

Dep. Ex. 884

INTERCREDITOR AGREEMENT
(Retail)

THIS INTERCREDITOR AGREEMENT is made as of June 6, 2007 by and among BANK OF AMERICA, N.A., as the Administrative Agent acting on behalf of itself and the Bank Lenders pursuant to the Bank Credit Agreement (in such capacity, the "Bank Agent"), WELLS FARGO BANK, NATIONAL ASSOCIATION in its capacity as Trustee under the Second Mortgage Indenture (in such capacity, the "Trustee"), LEHMAN BROTHERS HOLDINGS INC., acting on behalf of itself and the Retail Lenders pursuant to the Retail Facility Agreement (in such capacity, the "Retail Agent"), and FONTAINEBLEAU LAS VEGAS RETAIL, LLC (the "Retail Affiliate") with reference to the Master Disbursement Agreement (the "Disbursement Agreement") of even date herewith among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively the "Borrowers"), Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Capital Corp. (the "Issuers") and the Retail Affiliate, the Funding Agents referred to therein, and Bank of America, N.A., as Disbursement Agent.

A. The Borrowers own the fee interest underlying the Site and are developing the Project on the Site.

B. The Borrowers and the Retail Affiliate have executed the REA and the Retail Air Space Lease, and concurrently herewith shall cause the recordation of such documents in the official records of Clark County, Nevada.

C. The Retail Affiliate will own the Retail Air Space Lease.

D. The Borrowers have granted Liens in favor of the Bank Agent and the Trustee to encumber their interests in the Retained Site and all improvements and fixtures associated therewith, other than the Retail Air Space Fees and the improvements and fixtures associated therewith, to secure their obligations in respect of the Bank Credit Agreement and the Second Mortgage Notes, as further described in the Disbursement Agreement.

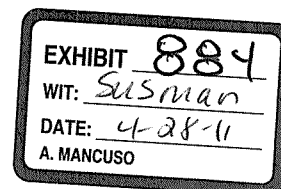
E. The Retail Affiliate and the Retail Lenders have entered into a Loan Agreement of even date herewith providing for a \$315,000,000 credit facility to the Retail Affiliate (the "Retail Facility"). The Retail Affiliate has granted a Lien in favor of the Retail Agent encumbering its interests under the Retail Air Space Lease and the Retail Air Space Fees to secure its obligations under the Retail Facility.

F. In addition to the Retail Facility, the Retail Agent and the Retail Lenders have made a separate and distinct \$85,000,000 term loan (the "Retail Mezzanine Loan") being made to Fontainebleau Las Vegas Retail Mezzanine, LLC, the corporate parent of the Retail Affiliate.

G. It is acknowledged that the Retail Agent and the Retail Lenders have certain rights vis a vis the Retail Affiliate to increase the size of the Retail Facility and to correspondingly decrease the size of the Retail Mezzanine Loan.

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H. The Retail Mezzanine Loan has the benefit of a payment guaranty issued by Jeffery Soffer and Fontainebleau Resorts, LLC attached hereto as Exhibit A.

I. The Credit Parties desire to provide for the coordination of the construction of the Project and the other matters set forth herein.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Credit Parties agree as follows:

1. **Definitions and General Provisions.**

1.1 **Definitions.** Except as otherwise expressed and provided herein, all capitalized terms used in this Agreement and its Exhibits and not otherwise defined herein shall have the meanings given to such terms in the Disbursement Agreement. Except as set forth herein, the rules of interpretation set forth in Exhibit A to the Disbursement Agreement shall apply.

1.1.1 **Other Terms.** The following terms shall have the meanings set forth below:

"Agreement" means this Intercreditor Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Applicable Retail Secured Obligations" means the Retail Facility and, where required to be purchased pursuant to the proviso to the first paragraph of Section 7.1, the Retail Mezzanine Loan.

"Bank Financing Agreements" means the Bank Credit Agreement, the Disbursement Agreement, Project Lender Intercreditor Agreement, this Agreement, the Bank Security Documents and any other agreement, document or instrument entered into or delivered by any of the Project Entities on, prior to or after the Closing Date with or to the Bank Agent or the Bank Lenders in connection with the financing of the Project.

"Bank Purchase Option Event" means (i) the failure of the Bank Agent to fund any Advance requested by the Project Credit Parties, which the Bank Agent is required to fund in accordance with the terms of the Disbursement Agreement, and (ii) the passage of ten Banking Days following written notice thereof from the Retail Agent to the Bank Agent without the cure by the Bank Agent of such failure.

"Bank Secured Obligations" means all Obligations of the Companies under the Bank Financing Agreements.

