontainebleau and its respective subsidiaries are solvent. (*See* Disbursement Agmt., Art. 4.) During this meeting, when asked exactly when Fontainebleau had retained Kasowitz, Benson, Torres & Friedman LLP as counsel, Marc Kasowitz of the law firm responded that his firm was retained in February.

41. On April 20, 2009, a majority of the Revolver Lenders instructed Bank of America to notify Fontainebleau that the Revolving Lenders “have determined that one or more Events of Default have occurred and are continuing and that they have requested that the Administrative Agent notify you that the Total Revolving Commitments have been terminated.” A true and correct copy of the April 20, 2009 letter from Ronaldo Naval to Jim Freeman is attached hereto as Exhibit 26.

42. On April 23, 2009, based upon the new information received from Fontainebleau, IVI issued Project Status Report No. 23 (“Report No. 23”), reporting significant cost increases for the Project. A true and correct copy of Report No. 23 is attached hereto as Exhibit 27. Report No. 23 states that (i) “the Developer increased the direct cost budget by \$50,000,000 to account for additional construction costs;” (ii) “the Prime Contract Control Budget was increased

⁴ Material Adverse Effect is defined as:

any event or circumstance which: (a) has a material adverse effect on the business, assets, properties, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of . . . the Companies and their Subsidiaries, taken as a whole . . . ; (b) materially and adversely affects the ability of the Companies and their Subsidiaries, taken as a whole, to perform their respective obligations under the Financing Agreements or of the Project Entities to construct the Project; (c) materially and adversely affects the rights of the Secured Parties under their respective Financing Agreements, including the validity, enforceability or priority of the Liens purported to be created under the Security Documents; or (d) materially and adversely affects the ability of the Project Entities to achieve the Opening Date by the Outside Date.

Disbursement Agmt., Ex. A at 18.

\$64,854,542 from \$1,986,150,792 to \$2,051,005,334;” and (iii) “the Contingency was reduced by \$38,854,000, resulting in a current direct cost contingency of \$37,994,445.” (Ex. 27 at 7.) IVI also stated that it “believes the current contingency budget will be depleted.” (*Id.* at 23.) IVI also requested that “[w]hile the [Anticipated Cost Report] has been submitted by the Developer as a true representation of known costs, IVI is still concerned that all the subcontractor claims have not been fully incorporated into the report.” (*Id.* at 7.) In addition, Report No. 23 also stated that “the anticipated LEED credits are tracking behind projections” and that “the Developer has acknowledged a +/- \$6,000,000 lower target; however, IVI is still concerned it may be more.” (*Id.* at 22.)

43. On April 28, 2009, Fontainebleau held a meeting with several lenders in New York. Fontainebleau further discussed a plan to restructure the Project’s finances. During that meeting, Fontainebleau revealed that it would cost \$1.504 billion to complete and open the Project. This amount far exceeded the amount that the Lenders would have had on deposit in the Bank Proceeds Account as of April 20, 2009, even if the Revolver Lenders had ignored Section 2.1(c)(iii) of the Credit Agreement and funded the March 3, 2009 Notice of Borrowing. Under Section 2.1(b)(iii) of the Credit Agreement, which states “the proceeds of each Delayed Draw Term Loan will be applied first to repay in full any then outstanding Revolving Loans and Swing Line Loans (but without reducing the Total Revolving Commitments), and second, to the extent of any excess, be credited to the Bank Proceeds Account ...,” all of the funds from the Delay Draw Term Loan would have gone towards paying down the Revolver indebtedness first. In addition, Fontainebleau and its advisors asserted that the maximum amount of debt that can be serviced by the project is \$1.4 billion. Therefore, consistent with the presentation on April 17, 2009, the company insisted that the \$675 million of Second Mortgage Notes had to be

extinguished and a substantial portion of the senior secured credit facilities had to be converted to equity. This again confirms that the Project had been insolvent well before Fontainebleau filed for bankruptcy protection on June 9, 2009.

44. On or about May 12, 2009, I learned that Fontainebleau had been sued by CCCS International, one of Fontainebleau's consultants for the Project. A true and correct copy of CCCS' complaint is attached hereto as Exhibit 28. CCCS alleges that it had been hired by Fontainebleau during the summer of 2008 because "[a]ccording to Fontainebleau, the Project was severely over budget and Fontainebleau was in need of a contraction manager able to provide cost management and auditing services to recover prior unnecessary overpayments" to contractors and suppliers. (Ex. 28 at ¶ 9.) CCCS also claimed that at the time of its termination, it had already "discovered over \$40 million in prior overpayments, and was well on its way to uncovering upwards of \$130 million" in overpayments. (*Id.* at ¶ 27.) CCCS further alleged that "Fontainebleau failed to adequately design, supervise, coordinate, plan and schedule all the work performed at the Project, which resulted in significant delays, disruptions, alterations and hardship on many of the subcontractors, consultants and employees who worked on the Project, including CCCS." (*Id.* at ¶ 18.) CCCS' allegations suggested to me that the Project was over budget for more than one year, thereby casting doubt on the accuracy of Fontainebleau's prior cost disclosures and financial forecasts under the Credit and Disbursement Agreements.

45. On May 15 2009, IVI issued a Cost-to-Complete Review (the "CTC Review") analyzing the costs of completing the Project. (*See* Declaration of Robert Barone, Ex. 6 (hereinafter "Barone Ex. 6").) The CTC Review states that "[d]uring March 2009, the Developer increased the direct cost budget by \$50,000,000," and that "[w]hile the information submitted by the Developer at that time was accepted as a true representation of known costs, IVI was still

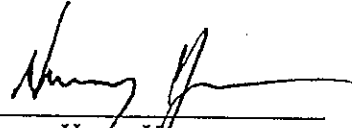
concerned that all the subcontractor claims have not been fully incorporated into the disclosed costs.” (Barone Ex. 6 at 6.) IVI reports that Fontainebleau’s anticipated cost report “includes \$298,053,918 in Pending Owner Changes,” and that “[i]t is clear from the number and scope of pending items, the claims were made by the subcontractors some time ago, possibly as far back as a year, and were never included on prior [anticipated cost reports] submitted to IVI.” (*Id.* at 20.) In addition, the CTC Review also stated that “the anticipated LEED credits are tracking behind projections and we believe that there will be a shortfall of ±\$10,000,000.” (*Id.* at 22.) IVI also reported that certain shortfalls in the Project budget “are expected to erode the Developer’s Unallocated Contingency budget to insufficient levels.” (*Id.*)

46. Bank of America retained Cushman & Wakefield to conduct an appraisal of the Fontainebleau Project. On May 21, 2009, Cushman & Wakefield issued an appraisal report. A true and correct copy of the appraisal report is attached hereto as Exhibit 29. Cushman & Wakefield concluded that the Project’s market value upon completion in May 1, 2010 would be \$1,764,000,000. (Ex. 29 at 200.) Given that Fontainebleau asserts that \$1.5 billion is needed from this point forward to complete and open the project, and that most of that amount has to be debt on top of the existing \$1 billion of outstanding term loans and \$675 million of Second Mortgage Notes, it is clear that the project at completion will have liabilities far exceeding its assets unless the existing debt is compromised.

47. Based upon the foregoing, it is my belief, although it was not my belief at the time, that as of March 2, 2009, Fontainebleau was in default under the Credit and Disbursement Agreements because, among other things, Fontainebleau was insolvent, and the Project had suffered a Material Adverse Effect. I also believe that Fontainebleau's financial disclosures before and as of that date were materially inaccurate because they failed to accurately present Fontainebleau's financial condition, including the fact that remaining construction costs exceeded available funds. In addition, Fontainebleau failed to provide prompt notice of the occurrence of events of default, as required by the Credit Agreement and Distribution Agreement. I believe that these facts will be substantiated by discovery of Fontainebleau, its affiliates and certain third parties such as its accountants, financial advisors and contractors.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

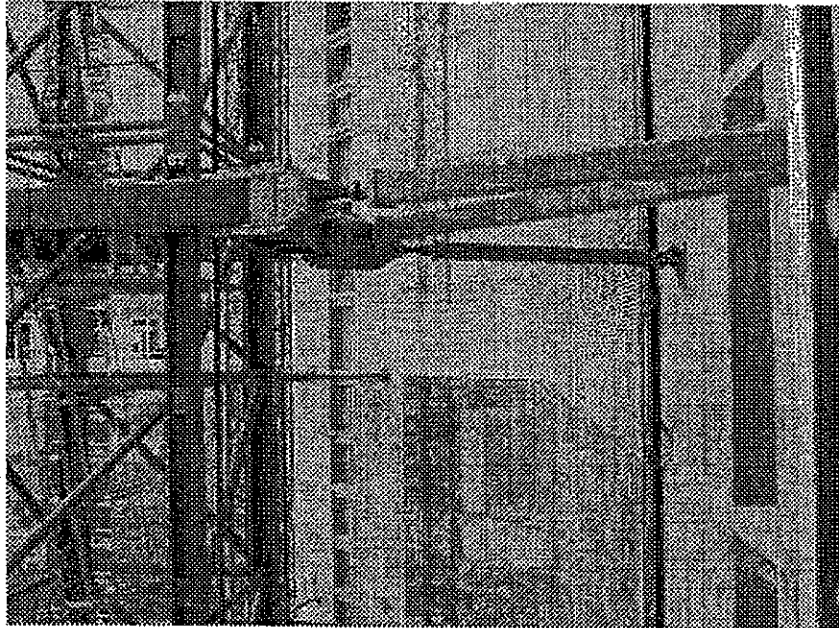
EXECUTED, this 1st day of July, 2009 at Lafayette, California.


Henry Yu

Dep. Ex. 809

Project Status Report

Report No. 21
Fontainebleau Las Vegas
8,749,063 SFG Hotel & Casino
Las Vegas, Nevada



Prepared for
Bank of America
Dallas, Texas
&
Lehman Brothers Holdings, Inc
New York, New York

January 30, 2009
IVI Project No. V61210964





CONSTRUCTION CONSULTING & PROJECT MANAGEMENT

INSPECTION & VALUATION INTERNATIONAL, INC.

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January 30, 2009

CDROM Overnight Mail

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josh.freedman@lehman.com

Re: Fontainebleau Las Vegas
8,749,063 SFG Hotel & Casino
Las Vegas, Nevada
IVI Project No. V61210964

Dear Mr. Bolio and Freedman:

Attached is our Project Status Report No. 21 for the Developer's Draw Request No. 21 and the General Contractor's Requisition No. 21.

If you have any questions please call me directly at (914) 313-5067. If I am not available, please contact Robert W. Barone, R.A., LEED AP, at (914) 313-5113.

Sincerely,

INSPECTION & VALUATION INTERNATIONAL, INC.

Paul R. Bonvicino Jr.
Senior Project Manager

Reviewed by:

Robert W. Barone, LEED AP
Senior Vice President

PRB/aok

CC: jeanne.p.brown@bankofamerica.com; mrafeddie@trimontrea.com; ronaldo.naval@bankofamerica.com; jeff.susman@bankofamerica.com

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TABLE OF CONTENTS

Cover Page

Transmittal Letter

Summary

1. Site Visit Data
2. Review of Payment Requisition
 - 2.1. Value of Work Completed to Date – Core and Shell
 - 2.2. Value of Work Completed to Date – FF&E
 - 2.3. Funding for Stored Materials and Deposits
 - 2.4. Requisition Retainage
 - 2.5. Certifications
 - 2.6. Waivers of Lien
3. Direct Cost Budget Status
 - 3.1. Prime Contract and Change Orders
 - 3.2. Subcontract Buy-out Status and Bonds
 - 3.3. Anticipated Costs
 - 3.4. Contingency Status
4. Schedule Status
 - 4.1. Construction Schedule
 - 4.2. Workforce
 - 4.3. Disbursement Schedule
5. Construction Status
 - 5.1. Key Indicators
 - 5.2. System Status
 - 5.3. Quality of Work and General Conformance with Construction Documents
 - 5.4. Testing Reports
6. Documentation Update
 - 6.1. Drawings and Specifications
 - 6.2. Permits
 - 6.3. As-Built Survey
 - 6.4. Designer-of-Record Field Observation Reports
 - 6.5. Certificate of Occupancy
 - 6.6. Construction Meeting Minutes
 - 6.7. Shop Drawing and RFI Logs
 - 6.8. Tenant/End-User Status and Approvals
 - 6.9. Closeout Documents
 - 6.10. LEED Status
7. Salient Facts Schedule
8. Salient Outline Specifications
9. Disbursement Agreement Terms

Exhibits

SUMMARY

Anticipated Construction Cost vs. Direct Cost Budget

The Developer's direct cost budget was increased by \$190,265,022 in June 2008 to account for a significant amount of additional construction costs, resulting in a revised direct cost budget of \$2,099,999,238, and a direct cost contingency budget of \$211,894,252. The construction costs are currently within the Developer's revised direct cost budget of \$2,099,999,234. During this PC, the Prime Contract Control Budget was increased \$11,234,778 to \$1,972,635,661, and the Additional Cost Contingency was reduced by \$11,234,778, resulting in a current direct cost contingency of \$90,413,322. This equates to 11.4% of the cost-to-complete and is adequate for the project as detailed in the Anticipated Cost Report, which reflects drawing completion and coordination. While the Anticipated Cost Report indicates the Project is expected to stay within budget, IVI is concerned that all the subcontractor claims have not been fully incorporated into the report and potential acceleration impact to meet the schedule has not been included. Additionally, it appears that the LEED credits are tracking behind projections and the Developer has begun a detailed audit. IVI will continue to discuss this with the Developer.

Construction Status

The project began in January 2007 with the Grand Opening anticipated in October/November 2009. At 66.2% complete, the overall construction progress is tracking in-line with the latest construction schedule, which indicates an October 1, 2009 overall completion.

While the Project is tracking in accordance with the current schedule, it appears that the work in the podium may need to be accelerated to meet the aggressive target for that portion of the project.

The overall impact of the collapse to the Garage/Convention Center construction schedule is six (6) to (8) eight weeks behind schedule. This delay impacted the TCO for construction parking in the garage and the TCO was issued on August 26, 2008. At this time, it has been determined that the overall completion dated of the Garage/Convention Center will not be impacted.

Quality of Work/Conformance with Construction Documents

The work observed appears to be in general conformance to the drawings and specifications we have reviewed, and during our site visit, we did not observe any significant areas of unsatisfactory workmanship. It should be noted that the General Contractor has been maintaining a clean, relatively debris free site.

Five (5) previous material incidents occurred on-site August 2, 2007, August 6, 2007, February 11, 2008, June 3, 2008 and June 25, 2008. We understand that OSHA has acknowledged no fault or negligence on the part of TWC or FB for the August 2 and 6 incidents and will issue their formal report in 12 to 18 months (August 2008 to January 2009) for the first three (3) incidents. The fourth incident was no fault or negligent on the part of TWC or FB.

Five (5) additional incidents with minor injuries have occurred on-site, Monday December 10, 2007, Thursday January 3, 2008, Saturday January 12, 2008, Monday September 1, 2008 and Thursday October 2, 2008. The incidents are currently under investigation by OSHA and the fourth by LVPD.

Outstanding Documentation

- Formal OSHA report for the construction workers fall and the failure of the precast tees; and
- Close-out documentation for Orphan Tanks 3 and 4 (expected by June/July 2009).

These outstanding items were discussed during our previous site meetings.

Fontainebleau Las Vegas
Report No. 21

Page 9

1. SITE VISIT DATA

Site Visit Date:	December 5, 2008
Previous Visit Date:	November 3, 2008
Additional Site Visit:	NA
Next Site Visit Date:	January 5 & 6, 2009
Weather:	Cloudy, 40°F
BofA Representative:	Jeanne Brown, Brandon Bolio
LBH Representative:	None
EZ Solutions:	Chris Klehm
PCI Group:	Raquel Speers-Shohet
IVI's Representative:	Paul Bonvicino, Robert Barone
Developer Entity:	Fontainebleau Las Vegas, LLC
Developer Representatives:	R C White, Deven Kumar, Jackie Miller
Architect's Representative:	Scott Walls
General Contractor's Representatives:	Bob Ambridge, Bob Oehrli, Don Byrd, Ken McElfresh, Kili Ogilvie, Stephanie Cisneros, Karen Bruner, Cheryl Ross, Glen Russo, Robin Allen, Dan Ruddock, Miranda Zeller, Joe DeMarco, Cheryl Szeles
Developer's Advance Request No & Date:	25, January 9, 2008 (Exhibit "B")
Date Advance Received by IVI:	January 12, 2009 (Additional documentation and clarification provided through January 26, 2009)
General Contractor's Requisition No. & Date:	25, December 31, 2008 (Exhibit "C")
Date Requisition Received by IVI:	January 12, 2009
Period Covered (PC):	December 1 to December 31, 2008

2. REVIEW OF PAYMENT REQUISITION

2.1. Value of Work Completed to Date – Core and Shell

In accordance with the Form of Construction Consultant’s Advance Certificate dated January 13, 2009 (Exhibit “D”), IVI has approved the following advance. Included as part of (Exhibit “B”) are the following: Developer’s Advance Request Certificate, Advance Confirmation Notice, Requested Cost Report, Shared Cost Allocation Report, Current Available Sources Report, Funding Order Report, Advance Request Transfer Report, Detailed Remaining Cost Report, Retail Remaining Cost Report, In Balance Report and the Contractor’s Payment Application letter. In addition to the aforementioned also included as (Exhibit “B-1”) are the following: Budget/Schedule Amendment Certificate dated December 31, 2008; Appendix I to Budget/Schedule Amendment, Appendix III to the Budget/Schedule Amendment Certificate and Attachment A to Budget Amendment Certificate. The General Contractor’s Advance Certificate (Exhibit “C”) dated December 31, 2008 and Architect Advance Certificate (Exhibit “C-1”) dated December 31, 2008 is included.

a. Developer's Direct Cost Budget	\$	1,904,673,934	
b. Adjustments (approved COs, revisions, etc.)	+	195,325,304	(1)
c. Adjusted Direct Cost Budget	\$	<u>2,099,999,238</u>	
d. Value of Work Completed to Date	\$	1,330,835,697	
e. Stored Materials		41,946,665	
f. Deposits	+	17,668,157	
g. Subtotal Completed Value + Stored Materials	\$	<u>1,390,450,519</u>	
h. Less Retainage	-	82,804,662	
i. Total Completed Value Less Retainage	\$	<u>1,307,645,857</u>	
j. Less Previous IVI Recommended Disbursements	-	1,234,211,830	
k. Recommended Disbursement for the PC	\$	<u>73,434,027</u>	
l. Cost to Complete Direct Cost Budget (c - i)	\$	792,353,381	
m. IVI's Estimated Cost to Complete	\$	792,353,381	
n. Gross Percentage Complete (g/c)			66.2%
o. Net Percentage Complete (k/c)			62.3%
Budget Amendment No. 1	\$	5,060,279	
Budget Amendment No. 2	\$	<u>190,265,022</u>	
(1) Total Amendment change	\$	<u>195,325,301</u>	

2.2. Value of Work Completed to Date – FF&E

a. Developer's FF&E Budget	\$	169,853,898	
b. Adjustments (approved COs, revisions, etc.)	+	0	
c. Adjusted FF&E Budget	\$	169,853,898	(1)
d. Value of Work Completed to Date	\$	0	
e. Stored Materials		0	
f. Deposits	+	51,672,936	
g. Subtotal Completed Value + Stored Materials	\$	51,672,936	(2)
h. Less Retainage	-	687,828	
i. Total Completed Value Less Retainage	\$	50,985,108	
j. Less Previous IVI Recommended Disbursements	-	42,384,085	
k. Recommended Disbursement for the PC	\$	8,601,023	
l. Cost to Complete Direct Cost Budget (c - i)	\$	118,868,790	
m. IVI's Estimated Cost to Complete	\$	118,868,790	
n. Gross Percentage Complete (l/c)		30.4%	
o. Net Percentage Complete (k/c)		30.0%	

(1) Gaming FF&E	\$	40,871,099
Rooms FF&E		73,784,267
Exterior Signage		26,532,720
Common Areas	+	28,665,812
Developer's Direct Cost Budget	\$	169,853,898

(2) The total value of deposits to date are as follows:

Gaming FF&E	\$	150,771
Rooms FF&E		31,372,252
Exterior Signage		6,878,276
Common Areas	+	13,271,637
Total	\$	51,672,936

IVI has received the FF&E overview summary of costs and status for each component as detailed in section 3.3 of this report.

2.3. Funding for Stored Materials and Deposits

During this period, additional funding was requested for off-site stored materials with the Developer providing IVI with the following (Exhibit "E"):

- An Inventory of Unincorporated Materials spreadsheet, which details a total of \$41,946,665 in currently stored materials and includes additional inventory this PC of \$9,053,475;
- Supporting documentation for stored materials, including evidence of property insurance, bill of sale and Transfer of Title; and
- Inspection report verifying Stored Materials prepared by Professional Associates Construction Services dated December 9, 2008.

During this period, funding was requested for material deposits with the Developer providing IVI with the following (Exhibit "F"):

- Deposit Summary spreadsheet detailing a total of \$17,668,157 in deposits which includes deposits of \$943,701 this PC.

Stored materials and deposits to date are identified in the following tables:

Description of Item (Tower 200)	Storage Location	Cumulative Off-Site Stored Value	Cumulative On-Site Stored Value	Key	Authorize Funding
Copper Tubing-Plumbing	2020 Mendenhall, NLV, NV	\$509,236		1, 2, 3, 5, 6	9
FCU/Thermal Fuse	16781 Burke La, Huntington Beach	\$188,793		1, 2, 3, 5, 6	9
MC Cable	3950 W Diablo Dr., LV, NV	\$94,810		1, 2, 3, 4	9
Hardware	4030 Industries, NLA, NV	\$841,390		1, 2, 3	9
Condo Mirrors	4030 Industries, NLA, NV	\$15,854		1, 2, 3	9
Condo Millwork	4030 Industries, NLA, NV	\$479,322		1, 2, 3	9, 10
Condo Shower Doors	4030 Industries, NLA, NV	\$1,027,682		1, 2, 3	9
Condo Closets	4030 Industries, NLA, NV	\$243,192		1, 2, 3	9, 10
Vanities	16791 Burke La, Huntington Beach	\$531,333		1, 2, 3	9
Brackets	16791 Burke La, Huntington Beach	\$250,000		1, 2, 3	9
T1 Elevator Lobbies	16791 Burke La, Huntington Beach	\$70,200		1, 2, 3	9
Stone Shelves	16791 Burke La, Huntington Beach	\$12,785		1, 2, 3	9
Fire Alarm MC Cable	4375 s. Valley View, LV, NV	\$15,410		1, 2, 3	9
Condo Trim	4030 Industries, NLA, NV	\$94,832		1, 2, 3	9
Calacatta Oro	3750 W. Quail Ave, LV, NV	\$82,097		1, 2, 3	9
Tile Material	2020 Mendenhall, NLV, NV	\$2,198,381		1, 2, 3	9, 10
Glass Shower/Part	4030 Industries, NLA, NV	\$798,020		1, 2, 3	9
FCU/Thermal Fuse	16791 Burke La, Huntington Beach	\$169,956		1, 2, 3	9
Bath Accessories	280 Orville Wright, LV, NV	\$210,242		1, 2, 3	9
Lighting Fixtures	3950 W Diablo Dr., LV, NV	\$797,153		1, 2, 3	9
MC Cable	4375 s. Valley View, LV, NV	\$71,217		1, 2, 3	9
Misc. Elec. Materials	4375 s. Valley View, LV, NV	\$408,406		1, 2, 3	9
Elevator Lobbies	16791 Burke La, Huntington Beach	\$1,177,200		1, 2, 3	9
Lighting Fixtures	13169 Slover Ave., Fontana, CA	\$218,457		1, 2, 3	9
Cable Tray	3455 W Reno Ave, Sun Valley	\$94,476		1, 2, 3	9
Trim	4030 Industries, NLA, NV	\$527,624		1, 2, 3	9
Welded Frames	4030 Industries, NLA, NV	\$110,484		1, 2, 3	9
Crown Molding	4030 Industries, NLA, NV	\$291,202		1, 2, 3	9
Elevator Materials	4855 West Harmon, LV, NV	\$8,468,471		1, 2, 3	9
LED Color Changing	30733 W Ten Mile, Farmington, MI	\$588,415		1, 2, 3	10
Wiring Devices	6065 Polaris	\$375,637		1, 2, 3	9
Electrical Materials	4375 s. Valley View, LV, NV	\$200,632		1, 2, 3	9
Pocket Fascia Bds	Architectural Materials	\$145,317		1, 2, 3	9
KD Frames	4030 Industries, NLA, NV	\$281,877		1, 2, 3	9
Condo Kitchen	4030 Industries, NLA, NV	\$176,439		1, 2, 3	9
Granite	6025 Hauck St, LV, NV	\$300,585		1, 2, 3	10
Wood Doors	4030 Industries, NLA, NV	\$2,559,472		1, 2, 3	9
Upgrade beam/case	4030 Industries, NLA, NV	\$189,902		1, 2, 3	9
Upgrade hardware	4030 Industries, NLA, NV	\$196,616		1, 2, 3	9
Closet Doors	4030 Industries, NLA, NV	\$1,161,130		1, 2, 3	9, 10
Mirrors	4030 Industries, NLA, NV	\$716,603		1, 2, 3	9, 10
Appliances	Econ Warehouse	\$55,448		1, 2, 3	9
Polished Tile	2020 Mendenhall, NLV, NV	\$271,538		1, 2, 3	9
Marble	2020 Mendenhall, NLV, NV	\$437,132		1, 2, 3	9
Low Voltage Cable	3950 Ponderosa, LV, NV	\$87,462		1, 2, 3	9
ASI Panels	2901 Meade Ave, LV, NV	\$57,520		1, 2, 3	9
Glass Mosaic	2020 Mendenhall, NLV, NV	\$45,967		1, 2, 3	9
Switchgear	5570 S Valley, LV, NV	\$746,319		1, 2, 3	9, 10
Low Voltage Material	4375 s. Valley View, LV, NV	\$41,682		1, 2, 3	9, 10
	Closing Inventory Total	\$28,433,918			