"Collateral" means (a) the Resort Collateral and (b) the Retail Collateral.

"Credit Parties" means the Bank Agent, the Trustee and the Retail Agent.

"Disbursement Agreement Default" means the occurrence and continuance of an

Event of Default under, and as defined in, the Disbursement Agreement.

"Event of Default" means, as the context requires, (i) a Disbursement Agreement Default, or (ii) the occurrence and continuance of an "Event of Default" by or with respect to the Project Entities under the applicable Project Financing Agreement that has not been waived by the applicable Credit Party.

"Facilities" means, as the context requires, any or all of the Bank Credit Facility, the Second Mortgage Notes and the Retail Facility.

"Insolvency or Liquidation Proceeding" means (a) any case commenced by or against any of the Project Entities under the Bankruptcy Code, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of any of the Project Entities, any receivership or assignment for the benefit of creditors relating to any of the Project Entities or any similar case or proceeding relative to any of the Project Entities or their creditors, as such, in each case whether or not voluntary; (b) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to any of the Project Entities, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or (c) any other proceeding of any type or nature in which substantially all claims of creditors of any of the Project Entities are determined and any payment or distribution is or may be made on account of such claims.

"Notice of Default" means a notice of default which must be recorded in the official real property records of Clark County, Nevada, in order to commence non-judicial foreclosure of a deed of trust in accordance with applicable Nevada law.

"Premises" means the property leased pursuant to the Retail Air Space Lease.

"Project Credit Parties" means, (i) the Bank Agent and the Trustee, (ii) the Lenders represented thereby, (iii) any creditors now or hereafter party to any Project Financing Agreements.

"Project Financing Agreements" means (i) the Second Mortgage Financing Agreements, (ii) the Bank Financing Agreements, and (iii) each debt instrument, mortgage or deed of trust which refinances either the Bank Financing Agreements or the Second Mortgage Financing Agreements, either in whole or in part, including successive refinancings thereof.

"REA" means the Construction, Operation and Reciprocal Easement Agreement of even date herewith between the Borrowers and the Retail Affiliate.

"Resort Collateral" means all real and personal property encumbered to secure the Project Financing Agreements other than the Retail Collateral.

"Retail Account Collateral" means the Retail Funding Account and the Retail Payment Account, and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts, and any identifiable proceeds of the foregoing.

"Retail Air Space Fees" has the meaning set forth in Section 3.

"Retail Air Space Lease" means the Master Lease Agreement dated on or about the date hereof among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC, as the landlord, and the Retail Affiliate as the tenant.

"Retail Collateral" means (a) the Retail Air Space Lease, (b) the Retail Air Space Fees, (c) all fixtures and improvements within the Premises, (d) the Retail Account Collateral and (e) all other real and personal property encumbered by the Retail Affiliate to secure the Retail Facility.

"Retail Financing Agreements" means the Retail Facility Agreement, any related notes, this Agreement, the deed of trust and other security documents entered into in connection with the Retail Facility Agreement and any other agreement, document or instrument entered into or delivered by the Retail Affiliate on, prior to or after the Closing Date with or to the Retail Agent or the Retail Lenders in connection with the Project.

"Retail Mezzanine Loan Guaranty" means that certain payment guaranty by Fontainebleau Resorts, LLC and Jeffrey Soffer of the Retail Facility attached hereto as Exhibit A.

"Retail Purchase Option Event" means (i) the failure of the Retail Agent to fund any Advance requested by the Project Credit Parties for Shared Costs, which the Retail Agent is required to fund in accordance with the terms of the Disbursement Agreement and (ii) the passage of ten Banking Days following written notice thereof from the Bank Agent to the Retail Agent without the cure by the Retail Agent of such failure.

"Retail Secured Obligations" means all Obligations of the Retail Affiliate to the Retail Agent and the Retail Lenders with respect to the Retail Facility under the Retail Financing Agreements.

"Second Mortgage Financing Agreements" means the Second Mortgage Indenture, the Second Mortgage Notes, the Disbursement Agreement, Project Lender Intercreditor Agreement, this Agreement, the Second Mortgage Security Documents and any other agreement, document or instrument entered into or delivered by any of the Project Entities on, prior to or after the Closing Date with or to the Trustee or the Second Mortgage Holders in connection with the financing of the Project.

"Second Mortgage Proceeds Account Collateral" means the Second Mortgage Proceeds Account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement.

"Second Mortgage Secured Obligations" means all Obligations of the Companies under the Second Mortgage Financing Agreements.

"Secured Obligations" means, as the context requires, any or all of the Bank Secured Obligations, the Second Mortgage Secured Obligations and the Retail Secured Obligations.