Description or Item (Tower 200)	Vendor	Cumulative Deposits	Key	Authorize Funding
Glass	Zetian Systems	\$317,000	1	9, 10
Guest Closet Units	Architectural Materials	\$2,859,155	1	9
Curtain Wall	Zetian Systems	\$101,033	1	9
Custom Color	Zetian Systems	\$162,500	1	9
Kitchen Cabinets	M3 Procurement & Design	\$817,705	1	9, 10
Aluminum Extrusions	Zetian Systems	\$899,000	1	9, 10
Deposit on tile	Portobello	\$255,786	1	9
Sinks	Desert Plumbing & Heating	\$174,426	1	9
Stone/Marble Vanity Tops	SMES SNC	\$17,040	1	9
Marble	Ital Stone	\$92,206	1	9, 10
ITA 093005	Ital Stone	\$69,174	1	9
Limestone	Ital Stone	\$32,948	1	9
Granite	Ital Stone	\$164,669	1	9, 10
Temp Controls	Bombard Electric	\$83,762	1	9
Dishwasher	Miele	\$25,017	1	9, 10
Dishwasher	Miele	\$47,942	1	9, 10
Eterior lighting	Uilluminating	\$6,500,000	1	9
Glass	Zetian Systems	\$187,636	1	9, 10
Interior Glass	Zetian Systems	\$224,850	1	10
Biege Stone	Ital Stone	\$193,051	1	10
Marble-Container #31	SMES SNC	\$17,675	1	10
Marble-Container #32	SMES SNC	\$17,443	1	10
Frosty Glass Tile	Ital Stone	\$78,000	1	10
Vanity countertops	Ital Stone	\$100,000	1	10
Wood Doors	Gallagher-Kaiser	\$1,062,000	1	9
	Closing Inventory Total	\$14,600,018		

Description or Item (Garage/Convention 300)	Storage Location	Cumulative Off- Site Stored Value	Cumulative On- Site Stored Value	Cumulative Deposits	Key	Authorize Funding
Wire	3755 W Hacienda Ave	\$4,365			1, 2, 3, 4	9
Copper-Hydrionics	2020 Mendenhall NLV, NV	\$21,441			1, 2, 3, 4	9
Rolls Steel	2333 McCall St, Dayton, Oh	\$503,872			1, 2, 3, 4	9
Light Fixtures	3755 Sunset, LV, NV	\$168,414			1, 2, 3, 4	9
Elevator Equipment	4855 W. Harmon, LV, NV	\$3,893,911			1, 2, 3	9, 10
Gears/Switches	3455 W Reno Ave, LV, NV	\$139,667			1, 2, 3, 4	9
Copper Tubing-Plumbing	2020 Mendenhall NLV, NV	\$60,780			1, 2, 3, 4	9
	Closing Inventory Total	\$4,792,460		\$0		

Description or Item (Overtime Inspection Account 400)	Storage Location	Cumulative Off-Site Stored Value	Cumulative On-Site Stored Value	Cumulative Deposits	Key	Authorize Funding
Inspections	Clark County Development Services			\$8,675	1	9
	Closing Inventory Total	\$0		\$8,675		

Description or Item (Podium 500)	Storage Location	Cumulative Off-Site Stored Value	Cumulative On-Site Stored Value	Cumulative Deposits	Key	Authorize Funding
Structural Steel Raw Material	1730 W. Reno, OK City, OK	\$33,606			1, 2, 3, 4	9
AFCO Steel	1423 E 6th, Little Rock, AR	\$53			1, 2, 3, 4	9
Bolts & Misc. Components	1730 W. Reno, OK City, Ok	\$5,148			1, 2, 3, 4	9
Copper-Hydraulics	2020 Mendenhall, NLV, NV	\$4,842			1, 2, 3, 4	9
Copper Tubing-Plumbing	2020 Mendenhall, NLV, NV	\$148,320			1, 2, 3, 4	9
Wire	3755 W. Hacienda Ave, LV, NV	\$28,605			1, 2, 3, 4	9
Pool Deck/Spa	710 Sunnyvale Dr, Wilmington, NC	\$1,836,805			1, 2, 3, 4	9
HSS Steel	6625 W Gary Ave, LV, NV	\$98,612			1, 2, 3, 4	9
Elevators	4855 W Harmon, LV, NV	\$5,174,467			1, 2, 3	9, 10
Structural Steel Fabricated	1730 W. Reno, OK City, Ok	\$3			1, 2, 3, 4	9
Spa materials	710 Sunnyvale Dr, Wilmington, NC	\$321,160			1, 2, 3, 4	9
Electrical Material	Sun Valley	\$392,419			1, 2, 3	9, 10
Glazing Accessories	Giroux Glass	\$345,997			1, 2, 3	9, 10
Grey River Marble	Ital Stone	\$330,360			1, 2, 3	10
Glazing Accessories	Giroux Glass			\$1,359,150	1	9
Stone	Ital Stone			\$296,427	1	9
Spa Marble	Superior Tile			\$140,000	1	9
Tile	Silver State Marble			\$183,244	1	9
Casino Tile	Sam fet			\$503,280	1	9
Greystone	Ital Stone			\$560,714	1	9, 10
Day Spa Stainless	Water Fx Custom Pools			\$116,649	1	9
	Closing Inventory Total	\$8,720,297		\$3,159,464		

Component	Cumulative Off-Site Stored Value	Cumulative On-Site Stored Value	Cumulative Deposits	Key	Authorize Funding
Tower (200)	\$28,433,918		\$14,500,018	1, 2, 3, 4	9
Garage/Convention (300)	\$4,792,450		\$0	1, 2, 3, 4	9
Inspections (400)	\$0		\$8,675	1, 2, 3, 4	9
Podium (500)	\$8,720,297		\$3,159,464	1, 2, 3, 4	9
Closing Inventory Total	\$41,946,665		\$17,668,157		

Key to Back-up Documents Received

- (1) Inventory Schedule.
- (2) Bill of Sale evidencing Developer's ownership of the stored materials.
- (3) Evidence of insurance on the stored material naming BofA as an additional insured.
- (4) Designer/Third Party Inspector acceptance.
- (5) IVI stored material visit.
- (6) Viewed on-site.
- (7) Material previously received.
- (8) Photographs taken by the GC/Subcontractor.
- (9) Previously funded by BofA.
- (10) Additional Funding this PC.

The Contractor has provided a procedural flow chart for products sourced internationally prepared by SGS dated January 6, 2009 (Exhibit "F-1"). The chart and photo's by the third party inspector confirm that the international supplier and manufacturer are currently on time with shipping and delivery of the products.

2.4. Requisition Retainage

Generally, the retainage is currently held at 10% of the trade work up to 50% of the contract amount, which is in compliance with the loan agreement and appropriate.

2.5. Certifications

IVI has received the Developer's Project Entities' Advance Certificate for the current draw request, which is included as part of Exhibit "B". The Advance Request now includes the General Contractor's Advance Certificate and the Project Architect's Advance Certificate (Exhibit "C" and Exhibit "C-1"), respectively.

2.6. Waivers of Lien

IVI has received current and generally appropriate waivers of lien from the General Contractor, and subcontractors. A copy of the General Contractor's and subcontractor's waiver is included as (Exhibit "G"). IVI has also received acceptable copies of the Lien Release Log (Exhibit "H") from the Developer for each component.

3. DIRECT COST BUDGET STATUS

3.1. Prime Contract and Change Orders

IVI has received fully executed copies of the General Contractor's agreement, which identifies the Control Budget including Developer Change Orders as shown below for each component. Bolded line items are new Change Orders received this PC.

Site Change Order Schedule	
Site CO#1-Landscaping reclassification	-\$44,074,777
Site CO#2 OCIP reclassification	\$937,936
Site CO#3 LEED's credit	-\$200,790
Site CO#4 Compliance with Nevada Power	\$3,743,761
Site CO#5 Electrical conduit relocation	\$110,282
Site CO#6 Dewatering system relocation	\$370,000
Site CO#7 NP Co relo lines overhead to underground	\$1,119,598
Site CO#8 Nevada Power field conditions	\$509,742
Site CO#9 Removal of pylon sign	\$73,753
Site CO#10 Relocate overhead power lines	\$100,400
Site CO#11 Extended allowances for dewatering	\$150,000
Site CO#12 Las Vegas Blvd. water revisions	\$38,753
Site CO#13 Extend existing conduit to transformer	\$126,783
Subtotal Change Orders	\$ (36,994,559)

LEED Change Order Schedule	
LEED Contract	-\$37,000,000
LEED CO#1 Credit reallocation	\$59,000,000
LEED CO#2 Garage mechanical modifications	-\$2,014,885
LEED CO#3 Podium mechanical modifications	-\$2,370,635
LEED CO#4 Added men's & women's showers	-\$75,455
LEED CO#5 Garage finishes modification	-\$190,000
LEED CO#6 Garage control revisions	-\$1,972,669
LEED CO#7 Garage structural modifications	-\$2,446,648
LEED CO#8 Tower finishes modifications	-\$133,521
LEED CO#9 Tower finishes modifications	-\$200,000
Subtotal Change Orders	\$ 12,596,186

Tower Change Order Schedule		
Tower CO#1-Deduct Colasanti backcharge		-\$400,000
Tower CO#2 LEED's credit		-\$23,034,939
Tower CO#3 Steel required field modifications		\$600,482
Tower CO#4 Additional beams		\$138,746
Tower CO#5 Concrete field modification		\$41,685
Tower CO#6 Additional fireproofing		\$275,653
Tower CO#7 T1 terrace field conditions		\$45,520
Tower CO#8 Tower entry lockset & Incomm System		\$454,675
Tower CO#9 T1 knee wall modifications		\$204,797
Tower CO#10 Roof walk ways		\$119,775
Tower CO#11 Additional elevator openings		\$626,340
Tower CO#12 Sprinkler, electrical and HVAC revisions		\$6,149,277
Tower CO#13 Life Line System		\$410,500
Tower CO#14 Wireless Infrastructure		\$1,011,840
Tower CO#15 Concrete material price escalation		\$1,619,979
Tower CO#16 Electrical revisions		\$12,999,999
Tower CO#17 Light fixtures South Façade		\$8,500,000
Tower CO#18 Coordination of structural beams		\$616,294
Tower CO#19 Lati Veneer		\$383,269
Tower CO#20 Additional equipment including ladders		\$78,969
Tower CO#21 Warehousing costs		\$338,476
Tower CO#22 Building insulation & firestopping		\$50,001
Tower CO#23 Crane/Hoisting Equipment		\$20,234,342
Tower CO#24 Budget transfer Podium to Tower		\$17,472,684
Tower CO#25 Transfer elevator operations		\$1,541,678
	Subtotal Change Orders	\$ 50,480,041

Garage Change Order Schedule	
Garage CO#1-Furnish/install Misc Steel	\$9,946,607
Garage CO#2-Added Hydraulic Elevator	\$321,302
Garage CO#3-Deduct Stair #12	-\$349,326
Garage CO#4-Deduct Overhead	-\$472,314
Garage CO#5 LEED's Credit	-\$13,386,296
Garage CO#6 Added Emergency Ramp/County requirement	\$660,768
Garage CO#7 Garage collapse costs	\$5,060,279
Garage CO#8 Upgraded pressure on Condensers	\$518,485
Garage CO#9 Provide 6 Boiler Economizers	\$1,496,401
Garage CO#10 Conversion costs from GMP to LS	\$3,605,522
Garage CO#11 Central plant boiler modifications	\$748,253
Garage CO#12 HVAC revisions	\$1,127,841
Garage CO#13 Structural steel modifications	\$2,632,773
Garage CO#14 Steel modifications	\$3,117,334
Garage CO#15 Concrete revisions	\$4,636,023
Garage CO#16 Additional masonry scope	\$888,349
Garage CO#17 Modification caisson & emergency ramp	\$205,343
Garage CO#18 Expansion control Podium to Garage	\$600,000
Garage CO#19 Steel modifications	\$2,976,952
Garage CO#20 Fire Alarm	\$43,165
Garage CO#21 Underground Utility Verification	\$2,884
Garage CO#22 Additional Scaffolding	\$7,920
Garage CO#23 Expansion Controls	\$2,060,400
Garage CO#24 Roof Membrane	\$1,251,959
Garage CO#25 Fireproofing	\$131,408
Garage CO#26 Hot Domestic Water Control System	\$80,564
Garage CO#27 Plumbing revisions	\$2,857,049
Garage CO#28 Emergency Generator Fill Station	\$168,397
Garage CO#29 Dock Storm Drains	\$156,355
Garage CO#30 Fire protection / TCO	\$255,000
Garage CO#31 Overtime NPC Yard	\$51,401
Garage CO#32 Overtime NPC Utilities	\$13,509
Garage CO#33 Waterproofing Level 1	\$972,533
Garage CO#34 Added men's & women's showers	\$75,455
Garage CO#35 Upgrade formaldehyde free finish	\$1,972,669
Garage CO#36 Control revisions for LEED compliance	\$190,000
Garage CO#37 Revision roof access/drywall/fire protection	\$3,703,810
Garage CO#38 Concrete revisions	\$444,076
Garage CO#39 Transfer crane/hoisting costs from General Conditions	\$1,766,595
Garage CO#40 Structural modifications of roof steel	\$2,446,648
Garage CO#41 Isolation Ceiling for sound control	\$527,558
Garage CO#42 & CO#43 Misc. steel revisions & package	\$4,537,217
Garage CO#44 Electrical revisions	\$4,180,358
Garage CO#45 Excavation/backfill for ejector pit	\$138,770
Garage CO#46 Steel revisions	\$39,730
Garage CO#47 Backfill north wall	\$357,227
Garage CO#48 Switchgear filters	\$534,520
Garage CO#49 Overtime to meet milestones	\$46,284
Garage CO#50 Elevator revisions	\$119,181
Garage CO#51 Façade mock-up & exterior louvers	\$3,766,147
Garage CO#52 Transfer Meeting Room budget	\$3,311,126
Garage CO#53 Transfer elevator operations	\$1,093,389
Subtotal Change Orders	\$ 61,637,601

General Conditions Change Order Schedule	
General Conditions CO#1-Overhead Podium and Garage	\$1,082,844
General Conditions CO#2-Colasanti charge	\$400,000
General Conditions CO#3 Adjusted Prime Contract Control Budget	\$221,477
General Conditions CO#4 Overhead on CO's	\$279,678
General Conditions CO#5 Additional site costs	\$24,014
General Conditions CO#6-Overhead on Podium CO's	\$2,658,287
General Conditions CO#7-Costs associated with Podium/Site/Tower and Garage	\$1,551,644
General Conditions CO#8 Costs associated with Podium & Garage	\$1,080,533
General Conditions CO#9 Cranes/Hoisting Costs	\$1,025,828
General Conditions CO#10 Additional management staff	\$425,001
General Conditions CO#11 Transfer costs to Tower	-\$20,234,341
General Conditions CO#12 Transfer costs to Garage	-\$1,766,596
General Conditions CO#13 Transfer costs to Podium	-\$3,612,946
General Conditions CO#14 Costs for September 2008	\$2,305,758
General Conditions CO#15 Transfer elevator operations	-\$4,510,601
General Conditions CO#16 General conditions future projects	\$4,016,400
Subtotal Change Orders \$ (15,053,019)	

Podium Change Order Schedule	
Podium CO#1-Chilled Water Trough to Tower	\$1,053,138
Podium CO#2-Structural Changes	\$9,243,660
Podium CO#3-Added Ventilation Ducts	\$2,524,345
Podium CO#4-Deducted General Conditions	-\$610,531
Podium CO#5-Landscaping reclassification	\$44,074,777
Podium CO#6 Site OCIP reclassification	-\$937,936
Podium CO#7 LEED's Credit	-\$22,377,975
Podium CO#8 Additional 161 foundation piles	\$1,032,477
Podium CO#9 Increase concrete duct, added re-bar	\$2,736,298
Podium CO#10-Foundation Revisions	\$1,849,806
Podium CO#11-Upgrade of Monitoring Systems	\$2,370,635
Podium CO#12-Structural revisions	\$11,597,697
Podium CO#13-Structural column revisions	\$41,568,038
Podium CO#14 Expansion control Podium to Garage	-\$600,000
Podium CO#15 Kitchen equipment buy-out	\$1,002,066
Podium CO#16 Steel handrails & railings	\$457,443
Podium CO#17 Partial buy-out of retail corridor	\$277,015
Podium CO#18 Fire Protection	\$739,174
Podium CO#19 Structural Revisions	\$2,853,024
Podium CO#20 Structural Revisions	\$9,739,229
Podium CO#21 Misc. steel revisions	\$4,700,926
Podium CO#22 Switchgear revision	\$485,797
Podium CO#23 Fire protection modifications	\$1,355,006
Podium CO#24 Added beverage CO system	\$1,206,093
Podium CO#25 Transfer of General Conditions	\$3,612,945
Podium CO#26 Venue budget	-\$4,406,358
Podium CO#27 Added beverage conduit system	-\$1,206,093
Podium CO#28 Structural revisions	\$1,214,062
Podium CO#29 Window washing equipment	-\$500,000
Podium CO# 30 Transfer budget to garage	-\$3,311,126
Podium CO# 31 Transfer budget to tower	-\$17,472,684
Podium CO# 32 BOH structure & finishes	\$2,943,498
Podium CO# 33 Public restrooms	\$442,914
Podium CO#34 Transfer elevator operations	\$1,875,533
Podium CO#35 Pollution control units	\$3,194,506
Podium CO#36 Additional air handlers	\$3,607,936
Subtotal Change Orders	\$ 106,335,337

Summary Change Order Schedule	
Prime Contract Control Budget	\$ 1,793,634,074
Site	-\$36,994,559
Tower	\$50,480,041
LEED	\$12,596,186
Garage	\$61,637,601
General Conditions	-\$15,053,019
Podium	\$106,335,337
Subtotal Change Orders	\$ 179,001,587
Adjusted Prime Contract Control Budget	\$ 1,972,635,661

IVI has reviewed the Developer change orders in detail with the Developer and has determined the change orders are not scope changes. IVI has prepared a schedule that provides a detailed description for each owner change order (Exhibit "T"). It should be noted that the Adjusted Prime Contract Control Budget increased \$11,234,778 to \$1,972,635,661 this PC.

IVI has also attached the executed supporting change order documentation (Exhibit "I-1") provided by the General Contractor which adjusts the Control Budget.

3.2. Subcontract Buy-out Status & Bonds

The Disbursement Agreement requires that the General Contractor award fixed price or GMP agreements for each subcontractor in accordance with the following timeline:

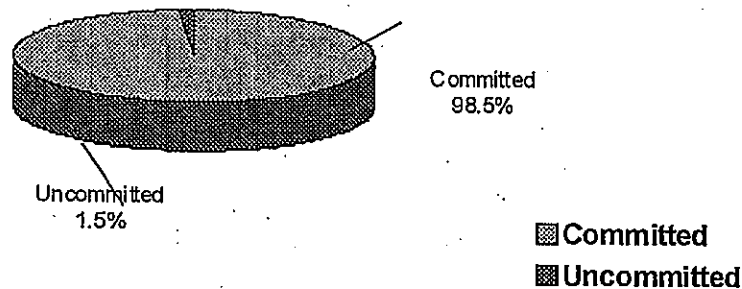
Date	% of Direct Costs
April 30, 2007	60%
June 30, 2007	75%
October 25, 2007	85%
2008 *	95%

*First advance after exhaustion of the second mortgage proceeds account.

The second mortgage has been exhausted and the first advance funding took place on August 25, 2008.

IVI has received 203 executed subcontracts, purchase orders and Owner change orders representing 98.5% of the direct cost budget of \$1,884,458,423 as shown in IVI's Contracts Received Schedule and TWC's Executed Contracts and POs (Exhibit "J").

GC Scope Buyout



3.3. Anticipated Costs

IVI has received the General Contractor's December 2008 Anticipated Cost Report (Exhibit "K") with detailed back-up for each component dated October 2008. The updated ACR incorporates the anticipated costs to complete each component of the project incurred this PC.

The ACR includes \$50,514,208 in pending OCOs; however, these have been taken into account within the Anticipated Contingency Summary. The Anticipated Summary anticipates a balance contingency of \$50,514,708; however, IVI is concerned that the anticipated balance may drop substantially in order to meet the aggressive schedule. The concern specifically, is that all of the subcontractors have not fully incorporated the potential costs to meet the schedule.

During the June 2008 PC, the Developer increased the Owner Equity Funds by \$190,265,021. The General Contractor's ACR identified \$217,191,288 in potential extra cost exposure due to; anticipated component modification, completion of the design documents, modifications required to satisfy the neighbor's concerns about the garage façade, budget busts and concealed field conditions related to underground utilities. At this time, the construction costs are anticipated to increase but not exceed the Developer's revised direct cost budget of \$1,909,734,213 plus \$190,265,021 in equity with the new direct cost budget totaling \$2,099,999,234. The executed Developer change orders during this PC increased the Prime Contract Control Budget by an additional \$11,234,778. The amended Developer's Prime Contract Control Budget is \$1,972,635,661 as detailed in section 3.1 of this report. Additional Budget Variances are anticipated; however, the List of Scope Changes (Exhibit "L") does not list any.

The Developer has provided documentation confirming LEED approval and the associated financial benefits accompanied as detailed in Section 6.10 of this report. However, it appears that the anticipated LEED credits are tracking behind projections, possibly in excess of \$15,000,000. The Developer has begun a detailed audit of the GC's cost documentation to determine if all the possible credits have been obtained from the subcontractors.

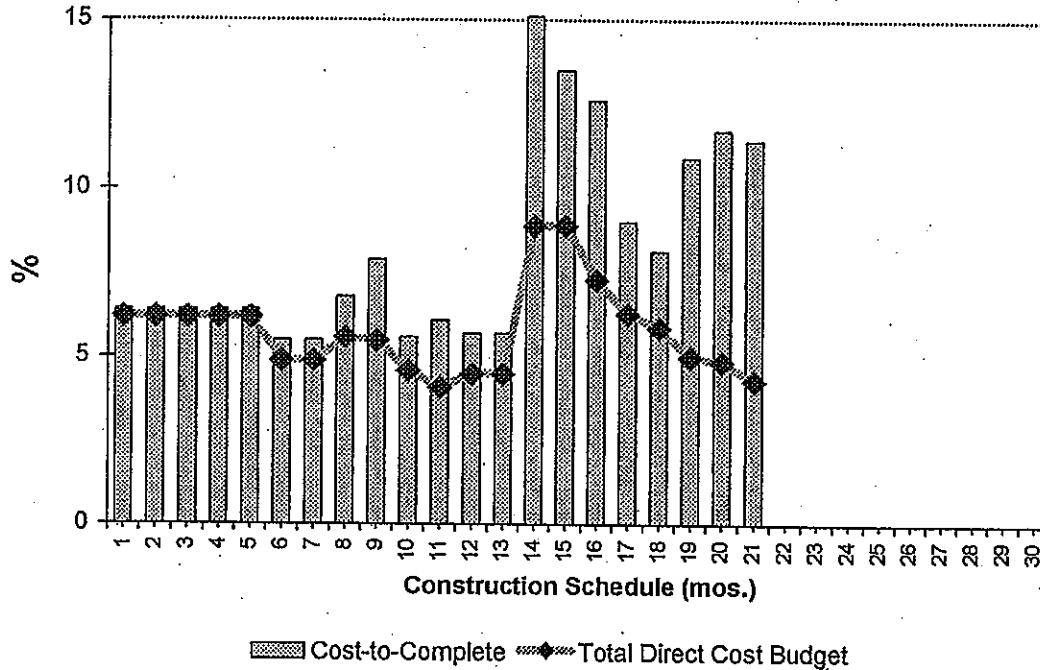
IVI received the latest cost report summary and supporting back-up (Exhibit "M") undated, received January 20, 2009 related to the FF&E. The FF&E costs are currently trending within the budget as detailed in section 2.2 of this report. The overall percentages committed are detailed in the matrix below:

Commitments Against Tracked Areas	Approved Bank	Committed	Variance to Commit	Previous Percentage Committed	Percentage Committed to Date
Total Gaming	\$40,870,000	\$14,022,000	\$26,848,000	34%	34%
Total Rooms	\$73,784,000	\$51,602,643	\$25,203,188	63%	66%
Common Area-FOH	\$23,281,000	\$16,781,514	\$9,209,471	56%	60%
Common Area - BOH	\$5,385,000	\$0	\$5,385,000	0%	0%
Exterior Signage	\$26,532,000	\$23,459,127	\$3,072,873	88%	88%
Total	\$169,852,000	\$105,865,284	\$69,718,532	57%	59%

The Developer anticipates FF&E delivery to start March 2, 2009 with a completion date of August 31, 2009.

3.4. Contingency Status

Contingency vs. Direct Cost Budget

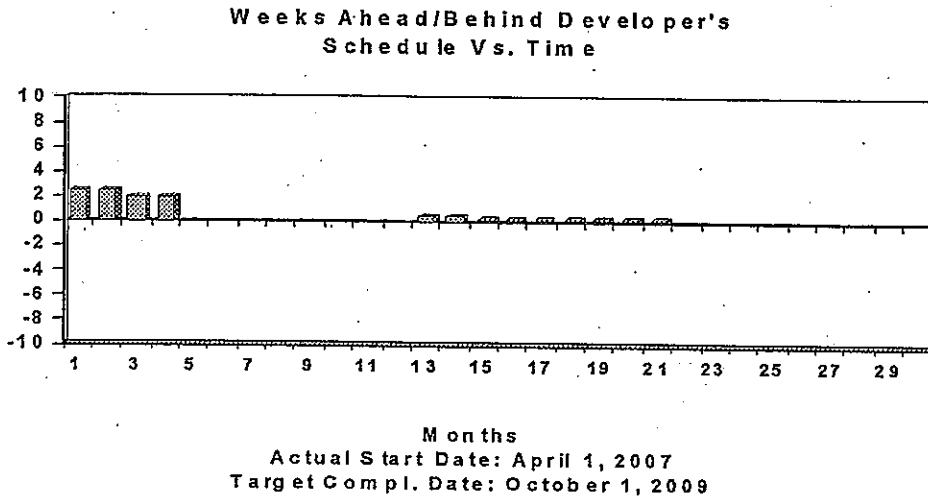


An \$111,039,860 contingency was available solely for direct costs, which originally represented 6.2% of the direct cost budget (less the contingency value). This was increased by \$100,854,392 to \$211,894,252 as a result of expected change orders for extra costs during a previous PC.

During this PC, the Developer executed \$11,234,778 in change orders to the General Contractor's Control Budget, which reduced the contingency from \$101,648,100 to \$90,413,322. The current curve indicated a project surplus of approximately \$50,000,000; however, that is suspect pending potential subcontractor claims to accelerate the schedule to meet the aggressive target.

4. SCHEDULE STATUS

4.1. Construction Schedule



IVI has received a copy of the undated Major Construction Summary and Milestones, which outlines the overall 30-month construction schedule on a summary level and is an adequate overview presentation of the schedule. IVI has also received the Monthly Update Schedule, dated December 6, 2007 updated by phase; Tower, Podium and Garage/Convention Center and by discipline. This is considered the baseline schedule.

The schedule start date of April 1, 2007 is based on the Developer issued Notice to Proceed of April 1, 2007 through completion of the entire project, October 1, 2009. The schedule represents a phased fast-track program, since construction operations commenced prior to completion of all construction documents.

The Developer has retained PCI, a schedule consulting firm, to independently review the progress of the work with weekly meetings and issue monitoring reports on the status of the schedule that have been provided to IVI. Key construction dates are currently indicated as follows based on PCI's January 9, 2009 (Exhibit "N") schedule report (milestone pages only) which indicates that the project is tracking on schedule. PCI and the General Contractor concurred that the project is on schedule. PCI attends the draw meetings as a 'checks and balance' to insure that the project remains on schedule, and any difference of opinion concerning the schedule can be immediately addressed without impacting the completion dates for each component/phase.

IVI has received an updated Podium Venue Schedule dated January 5, 2009 (Exhibit "O"). The matrix details the process for each of the venues from inception to completion. Currently a majority of the spaces are tracking on or slightly ahead of schedule.

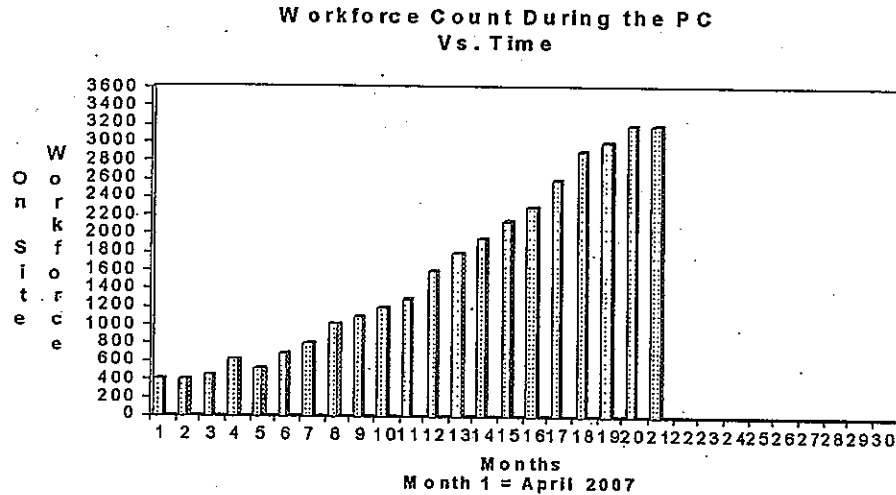
Task	Targeted Date	Actual A/Targeted Date
Start Tower Sitework and Piles	December 13, 2006	January 2, 2007 (A)
Start Garage Sitework and Piles	January 12, 2007	January 2, 2007 (A)
Start Podium Sitework and Piles	January 15, 2007	April 16, 2007 (A)
Complete Tower Sitework and Piles		September 12, 2007 (A)
Start Podium Structural Steel Erection	July 23, 2007	September 24, 2007 (A)
Tower Start Drywall T1 – T61	January 3, 2008	January 3, 2008 (A)
Perm Power to the Tower for Service Elevator	June 2, 2008	May 1, 2008 (A)
Garage Construction Parking available	July 31, 2008	August 28, 2008 (A)
Podium Begin Interior Build Out	May 21, 2008	April 18, 2008 (A)
Tower Passenger Elevators through T20	October 1, 2008	November 15, 2008 (A)
Tower Complete Structural Concrete	January 6, 2009	November 13, 2008 (A)
Start Convention Center Start-up/Testing & Commissioning	October 23, 2008	January 9, 2009
Tower – Start FF&E deliveries	March 2, 2009	March 2, 2009
Start Podium Start-up/Testing & Commissioning	February 18, 2009	August 2009
Tower – Complete FF&E deliveries	August 31, 2009	August 31, 2009
Start Tower Start-up/Testing & Commissioning	April 21, 2009	June 9, 2009
Start Garage Start-up/Testing & Commissioning		March 31, 2009
Ballroom/Convention Center Complete	May 20, 2009	March, 2009
Garage Complete		March 31, 2009
Podium Complete	September 21, 2009	August 28, 2009
Tower Complete	September 21, 2009	September 30, 2009
Soft Opening	September 22, 2009	October 2009
Grand Opening	October 12, 2009	October 1, 2009
Theatre Complete	April 9, 2010	April 9, 2010

Based upon our visit, work is tracking in-line with the latest schedule; however, it appears that the work in the podium may need to be accelerated to meet the aggressive target.

Due to installation issues, the curtain wall system is slightly behind schedule; however, the Contractor will prepare a make-up schedule for discussion at the February draw meeting. Additionally, concerning the retail spaces it is anticipated that several venues may open 30-60 days after the scheduled grand opening of October 2009; however, the Developer will fine tune the venue schedule within the next 30 to 45 days.

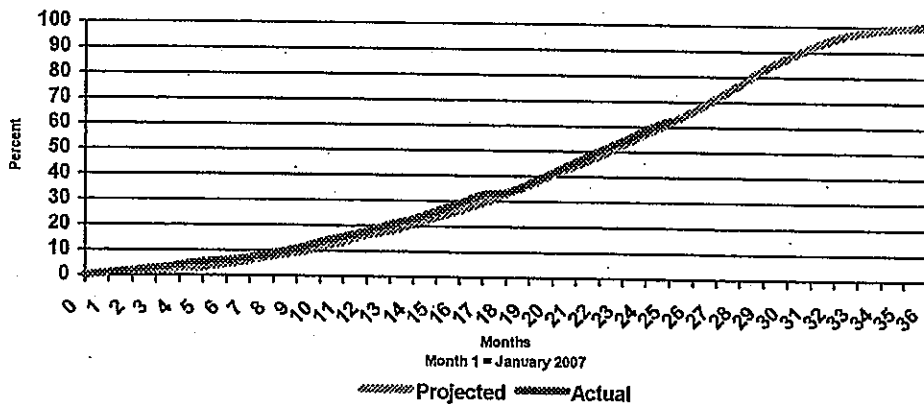
4.2. Workforce

During the PC, the workforce averaged approximately 3,200 trade people on site. This current workforce is adequate to ensure progress consistent with the construction schedule.



4.3. Disbursement Schedule

Cumulative Direct Cost Disbursements vs. Time



IVI originally received a copy of the Developer's Project Cash Flow based on the 30-month construction schedule; however, this was based upon an April 2007 start. Subsequently, we plotted the projected S-curve for the 36 month construction period, which took a January 2007 start and two (2) month close-out period into account. The project's cumulative net direct cost disbursements are now 62.4% of the direct cost budget, right in line with projections.

Building lighting protection for the four components;

Component	Previously Completed	Completed this PC
Tower	7.0%	17.0%
Podium	50.0%	57.0%
Garage	93.0%	95.0%
Pylon	0%	0%

The percent complete for the tower will remain relatively flat until completion of the superstructure roof and parapet.

During mass excavation of the site, the subcontractor uncovered Orphan Tanks 3 and 4, reporting the discovery to NDEP. The closure of the USTs will be remediated the same way Orphan Tanks 1 and 2 were handled. Specifically, the tanks and their contents were removed and disposed of by the instructions of NDEP. Currently, the excavated soils are being disposed of at the proper facilities per County and State requirements, scheduled for completion in June/July 2009. The dewatering wells are being tested on a regular basis to ensure that contaminants have not reached the water tables. All costs for excavation and removal of the tanks are being paid through Fontainebleau's Pollution Control Insurance Policy (AIG). No costs for the associated work have been added to the Construction Budget.

A. TOWER (200)

Excavation and Foundations

Site clearing and earthwork is 100% complete.

Concrete Superstructure

The core foundation is 100% complete. The superstructure was "topped-off" on November 13, 2008, 6-weeks ahead of schedule.

Masonry

The project has not reached this stage of the construction schedule.

Roofing and Waterproofing

The project has not reached this stage of the construction schedule.

Doors and Windows

A mock-up of the curtain wall system was constructed in Los Angeles, reviewed and approved by the Architect, Developer and Contractor. All of the curtain wall material has been ordered with the status as follows:

Task	Previously Completed	Completed this PC
Curtain Wall Clips 100%		
North Elevation	T49	T50 thru T53
South Elevation	T49	T50 thru T53
East Elevation	T45	T46 thru T55
West Elevation	T49	T50 thru T53
Curtain Wall System 100%		
North Elevation	T42 T43 thru T44/50%	T43 thru T46 T4 thru T48/50%
South Elevation	T44 T45 & T 46/50%	T45 thru T50
East Elevation	T46	T47 thru T52 T53 & T54/50%
West Elevation	T36 T45 & T46/50%	T37 thru T46 T47 & T48/50%

Note the curtain wall system has not been installed on mechanical level T32.

Due to performance issues on the installation of the curtain wall system, Embassy Glass, Inc. was replaced with Helou & Sons. The following issues have previously arisen concerning the curtain wall system that has impacted the schedule: movement of the structure above T32 and "wind days". This had caused a schedule delay of approximately 12 days. The General Contractor implemented 10-hour days in October and November to make up for lost time and during this PC has reduced the delay to approximately 5 days.

Currently, weather permitting the Contractor is implementing a 4 floors per week curtain wall system schedule to T62 anticipating completion by mid-February with the north elevation lagging and no impact to the critical path schedule.

Carpentry and Drywall

The following tasks are 100% complete to the following levels:

Task	Previously Completed	Completed this PC
Partition layout	T1 thru T61	T62 thru T64
Install top track	T1 thru T50	T51 thru T54
Metal stud framing	T1 thru T48	T49 thru T52
Ceiling framing	T1 thru T39	T40 thru T44
Tub framing	T1 thru T28	T29 thru T42
Drywall one side (Rooms)	T1 thru T33	T34 thru T35
Drywall two side (Rooms)	T1 thru T33	T34 thru T35
Tape and finish (Rooms)	T1 thru T32	T33 thru T35
Drywall one side (Condos)	T1 thru T30	T32 thru T35
Drywall two sides (Condo)	T1 thru T30	T32 thru T35
Tape and finish (Condo)	T1 thru T30	T32 thru T33

Finishes

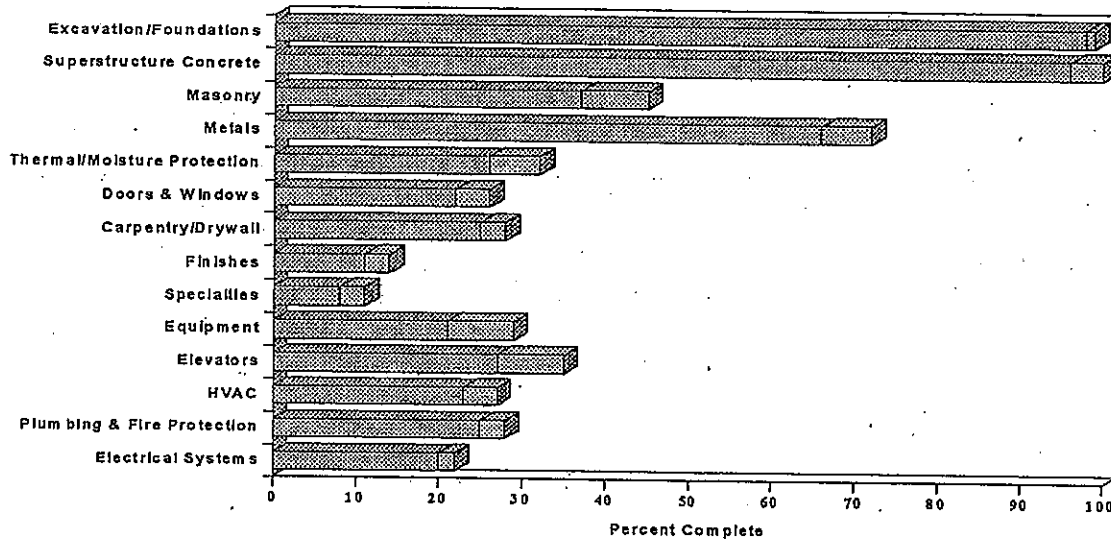
The following tasks are 100% complete to the following levels (unless otherwise noted):

Task	Previously Completed	Completed this PC
Ceiling skim coat	T1 thru T56	No change
Install porcelain tile (Rooms)	T1 thru T20 T21/50%	T21 thru T24 T25 & T26/50%
Install porcelain tile (Condo)	T1 thru T15	No change
Install tub decks	T1 thru T39	T40 thru T44
Install shower curbs	T1 thru T28	T29 thru T33
Shower curb stone	T1 thru T14 T15 thru T25/90%	No change
Set Tubs	T1 thru T 21	T22 thru T30
Install Carpet T1 thru T19	T1 thru T19 T20 & T21/65%	T22 thru T24/10%
Wall covering T1 thru T5 T6 thru T22 T23 T24 thru T28 T29 T30	95% 90% 50% 0% 0% 0%	95% 90% 90% 90% 70% 25%
Painting T1 thru T3 T4 thru T5 T6 thru T18 T19 T20 & T21 T22 T23 thru T25 T26 T27 & T28 T29 T30	95% 95% 90% 50% 45% 90% 75% 50% 0% 0% 0%	95% 95% 95% 95% 95% 95% 90% 90% 90% 70% 25%
Shower enclosure Rooms Condo	T1 thru T18 T1 thru T3	T19 thru T22 T4 thru T5
Bathroom vanities Rooms Condo	T1 thru T22 T1 thru T8	T23 thru T26 T9 thru T13
Condo Kitchen Cabinets	T1 thru T14	T15 thru T18

5. CONSTRUCTION STATUS

5.1. Key Indicators

Construction Progress of Key Systems



5.2. System Status

Temporary Facilities

The Developer has a fully staffed project office off-site on the adjacent property formerly known as the 'Wet-n-Wild' site. The Contractor's office consists of a series of approximately six (6) adjoining trailers; however, there are currently approximately 50 to 60 "job-trailers" on site.

Site Work

The basic roadways and infrastructure adjacent to the site exist and will be modified per the established scope of work. Off-site water and sanitary connection is in process in the Riviera Boulevard right-of-way and is approximately 98.5% complete with an anticipated completion January 31, 2009. Also, the overhead electrical lines relocation phase of the project is 100% complete.

The electrical feeds; Swenson and Highland are 100% and were previously accepted by Nevada Power and Light.

The Contractor entered into a third lease amendment effective January 1, 2009 (Exhibit "P") for approximately two (2) acres of unimproved land located on Paradise Boulevard to provide additional employee parking.

Conveying Systems

The elevator system has been delivered to the site and is proceeding on schedule as follows:

Task	Previously Completed	Completed this PC
Passenger Cars P1 thru P8	100%	100%
Passenger Cars P9 thru P16	70%	75%
Passenger Cars P17 thru P24	0%	30%
Passenger Cars P25 thru P32	0%	25%
Service Cars S1 thru S8	95%	100%
Service Cars S9 thru S16	70%	75%

Passenger cars P1 thru P8 and Service cars S1 thru S8 are operational since November after execution of a contract with the Hoister's union for operators.

Fire Protection

The following tasks are 100% complete to the following levels (unless otherwise noted):

Task	Previously Completed	Completed this PC
Rough-in	T1 thru T52	T53 thru T56
Sprinkler System Trim	T1 thru T30 & T31 thru T35/50%	T31 thru T35 & T36 thru T40/50%
Fire Pump rough-in	85%	92.5%

The fire standpipe is in process to T56.

Plumbing

The following tasks are 100% complete to the following levels (unless otherwise noted):

Task	Previously Completed	Completed this PC
Install soaking tubs	T1 thru T30	T31 thru T42
In wall plumbing	T1 thru T43	T44 thru T50
Plumbing Rough-In	T1 thru T53	No change
Install fixtures	0%	0%
Install trim	T1 thru T43	T44 thru T49/20%

Risers, laterals are 100% complete with the overhead work complete to Level T59 and in progress up to Level T63.

HVAC

The percentage complete for the following major tasks are:

Task	Level	Previously Completed	Completed this PC
Set Distribution Equipment	Retail Mech.	95%	No change
Set Distribution Equipment	T31	80%	No change
Sleeves, Hangers/Supports	T1 thru T57	T62	Complete

Task	Level	Previously Completed	Completed this PC
Rough-In Ductwork/Piping	T1 thru T36	100%	Complete
Rough-In Ductwork/Piping	T31	55%	60%
Rough-In Ductwork/Piping	T32	50%	50%
Rough-In Ductwork/Piping	T37 thru T44	70%	96%
Rough-In Ductwork/Piping	T45 thru T49	50%	50%
Rough-In Ductwork/Piping	T50 thru T54	50%	50%
Rough-In Ductwork/Piping	T55 thru T58	5%	5%
Set Fan Coil Units	T1 thru T32	100%	Complete
Set Fan Coil Units	T33 thru T36	80%	90%
Set Fan Coil Units	T32	60%	90%
Set Fan Coil Units	T37 thru T39	20%	90%
Set Fan Coil Units	T40 thru T43	5%	5%

Electrical

The percentage complete for the following task are:

Task	Level	Previously Completed	Completed this PC
Main Switchgear Distribution	T31	94%	96%
Main Switchgear Distribution	T62	58%	88%
Power Lighting & Branch	T1 thru T5	85%	95%
Power Lighting & Branch	T6 thru T12	85%	85%
Power Lighting & Branch	T13 thru T24	80%	80%
Power Lighting & Branch	T25 thru T33	60%	68%
Power Lighting & Branch	T34 thru T41	10%	20%
Power Lighting & Branch	T42 thru T58	4%	10%
Power Lighting & Branch	T59 & T60	4%	4%
Power Lighting & Branch	T61	4%	4%

B. GARAGE/CONVENTION (300)

A failure occurred in one of the double tees placed on Level P-6 in August 2007 which started a chain reaction, resulting in the collapse of seven (7) double tees. The seven (7) double tees damaged the Casino Deck Level where the debris settled. This has been repaired; however, delays of six (6) to eight (8) weeks have resulted which will not impact the completion day.

Excavation and Foundations

Mass excavation, drilled piers, piles, micro piles and the secant wall are 100% complete. The secant wall permit was closed out November 2007.

Concrete Superstructure

The foundation is underway with 100% of the walls and perimeter walls complete. 100% of the double tees have been fabricated and installed. Slab placement in increments of 20,000 SF continues three to five times per week with approximately 99% in place, an increase of 4% during this PC.

Masonry

The contractor has completed 91% of the masonry work within the Nevada Power Yard area, an increase of 1% during this PC.

Structural Steel

The structural steel structure was completed on October 24, 2008.

Miscellaneous Metals

The emergency egress stairs and railings are in process with 78% complete.

Roofing and Waterproofing

The subcontractor has mobilized, completing the underlayment at the cooling tower and 35% of the roofing installation, and a 5% increase this PC.

Doors and Windows

The exterior metal framing is in process and the percentage complete for the following tasks are:

Task	Previously Completed	Completed this PC
South Façade	70%	70%
East Façade	75%	75%
Exterior Louver System	99%	100%
Doors & Hardware	15%	20%

Carpentry and Drywall

Framing and drywall is in progress on the Dock/Parking Levels and Ballroom with 70% and 65%, respectively, an increase of 5% during this PC for each component.

Finishes

The painting subcontractor has mobilized on Level P-1 for painting of the exposed concrete and is 90% complete, no increase this PC.

Conveying Systems

Shop drawings for the elevators have been approved, and shafts for the hydraulic elevators have been set. Materials for the South Freight Elevators have been delivered; motors have been installed and the balance of material is stored on-site. It is anticipated that elevators CF 6 thru 8, CS-2 and EP 1 thru 3 will be operational by February 2009.

Fire Protection

The standpipe has been set at the south end of the garage with approximately 75% of the rough-in complete, a 3% increase during this PC. Approximately 95% of the applied fire proofing is complete, an 8% increase during this PC.

Plumbing

Materials have been purchased and are being stored in the Developer's warehouse. The percentage complete for the following tasks are:

Task	Previously Completed	Completed this PC
Underground dewatering	88%	95%
Central Plant rough-in	100%	Complete
Convention Center/Ballroom	60%	75%
Underground sanitary lines	87%	90%

HVAC

Engineering is in progress and hangers below the casino level are being placed. The eight chiller units are currently installed and five boilers have been set. Mechanical chase to the roof is in process with 98% complete, a 1% increase this PC. Installation of the roof top air houses is in process with 80% complete, a 20% increase this PC. The cooling towers are in place and installation remains at 99% complete.

Electrical

The underground electrical duct bank is 100% complete and the conduit from Rivera to the Nevada Power yard is in-place. Primary switch gear has been set and temporary power has been provided. Installation of the generators is in process with 87% complete, no increase this PC.

C. PODIUM (500)

Excavation and Foundations

Mass excavation has been underway and is 100% complete with a small area remaining north and northwest of the Tower. 100% of the drilled piles/caissons are complete with 98% of the pile caps complete, no change this PC. The pile caps will be completed upon demobilization of Garage/Convention Center crane.

Concrete Superstructure

The percentage complete for the following tasks are:

Task	Previously Completed	Completed this PC
Grade Beams/Wall Foundations	98%	98.5%
Basement Walls	85.5%	87%
Core/shear Walls	100%	Complete
Slab on Grade	55%	65%
Slab on Metal Decking	65%	70%

Masonry

Walls in the Valet Level are 75% complete, an increase this PC of 20%.