"Secured Party" or "Secured Parties" means, as the context requires, any or all of the Project Credit Parties, the Retail Agent and the Retail Lenders.

1.2 Interpretation. To the extent that reference is made in this Agreement to any term defined in, or to any other provision of, any other agreement, such term or provision shall continue to have the original meaning thereof notwithstanding any termination, expiration or amendment of such other agreement.

2. Retail Air Space.

2.1 Relative Priorities of REA and Retail Air Space Lease. Notwithstanding anything to the contrary herein, irrespective of the time, order or manner of recording thereof, each of the Bank Agent, the Trustee and the Retail Agent each hereby unconditionally subordinates the deeds of trust securing their respective Facilities to the REA and the Retail Air Space Lease. The Bank Agent, the Trustee and the Retail Agent each acknowledge and agree that their respective deeds of trust are to be recorded following the Retail Air Space Lease and the REA to reflect the foregoing. In the event such deeds of trust are not recorded in this manner, the Bank Agent, the Trustee and the Retail Agent agree to enter into appropriate subordination agreements with one another that will provide for the subordination described in this Section 2.1. Without limitation upon the foregoing provisions of this Section 2.1, it is intended that foreclosure of the liens created by the deeds of trust executed in favor of the Project Secured Parties will not disturb the REA or the Retail Air Space Lease or the Liens of the Retail Agent and the Retail Lenders on the Retail Air Space Lease.

2.2 Attornment. In the event that any of the Project Credit Parties take possession of all or any portion of the Project, either as the result of foreclosure of any applicable Project Financing Agreements, by accepting a deed to the Project in lieu of foreclosure, or otherwise, or all or any portion of the Project is purchased at a foreclosure by a third party taking through the Project Credit Parties, then from such date (i) the Tenant under the Retail Air Space Lease (whether it is then the Retail Affiliate, the Retail Agent, or the designee or transferee thereof) shall attorn to the Project Credit Parties or such third party and recognize the Project Credit Parties or such third party as its landlord under the Retail Air Space Lease, and (ii) the Project Credit Parties or such third party shall assume all of the obligations of the landlord under the Retail Air Space Lease; provided, however, that the Project Credit Parties or such third party shall not:

(a) be liable for any act or omission of any prior landlord (including the Borrowers) under the Retail Air Space Lease;

(b) be subject to any offsets or defenses which the Retail Affiliate might have against any prior landlord (including the Borrowers) under the Retail Air Space Lease, except to the extent such Project Credit Party was furnished notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to

taking possession of such Premises;

(c) be bound by any amendment or modification of the Retail Air Space Lease not consented to in writing by such Project Credit Party; or

(d) notwithstanding any term or provision of the REA or the Retail Air Space Lease to the contrary, have any obligation to the Retail Affiliate, the Retail Agent or the Retail Lenders, to continue the construction of the Project or to advance any funds for the construction of the Project.

The Retail Agent, the Retail Lenders and the Retail Affiliate consent to the foregoing, and each agree that any person taking any interest in the Retail Air Space Lease through the Retail Agent, the Retail Lenders or the Retail Agent shall be bound by the terms hereof. None of the matters set forth in this Section 2.2 shall affect the right of the tenant or the obligation of the landlord under the Retail Air Space Lease to convert the Premises thereunder to the Retail Air Space Fees in accordance with the provisions of the Retail Air Space Lease.

2.3 Access. To the extent permitted under the Bank Financing Agreements and the Second Mortgage Financing Agreements, the Project Credit Parties shall have the right to enter the Premises for the purpose of inspecting, maintaining or protecting the Project, or removing any Resort Collateral located thereon. To the extent permitted under the Retail Financing Agreements, the Retail Agent and the Retail Lenders shall have the right to enter the Site for the purpose of inspecting, maintaining or protecting the Premises, or removing any Retail Collateral located thereon.

3. Conversion to Retail Air Space Fee Parcels.

The parties acknowledge that, pursuant to the terms of the Retail Air Space Lease (and subject to the terms and conditions set forth therein), it is anticipated that the interest of the Retail Affiliate in and to the Premises is to be converted to air space fee interests (the "Retail Air Space Fees"). The Retail Affiliate and the Retail Agent agree that no such conversion shall occur unless and until (i) all conditions to such conversion set forth in the Retail Financing Agreement have been satisfied (or waived in accordance with the Retail Financing Agreement) and (ii) the Bank Agent and the Trustee are provided with either (a) an opinion of counsel stating that the subdivision of the Retail Air Space Fees has been completed in accordance with applicable Nevada State law and all applicable Clark County ordinances, including without limitation all subdivision map acts or similar requirements, or (b) an appropriate endorsement or endorsements to their respective title insurance policies.