Structural Steel

Installation of the steel stairs is in progress in Sequence 1. The percentage complete for the following tasks are:

Task	Previously Completed	Completed this PC
Structural Steel & metal decking on-site	77%	78%
Installed steel & metal decking	67%	68%
Steel frame erection		
Sequence 1 (Meeting Rooms North)	100%	Complete
Sequence 2A (Pool Suites)	100%	Complete
Sequence 2B (South Shops)	100%	Complete
Sequence 3A (Meeting Rooms South)	100%	Complete
Sequence 3B (Theatre)	100%	Complete
Sequence 4 (Casino/Pool Deck)	85%	90%
Sequence 5A (Casino Pool Deck)	100%	Complete
Sequence 5B	100%	Complete

The last main truss is schedule for installation on January 12, 2009.

Miscellaneous Metals

Engineering and fabrication for the steel stairs continues to proceed and is 97% complete, an increase this PC of 4%.

Roofing and Waterproofing

Below grade waterproofing is 95% complete and waterproofing Level 8 is 22% complete.

Doors and Windows

Door framing in the Back of House area is in process and is 51% complete.

Carpentry and Drywall

Installation of the metal studs and drywall is in progress with 30% complete, an increase this PC of 10%.

Finishes

The project has not reached this stage of the construction schedule.

Conveying Systems

The escalators have been delivered to the site and rail installation for Elevators HS1 and HS2 continues to proceed and is 83.5% complete, no increase this PC.

Fire Protection

Installation has begun at the casino levels below the Tower. Spray fire proofing overall is 61% complete in the south podium, an increase of 4% this PC. The progress per floor is detailed below:

Task	Level	Previously Completed	Completed this PC
2 nd Floor Framing	Valet	71%	75%
3 rd Floor Framing	Casino/Theatre	67%	80%
4 th Floor Framing	Casino Mechanical	100%	Complete
5 th Floor Framing	Retail/Meeting L01	86%	87%
7 th Floor Framing	Retail Mech./Meeting L02	80%	81%
8 th Floor Framing	Pool Sub-deck	39%	47%
9 th Floor Framing	Pool Deck/Meeting L02	45%	46%
10 th Floor Framing	VIP L01	50%	58%
11 th Floor Framing	VIP L02/Meeting L03	50%	54%
12 th Floor Framing	VIP L02/Theatre	50%	54%
13 th Floor Framing	VIP L04/Meeting L05	45%	52%
14 th Floor Framing	VIP Roof/Meeting L06	45%	46%

Plumbing

Installation has begun at the casino levels below the Tower and sleeving/canning is proceeding with approximately 51% complete, a 2% increase during this PC.

HVAC

Installation has begun at the casino levels below the Tower and sleeving/canning is proceeding with approximately 28% complete, a 2% increase during this PC.

Electrical

Installation has begun at the casino levels below the Tower for temporary power, main power and low voltage, and sleeving/canning is proceeding with approximately 38% complete, a 2% increase during this PC.

D. FF&E

Tower (200)

Deposits have been placed for long lead item and items critical to maintaining the construction schedule. These items include: bathroom vanities and guest closet units, as detailed in Section 2.3 of this report.

Garage/Convention (300)

No deposits have been placed as of this date.

Podium (500)

No deposits have been placed as of this date.

5.3. Quality of Work and Conformance with Construction Documents

The work observed appears to be in general conformance to the drawings and specifications we have reviewed, and during our site visit, we did not observe any significant areas of unsatisfactory workmanship. The previously deficient precast concrete tees have now been replaced. In addition, work has been performed in accordance with generally accepted construction industry standards.

At the time of our site visit, the street side elevations of the project have been fenced in securely and appropriate safety measures appear to have been taken. IVI noted that generally, all workers were wearing hard hats.

Five (5) previous material incidents have occurred on-site:

Material Incidents		
#	Date	Comments
1	Thursday August 2, 2007	Three (3) construction workers were involved in a construction site fall; falling from an approximate height of 30-feet. One (1) worker died and two (2) sustained minor injuries. Complete details are not available at the present time; however, once the detailed information becomes available IVI will incorporate into the next PSR. OSHA was immediately called, inspected the area of the accident, and allowed construction to proceed. The OSHA report will also become part of a forthcoming PSR.
2	Monday August 6, 2007	A precast concrete tee collapse took place within the proposed Garage/Convention Center area in the southeast quadrant of the site. Specifically; one (1) precast concrete tee failed under its own weight. It is believed that the failure was due to an insufficient length of re-bar at the bottom chord of the precast tee. This is considered an anomaly; the Developer and Contractor in conjunction with their team of professionals have prepared a two volume Double Tee Incident Correspondence & Photos report confirming that this was an isolated incident. The cause of the failure was determined to be due to the misplacement of the reinforcing in the North West corner of the Double Tee at level P-6. During the investigation, discrepancies were observed concerning the tendons on all of the tees. It has been

Material Incidents		
#	Date	Comments
		determined that all of the 9' tees and 12' tees longer than 60' must be removed, recast and replaced. The aforementioned will affect approximately 300 tees. The on-site tees have been replaced at this time.
3	Monday February 11, 2008	A construction worker was struck by a chilled water pipe as it slid through the nylon chokers from the 19 th Floor to the 18 th Floor. The injuries sustained are a left hand which was nearly severed and a compound fracture to the right leg in two places. (Note that the hand was successfully reattached later in the day).
4	Tuesday June 3, 2008	The hydraulic crane cable snapped causing two (2) beams to fall and damaged two (2) in-place concrete garage tees. The damaged tees were replaced within by Friday June 6, 2008.
5	Wednesday June 25, 2008	Welding was in process directly above the product "Polacell" on the low roof of the garage. The product ignited and quickly became too big for the fire watch posted; the on-site water truck and the fire department extinguished the fire. Additionally, the fire caused extensive damage to the large generator temporary located next to the fire lane. The incident is currently under review and a report is expected within the next 30 to 60 days (August 2008 to September 2008).

Concerning incidents 1 and 2 OSHA verbally acknowledged on their closing conference call, Wednesday September 5, 2007 that no fault or any negligence in TWC or FB. There will be no monetary fines or citation for the two (2) accidents, a formal OSHA investigation report is due between August 2008 and January 2009.

Five (5) additional incidents with minor injuries have occurred on-site, Monday December 10, 2007, Thursday January 3, 2008, Saturday January 12, 2008 and Monday September 1, 2008 and Thursday October 2, 2008. The incidents are currently under investigation by OSHA and the fourth by LVPD.

There is a concern related to the fourth incident and LVPD. Apparently even though LVPD was at the scene twice; once for the drunk driver and the second for the barricade collapse, there was no accident report filed by LVPD. This is being investigated by the General Contractor's attorneys. In the interim, the General Contractor has been contacted by an attorney representing the 20 year old injured women; however, a lawsuit has not been filed as of November 4, 2008. The costs incurred including a reserve total \$412,337 as detailed in the General Contractor's letter dated December 31, 2008 (Exhibit "Q").

5.4. Testing Reports

IVI has received copies of previous monthly non-conformance Inspection Report Logs (Exhibit "R") dated December 30, 2008.

6. DOCUMENTATION UPDATE

6.1 Drawings and Specifications

IVI has received the Major Milestone Summary, which includes Value Engineering ("VE") updated April 12, 2007 prepared by BWA, which outline the design status.

The project is tracking the schedule with milestone updates incorporated in the outline below:

Component	Task	Date
Site	Land Use Permits Available	October 4, 2006
Site	Grading Drainage Permit Study Approved	October 13, 2006
Garage/Convention Center	Issue for Permit 100% Foundation Construction Documents	October 31, 2006
Tower	Issue for Permit 100% Foundation Construction Documents	November 6, 2006
Tower	Issue for Permit 50% Construction Documents	November 21, 2006
Garage/Convention Center	Issue for Permit 50% Construction Documents	December 1, 2006
Tower	Issue for Permit 100% Structural Construction Documents (up to level 35) Mechanical Level	December 12, 2006
Garage/Convention Center	Issue for Permit 100% Structural Construction Documents	December 18, 2006
Tower	Issue for Permit 80% Construction Documents	February 1, 2007
Podium	Issue for Permit 100% Foundation Construction Documents (South Tower)	February 1, 2007
Podium	Issue for Permit 50% Construction Documents	February 1, 2007
Tower	Issue for Permit 100% Structural Construction Documents (Level 36 to Top)	February 7, 2007
Garage/Convention Center	Issue for Permit 80% Construction Documents	February 14, 2007
Podium	Issue for Permit 100% Structural Construction Documents (South of Tower)	March 2, 2007
Tower	Issue for Permit 100% Construction Documents	March 12, 2007
Garage/Convention Center	Issue for Permit 100% Construction Documents	March 21, 2007
Garage/Convention Center	Issue AMPE 100% CD's for permit	April 4, 2007
Podium	Issue Structural CD's (South Tower) for permit	April 20, 2007
Podium	Issue 80% Progress CD's	May 30, 2007
Podium	Issue for Permit 80% Construction Documents	June 1, 2007
Podium	Issue Theatre Footprint modification	July 15, 2007
Garage/Convention Center	CCBD approved proceeding as collapse	August 31, 2007
Podium	Issue for Permit 100% Foundation/Structural Construction Documents (North of Tower)	September 19, 2007

Component	Task	Date
Garage/Convention Center	Permit issued for AMPE	October, 2007
Podium	Issue ASMPE 100% CD's (North Tower) for permit	October, 2007
Garage/Convention Center	Revised Ballroom/Convention Center CD's issued	October 1, 2007
Podium	Issued VE North Podium Foundation and Structural Plans	February 1, 2008
Garage/Convention Center	100% AMEP issued	February 4, 2008
Garage/Convention Center	Ballroom interior design CD's issued	February 29, 2008

In anticipation that several venues may open 30-60 days after the scheduled grand opening of October 2009 a mural will be designed and constructed for the future storefront spaces along the promenade.

6.2. Permits

Permits are in place for the current work underway. The permits received during this PC (Exhibit "S") are bolded below:

Component	Description	Permit No.	Date Issued
Site	Dust Permit	33202	November 20, 2006
Site	Temporary Discharge Permit	Tnev2007368	December 4, 2006
Site	Demolition	06-41516 DE2	December 4, 2006
Site	Temporary Power Permit	06-53143 EPD	December 13, 2006
Site	Land Use Permit	06-41514	December 14, 2006
Site	Grading Permit	06-41514 GD6	January 12, 2007
Site	Secant Wall Permit	06-46993 BU1	January 16, 2007
Tower	Phased Foundation	06-48249 BU3	February 20, 2007
Garage	Emergency Ramp	06-52272 BU1	February 22, 2007
Wet n Wild	Dust Permit	N/A	February 22, 2007
Wet n Wild	Demolition (<i>Wet-n-Wild</i>)	07-12042 DE2	March 1, 2007
Tower	Structural	06-48249	March 6, 2007
Garage	Foundation-Parking	06-47392 BU1	March 14, 2007
Tower	Structural (Levels 1 through 34)	07-05172	May 3, 2007
Garage	Structural Permit	07-7220-BU4	May 4, 2007
Podium	Foundation Permit	07-11015	May 10, 2007
Tower	Structural	06-48249	May 14, 2007
Garage	Sub-Slab Drainage	06-47392 BU3	May 17, 2007
Garage	Structural	07-25864	June 12, 2007

Component	Description	Permit No.	Date Issued
Garage	Foundation Electrical	06-47392 EDP	June 25, 2007
Podium	Foundation Electrical	07-11015 EDP	July 6, 2007
Tower	AMEP	07-14840	July 31, 2007
Garage	Submittal Letter	07-33797	August 8, 2007
Podium	Structural	07-21582	August 9, 2007
Tower	Structural L35 – Roof	07-141186	August 12, 2007
Tower	Foundation	06-48249-001	August 16, 2007
Tower	Structural Permit	06-48249-02	August 16, 2007
Podium	Foundation F3	07-11015-001	August 27, 2007
Garage	Temporary Power	07-34342 EPD	September 5, 2007
Podium	Master Egress	06-48195-001	September 6, 2007
Tower	Structural Revision L1 – L34	07-5172-01	September 6, 2007
Garage	Materials & Methods	06-39826	September 15, 2007
Podium	Master Egress	06-48195-002	September 15, 2007
Tower	Electrical	07-14840-EPD	October 3, 2007
Garage	Structural	07-7220-01	October 18, 2007
Garage	Foundation	06-47392-01	October 19, 2007
Tower	Piping Supports @ Valet	06-48249-03	October 24, 2007
Podium	Underground	07-11015PLFT	October 29, 2007
Tower	Plumbing	07-14840-PLFT	November 1, 2007
Garage	Architectural Permit	07-17708 BU5	November 8, 2007
Garage	Micro Piles	07-32876	November 13, 2007
Garage	PLFT	07-17708-PLFT	November 14, 2007
Tower	Mechanical	07-14840	November 20, 2007
Garage	Closure Secant Wall Permit	06-46993 BU1	November 26, 2007
Podium	Foundation DPH	07-11015-03	November 29, 2007
Tower	Master Egress Permit	06-33024	December 15, 2007
Garage	Stairs 4, 5, & 6	07-7220-02	January 4, 2008
Garage	Double-Tee	07-7720-03	January 4, 2008
Podium	Foundation Phased	07-38187 BU3	January 14, 2008
Podium	North Podium Foundation and Structural Permit	07-40154 BU4	January 18, 2008
Garage	Structural	07-7220-04	January 18, 2008
Garage	Foundation	06-47392-02	February 7, 2008
Podium	AMEP	07-42658BU	February 13, 2008
Podium	South Podium	07-33462 BU5	February 20, 2008

Component	Description	Permit No.	Date Issued
Tower	Revisions	07-33024	February 20, 2008
Podium	North Podium AMPE	07-42658	February 25, 2008
Tower	Structural Smoke Control	07-14840	March 4, 2008
Garage	AEMP Revisions	07-17708-01	March 4, 2008
Podium	MEPD	07-33462EPD	March 5, 2008
Site	Fire Protection Report	06-33024	March 6, 2008
Garage	Fire Protection Report	06-39826	March 6, 2008
Podium	Fire Protection Report	06-48195	March 6, 2008
Podium	Fire Protection Report	07-33462	March 6, 2008
Tower	Curtain Wall and Embeds	07-5172-04	March 7, 2008
Tower	Structural Revisions	07-14186-04	March 7, 2008
Tower	Rebar Revisions	07-5172-03	March 9, 2008
Podium	Plumbing	07-33462PLFT	March 11, 2008
Podium	Stairs 101, 115 & 117	07-21582-14	March 12, 2008
Podium	Stairs 116	07-21582-15	March 12, 2008
Podium	Porte Coche Revisions	07-38187-01	March 13, 2008
Podium	Porte Coche Revisions	07-40154-01	March 17, 2008
Podium	Stair Revisions	07-21582-16	March 20, 2008
Podium	Framing Revisions	07-21582-17	March 20, 2008
Tower	Arch Revisions	07-14840-07	March 25, 2008
Tower	Engineering	06-33024-02	April 6, 2008
Site	Pedestrian Overhead Canopy	08-06455 BU1	April 8, 2008
Tower	Architectural Revision	07-14840-05	April 8, 2008
Garage	Structural Revision	07-7220-05	April 15, 2008
Tower	Sprinkler System	N/A	April 15, 2008
Garage	Foundation Revision	06-47392-03	April 25, 2008
Podium	Stair Revision	07-21582-20	April 28, 2008
Tower	Engineering	06-33024-03	May 6, 2008
Podium	Stair Revision	07-21582-31	May 7, 2008
Tower	Arch Revisions	07-14840-09	May 8, 2008
Podium	Arch Revision	07-33462-01	May 12, 2008
Garage	Arch Set Rev.	07-17708-02	May 13, 2008
Podium	Structural	07-21582-23	May 20, 2008
Podium	Structural	07-21582-22	May 21, 2008
Tower	Stairs #1, #2 & #3	07-5172-007	May 22, 2008
Tower	Architectural	07-14840-10	May 28, 2008

Component	Description	Permit No.	Date Issued
Garage	Stairs #10 & #22	07-7220-06	May 28, 2008
Podium	Life Safety	06-48195-03	May 29, 2008
Garage	Stairs #16	07-7220-07	June 2, 2008
Garage	Stair Framing	07-7220-09	June 4, 2008
Tower	Structural	07-5172-008	June 6, 2008
Tower	Structural	07-14186-06	June 16, 2008
Podium North	Structural	07-40154-02	June 17, 2008
Podium North	Foundation	07-40154-02	June 17, 2008
Tower	Structural	07-5172-09	June 20, 2008
Tower	Stairs 1-3	07-14186-10	June 20, 2008
Garage	Sanitary	08-13931 BU1	July 7, 2008
Tower	Architectural	07-14186-07	July 8, 2008
Podium	Structural	07-21582-24	July 8, 2008
Tower	Electrical	07-14840-12	July 11, 2008
Tower	AMEP	07-14840-11	July 11, 2008
Tower	Architectural	07-14186-09	July 16, 2008
Podium	Site	07-33462-03	July 17, 2008
Garage	Electrical	07-17708-EL	July 25, 2008
Garage	Structural	07-7220-11	July 29, 2008
Garage	Structural	07-7220-12	July 30, 2008
Podium	Stairs	07-21582-18	July 8, 2008
Podium	Framing	07-21582-26	July 8, 2008
Garage	East Elevation	07-7220-13	July 15, 2008
Podium	Architectural	07-33462-02	July 30, 2008
Podium	Site	07-33462-04	July 30, 2008
Podium	Mechanical	07-42658 MEFT	August 5, 2008
Podium	Spa	08-13578	August 7, 2008
Garage	Barrier Cables	07-7220-14	August 8, 2008
Podium	Theatre Arch.	07-33462-05	August 11, 2008
Podium	Building	07-42658-01	August 11, 2008
Tower	Misc. Coordination	07-14840-13	August 15, 2008
Podium	Structural	07-21582-27	August 19, 2008
Podium	Plumbing	07-42658 PLFT	August 21, 2008
Garage	Structural	07-7220-15	September 3, 2008
Garage	Structural	07-7220-16	September 4, 2008



Component	Description	Permit No.	Date issued
Podium	Foundation	07-38187-3	September 5, 2008
Tower	Misc. Coordination	07-14840-14	September 9, 2008
Podium	Stair 121	07-21582-25	September 9, 2008
Podium	Structural	07-33462-06	September 10, 2008
Podium	Structural	07-40154-3	September 10, 2008
Garage	Structural	07-7220-18	September 11, 2008
Podium	Casino	08-23297	September 11, 2008
Garage	Structural	07-7220-19	September 12, 2008
Garage	Structural	07-7220-20	September 14, 2008
Garage	TCO Exit Plan	07-7220	September 15, 2008
Garage	Foundation	06-47392-04	September 15, 2008
Podium	Structural	07-40154-4	September 17, 2008
Tower	Materials & Methods	06-33024-11	September 21, 2008
Podium	Building	07-42658	September 23, 2008
Podium	Building	08-13578-01C	September 23, 2008
Podium	Framing	07-21582-29	September 24, 2008
Podium	Architectural	07-21582-28	September 24, 2008
Garage	Structural/Stair #3	07-7220-21	October 1, 2008
Podium	Architectural	07-21582-31	October 6, 2008
Garage	Structural	07-7220-22	October 6, 2008
Tower	Structural	07-14186-012	October 7, 2008
Podium	Structural	07-38187-4	October 7, 2008
Podium	Framing	07-21582-32	October 10, 2008
Garage	Fire	07-17708-FA	October 15, 2008
Podium	Stair 192	07-21582-41	October 20, 2008
Podium	Stair 191	07-21582-43	October 20, 2008
Podium	Structural	07-21582-35	October 21, 2008
Tower	Structural	07-14186-013	October 21, 2008
Tower	Structural	07-14186-015	October 21, 2008
Tower	Architectural & MEP	07-14840-15	October 21, 2008
Podium	Structural	07-21582-33	October 22, 2008
Podium	Structural	07-21582-34	October 22, 2008
Garage	Architectural	07-17708-003	October 22, 2008
Site	Sidewalk Canopy	08-25201	October 24, 2008
Podium	Site	07-21582-36	October 27, 2008
Podium	Structural	07-21582-37	October 28, 2008

Component	Description	Permit No.	Date Issued
Podium	Structural	07-21582-39	November 10, 2008
Garage	Egress	07-7220	November 10, 2008
Garage	Misc.	07-7220-24	November 10, 2008
Podium	Wedding Chapel	08-27529	November 11, 2008
Podium	Theatre	07-21582-40	November 11, 2008
Garage	Structural	07-17708-04	November 12, 2008
Garage	Misc.	07-7220-26	November 12, 2008
Garage	Structural	07-7220-25	November 14, 2008
Garage	Structural	07-7220-27	November 18, 2008
Garage	Structural	07-7220-28	November 18, 2008
Podium	Convention Lobby	08-30383 BU1	November 18, 2008
Garage	Stair 2	07-7220-29	November 19, 2008
Garage	Structure	07-7220-30	November 19, 2008
Garage	Stair 11	07-7220-31	November 19, 2008
Podium	Stair 193	07-21582-42	November 25, 2008
Podium	Stair 157	07-21582-44	November 25, 2008
Podium	Stair 159	07-21582-45	November 25, 2008
Podium	Stair 162	07-21582-46	November 25, 2008
Podium	Stair 158	07-21582-47	November 25, 2008
Garage	Stair 9	07-7220-33	November 26, 2008
Garage	West Elevation	07-7220-32	November 29, 2008
Garage	Stair 1	07-7220-34	December 2, 2008
Podium	Structural	07-21582-48	December 5, 2008
Garage	SK-06 &SK-07	07-7220-35	December 8, 2008
Podium	Foundation delta NF6	07-38187-05	December 9, 2008
Podium	Structural delta NS8	07-40154-05	December 9, 2008
Podium	Bleau Lounge	08-31185 BU1	December 11, 2008
Garage	East Elevation	07-7220-36	December 13, 2008
Podium	Fireproofing	07-21582-38	December 17, 2008
Podium	Exterior Courtyard	07-21582-51	December 19, 2008
Podium	Fire Alarm	07-33462 FA 9	December 19, 2008

6.3. As-Built Survey

Not expected at this time.

6.4. Designer-of-Record Field Observation Reports

IVI has requested, but has not received a report for this PC.

6.5. Certificate of Occupancy

Upon governmental sign-off of each completed component/phase the GC will acquire a Temporary Certificate of Occupancy (TCO) or Certificate of Occupancy (CO). Either a TCO or CO has been received during this PC (Exhibit "T"-intentionally left blank) and bolded on the matrix below:

Component/Phase	Permit No.	Date Issued	Expires	Certificate
Parking Garage P-1 to P-3	07-7220	August 26, 2008	January 31, 2009	TCO
Parking Garage P-4	07-7220	October 1, 2008	January 31, 2009	TCO
Parking Garage P-1 to P-4	07-7220	December 1, 2008	January 31, 2009	TCO

6.6. Construction Meeting Minutes

The contractor has continued to provide Project Meeting Minutes prepared by BWA.

6.7. Shop Drawing and RFI Logs

IVI as requested has received the RFI Log – Outstanding for the garage, tower and podium (Exhibit "U") during the PC.

6.8. Tenant/End-User Status and Approvals

IVI has not received copies of any executed lease agreements for the available retail spaces (Exhibit "V"-intentionally left blank). Listed below are the proposed tenants and allotted space:

Category	Level	Suite ID	Tenant	Leased Date	SFG
F&B	Casino	100A	Lobby Bar	TBD	4,391
F&B	Casino	R1	Gotham Bar & Grill	TBD	9,918
F&B	Casino	R2	FB Steakhouse	TBD	9,702
F&B	Casino	R4	Bar American	TBD	10,537
Retail	Casino	104	Retail	TBD	1,157
Retail	Casino	105	Retail	TBD	3,515
Retail	Casino	107	Retail	TBD	1,920
Retail	Casino	108	Retail	TBD	2,300
Retail	Casino	109	Retail	TBD	5,747
F&B	Retail	R6	Italian Concept	TBD	8,739
F&B	Retail	R12	Burger Bar	TBD	3,524
F&B	Retail	R7	Seafood	TBD	9,747
F&B	Retail	237	Gelateria	TBD	2,853
F&B	Pool	R9	Tapas Concept	TBD	7,006
F&B	Pool	R10	Hakkasen	TBD	11,889
F&B	Pool	R11	Night Club/Ultra Lounge	TBD	41,400
F&B	Casino	R3	NOBU Sushi	TBD	5,385
Retail	Casino	103	Retail	TBD	2,067
Retail	Casino	111	Retail	TBD	1,173
Retail	Casino	A2	Retail	TBD	5,040
Retail	Casino	116	Retail	TBD	2,731
Retail	Casino	116/LOGO	Retail	TBD	2,182
Retail	Casino	LOGO	Retail	TBD	2,036
Retail	Casino	Delj	Retail	TBD	1,689

Category	Level	Suite ID	Tenant	Leased Date	SFG
F&B	Retail	R5	NOBU	TBD	14,548
Retail	Retail	200	Retail	TBD	8,972
Retail	Retail	202	Retail	TBD	715
Retail	Retail	205	Retail	TBD	1,867
Retail	Retail	207	Retail	TBD	2,293
Retail	Retail	209	Retail	TBD	1,612
Retail	Retail	211	Retail	TBD	1,535
Retail	Retail	213	Retail	TBD	2,094
Retail	Retail	215	Retail	TBD	2,016
Retail	Retail	217	Retail	TBD	2,141
Retail	Retail	225	Retail	TBD	5,028
Retail	Retail	226	Retail	TBD	6,423
Retail	Retail	227	Retail	TBD	2,305
Retail	Retail	229	Retail	TBD	2,380
Retail	Retail	231	Retail	TBD	4,630
Retail	Retail	235	Retail	TBD	2,720
Retail	Retail	238	Retail	TBD	670
Retail	Retail	239	Retail	TBD	679
Retail	Retail	241	Retail	TBD	1,995
Retail	Retail	243	Retail	TBD	1,806
Retail	Retail	245	Retail	TBD	1,861
Retail	Retail	247	Retail	TBD	2,803
Retail	Retail	249	Retail	TBD	1,225
Retail	Retail	251	Retail	TBD	1,509
Retail	Retail	253	Retail	TBD	1,790
Retail	Retail	255	Retail	TBD	1,884
Retail	Retail	257	Retail	TBD	1,822
Retail	Retail	258	Retail	TBD	1,778
Retail	Retail	259	Retail	TBD	1,556
Retail	Retail	260	Retail	TBD	1,306
Retail	Retail	261	Retail	TBD	1,047
Retail	Retail	262	Retail	TBD	1,043
Retail	Retail	263	Retail	TBD	1,266
Retail	Retail	265	Retail	TBD	1,286
Retail	Retail	267	Retail	TBD	1,120
Retail	Retail	268	Retail	TBD	1,336
Anchor	Retail	A1	Retail	TBD	14,661
Anchor	Retail	A3	Retail	TBD	27,795
Total SFG					290,373

6.9. Closeout Documents

Not expected at this time.

6.10. LEED Status

The Developer previously provided the following as a summary update concerning the status of the LEED qualification costs and the sales tax benefit:

- Executed LEED Deferral Certificate Log;
- LEED Credit checklist; and
- LEED Scorecard & Action Plan.

The aforementioned outlined: potential credit, requirements for compliance, action plan, assigned responsibility and estimated premium costs.

During this PC, the Developer provided the following (Exhibit "W"):

- LEED credit checklist dated December 31, 2008.

Based upon this documentation, it appears that the project is on track to obtain a Silver certification. The governmental approval process is 4-6 weeks after final submission, with certification expected by March 2010.



7. SALIENT FACTS SCHEDULE

Project Location:	Las Vegas Boulevard, Las Vegas, Nevada
Project Type:	Fontainebleau Resorts Hotel Casino
Project Size:	8,749,063 SFG
Construction Delivery Method:	Cost-of-the-Work Plus a Fee
Developer:	Fontainebleau Las Vegas, LLC. 2827 Paradise Road Las Vegas, Nevada 89109 Mr. Deven Kumar, VP of Development Finance (702) 495-8055 (tel) (702) 495-8403 (fax) dkumar@fbresorts.com
BofA Contact:	Bank of America 901 Main Street, 64 th Floor Dallas, Texas 75202 Mr. Brandon Bolio (214) 209-3795 (tel) (214) 209-0085 (fax) brandon.bolio@bankofamerica.com
LBH Contact:	Lehman Brothers Holdings, Inc 399 Park Avenue New York, New York 10022 Josh Freedman (212) 526-7000 (tel) (212) 713-1278 (fax) josh.freedman@lehman.com
General Contractor:	Turnberry West Construction, Inc 6725 Via Austi Parkway, Suite 380. Las Vegas, Nevada 89119 Roger McElfresh, President (702) 495-8005 (tel) (702) 495-7110 (fax) RMcelfresh@turnberryltd.com
Architect:	Bergman, Walls & Associates. 2965 S. Jones Boulevard Suite C Las Vegas, Nevada 89146 Scott Walls (702) 940-0000 (tel) (702) 940-0001 (fax) swalls@bwaltd.com

8. DISBURSEMENT AGREEMENT TERMS

Agreements:	Executed subcontractor agreement requirements: 60% execution by April 30, 2007; 75% execution by June 30, 2007; 85% execution by October 25, 2007 and 95% after exhaustion of the second mortgage proceeds account.
Contingency:	\$111,039,860; usage to be approved by BofA.
Retainage:	10% retainage will be held per trade contractor until 50% completion, and then the Project Entities may terminate the requirement of further retainage to the extent that the cumulative retainage is equal to 5% of the contract value (as adjusted by change orders, if any).
Bonding:	Payment and Performance Bonds are required from major subcontractors with a value over \$25,000,000, unless specifically waived.
Reallocations:	To be approved by BofA.
Stored Materials:	Funding for stored materials is permitted with an on-site limit of \$25,000,000, an off-site limit of \$50,000,000, increased to \$75,000,000 at the October 2, 2007 draw request meeting for PSR 6 which may further be waived at the discretion of the disbursement agent and a deposit limit of \$50,000,000. Funding for retail stored materials is permitted with an on-site limit of \$4,000,000, an off-site limit of \$4,000,000 and a deposit limit of \$4,000,000. Evidence of insurance, an invoice, a bill-of-sale, and consultant or 3 rd party verification is required for funding.

Dep. Ex. 810

13-Feb-2009 11:21 AM Bank of America 2142090085

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J.P.Morgan

Marc E. Costantino
Executive Director
383 Madison Avenue, 40th Floor
New York, NY 10179

Tel: 212-622-8167
Fax: 848-328-3037
marc.costantino@jpmorgan.com

February 12, 2009

Bank of America, N.A.
Agency Management
Mail Code, TX1-492-14-11
Bank of America Plaza
901 Main Street
Dallas, Texas 75202-3714

Attn: Donna Kimbrough

RE: Credit Agreement, dated as of June 6, 2007, among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC, as Borrowers; Bank of America, N.A., as Administrative Agent and Lender; the Lenders there to and the other parties identified therein ("Credit Agreement")

Dear Ms. Kimbrough:

JPMorgan Chase Bank, N.A. ("JPMorgan") has received a copy of Project Status Report No. 21 dated as January 30, 2009 (the "Report") for the Fontainebleau Las Vegas Hotel & Casino, prepared by Inspection & Valuation International, Inc., ("IVI"). In the Report, IVI makes certain observations, described below, which were not included in prior reports.

Specifically, at page 7, IVI states "[w]hile the Anticipated Cost Report indicates the Project is expected to stay within budget, IVI is concerned that all the subcontractor claims have not been fully incorporated into the report and potential acceleration impact to meet the schedule has not been included." Similarly, at page 22, IVI states "[t]he Anticipated Summary anticipates a balance contingency of \$50,514,708; however, IVI is concerned that the anticipated balance may drop substantially in order to meet the aggressive schedule. The concern specifically, is that all of the subcontractors have not fully incorporated the potential costs to meet the schedule."

At page 7, IVI also states "[a]dditionally, it appears that the LEED credits are tracking behind the projections and the Developer has begun a detailed audit." Again, at page 22, IVI states "[t]he Developer has provided documentation confirming LEED approval and the associated financial benefits accompanied as detailed in Section 6.10 of this report. However, it

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Page 2

appears that the anticipated LEED credits are tracking behind projections, possibly in excess of \$15,000,000. The Developer has begun a detailed audit of the GC's cost documentation to determine if all the possible credits have been obtained from the subcontractors."

JPMorgan requests that the Administrative Agent and IVI elaborate on the status of the analysis of subcontractor costs and potential cost overruns and the investigation of the LEED credits. Please identify specific actual or potential cost overruns and the LEED credit shortfalls, and please also provide an analysis of the impact of those matters on the budget for the project, the anticipated cost to complete the project, and the funds available for completion.

Also, please provide an update on the status of funding under the Retail Facility Agreement and the status of the construction of the retail facility.

We look forward to your response.

Very truly yours,

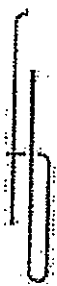


Marc E. Costantino
Executive Director

cc: Brandon Bolio, Bank of America, N.A.

73539:v1

Dep. Ex. 811



FONTAINEBLEAU RESORTS, LLC

702-495-8100
2827 PARADISE ROAD
LAS VEGAS NV 89109

FONTAINEBLEAU.COM

February 23, 2009

VIA ELECTRONIC MAIL

Bank of America, N.A.,
As Administrative Agent
Maurice Washington
Vice President
Agency Management Officer

RE: CREDIT AGREEMENT DATED AS OF JUNE 6, 2007 AMONG FONTAINEBLEAU LAS VEGAS, LLC, FONTAINEBLEAU LAS VEGAS II, LLC, THE LENDERS PARTY THERETO AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT

Dear Maurice:

We are writing in response to your letter of February 20th, 2009. We appreciate your pointing out that the Advance Request was submitted on February 13th instead of the 11th. As you are aware, this is a very large construction project and the Master Disbursement Agreement requires each Advance Request to include a very large number of documents that need to be prepared each month, many of which require the cooperation of third parties. Accordingly, at times, it is difficult to collect the various documents on a timely basis, especially from third parties. We apologize for any inconvenience that this month's timing caused to the lenders and will make every effort to ensure that it does not happen again.

We recognize that we are living in uncertain and unpredictable times, and are therefore pleased to accommodate the questions from the lenders as best we can and to the best of our knowledge.

With respect to the first question, the information reviewed by the lenders is outdated. We understand from your letter that the lenders reviewed the IVI report from January 31, 2009. As you are aware there have been subsequent update meetings and discussions with IVI that supersede that report. Through discussions and negotiation with our various subcontractors, we have been able to better determine the potential cost increases we may incur and have incorporated such potential costs into the Anticipated Cost Report, with IVI's concurrence. If these anticipated costs become committed and there are no offsetting cost savings, the budget will be amended and remaining costs would be increased. If all of these anticipated costs materialized and there were no offsetting cost savings, the In Balance test would continue to be satisfied. While, as you know, construction of a project of this scale is a fluid and dynamic process, at this point in time we are not aware of any costs overruns or acceleration costs that are not reflected in the Anticipated Cost Report.



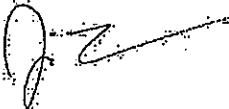
With respect to the LEED credits, we believe that the full amount of the credits reflected in the Budget will in fact be realized. Specifically, based on the breakdown between the cost of materials and the cost of labor that has been reported to us by our subcontractors, relative to such breakdown for other current projects on the Las Vegas Strip, we believe that our subcontractors have been underreporting the cost of materials relative to the cost of labor under their subcontracts. The result of such underreporting is a larger payment to our subcontractors and smaller LEED credits to us. We are currently in the process of engaging auditors to investigate and audit the subcontractors and expect to recover the difference promptly. Accordingly (and, in fact, regardless of whether we are able to recover the \$15 million pointed out in your letter), we do not believe that this item will cause the In Balance test to not be satisfied.

As relates to the Retail Facility, we are continuing active discussions with Lehman Brothers and the co-lenders to ensure that funding for the Project will continue on a timely basis. The Retail Facility is in full force and effect, there has not been an interruption in the retail funding of the Project to date.

As you correctly point out, the condominium sales market in Las Vegas has been challenging recently. While it is difficult to predict with a high degree of certainty when the market will rebound, we are continuing to construct and finish the condominium units and remain prepared to actively market and promote the units. We believe we are well positioned to sell them successfully as market conditions improve. We have been in compliance with the covenants in the Credit Agreement thus far and intend to continue to comply in the future. The weakness in the overall economy has impacted recent performance for the Las Vegas strip and we continue to monitor current operating trends. We do not believe any operator can accurately advise you of the timing and magnitude of the recovery for the overall economy generally or Las Vegas in particular. We continue to believe strongly that a branded, differentiated product, like our project, will continue to outperform the broader market regardless of market conditions. As required by the documentation, we will comply with the operating budget and operating cash flow projections delivery requirements when those become applicable. In addition, as requested in your letter, we would be pleased to meet with you to discuss what additional information you would like that we can prepare, keeping in mind that this may not delay the current advance on the 25th of this month in accordance with the Master Disbursement Agreement.

We hope this is helpful. Please contact me if you have any questions.

Very truly yours,



Jim Freeman
Fontainebleau Resorts

Dep. Ex. 813



March 3, 2009

Via Electronic Mail

Jim Freeman, Senior Vice President and Chief Financial Officer
Fontainebleau Resorts LLC
Fontainebleau Las Vegas, LLC
2827 Paradise Road
Las Vegas, NV 89109
jfreeman@fontainebleau.com

Re: Credit Agreement dated as of June 6, 2007 among Fontainebleau Las Vegas, LLC (the "Company"), Fontainebleau Las Vegas II, LLC, the Lenders, and Bank of America, N.A., as Administrative Agent

Dear Jim:

We are in receipt of the Loan Notice which the Company submitted yesterday under the Credit Agreement described above, which requests a Delay Draw Term Loan in the amount of \$350,000,000 and a Revolving Loan of \$670,000,000.

The Loan Notice which you submitted does not comply with the provisions of Section 2.1(c) of the Credit Agreement, which states that:

"(iii) unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000."

Accordingly, we have notified the Lenders that we will not be processing this Loan Notice. Please contact Brian Corum or me if you have any questions regarding this letter.

Very truly yours,

BANK OF AMERICA, N.A, as Administrative Agent

By: Ronald Naval
Ronaldo Naval, Vice President



W02-WEST:LARW01398740.1

Dep. Ex. 814

March 4, 2009

Via Electronic Mail

Jim Freeman, Senior Vice President and Chief Financial Officer
Fontainebleau Resorts LLC
Fontainebleau Las Vegas, LLC
2827 Paradise Road
Las Vegas, NV 89109
jfreeman@fontainebleau.com

Re: Credit Agreement dated as of June 6, 2007 among Fontainebleau Las Vegas, LLC (the "Company"), Fontainebleau Las Vegas II, LLC, the Lenders, and Bank of America, N.A., as Administrative Agent

Dear Mr. Freeman:

I am officer within Bank of America's Special Assets Group with responsibility for Fontainebleau Nevada. We have formed an ad hoc steering committee with other Lenders under the Credit Agreement constituting a majority in interest of the Lenders under the Credit Agreement. The steering committee unanimously concurs that your Loan Notice does not conform to the requirements of the Credit Agreement.

The Lenders have been increasingly anxious to have a meeting with the Company to discuss the current status and prospects of the Fontainebleau Las Vegas Project, including construction issues, the challenges which the current economic crisis poses for the Project, and other topics of interest. We have made several attempts to schedule a call or meeting without success, and reiterate that it is critically important that the Company meet with the Lenders.

As an immediate step, we request that a meeting with Bank of America and other members of the steering committee be held Monday or Tuesday of next week, in Las Vegas. We would also like to schedule a meeting with the full lender group at the earliest possible date.

At the steering group meeting, we request that you and other members of the Fontainebleau senior management team be available to make a presentation focusing on the general status of the Project, the effect of the financial and market environment upon the Project and its expected operation, the financial condition of the Company and relevant affiliates (including both Fontainebleau Resorts and Turnberry Residential) and the Company's ability to complete and successfully operate the Project. A list of topics which we request that you cover is attached to this letter. We believe that it is important for Company executives having both financial and construction responsibility to be in attendance.

We think it is unlikely that more than a few of the Lenders would be able to physically attend the meeting, but for those who can be present, a brief tour of the Project would be

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HIGHLY CONFIDENTIAL

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extremely helpful. We would appreciate it if construction personnel could be available to guide and narrate the tour.

It is critical that the Company meet and interact with its Lenders. Please let us know if you will make yourself available to meet on Monday or Tuesday.

Very truly yours,

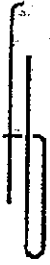
BANK OF AMERICA, N.A, as Administrative Agent

By: 
Henry Yu, Senior Vice President

Fontainebleau Las Vegas – Lender Meeting Topics.

- General Status of Project;
- March Advance Request – please assure that this is promptly submitted;
- Adequacy of the contingency for the Project;
- Project cost issues including the status of LEED credits and Subcontractor costs associated with accelerated schedule
- Any plans for the Company may have for timetable or scope adjustments to achieve cost savings;
- The status of the Company's efforts to provide for the operation of the Project, including staff hiring, group reservations and other marketing efforts, licensing and other pre-opening activities;
- The absence of condominium sales, the impact of the impending Condo Price Adjustment upon the construction budget for the Project and the In-Balance Test, and the impact of increased leverage upon the ability of the Company to successfully operate the Project;
- A recap of the current In Balance calculation;
- Any plans the Company has to raise equity, either directly or through its parent entities;
- A general overview of the current status of related party financings, including Fontainebleau Resort's PIK Preferred shares, and Retail Facilities, and the Fontainebleau Miami project and mezzanine loan facilities;
- The status of negotiations with the Retail Lenders, a recap of the amounts funded by each of the Retail Lenders, and the prospects for continued fundings under the Retail Facility;
- The current financial status of Turnberry Residential;
- Discussion of current market conditions and expected impact upon operating results, and updated projections.

Dep. Ex. 816



FONTAINEBLEAU RESORTS, LLC
702 495 8100
2827 PARADISE ROAD
LAS VEGAS NV 89109
FONTAINEBLEAU.COM

March 9, 2009

VIA ELECTRONIC MAIL

Henry Yu
Senior Vice President
Bank of America, N.A.
901 Main Street
Mail Code TX1-492-14-11
Dallas, Texas 75202

RE: CREDIT AGREEMENT DATED AS OF JUNE 6, 2007 AMONG FONTAINEBLEAU LAS VEGAS, LLC, FONTAINEBLEAU LAS VEGAS II, LLC (CUMULATIVELY, THE "COMPANY"), THE LENDERS PARTY THERETO AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT

Dear Mr. Yu:

On March 2, 2009 and again on March 3, 2009 we issued a Notice of Borrowing to the Administrative Agent pursuant to Sections 2.1(b) and 2.4 of the Credit Agreement, in which we sought a Delay Draw Loan in the amount of \$350,000,000 and a Revolving Loan in the amount of \$656,522,698. The response to both Notices of Borrowing was that the Administrative Agent had declined to process our request on the basis that the Loan Notice did not "conform to the requirements of the credit agreement." It appears to be your belief – albeit an incorrect one – that the credit agreement does not permit a simultaneous draw on the Delay Draw Term Loan and Revolving Loan. We have explained in clear terms why your refusal to process our Loan Notice was in error. We reiterate our prior statements that the Lenders were, by their actions or inactions, in default of the Loan Documents and that, as a consequence of said conduct, we have incurred – and will continue to incur – substantial damages. We also reiterate our very real concern that Bank of America may be acting in its own self-interest in derogation of the Loan Agreement, and against the interests of the Company and several of the other Lenders.

However, given the substantial risks to the Company and the Project associated with any further delay in the processing of our Notice of Borrowing, you have left us no choice but to now submit a Notice of Borrowing for the \$350 million Delay Draw Term Loan, without simultaneously seeking to draw upon the Revolving Credit Facility. Accordingly, attached hereto please find our Notice of Borrowing with respect to a \$350,000,000 Delay Draw Term Loan to the Company.



We wish to be clear that our application today in a manner different from our prior applications of March 2 and 3 is not intended as, does not constitute, and should not be construed as, a waiver of any of the Company's rights or available remedies regarding the funds in the Revolving Credit Facility generally, or the Company's rights or available remedies with regard to its March 2 or 3, 2009 Notices of Borrowing. Nor should this Notice of Borrowing be construed as an admission of any deficiencies with respect to those Notices of Borrowing.

The Company strongly believes that the March 2 and 3, 2009 Notices of Borrowing were proper, timely and fully compliant with the Loan Documents. However, as it is clear that the Administrative Agent and Lenders will not abide by the terms of the Loan Documents, we have no choice but to make this revised application to ensure the availability of funds to continue the Project, although the completion of the Project is at risk due to the Lenders' failure to fund the loans. We submit the revised Notice of Borrowing under duress, and with all rights reserved and without waiver of, or prejudice to, any and all rights that we may have either at law or in equity. Furthermore, the Company expressly reserves all rights, claims, causes of action, and other bases for recourse against the Administrative Agent and the Lenders in connection with its March 2 and March 3, 2009 Notices of Borrowing and as set forth in our related letters to you.

Very truly yours,

Fontainebleau Las Vegas, LLC


Name: Jim Freeman
Title: Sr. Vice President and Chief Financial Officer

NOTICE OF BORROWING

March 9, 2009

Bank of America, N.A.,
as Administrative Agent
Mail Code: TX1-492-14-11
Bank of America Plaza
901 Main St.
Dallas, TX 75202-3714
Attention: Donna F. Kimbrough

Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC

Ladies and Gentlemen:

Pursuant to Section 2.4 of that certain Credit Agreement, dated as of June 6, 2007 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement or if not set forth therein the meanings given to them in the Disbursement Agreement, or, to the extent the Disbursement Agreement is then not in effect, the Disbursement Agreement as of the last day of its effectiveness), among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively, the "Borrowers"), each lender from time to time party thereto and Bank of America, N.A., as administrative agent (the "Administrative Agent"), the Borrowers hereby give the Administrative Agent irrevocable notice that the Borrowers hereby request a Loan under the Credit Agreement, and in that connection set forth below the information relating to such Loan:

1. The Banking Day of the proposed Loan is March 10, 2009 (the "Borrowing Date").
2. The proposed Loan is a Disbursement Agreement Loan.
3. The proposed Loan is a Delay Draw Loan.
4. The Type of the proposed Loan is a Base Rate Loan.
5. The aggregate amount of the proposed Loan is \$350,000,000.

The Borrowers agree that, if prior to the Borrowing Date any of the foregoing certifications shall cease to be true and correct, the Borrowers shall forthwith notify the Administrative Agent thereof in writing (any such notice, a "Non-Compliance Notice"). Except to the extent, if any, that prior to the Borrowing Date, the Borrowers shall deliver a Non-Compliance Notice to the Administrative Agent, each of the foregoing certifications shall be deemed to be made additionally on the Borrowing Date as if made on such date.

The undersigned is executing this Notice of Borrowing not in an individual capacity, but in the undersigned's capacity as a Responsible Officer of the Borrowers.

Very truly yours,

FONTAINEBLEAU LAS VEGAS, LLC,

and

FONTAINEBLEAU LAS VEGAS II, LLC

By: Fontainebleau Las Vegas Holdings, LLC,
Managing Member of each of the foregoing

By: Fontainebleau Resort Properties I, LLC, its
Managing Member

By: Fontainebleau Resort Holdings, LLC, its
Managing Member

By: Fontainebleau Resorts, LLC, its Managing
Member

By:

Name: 
Jim Freeman

Title: Sr. Vice President and Chief Financial Officer

Dep. Ex. 819

March 10, 2009

Via Electronic Mail

Jim Freeman, Senior Vice President and Chief Financial Officer
Fontainebleau Resorts LLC
Fontainebleau Las Vegas, LLC
2827 Paradise Road
Las Vegas, NV 89109
jfreeman@fontainebleau.com

Re: Credit Agreement dated as of June 6, 2007 among Fontainebleau Las Vegas, LLC (the "Company"), Fontainebleau Las Vegas II, LLC, the Lenders, and Bank of America, N.A., as Administrative Agent

Dear Mr. Freeman:

This letter responds to your letters of March 6 and March 9, and to your claims in those letters that Bank of America's responses to the Notices of Borrowing you submitted on March 2 and March 3 were improper.

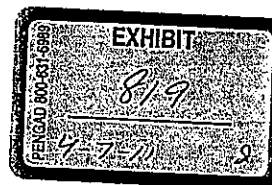
First, you should be aware that the determination that these Notices of Borrowing did not comply with the terms of the Credit Agreement was unanimously supported by the members of the Steering Committee. The Steering Committee, which is comprised of Bank of America, Bank of Scotland, Barclays Capital, Deutsche Bank, Highland Capital, JP Morgan Chase Bank, Royal Bank of Scotland and Sumitomo, comprises over half of the Lenders in the Credit Agreement by commitment size, and includes Lenders under the Initial Term, Delay Draw Term and Revolving Facilities. The committee contains holders of the two largest positions in the Initial Term Loans and Delay Draw Term Loans. Specifically, Bank of America believes that members of the Steering Committee represent over 90% of the Revolving Lenders and over 25% of the Delay Draw Term Lenders and Initial Term Lenders. We have also invited other significant Initial Term Lenders and Delay Draw Term Lenders to participate in the Steering Committee subject to their agreement to become private-side Lenders, but none has agreed to do so.

Your March 2 Notice of Borrowing was promptly submitted to the Lenders, and several Lenders funded a total of \$29,525,005. We returned funds when the determination was made that the March 2 Notice of Borrowing did not comply with the terms of the Credit Agreement. On March 3 you noted that the March 2 Notice of Borrowing contained a "scrivener's error," lowered the amount requested, and replaced the March 2 Notice of Borrowing with the March 3 Notice of Borrowing.