4. Other Collateral.

4.1 Retail Collateral Does Not Secure Bank Credit Facility or Second Mortgage Holders. The Bank Agent on behalf of the Bank Lenders and the Trustee on behalf of the Second Mortgage Holders acknowledge and agree that the Retail Collateral secures only the Retail Secured Obligations, and no Project Credit Party in its capacity as such shall have, or claim to have, now or at any time hereafter any Liens thereon. Nothing in this Agreement shall affect, limit or otherwise restrict the right and ability of the Bank Agent and the Trustee to exercise any remedy or enforce other rights (including foreclosure) upon the fee underlying the

Retail Air Space Lease, however no such foreclosure shall disturb the REA or the Retail Air Space Lease as provided in Section 2.1.

4.2 Resort Collateral Does Not Secure Retail Facility. The Retail Agent, on behalf of the Retail Lenders, acknowledges and agrees (i) that the Resort Collateral secures only the Bank Secured Obligations and the Second Mortgage Secured Obligations, (ii) the Project Credit Parties have Liens on the Resort Collateral and (iii) neither the Retail Agent nor any Retail Lenders have or shall claim to have, now or at any time hereafter, a Lien on any Resort Collateral.

5. Rights and Limitation of Actions.

5.1 Notification of Events of Default. The Bank Agent and the Retail Agent each hereby agree to use their respective reasonable best efforts to provide or cause the Project Entities to provide written notice to each other Credit Party as promptly as practicable after obtaining actual knowledge of the occurrence of an Event of Default under its respective Facility. The Trustee hereby agrees to use its reasonable best efforts to provide to the other Credit Parties copies of each notice to the Trustee from the holders of the Second Mortgage Notes or the Issuers that an Event of Default has occurred under the Indenture. No Credit Party shall have any liability to another for failing to provide or cause to be provided any notice under this Section.

5.2 Post Foreclosure. In the event that the Retail Lenders or their designees become the tenants under all or any portion of the Retail Air Space Lease or become the owners of the Retail Air Space Fees, either by way of foreclosure, deed in lieu of foreclosure, or otherwise:

(a) the Retail Agent and the Retail Lenders, to the extent (and only for so long as) they remain owners of the Retail Air Space Lease or Retail Air Space Fees, as applicable) shall not be relieved of their obligations to fund the then remaining portion of the \$83,000,000 in Shared Costs contemplated by the Disbursement Agreement not previously advanced by them in the manner, and to the extent, contemplated by the Disbursement Agreement and subject to all of the conditions set forth in the Disbursement Agreement, *provided* that if construction activities in respect of the Project are abandoned or suspended for a period which is in excess of six months, then the Retail Agent and the Retail Lenders shall be relieved of their obligations to the Project Credit Parties to fund such Shared Costs; and

(b) notwithstanding any term or provision of the REA or the Retail Air Space Lease to the contrary, the Retail Agent and the Retail Lenders shall not have any obligation to the Companies or the Project Credit Parties, to continue the construction of the Project or to advance any funds for the construction of the Project other than as required by Section 5.2(a).

It is acknowledged and agreed that the Retail Lenders shall have no obligation to fund Other Retail Costs following their foreclosure upon their deed of trust in respect of the Retail Air Space Lease or to the extent that the conditions specified in the Disbursement Agreement are not

satisfied.

5.3 Development of the Project.

The Retail Agent, on behalf of itself and the Retail Lenders, acknowledges that the Retail Air Space Lease and the Retail Facility are being entered into to facilitate the development of the Project, and agrees to cooperate with the Project Credit Parties to assure the development of the Project in accordance with the Resort Budget, the Retail Budget and the construction plans delivered by the Project Entities in connection with the Project pursuant to the Disbursement Agreement from time to time. The Retail Agent has consented to the joint use of the Construction Consultant (subject to Retail Agent's right to retain an addition construction consultant, at no expense to the Companies or the Project Credit Parties) for the entirety of the Project (including all retail components) and the joint use of Turnberry West Construction, Inc. as the prime contractor for the entirety of the Project. The Retail Agent agrees that the Project Credit Parties shall have the exclusive right vis a vis the Retail Agent and the Retail Lenders to replace the Construction Consultant, as provided in the Project Financing Agreements. The Bank Agent and the Trustee agree that the Retail Agent shall have the exclusive right vis a vis the Project Credit Parties to replace any contractors directly engaged by the Retail Affiliate after the Completion Date for work on the Premises, as provided in the Retail Financing Agreements and to engage additional construction consultants at no expense to the Project Credit Parties.