The March 3 Notice of Borrowing was also promptly submitted by Bank of America to the Lenders. In a concurrent Intralinks posting, each of the Lenders was notified of

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the Steering Committee's conclusion that the Notice of Borrowing did not comply with the terms of the Credit Agreement. However, the Intralinks posting offered each Lender which held a contrary view the opportunity to fund.¹ None of the Lenders funded in response to the March 3 Notice of Borrowing.

Your letters state that you have been in regular communication with the Administrative Agent, however you have not returned my telephone calls. You have also refused to conduct a meeting or conference call with Bank of America or the other Lenders as a group during the past two weeks in spite of our continued requests. Pursuant to Section 9.2.1 of the Disbursement Agreement, you and your construction team in any event have the obligation to meet with Bank of America within three Banking Days of request. We have requested such a meeting on several occasions, including my letter of March 4.

Bank of America has offered to meet with the Company individually, with members of the Steering Committee, or as a part of a meeting with the entire bank group, but all of these offers have been refused. This weekend, Bank of America again offered to meet with you on a one-on-one basis as early as yesterday, but you have still not agreed to meet.

We are hereby requesting, in our capacities as both Administrative Agent and Disbursement Agent, that the Company attend a bank meeting in Las Vegas on Tuesday, March 17. This meeting is requested pursuant to Section 9.2.1 of the Disbursement Agreement and Section 6.6 of the Credit Agreement. At the meeting we would expect to discuss all of the topics listed in our March 4th letter. We're appending the attachment to that letter listing those topics for your convenience.

¹ That posting read as follows:


"We are posting a renewed Loan Notice from the Company. Bank of America has formed an ad hoc steering committee which unanimously supports the position that the renewed Loan Notice does not comply with the terms of the Credit Agreement.

Lenders which disagree with the steering committee's position are asked to immediately contact Bank of America, as Administrative Agent, to make operational arrangements for funding their portion of the requested borrowing."

Yesterday morning, you supplied a new Notice of Borrowing which requested the funding of the entire amount of the Delay Draw Term Loan Commitments. We have submitted this request to the Lenders, and await their response.

Very truly yours,

BANK OF AMERICA, N.A, as Administrative Agent and
Disbursement Agent

By: 
Henry Yu, Senior Vice President

cc: Jeffrey Soffer
Glenn Schaeffer

Barclays Bank PLC
Bank of Scotland, plc
Deutsche Bank
Highland Capital
JPMorgan Chase Bank
Royal Bank of Scotland
Sumitomo Mitsui Bank

Fontainebleau Las Vegas – Lender Meeting Topics.

- General Status of Project;
- March Advance Request – please assure that this is promptly submitted;
- Adequacy of the contingency for the Project;
- Project cost issues including the status of LEED credits and Subcontractor costs associated with accelerated schedule
- Any plans for the Company may have for timetable or scope adjustments to achieve cost savings;
- The status of the Company's efforts to provide for the operation of the Project, including staff hiring, group reservations and other marketing efforts, licensing and other pre-opening activities;
- The absence of condominium sales, the impact of the impending Condo Price Adjustment upon the construction budget for the Project and the In-Balance Test, and the impact of increased leverage upon the ability of the Company to successfully operate the Project;
- A recap of the current In Balance calculation;
- Any plans the Company has to raise equity, either directly or through its parent entities;
- A general overview of the current status of related party financings, including Fontainebleau Resort's PIK Preferred shares, and Retail Facilities, and the Fontainebleau Miami project and mezzanine loan facilities;
- The status of negotiations with the Retail Lenders, a recap of the amounts funded by each of the Retail Lenders, and the prospects for continued fundings under the Retail Facility;
- The current financial status of Turnberry Residential;
- Discussion of current market conditions and expected impact upon operating results, and updated projections.

Dep. Ex. 820

From: Whitney Thier. Sent: 3/11/2009 9:24 PM.
To: henry.yu@bankofamerica.com; henry.yu@bankofamerica.com.
Cc: Jim Freeman; Varnell, Jon M; Bill Scott; amartin@sheppardmullin.com; Jim Freeman; Varnell, Jon M; Bill Scott; amartin@sheppardmullin.com.
Bcc: .
Subject: Pre-Negotiation Agreement.

Henry,

We understand that you spoke to Jon Varnell and Bill Scott about the company's proposal of a pre-negotiation agreement, a copy of which is attached. We look forward to speaking with you about it in the morning.

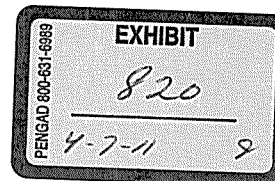
Whitney

Whitney Thier / General Counsel
Fontainebleau Resorts, LLC
wthier@fontainebleau.com / fontainebleau.com
O 702 495 8108 / C 702 249 5590
2827 Paradise Road / Las Vegas NV 89109

THE STAGE IS YOURS. LIVE YOUR PART.

please take note of my new email address

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CONFIDENTIAL --FOR SETTLEMENT PURPOSES ONLY. NOT ADMISSIBLE PURSUANT TO FEDERAL RULE OF EVIDENCE 408 AND ITS STATE LAW COUNTERPARTS.

PRE-NEGOTIATION AGREEMENT

This PRE-NEGOTIATION AGREEMENT (this "Agreement") is entered into as of March ___, 2009, by and among FONTAINEBLEAU LAS VEGAS, LLC, a Nevada limited liability company, as Borrower ("Borrower"), each of the other Loan Parties (as defined in the Credit Agreement referred to below), the financial institutions party hereto representing the Required Lenders, the Required Facility Lenders with respect to the Revolving Commitments, and the Required Facility Lenders with respect to the Delay Draw Commitments, in each case under the Credit Agreement (as hereinafter defined) (collectively, the "Consenting Lenders"), and Bank of America, N.A., individually as a Lender, and as administrative agent for the Lenders and as disbursement agent under the Disbursement Agreement (in such capacities, "Agent").

RECITALS

A. Borrower, Agent, and the Consenting Lenders are parties to that certain Credit Agreement, dated as of June 6, 2007 (as has been or may be further amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), pursuant to which, among other things, the Lenders party thereto agreed, subject to the terms and conditions set forth in the Credit Agreement, to make certain loans and other financial accommodations to Borrower. Unless otherwise defined above or elsewhere in this Agreement, capitalized terms used herein shall have the meanings ascribed to them in the Credit Agreement.

B. The parties wish to initiate discussions, exchange information and engage in other communications during the Standstill Period (as hereinafter defined) (all such discussions, exchanges of information and other communications, whether written, oral, or via email, collectively, "Discussions") about each of the parties' respective rights, obligations, and performance under the Loan Documents as well as a potential amendment and restructuring of the Loan Documents and other financing arrangements to which Borrower is party. Such Discussions may or may not result in the parties entering into a written instrument evidencing an agreement among the parties to resolve any dispute with respect to the scope and status of the foregoing rights, obligations, and performance or to amend or restructure the Loan Documents (any such agreement, a "Resolution or Settlement Agreement"). For the avoidance of doubt, as used herein, the term Discussions is limited to discussions and other communications occurring during the Standstill Period (as hereinafter defined).

C. The parties wish to pursue Discussions without litigation, the threat of litigation, the exercise of remedies under the Loan Documents or the threat of any such exercise of remedies, and to assure that Discussions will not affect any future litigation. To facilitate and to induce Borrower, Agent and the Consenting Lenders to commence Discussions, the parties are entering into this Agreement, which, among other things, provides for the forbearance of each of the parties hereto from the exercise of certain rights and remedies during the Standstill Period (as hereinafter defined).

NOW, THEREFORE, in consideration of the foregoing, the terms, covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Standstill.

(a) Effective as of the date hereof, each of the Consenting Lenders party hereto and the Agent (for itself and on behalf of the Lenders) (collectively, the "Lender Parties") agrees that until the expiration or termination of the Standstill Period (as defined in subsection (c) below), it will temporarily forbear from exercising its default-related rights and remedies (including, without limitation, the acceleration of the Loans, cancellation or termination of the Commitments or the exercise of any right or remedy against the Collateral) against Borrower or any other Loan Party in respect of any Default or Event of Default under the Credit Agreement or other Loan Documents (other than this Agreement), whether now existing or hereinafter occurring.

(b) Effective as of the date hereof, each of the Loan Parties agrees that until the expiration or termination of the Standstill Period (as defined in subsection (c) below), it will temporarily forbear from initiating any formal legal proceeding in respect of any claims, actions, causes of action and suits against any Lender Party arising out of or in connection with the Loan Documents (other than this Agreement) (collectively, the "Borrower Claims"), whether now existing or hereinafter occurring.

(c) As used herein, the term "Standstill Period" shall mean the period beginning on the date hereof and ending on the earliest to occur of (w) an Event of Default under Section 8(f)(i) of the Credit Agreement, (x) the election of Borrower following any breach of this Agreement by any of the Lender Parties, (y) the election of Agent following any breach of this Agreement by any of the Loan Parties, and (z) thirty (30) days following the date hereof.

(d) Any agreement to extend the Standstill Period, if any, must be set forth in writing and signed by each of the parties hereto.

(e) The parties hereto agree that the running of all statutes of limitation or doctrine of laches applicable to all claims or causes of action that any Lender Party or Loan Party may be entitled to take or bring in order to enforce its rights and remedies against any Loan Party or any Lender Party, respectively, is, to the fullest extent permitted by law, tolled and suspended during the Standstill Period.

(f) Notwithstanding anything herein to the contrary, none of the Lender Parties shall refuse to honor any Advance Request submitted during the Standstill Period in accordance with the Disbursement Agreement, so long as the conditions to any Advance requested therein have been satisfied in accordance with the terms of the Disbursement Agreement; provided, however, that in the event any such conditions are not satisfied, the Agent shall nonetheless make the requested Advances if the Required Facility Lenders with respect to the Facility whose proceeds are at such time on deposit in the Bank Proceeds Account consent to such Advances.

SECTION 2. Discussions. Discussions may be lengthy and complex. As such, the parties hereto agree as follows:

(a) No party has any obligation to agree to any Resolution or Settlement Agreement.

(b) No party shall have any rights or liabilities, express or implied, on account of the commencement, continuation, or termination of Discussions or any oral or emailed understanding or proposal, unless and until: (i) the parties have in their sole and absolute discretion signed and delivered a Resolution or Settlement Agreement; (ii) all required consents (including, without limitation, any required Lender approvals) to such Resolution or Settlement Agreement have been obtained in form and substance satisfactory to each of the parties thereto; and (iii) all other express conditions to the effectiveness of such Resolution or Settlement Agreement as set forth in such documentation have been satisfied or waived in writing (the occurrence of sub-clauses (i) through (iii), a "Binding Agreement"). Unless and until a Binding Agreement exists, no party shall rely on the pendency of Discussions or the possibility of a Resolution or Settlement Agreement resulting from such Discussions or any other communications with any Lender Party or any Loan Party. For the avoidance of doubt, the parties hereto have expressly declined to be bound by any email communications during the Discussions.

(c) During the Standstill Period, any party may, in its sole and absolute discretion, prepare a term sheet or any other written proposal or outline (any of the foregoing, a "Term Sheet") to further Discussions and possible preparation of draft documents. Any Term Sheet or response thereto is for purposes of Discussion only. Neither any Term Sheet nor any preparation, distribution, response, or failure to respond to it shall constitute any party's offer, agreement, or commitment to enter into a Resolution or Settlement Agreement.

(d) Any Term Sheet, any response to any Term Sheet, and any other Discussions, including, without limitation, any statement that is or could be deemed an admission of any fact, liability, or other matter, or of the satisfaction of any condition, shall constitute settlement discussions subject to the protections afforded by Federal Rule of Evidence 408 (and its state law counterparts) and shall not: (a) be discoverable or disclosable (except as required by law or regulation which cannot be waived by the applicable party), admissible in evidence for any purpose, or deemed an admission or a consent to any matter; or (b) affect the parties' rights or obligations. Nothing in this paragraph limits the discoverability or admissibility of any writing that was prepared for purposes other than the Discussions and is otherwise admissible or discoverable. Further, the Lender Parties shall maintain the confidentiality of all Discussions and information exchanged during the course of Discussions unless otherwise agreed to in writing by Borrower.

(e) Each party hereto waives and releases any and all claims, actions, causes of action, suits, and defenses that such party might have against any other party for or by reason of any matter, cause or thing whatsoever arising from any Discussions. This waiver and release does not release any party from any of its obligations under this Agreement, the Loan Documents, or any Binding Agreement that the parties may in their discretion execute and deliver to one another.

SECTION 3. Representations and Warranties. Each of the parties hereto represents, warrants and covenants that:

(a) It has the power and authority to execute and deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize its execution, delivery and performance of this Agreement;

(b) This Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; and

(c) The execution, delivery and performance of this Agreement will not violate any provisions of any material requirements of applicable law to such party or of any material contractual obligation of such party.

SECTION 4. Reference To And Effect Upon The Credit Agreement.

(a) Except as expressly set forth herein, each party hereto reserves all of its rights, powers, and remedies under the Credit Agreement, the other Loan Documents and applicable law.

(b) From and after the date hereof, the term "Loan Documents" in the Credit Agreement and the other Loan Documents shall include, without limitation, this Agreement.

(c) No Lender Party has waived, is by this Agreement waiving, and has no intention of waiving (regardless of any delay in exercising such rights and remedies), any Default or Event of Default which may be continuing on the date hereof or any Event of Default which may occur after the date hereof, and no Lender Party has agreed to forbear with respect to any of its rights or remedies concerning any Events of Default (other than during the Standstill Period), which may have occurred or are continuing as of the date hereof, or which may occur after the date hereof.

(d) No Loan Party has waived, is by this Agreement waiving, and has no intention of waiving (regardless of any delay in exercising such rights and remedies), any Borrower Claim which may be existing on the date hereof or any Borrower Claim which may arise after the date hereof, and no Loan Party has agreed to forbear with respect to any of its rights or remedies concerning any Borrower Claim (other than during the Standstill Period), which may exist as of the date hereof, or which may arise after the date hereof

(e) Each of the Loan Parties agrees and acknowledges that the Lender Parties' agreement to forbear from exercising their default-related rights and remedies during the Standstill Period does not in any manner whatsoever limit any Lender Party's right to insist upon strict compliance by Borrower and the other Loan Parties with the Credit Agreement, this Agreement or any other Loan Document during the Standstill Period, except as expressly set forth herein.

(f) Each of the Lender Parties agrees and acknowledges that the Loan Parties' agreement to forbear from initiating any formal legal proceeding in respect of any Borrower Claims during the Standstill Period does not in any manner whatsoever limit any Loan Party's right to insist upon strict compliance by Agent and the other Lender Parties with the Credit Agreement, this Agreement or any other Loan Document during the Standstill Period, except as expressly set forth herein.

SECTION 5. Governing Law; Consent to Jurisdiction and Venue and Waiver of Jury Trial. Sections 10.11 (Governing Law), 10.12 (Submission to Jurisdiction; Waivers) and 10.22 (Waivers of Jury Trial) of the Credit Agreement are incorporated herein *mutatis mutandis*.

SECTION 6. Construction. This Agreement has been prepared through the joint efforts of all of the parties hereto. Neither the provisions of this Agreement nor any alleged ambiguity herein shall be interpreted or resolved against any party on the ground that such party or its counsel drafted this Agreement, or based on any other rule of strict construction. Each of the parties hereto represents and declares that such party has carefully read this Agreement, and that such party knows the contents hereof and signs the same freely and voluntarily. The parties hereto acknowledge that they have been represented by legal counsel of their own choosing in negotiations for and preparation of this Agreement and is fully aware of the contents and legal effect of this Agreement.

SECTION 7. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument, and all signatures need not appear on any one counterpart. Any party hereto may execute and deliver a counterpart of this Agreement by delivering by facsimile or other electronic transmission a signature page of this Agreement signed by such party, and any such facsimile or other electronic signature shall be treated in all respects as having the same effect as an original signature. Any party delivering by facsimile or other electronic transmission a counterpart executed by it shall promptly thereafter also deliver a manually signed counterpart of this Agreement.

SECTION 8. Severability. The invalidity, illegality, or unenforceability of any provision in or obligation under this Agreement in any jurisdiction shall not affect or impair the validity, legality, or enforceability of the remaining provisions or obligations under this Agreement or of such provision or obligation in any other jurisdiction. If feasible, any such offending provision shall be deemed modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

SECTION 9. Time of Essence. Time is of the essence in the performance of each of the obligations of the parties hereunder.

SECTION 10. Section Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute part of this Agreement for any other purpose.

SECTION 11. Notices. All notices, requests, and demands to or upon the respective parties hereto shall be given in accordance with the Credit Agreement or, if applicable, the other Loan Documents to which the applicable Loan Party is party.

SECTION 12. Assignments; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of Borrower, the other Loan Parties, the Agent, the other Lender Parties and their respective successors and assigns permitted under the Loan Documents.

SECTION 13. Final Agreement. The Loan Documents (including this Agreement) set forth in full the terms of agreement between the parties hereto and thereto and are intended as the full, complete, and exclusive contracts governing the relationship between such parties, superseding all other discussions, promises, representations, warranties, agreements, and understandings between the parties with respect thereto. No term of any Loan Document may be modified or amended, nor may any rights thereunder be waived, except in a writing signed by the party against whom enforcement of the modification, amendment, or waiver is sought. Any waiver of any condition in, or breach of, any of the foregoing in a particular instance shall not operate as a waiver of other or subsequent conditions or breaches of the same or a different kind. Agent's or any Lender's exercise or failure to exercise any rights or remedies under any of the foregoing in a particular instance shall not operate as a waiver of its right to exercise the same or different rights and remedies in any other instances. There are no oral agreements among the parties hereto.

SECTION 14. Effectiveness. Notwithstanding the execution thereof, this Agreement shall not become binding or effective against any party hereto unless and until executed by the Borrower, the other Loan Parties, the Agent and the Consenting Lenders, on or before March __, 2009.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first written above.

FONTAINEBLEAU LAS VEGAS, LLC,
a Nevada limited liability company

By: Fontainebleau Las Vegas Holdings, LLC,
Managing Member

By: Fontainebleau Resort Properties I, LLC,
its Managing Member

By: Fontainebleau Resort Holdings, LLC,
its Managing Member

By: Fontainebleau Resorts, LLC,
its Managing Member

By: _____

Name: _____

Title: _____

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC,
a Delaware limited liability company

By: Fontainebleau Resort Properties I, LLC,
its Managing Member

By: Fontainebleau Resort Holdings, LLC,
its Managing Member

By: Fontainebleau Resorts, LLC, its Managing
Member

By: _____

Name: _____

Title: _____

FONTAINEBLEAU LAS VEGAS CAPITAL CORP.

a Delaware corporation

By: _____

Name: _____

Title: _____

FONTAINEBLEAU RESORT PROPERTIES I, LLC,

a Delaware limited liability company

By: Fontainebleau Resort Holdings, LLC,
its Managing Member

By: Fontainebleau Resorts, LLC, its Managing
Member

By: _____

Name: _____

Title: _____

FONTAINEBLEAU RESORTS, LLC,

a Delaware limited liability company

By: _____

Name: _____

Title: _____

TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P.,

a Delaware limited partnership

By: Soffer GP, LLC, its sole general partner

By: _____

Name: _____

Title: _____

BANK OF AMERICA, N.A.,
as Administrative Agent

By: _____

Name: _____

Title: _____

BANK OF AMERICA, N.A.,
as Disbursement Agent

By: _____

Name: _____

Title: _____

[INSERT CONSENTING LENDER SIGNATURE PAGES]

Dep. Ex. 825

Appendix I to Budget/Schedule Amendment

Amendment No. 1 to Resort Budget

I. Increases to Line Item Categories:

- (a) The following Line Item Category is increased: Construction Costs (Turnberry West Construction)
- b) Old Amount of Line Item Category: \$1,983,150,793
- (c) Amount of Increase: \$ 88,854,000
- (d) New Total For Line Item Category: \$2,072,004,793

II. Source of Funds For Increase to Line Item Categories:

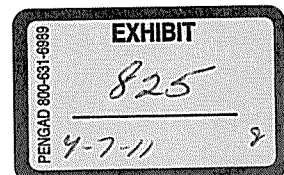
- (a) Realized Savings: \$ _____. The particular Line Item Category of the Resort Budget that is the source of such Realized Savings is identified in item III. below.
- (b) X Allocation of unallocated amount from the "Unallocated Construction Contingency" Line Item Category: \$64,854,000 The corresponding decrease in the "Unallocated Contingency Balance" is \$64,854,000. After giving effect to such allocation, the Unallocated Contingency Balance will equal or exceed the Required Minimum Contingency for the Resort Budget.
- (c) Additional Equity Contributions: The Companies received of additional equity capital contributions.
- (d) X Excess Funds/In Balance: \$14,084,701. Amount by which Available Funds exceed Remaining Costs.

III. Decreases to Line Item Categories:

- (a) The following Line Item Category is decreased: _____
- (b) Old Amount of Line Item Category: _____
- (c) Amount of Decrease: _____
- (d) New Total For Line Item Category: _____

Reason For Decrease of Line Item Category:

_____ Realized Savings. Realized Savings Certificate in the form attached hereto as Schedule 1 to Appendix I.



**Fontainebleau Las Vegas
 February Draw Select Data
 Amounts in millions**

Estimated Debt Service October 2009:

October Cash Debt Service

Cash Debt Service - Senior Secured ⁽¹⁾	\$ 4.8
Plus: Debt Service 2nd Mortgage	-
Unused Commitment Fees (0.75% for unused revolver availability)	0.2
Estimated Cash Debt Service & Fees	5.0

October Accrued Interest

Fixed Rate Debt #1 (\$466mm at 4.88%)	1.9
Fixed Rate Debt #2 (\$234mm at 3.91%)	0.8
Credit Spread on \$700mm Term Loan at 4.0%	2.3
2nd Mortgage Notes (\$675mm at 10.25%)	5.8
Rounding	0.2
Total Accrued Interest	11.0

Total Estimated Interest Expense - October \$ 16.0

<u>Debt Service Commitment Portion</u>	
Unearned portion of Revolver at October 1, 2009	\$ 40.0
Days to earn-in remaining revolver availability	90
Days between 9-30-09 and scheduled opening date	31
New Revolver Availability - November 1, 2009	\$ 13.78

(Unused revolver portion/90 days*31 days)

(1) Based on interest payments for monthly reset debt of:

- \$550mm fixed rate debt at 2.91%
- \$304mm floating rate debt at 2.29%
- Total debt of \$854mm at a credit spread of 4.0%

Appendix II to Budget/Schedule Amendment

Amendment No. 1 to Resort Budget

I. Increases to Line Item Categories:

- (a) The following Line Item Category is increased: Debt Service
- (b) Old Amount of Line Item Category: \$332,379,033
- (c) Amount of Increase: \$ 21,747,000
- (d) New Total For Line Item Category: \$354,126,033

II. Source of Funds For Increase to Line Item Categories:

- (a) Realized Savings: \$5,000,000. The particular Line Item Category of the Resort Budget that is the source of such Realized Savings is identified in item III. below.
- (b) Allocation of unallocated amount from the "Unallocated Construction Contingency" Line Item Category: \$ The corresponding decrease in the "Unallocated Contingency Balance" is \$. After giving effect to such allocation, the Unallocated Contingency Balance will equal or exceed the Required Minimum Contingency for the Resort Budget.
- (c) Additional Equity Contributions: The Companies received of additional equity capital contributions.
- (d) Excess Funds/In Balance: \$14,084,701 Amount by which Available Funds exceed Remaining Costs.