6. Other Intercreditor Provisions.

6.1 **Waiver of Provisions Under Financing Agreements.** Any Credit Party may, without the consent of any other Credit Party, defer any payments due under its Facility or waive any provisions thereof.

6.2 **Amendments of Financing Agreements.** Each of the Retail Agent and the Retail Lenders, the Bank Agent and the Bank Lenders and the Trustee and the Second Mortgage Holders (subject, in the case of the Trustee and the Second Mortgage Holders, to the Project Lender Intercreditor Agreement) shall be permitted to enter into amendments, modifications and supplements with the Project Entities of their respective Financing Agreements (other than the Disbursement Agreement which shall only be modified, amended and supplemented in accordance with the terms thereof) without the consent of any other party, provided that no Secured Party shall enter into an amendment, modification or supplement of its Financing Agreements that would contravene any of its funding obligations under the Disbursement Agreement.

6.3 **Responsibility for Staying Informed.** The Bank Agent and the Bank Lenders, the Retail Agent and the Retail Lenders and the Second Mortgage Holders, shall each be responsible for keeping themselves informed of the financial condition of the Project Entities and all other circumstances bearing upon the risk of nonpayment of the obligations owed to them. Except as set forth in Section 5.1, none of the Credit Parties shall have any obligation to advise one another of information regarding such condition or circumstances or as to any other matter. If any Credit Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to any other Credit Party or the lenders represented thereby, it shall be under no obligation to provide any similar information on any subsequent occasion, to

provide any additional information, or undertake any investigation, or to disclose any information which, pursuant to accepted or reasonable commercial finance practice, it wishes to maintain confidential.

7. Default Purchase Options.

7.1 Retail Facility Purchase Option. The Retail Agent, acting on behalf of each of the Retail Lenders, hereby grants to the Bank Agent the right (without any obligation) to purchase, at any time after the occurrence of a Retail Purchase Option Event, all, but not less than all, of the principal of and interest on the Retail Secured Obligations outstanding at the time of purchase for a purchase price equal to 100% of the principal amount and accrued interest outstanding on the Retail Secured Obligations on the date of purchase (including fees and interest accruing after the commencement of a Liquidation or Insolvency Proceeding at the rate provided for in the Retail Facility Agreement (regardless of whether such item is an allowed claim under applicable law) and any costs of collection) plus all other Retail Secured Obligations (including any LIBOR breakage costs but excluding any prepayment or acceleration penalty or premium) then unpaid, but excluding any early termination fees or prepayment fees, *provided* that the Retail Agent may (but shall not be required to) condition the purchase of Retail Secured Obligations upon the concurrent purchase of the Retail Mezzanine Loan (on the same terms (except as modified to relate to the Retail Mezzanine Loan as opposed to the Retail Secured Obligations and subject to the additional payment of any exit fee specified in the documents governing the Retail Mezzanine Loan as of the date of this Agreement) as set forth in this Section 7 with respect to purchasing the Retail Secured Obligations), *but only if*, as of the date of the purchase, the Retail Mezzanine Loan Guaranty has not been terminated, reduced or otherwise modified (unless with the prior written consent of the Bank Agent) by the Retail Agent and the Retail Lenders in a manner which results in a reduction of the amount guaranteed by either of the guarantors thereunder (excluding any reduction of the amount of the guarantee or any replacement of the guarantor, in each case, accordance with its currently existing terms or such).

Such purchase price shall be payable in cash on the date of purchase against transfer to the Bank Agent (or its nominee or transferee) of all right, title and interest in and to the Applicable Retail Secured Obligations (without recourse and without any representation or warranty whatsoever, whether as to the enforceability thereof or the validity, enforceability, perfection, priority or sufficiency of any Lien securing or guarantee or other supporting obligation therefor or as to any other matter whatsoever, except only the representations and warranties that (a) the transferor is transferring free and clear of all Liens and encumbrances (other than that will be satisfied and discharged concurrently with the closing of the purchase from the proceeds of the purchase price), (b) the transferor has the right to convey, whatever claims and interests it purports to have in respect of Applicable Retail Secured Obligations and any such Liens, guarantees and supporting obligations pursuant to the Retail Financing Agreements (and, where applicable, the Retail Mezzanine Loan), and (c) where the Retail Mezzanine Loan is purchased, the Retail Mezzanine Loan Guaranty has not been terminated, reduced or otherwise modified in a manner inconsistent with the proviso to the preceding paragraph.