III. Decreases to Line Item Categories:

- (a) The following Line Item Category is decreased: Condominium selling costs
- (b) Old Amount of Line Item Category: \$25,000,000
- (c) Amount of Decrease: \$5,000,000
- (d) New Total For Line Item Category: \$20,000,000

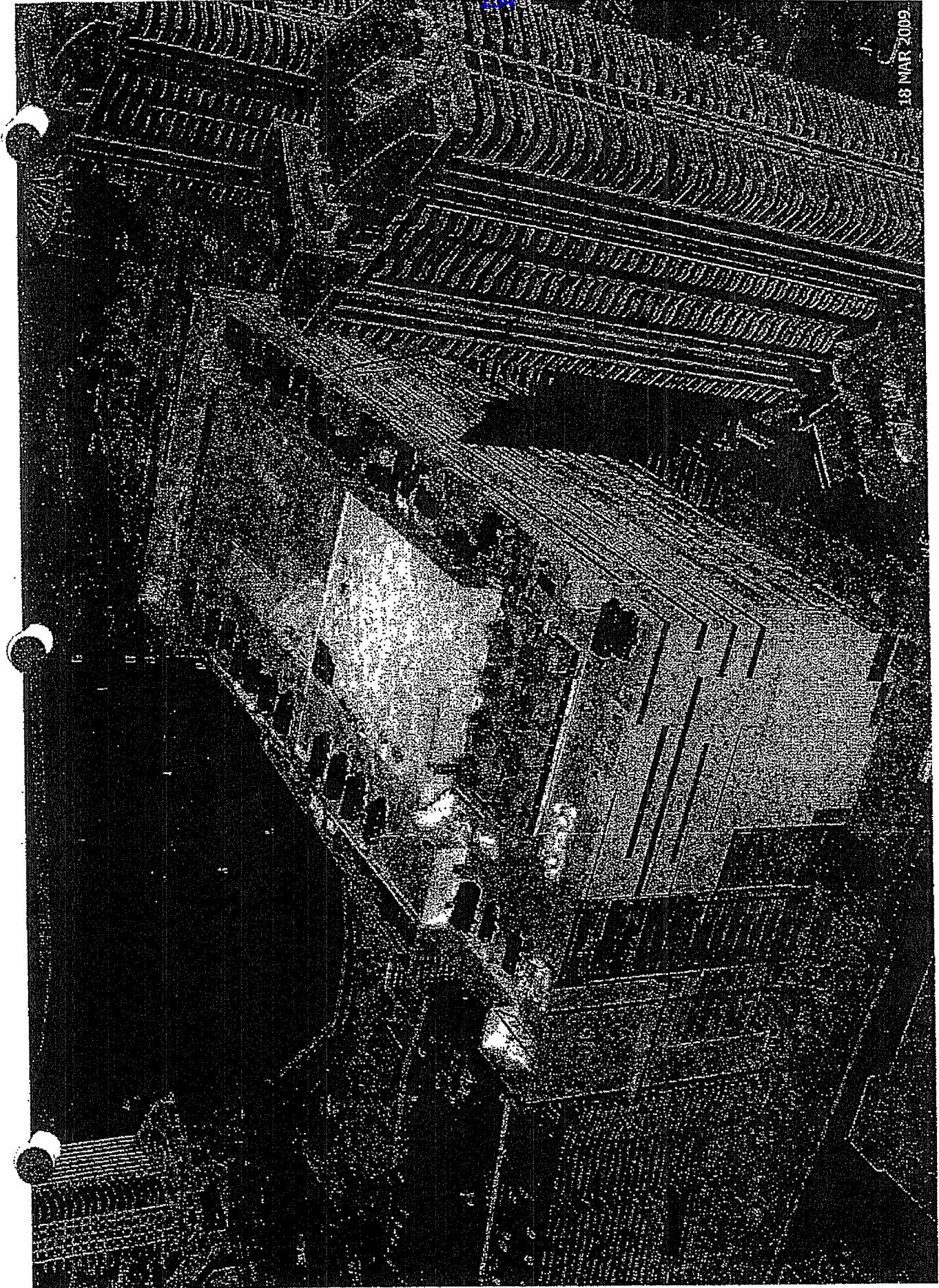
Reason For Decrease of Line Item Category:

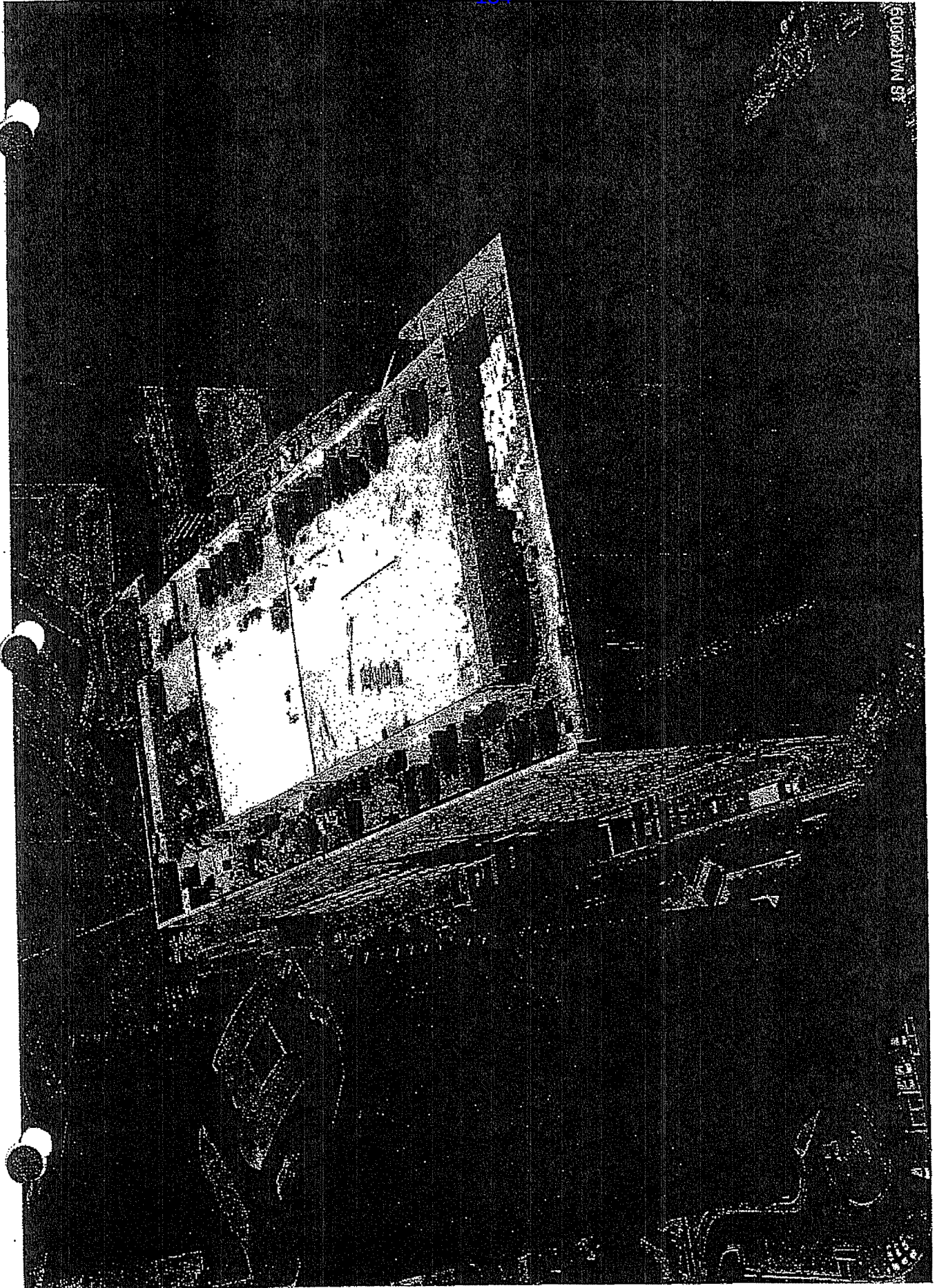
— Realized Savings. Realized Savings Certificate in the form attached hereto as Schedule 1 to Appendix II.

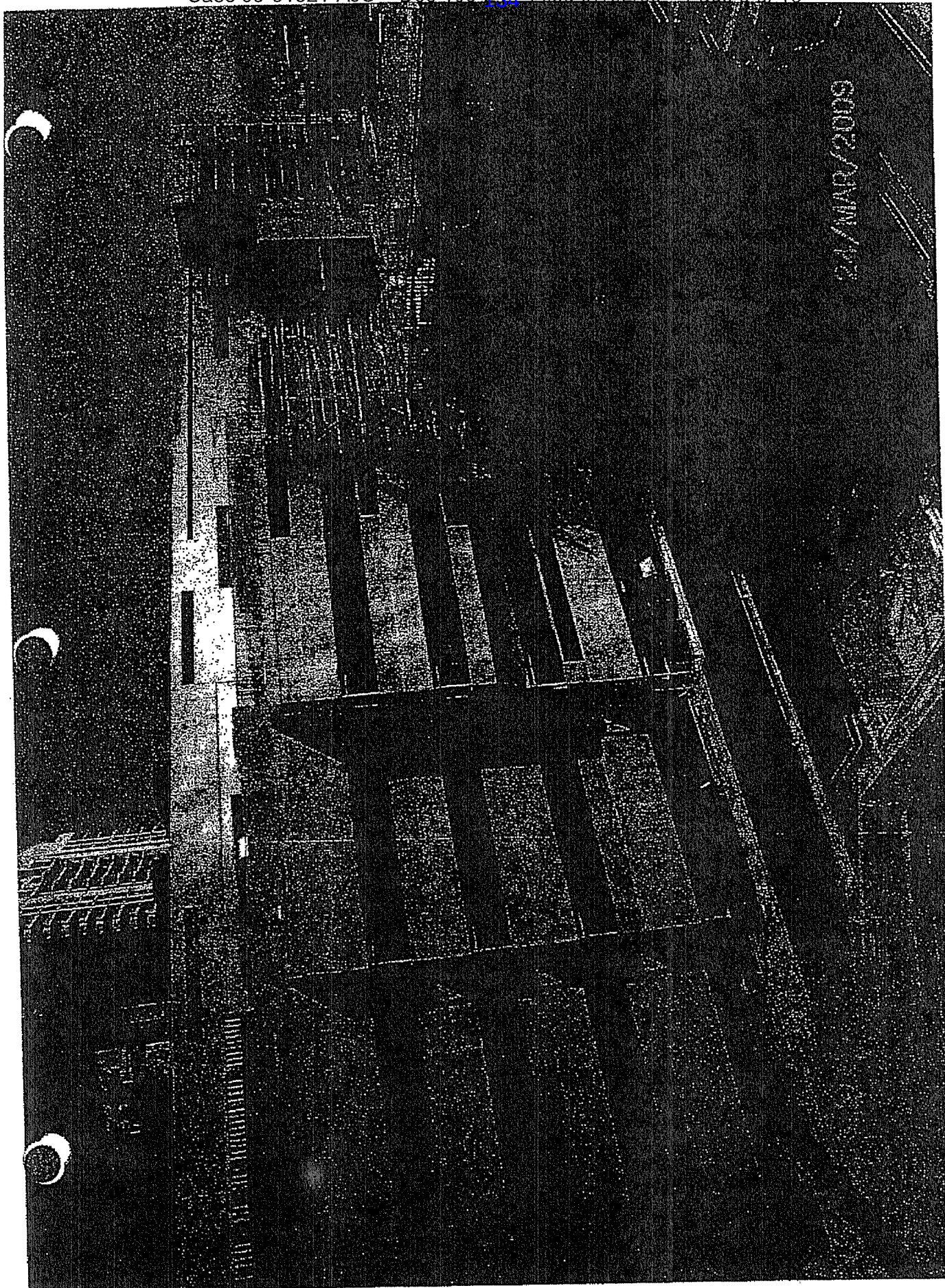
FONTAINEBLEAU RESORT AND CASINO
 LAS VEGAS, NV
 IN BALANCE REPORT
 APPENDIX X TO EXHIBIT C-1
 February 28, 2009

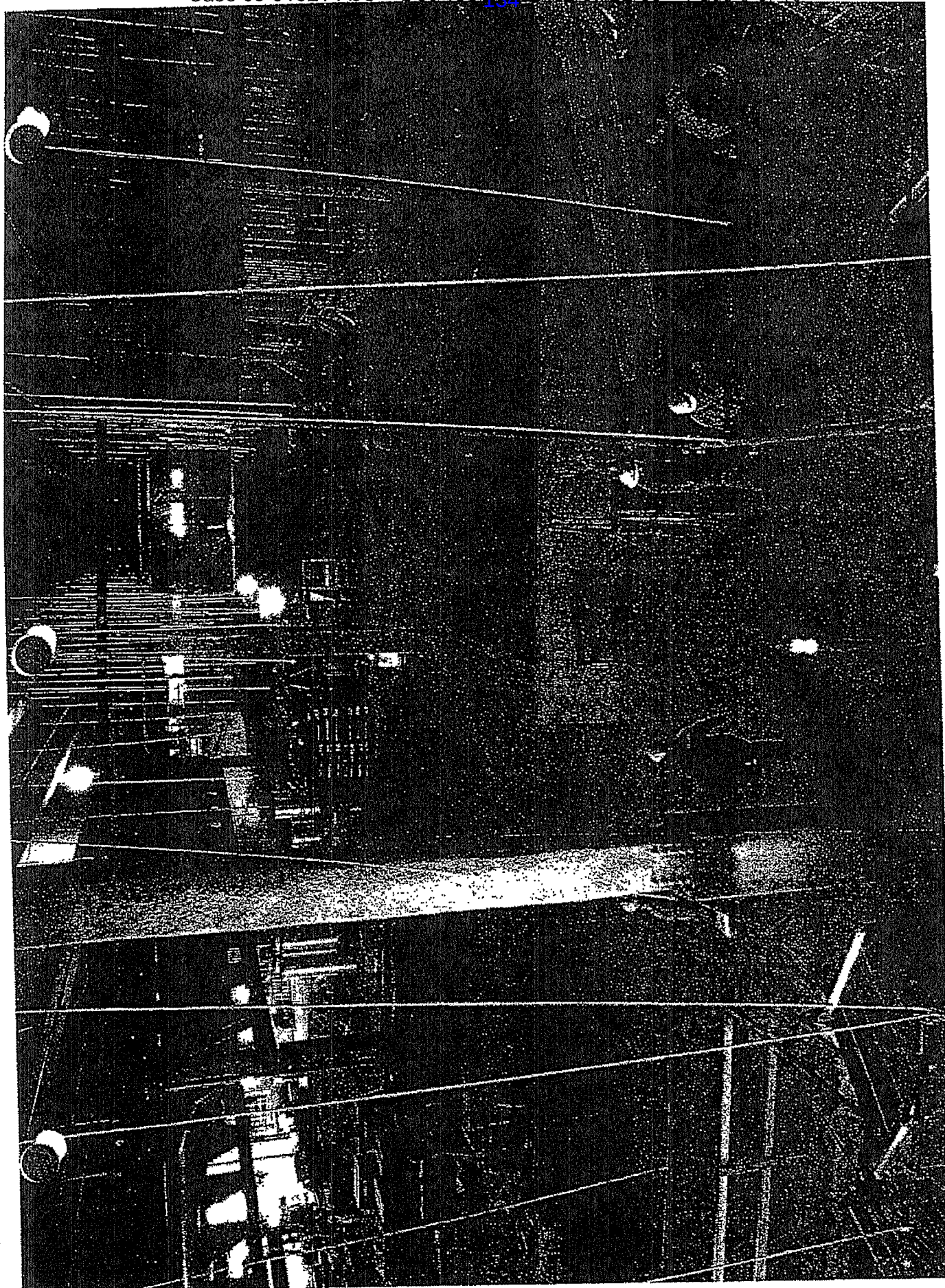
DESCRIPTION	IN BALANCE TEST
AVAILABLE FUNDS	
Projected Interest Income ⁽¹⁾	\$ 730,292
Anticipated Bonded Condo Deposits	\$ -
Equity Funding Account	\$ -
Cash Management Account	\$ 6,000,000
Second Mortgage Proceeds Account	\$ -
Bank Proceeds Account ⁽²⁾	\$ 126,513,294
Delay Draw Term Loan Availability ⁽³⁾	\$ 21,866,887
Bank Revolving Availability, Minus \$26,955,521.74	\$ 750,000,000
Debt Service Commitment Portion	\$ 13,777,778
Cash Support Amount	\$ 100,000,000
Retail Lenders Shared Cost Commitment (Less Advances Made for Shared Costs)	\$ 48,844,459
Cash Balance in the Resort Payment Account	\$ -
Cash Balance in the Interest Account	\$ -
Cash Balance in the Resort Loss Proceeds Account	\$ -
TOTAL AVAILABLE FUNDS	\$ 1,067,532,490
LESS: TOTAL	
Remaining Costs (in Balance Test Adjustments Total from the Remaining Cost Report)	\$ (1,053,447,789)
IN BALANCE POSITIVE / (NEGATIVE)	\$ 14,084,701

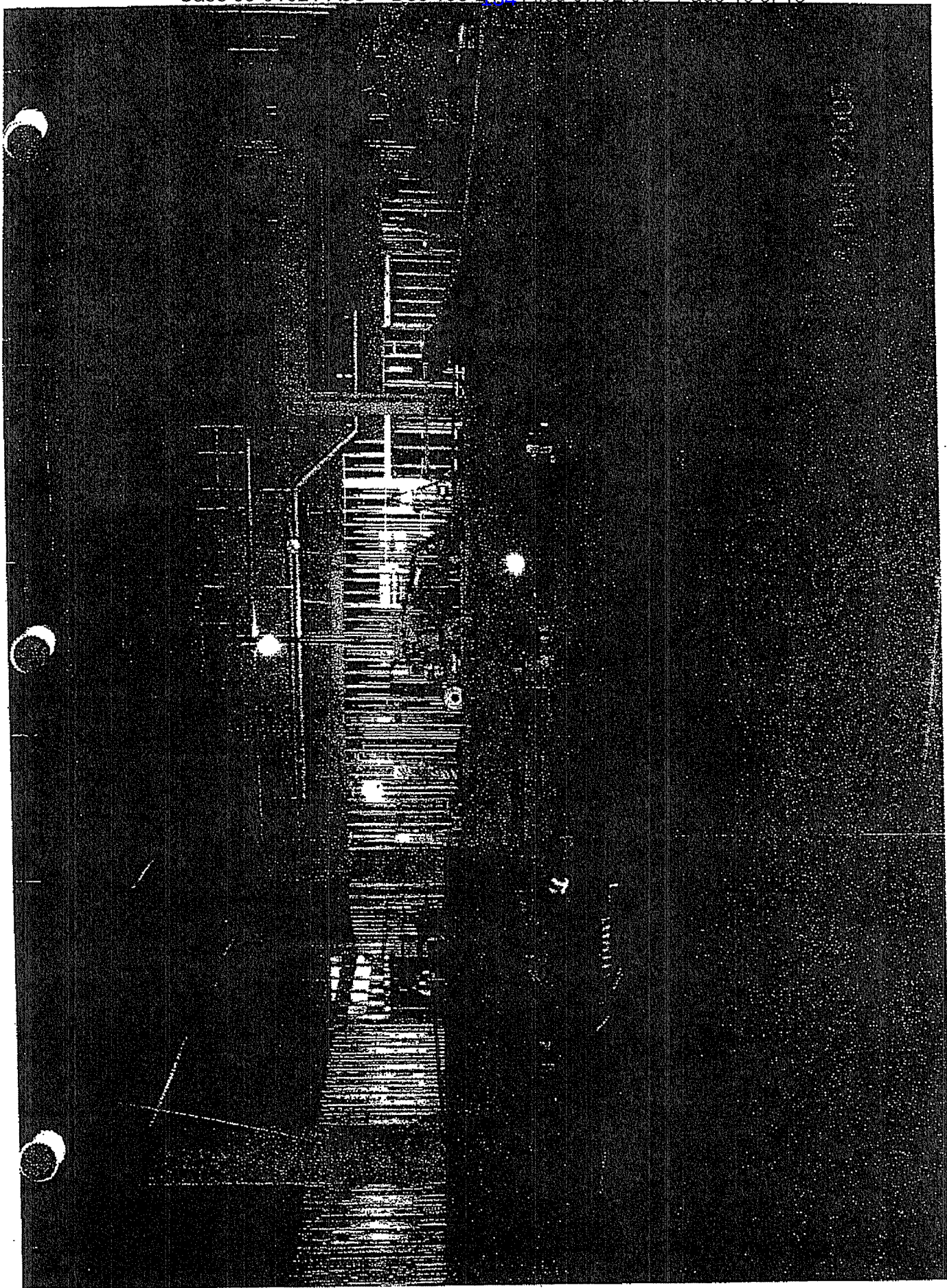
(1) Anticipation of interest income on all Resort accounts.
 (2) Bank proceeds account availability not reduced by letters of credit because the cost is already included in the remaining cost report.
 (3) Although the Borrowers show in full the commitments under the Delay Draw Term Loan Facility, the Borrowers believe that the unfunded portion of such commitments should be counted for in balance purposes as the Borrowers enforce their rights against the defaulting Delay Draw Term Loan Facility.