The Bank Agent shall assume any remaining obligations (whether for funding of

Advances or otherwise) of the Retail Agent and the Retail Lenders under the Retail Financing Agreements in connection with any such purchase.

7.2 Bank Facility Purchase Option. The Bank Agent, acting on behalf of each of the Bank Lenders, hereby grants to the Retail Agent the right (without any obligation) to purchase, at any time after the occurrence of a Bank Purchase Option Event, all, but not less than all, of the principal of and interest on the Bank Secured Obligations outstanding at the time of purchase for a purchase price equal to 100% of the principal amount and accrued interest outstanding on the Bank Secured Obligations on the date of purchase (including fees and interest accruing after the commencement of a Liquidation or Insolvency Proceeding at the rate provided for in the Bank Credit Agreement (regardless of whether such item is an allowed claim under applicable law) and any costs of collection) plus all other Bank Secured Obligations (including any LIBOR breakage costs but excluding any prepayment or acceleration penalty or premium) then unpaid, but excluding any early termination fees or prepayment fees. Such purchase price shall be payable in cash on the date of purchase against transfer to the Retail Agent (or its nominee or transferee) of all right, title and interest in and to the Bank Secured Obligations (without recourse and without any representation or warranty whatsoever, whether as to the enforceability of any Bank Secured Obligations or the validity, enforceability, perfection, priority or sufficiency of any Lien securing or guarantee or other supporting obligation for any Bank Secured Obligations or as to any other matter whatsoever, except only the representation and warranty that the transferor is transferring free and clear of all Liens and encumbrances (other than that will be satisfied and discharged concurrently with the closing of the purchase from the proceeds of the purchase price), and has the right to convey, whatever claims and interests it purports to have in respect of the Bank Secured Obligations and any such Liens, guarantees and supporting obligations pursuant to the Bank Financing Agreements). The Retail Agent shall assume any remaining obligations (whether for funding of Advances or otherwise) of the Bank Agent and the Bank Lenders under the Bank Financing Agreements in connection with any such purchase.

8. Relation to Mezzanine Loan. The Retail Facility shall not be cross-defaulted to the Retail Mezzanine Loan (but the Retail Mezzanine Loan may be cross-defaulted to the Retail Facility). It is agreed that the Retail Agent and the Retail Lenders shall have the right (subject to their agreements with the Retail Affiliate) to increase or decrease the aggregate size of the Retail Facility (and to correspondingly decrease or increase the Retail Mezzanine Loan) at any time.

9. Representations and Warranties. Each Credit Party represents and warrants to each other Credit Party as follows: (a) the Retail Agent represents and warrants that the terms of this Agreement shall bind the Retail Lenders, (b) the Trustee represents that the terms of this Agreement shall bind the Trustee, and that it is authorized to enter into this Agreement pursuant to the Indenture, and (c) the Bank Agent represents that the terms of this Agreement shall bind the Bank Lenders under the Bank Credit Agreement.

10. Miscellaneous Provisions.

10.1 Notices; Addresses. Any communications among the parties hereto or notices herein to be given may be given in the manner set forth in the Disbursement Agreement.

10.2 Waiver. Any waiver, permit, consent or approval of any kind or character on the part of any of the Credit Parties under this Agreement or any waiver on the part of any of the Credit Parties of any provision or condition of this Agreement must be in writing and shall be effective only to the extent in such writing specifically set forth.

10.3 Entire Agreement. This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof, all of which negotiations and writings are deemed void and of no force and effect. As among the Credit Parties, in the event of any conflict between the terms of this Agreement and the terms of the Disbursement Agreement, the terms of the Disbursement Agreement shall control.

10.4 Governing Law. This Agreement shall be governed by the laws of the State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the laws of such state without regard to the conflict of law rules thereof other than Section 5-1401 of the New York General Obligations Law.

10.5 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

10.6 No Fiduciary Duties. No Credit Party will have any duty, express or implied, fiduciary or otherwise, to any other Credit Party.

10.7 Headings. Section headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

10.8 Limitations on Liability. No claim shall be made by any Credit Party or any of its Affiliates against any other Credit Party, the Disbursement Agent or any of their respective Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement, the Disbursement Agreement or any act or omission or event occurring in connection therewith; and each Credit Party hereby waives, releases and agrees not to sue upon any such claim for any such special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor. No claim shall be made by the Retail Affiliate or any of its Affiliates against any Credit Party or any of their respective Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or any act or omission or event occurring in connection therewith; and the Retail Affiliate hereby waives, releases and agrees not to sue upon any such claim for any damages, whether or not accrued and whether or not

known or suspected to exist in its favor.

10.9 Consent to Jurisdiction. Any legal action or proceeding arising out of this Agreement may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York. Each Credit Party hereby waives any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other Operative Document brought before the foregoing courts on the basis of forum non-conveniens.

10.10 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10.11 Counterparts. This Agreement may be executed in one or more duplicate counterparts and when signed by all of the Credit Parties listed below shall constitute a single binding agreement.

10.12 No Third Party Beneficiaries. This agreement is for the exclusive benefit of the Credit Parties, the Retail Lenders and the Retail Affiliate and the parties hereto do not intend the benefits of this Agreement to inure to the benefit of nor shall it be enforceable by any third party; nor shall this Agreement be construed to make or render any Credit Party liable to any third party for the performance or failure to perform any obligations hereunder.

10.13 Refinancing; Amendment for New Credit Parties. Upon any replacement of any Facility or any refinancing in whole or in part of any Facility, at the request of any of the Credit Parties party hereto, the Retail Affiliate and the other Credit Parties shall enter into a substantively identical intercreditor agreement with the lender or lenders providing the replacement or refinancing facility.

10.14 Interaction with the Project Lender Intercreditor Agreement. As between the Bank Agent and the Trustee, nothing in this Agreement shall reduce, relieve or otherwise discharge the obligations of the Trustee, the Second Mortgage Holders, the Bank Agent and the Bank Lenders under the Project Lender Intercreditor Agreement. The exercise of rights under this Agreement by the Trustee and the Bank Agent shall (as between the Trustee and the Bank Agent) be exercised in the manner required by the Project Lender Intercreditor Agreement.

10.15 Attorneys' Fees. Unless paid by the Project Entities, the prevailing party in any dispute or controversy hereunder shall be entitled to an award of its reasonable attorneys' fees.

10.16 Recordable Memorandum; Termination. Each of the parties hereto shall, concurrently with the execution of this Agreement, execute a memorandum hereof in a form suitable for recordation in the Official Records of Clark County, Nevada. In connection therewith, it is agreed that the rights and duties of the parties under this Agreement shall terminate and be of no further force and effect, upon the issuance of a final certificate of occupancy for the Project (except as to any claims asserted prior to such date), and each of the parties shall thereafter promptly upon request of any other party execute and deliver a

termination of such recordable memorandum.

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IN WITNESS WHEREOF, the Credit Parties and the Retail Affiliate have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized as of the day and year first above written.

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

By: Donna F. Kimbrough
Name: Donna F. Kimbrough
Title: Assistant Vice President

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee

By: _____
Name: _____
Title: _____

LEHMAN BROTHERS HOLDINGS INC.,
as Retail Agent

By: _____
Name: _____
Title: _____

[Retail Intercreditor Agreement]

IN WITNESS WHEREOF, the Credit Parties and the Retail Affiliate have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized as of the day and year first above written.

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

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: *Lynn M. Steiner*
Name: *Lynn M. Steiner*
Title: *Vice President*

LEHMAN BROTHERS HOLDINGS INC.,
as Retail Agent

By: _____
Name: _____
Title: _____

{Retail Intercreditor Agreement}

IN WITNESS WHEREOF, the Credit Parties and the Retail Affiliate have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized as of the day and year first above written.


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

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Name: _____
Title: _____

LEHMAN BROTHERS HOLDINGS INC.,
as Retail Agent

By: 
Name: ~~Charlene Thomas~~
Title: ~~Authorized Signatory~~

[Retail Intercreditor Agreement]

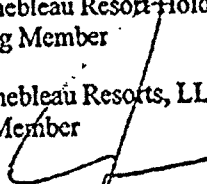
FONTAINEBLEAU LAS VEGAS RETAIL, LLC,
a Delaware limited liability company

By: Fontainebleau Las Vegas Retail Mezzanine,
LLC,
its Managing Member

By: Fontainebleau Las Vegas Retail Parent, LLC,
its Managing Member

By: Fontainebleau Resort Holdings, LLC,
its Managing Member

By: Fontainebleau Resorts, LLC, its
Managing Member

By: 
Title: Executive Chairman

[Retail Intercreditor Agreement]