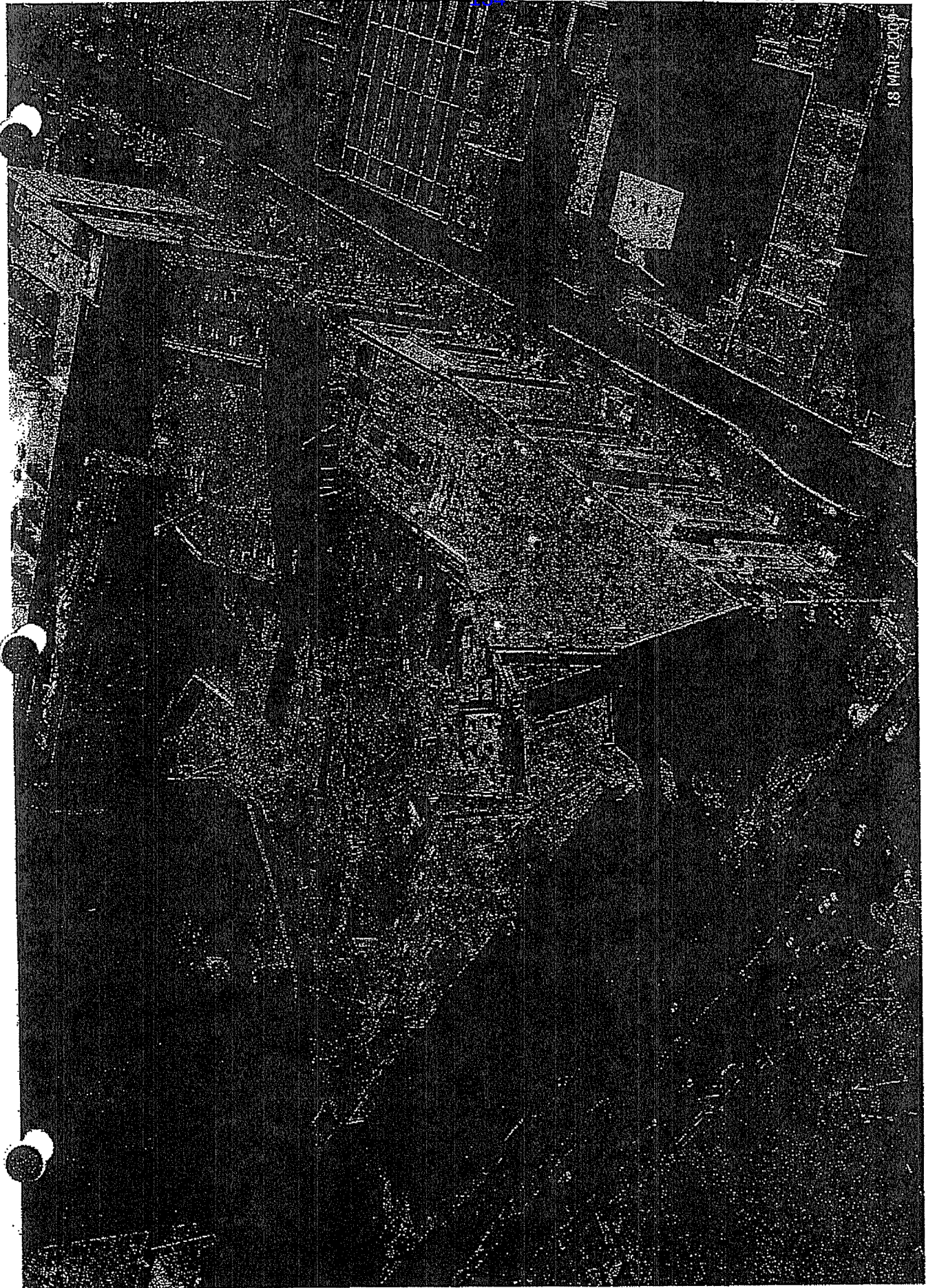


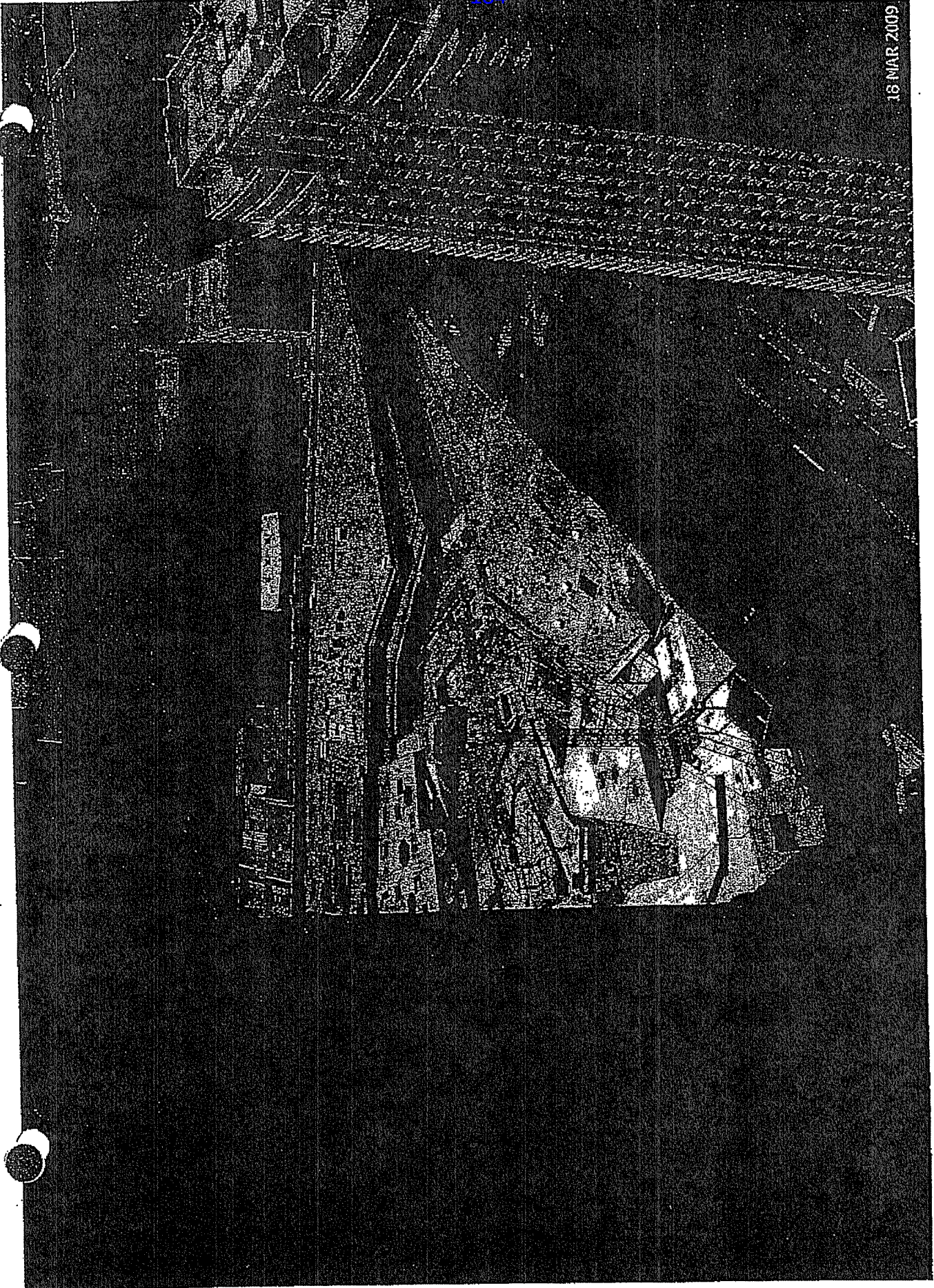


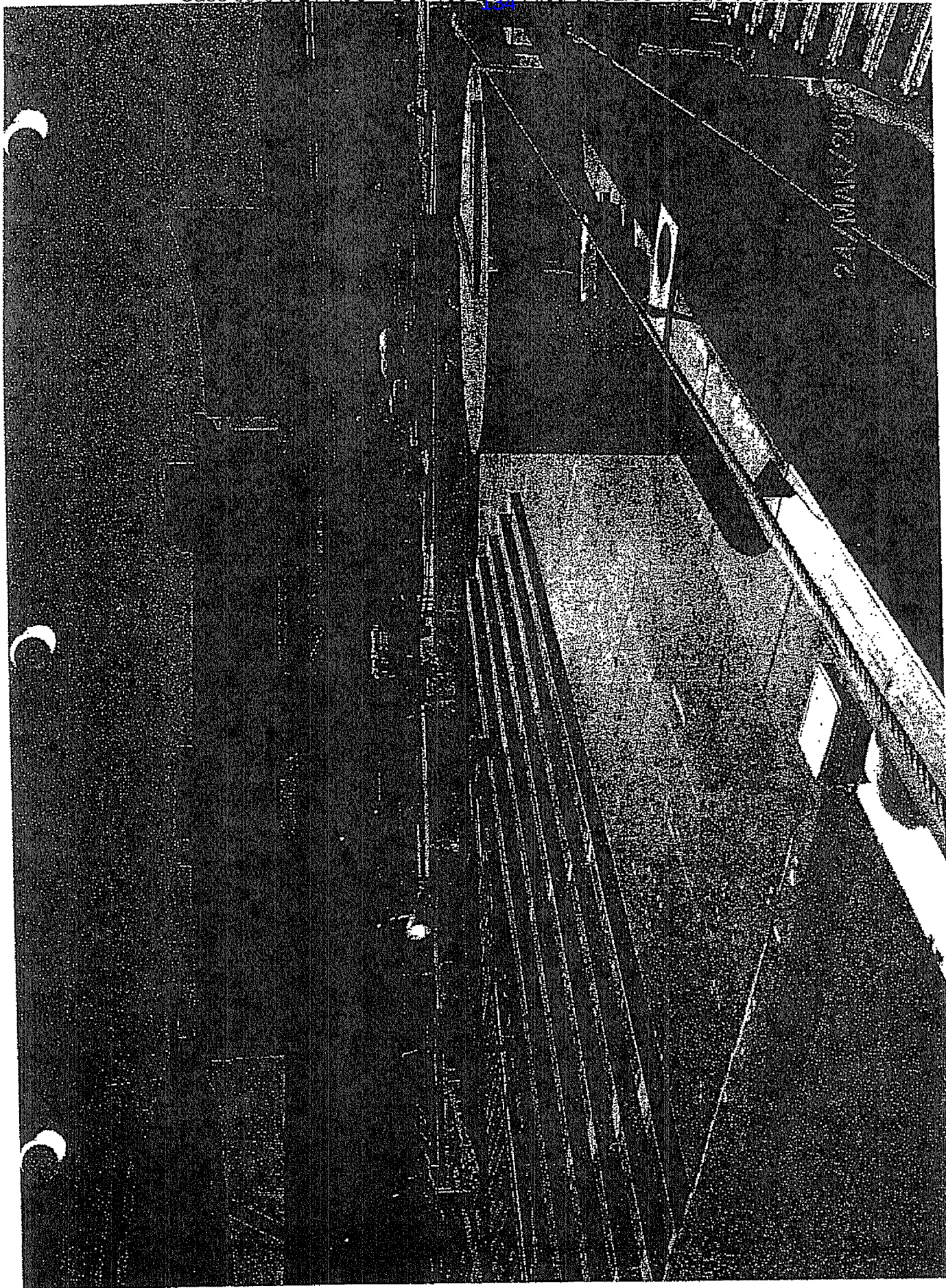


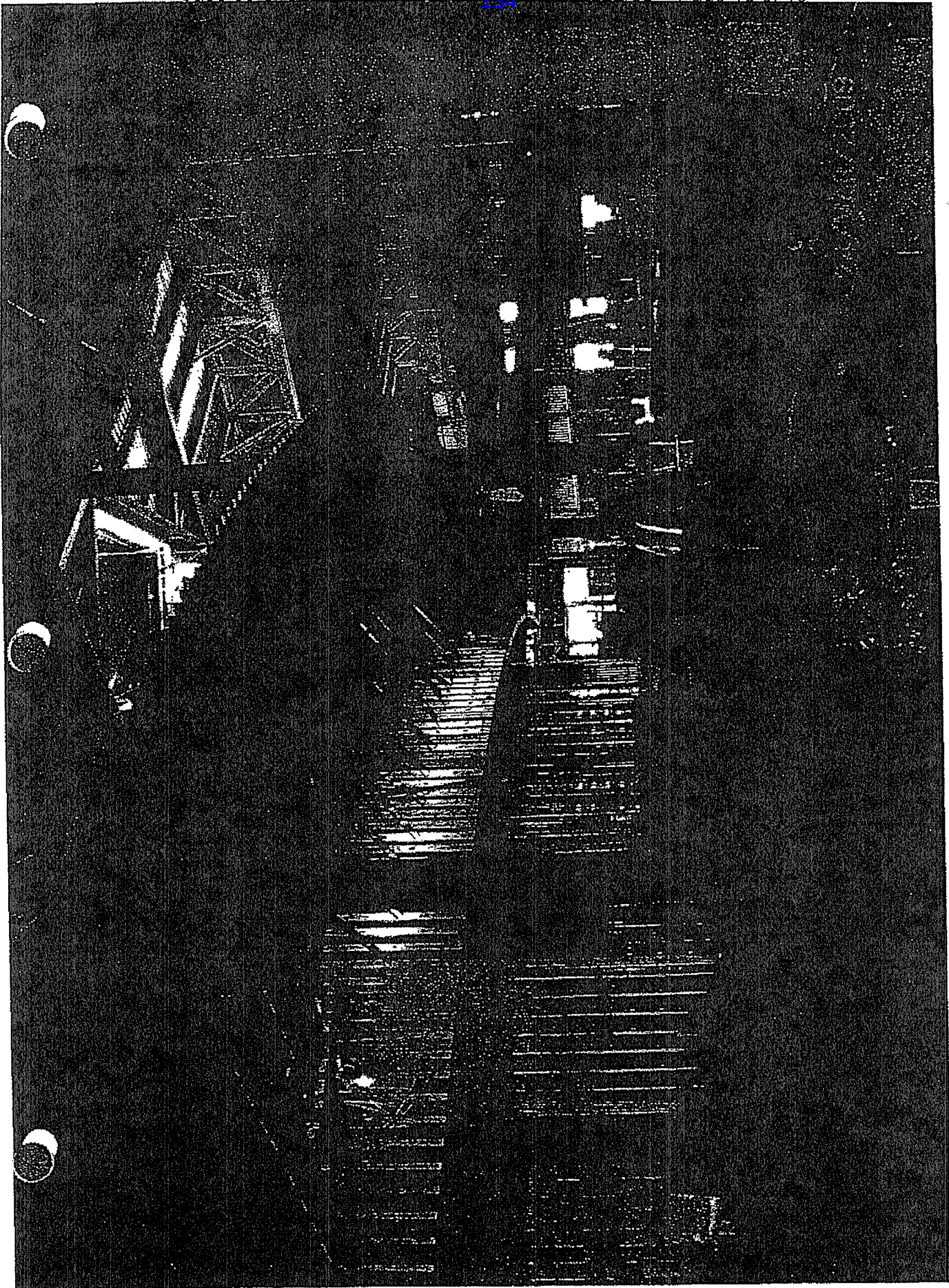


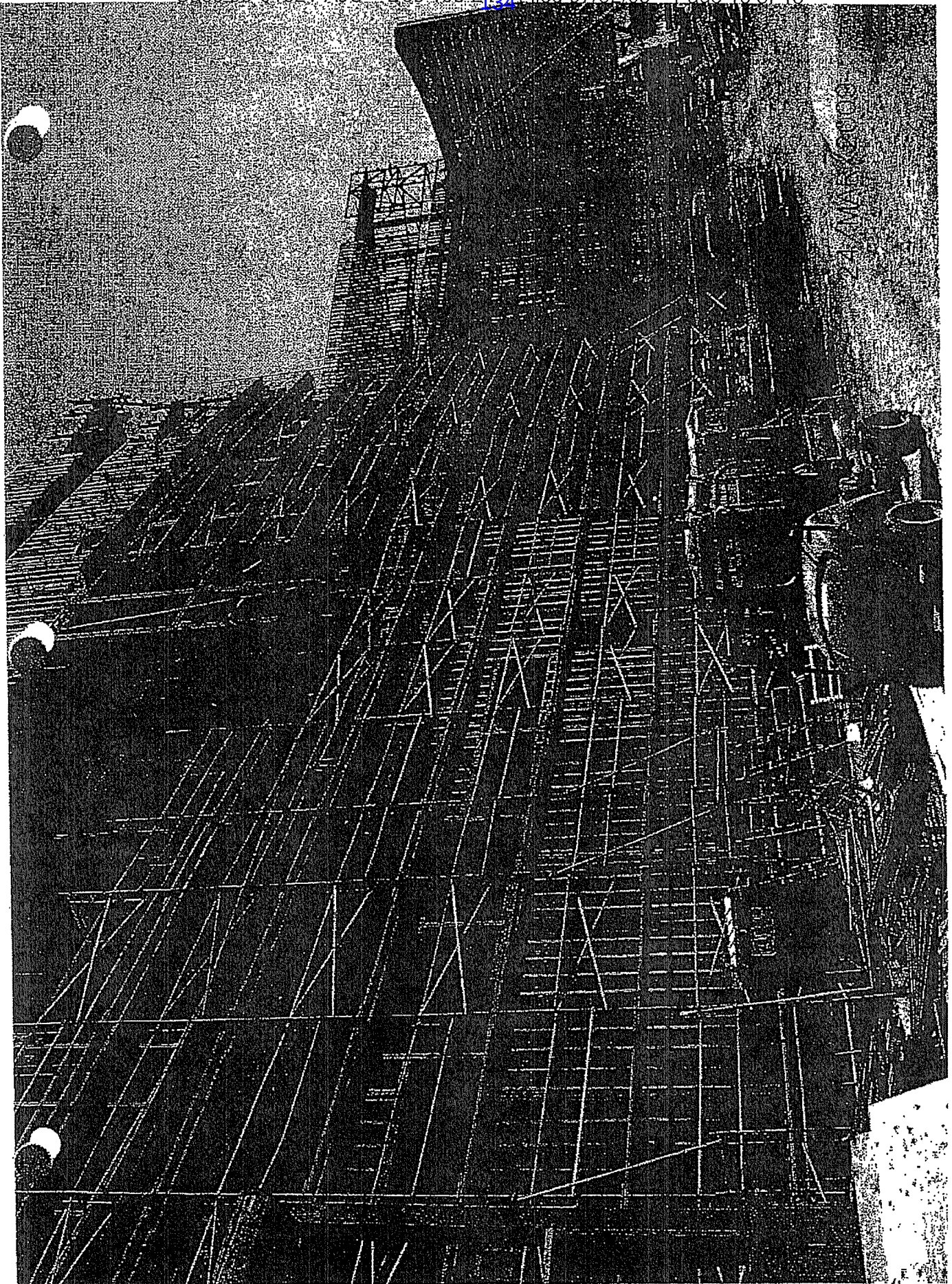


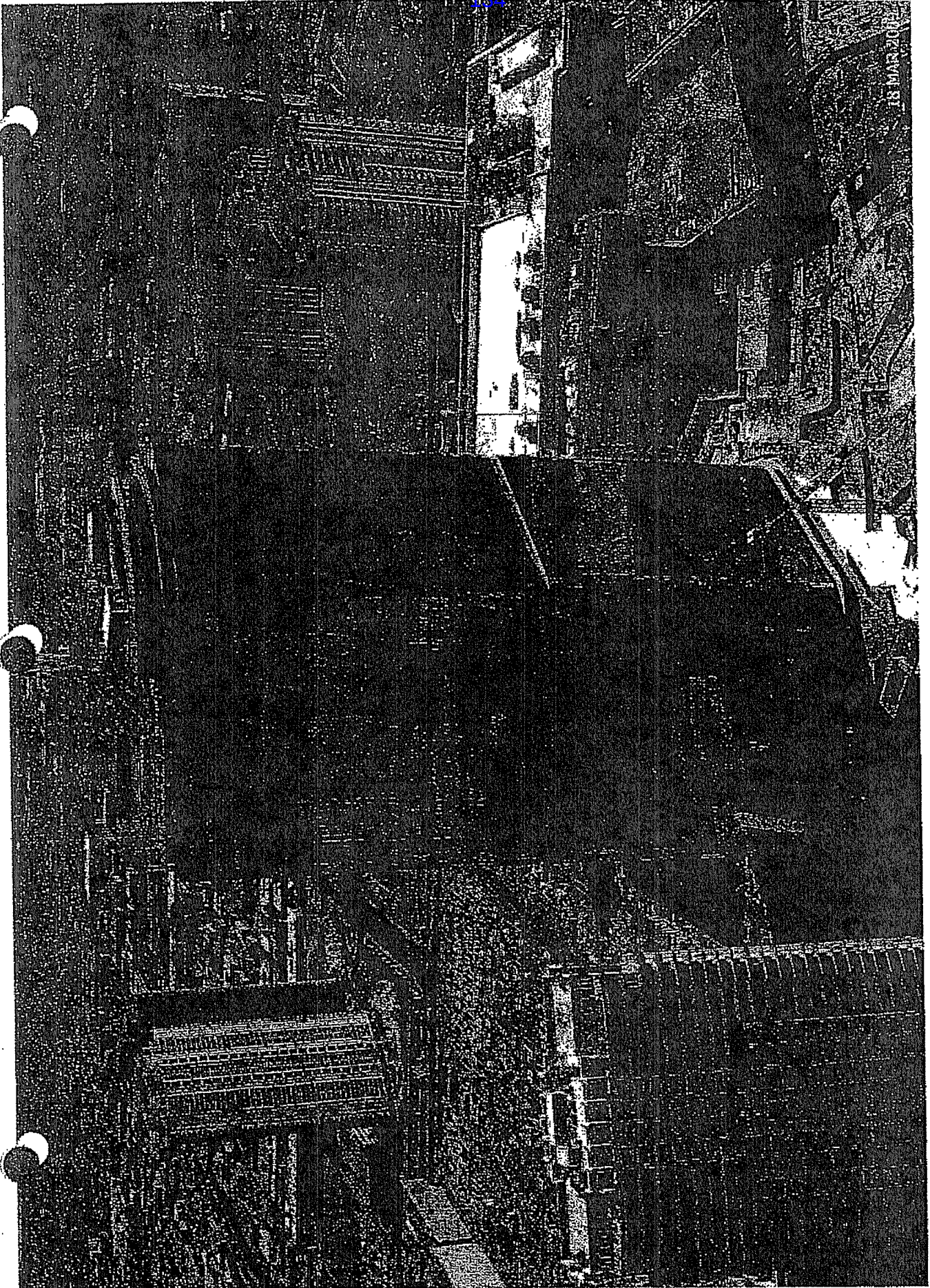




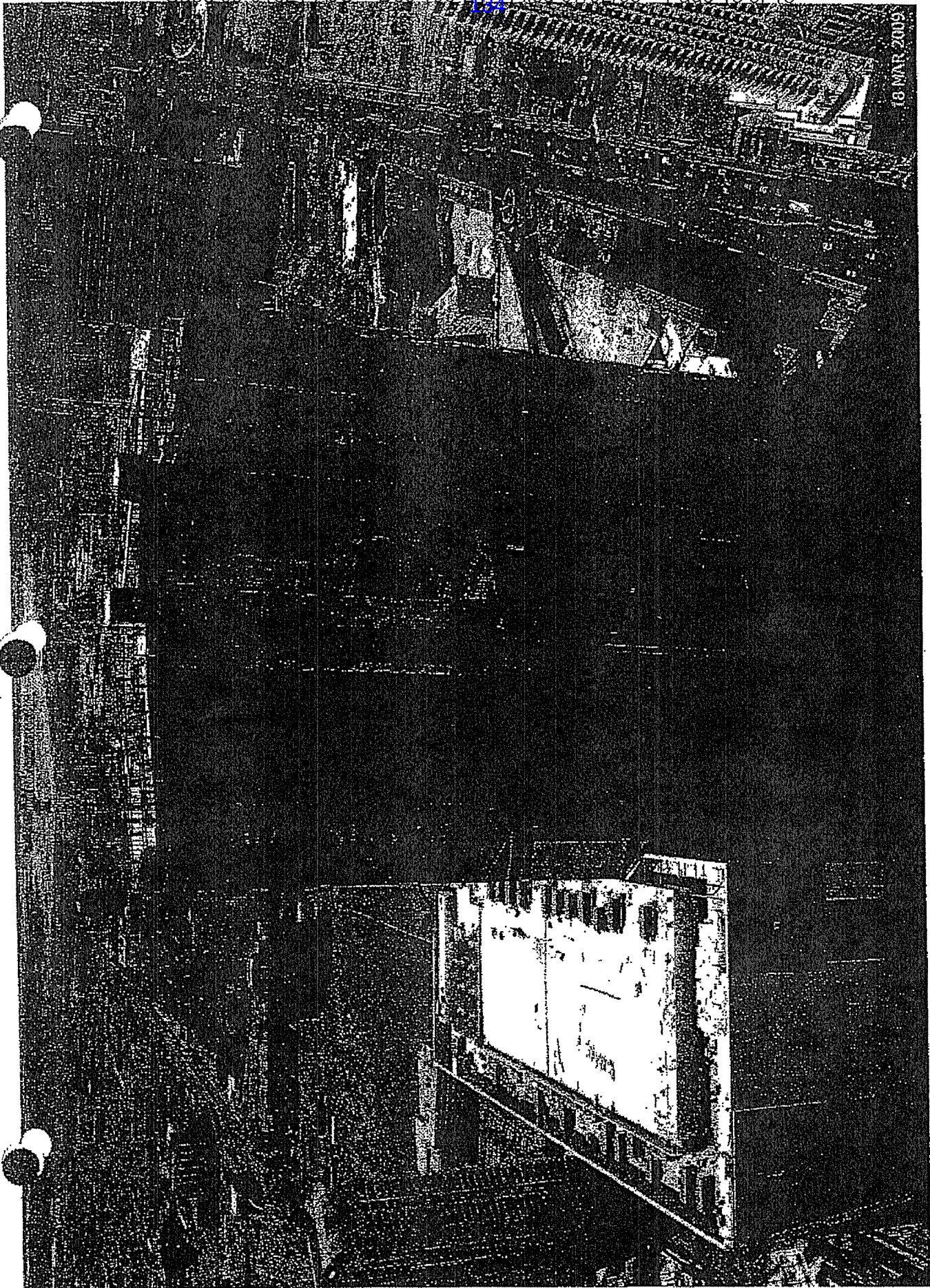








18 MAR 2009



Dep. Ex. 827



Global Product Solutions
Credit Services

April 20, 2009

By Electronic Mail, Telecopier and Overnight Courier

Jim Freeman, Senior Vice President and Chief Financial Officer
Fontainebleau Las Vegas, LLC
c/o Fontainebleau Resorts LLC
2827 Paradise Road
Las Vegas, NV 89109

Dear Ladies and Gentlemen:

This letter is delivered with reference to the Credit Agreement dated as of June 6, 2007 (the "Credit Agreement"), among Fontainebleau Las Vegas, LLC, a Nevada limited liability company, and Fontainebleau Las Vegas II, LLC, a Florida limited liability company (collectively, the "Borrowers"), the Lenders, and Bank of America, N.A., as Administrative Agent. Capitalized terms used but not defined herein are used with the meanings set forth in the Credit Agreement.

You are hereby notified that the Required Facility Lenders under the Revolving Credit Facility have determined that one or more Events of Default have occurred and are continuing and that they have requested that the Administrative Agent notify you that the Total Revolving Commitments have been terminated. Pursuant to Section 8 of the Credit Agreement, you are hereby notified that the Total Revolving Commitments are terminated effective immediately.



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-1-

Bank of America, TX1-482-14-04
901 Main Street, 14th Floor, Dallas, TX 75202-3714

Recycled Paper

HIGHLY CONFIDENTIAL

SMRH00135086

The Administrative Agent and the Revolving Lenders hereby expressly reserve all of their rights, remedies and privileges under the Credit Agreement, the other Loan Documents and applicable law.

BANK OF AMERICA, N.A., as Administrative Agent

By: Ronaldo Naval
Ronaldo Naval, Vice President

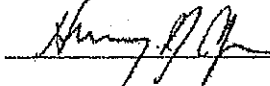
cc. Lenders
Bank of America, N.A., as Disbursement Agent
Whitney Thier, Esq.
Turnberry Residential Limited Partner, L.P.
Turnberry West Construction, Inc.
Mario Romine, Esq.
Fontainebleau Resorts, LLC
Fontainebleau Resort Properties I, LLC
Fontainebleau Resort Properties II, LLC
Fontainebleau Las Vegas Holdings, LLC
Fontainebleau Las Vegas Capital Corp.
Wells Fargo Bank, N.A., as Trustee
Lehman Brothers Holdings, Inc., as Retail Agent

CONSENT OF REVOLVING LENDERS

This Consent of Revolving Lenders (this "Consent") is delivered with reference to the Credit Agreement dated as of June 6, 2007 (the "Credit Agreement"), among Fontainebleau Las Vegas, LLC, a Nevada limited liability company, and Fontainebleau Las Vegas II, LLC, a Florida limited liability company (collectively, the "Borrowers"), the Lenders, and Bank of America, N.A., as Administrative Agent. Capitalized terms used but not defined herein are used with the meanings set forth in the Credit Agreement.

The undersigned Revolving Lender has determined that one or more Events of Default have occurred and remain continuing and, subject to the receipt by the Administrative Agent of Consents similar hereto from the majority in interest of the Revolving Lenders, hereby requests the Administrative Agent to notify the Borrowers that the Total Revolving Commitments have been terminated and consents to the providing of such notice.

Bank of America N.A. _____
[Name of Lender]

By:  _____

Name: Henry Y. Yu _____

Title: Senior Vice President _____

[Note to consenting Lender - Please fax or email this consent to:

William M. Scott IV
Sheppard, Mullin Richter & Hampton, LLP
333 South Hope Street, 48th Floor
Los Angeles, California, 90071
bscott@sheppardmullin.com
telecopier: (213) 443-2717
telephone (213) 617-4276

Email submissions will be confirmed by return email.
There is no need to submit original signatures.]