EXHIBIT A

W02-WEST LARM00199993 18

A-1

New York, New York
As of June 6, 2007

MEZZANINE GUARANTY OF PAYMENT

FOR VALUE RECEIVED, and to induce LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation, having an address at 399 Park Avenue, 8th Floor, New York, New York 10022, individually and as Agent for one or more Co-Lenders ("Lender"), to lend to FONTAINEBLEAU LAS VEGAS RETAIL MEZZANINE, LLC, a Delaware limited liability company, having its principal place of business at 2827 Paradise Road, Las Vegas, Nevada 89109 ("Borrower"), the maximum principal sum of EIGHTY-FIVE MILLION AND 00/100 DOLLARS (\$85,000,000.00) (the "Loan"), advanced pursuant to that certain Mezzanine Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by the Note and the other Loan Documents, the undersigned, JEFFREY SOFFER, an individual residing at 19950 West Country Club Drive, 10th Floor, Aventura, Florida 33180 ("Soffer") and FONTAINEBLEAU RESORTS, LLC, a Delaware limited liability company, having its principal place of business at 2827 Paradise Road, Las Vegas, Nevada 89109 ("Fontainebleau"; Soffer and Fontainebleau hereinafter referred to, collectively or individually, as the context requires, as "Guarantor") hereby absolutely and unconditionally guarantees to Lender the prompt and unconditional payment of (i) all Debt Service and (ii) a portion of the Debt equal to the Guaranteed Amount. All capitalized words and phrases not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

It is expressly understood and agreed that this Mezzanine Guaranty of Payment (this "Guaranty") is a continuing guaranty and that the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Note, the Loan Agreement, or the other Loan Documents, a true copy of each of said documents Guarantor hereby acknowledges having received and reviewed

The term "Guaranteed Amount" as used in this Guaranty shall mean the sum of (1) all unpaid interest on the Loan calculated in accordance with Section 2.2.2 of the Loan Agreement, (2) commencing on a Rebalancing Event (defined below) and continuing through a Deposit Event (defined below), the amount of such Additional TI/LC Deposit, and (3)(a) until such time as a Fee Transfer Event has occurred, the maximum principal sum of the Loan, (b) upon the occurrence of (i) a Fee Transfer Event (ii) the delivery of a separate tax lot endorsement to the Title Insurance Policy and (iii) the Opening Date, fifty percent (50%) of the maximum principal sum of the Loan, or (c) upon the occurrence of (i) a Fee Transfer Event, (ii) the delivery of a separate tax lot endorsement to the Title Insurance Policy (iii) the Opening Date and (iv) a Satisfactory DSCR Event (defined below), twenty-five percent (25%) of the maximum principal sum of the Loan.

The term "Rebalancing Event" as used in this Guaranty shall mean the date on which an Additional T/ILC Deposit would be required but for the terms contained in the second sentence of Section 5.1.34(b) of the Loan Agreement.

The term "Deposit Event" as used in this Guaranty shall mean the date on which Borrower makes the Additional T/ILC Deposit.

The term "Satisfactory DSCR Event" as used in this Guaranty shall mean such time when the debt service coverage ratio (as calculated by Borrower, and approved by Lender in its reasonable discretion, and based on (x) executed Leases satisfying the leasing requirements of Section 5.1.17 of the Loan Agreement, (y) an assumed Applicable Interest Rate of 6.0% and (z) a thirty (30) year amortization period) shall be greater than 1.0 to 1.0.

Any indebtedness of Borrower to Guarantor now or hereafter existing (including, but not limited to, any rights to subrogation Guarantor may have as a result of any payment by Guarantor under this Guaranty), together with any interest thereon, shall be, and such indebtedness is, hereby deferred, postponed and subordinated to the prior payment in full of the Debt. Until payment in full of the Debt (and including interest accruing on the Note after the commencement of a proceeding by or against Borrower under the Bankruptcy Code and the regulations adopted and promulgated pursuant thereto, which interest the parties agree shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally), Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right to file proof of claim and to vote thereon in connection with any such proceeding under the Bankruptcy Code, including the right to vote on any plan of reorganization. Further, if Guarantor shall comprise more than one person, firm or corporation, Guarantor agrees that until such payment in full of the Debt, (a) no one of them shall accept payment from the others by way of contribution on account of any payment made hereunder by such party to Lender, (b) no one of them will take any action to exercise or enforce any rights to such contribution, and (c) if any Guarantor should receive any payment, satisfaction or security for any indebtedness of Borrower to any Guarantor or for any contribution by the other Guarantors for payment made hereunder by the recipient to Lender, the same shall be delivered to Lender in the form received, endorsed or assigned as may be appropriate for application on account of, or as security for, the Debt and until so delivered, shall be held in trust for Lender as security for the Debt.

Guarantor agrees that, within ten (10) days after written demand, Guarantor will reimburse Lender, to the extent that such reimbursement is not made by Borrower, for all expenses (including reasonable counsel fees and disbursements) incurred by Lender in connection with the collection of the Guaranteed Amount or any portion thereof or with the enforcement of this Guaranty.

Subject to the provisions of the Loan Agreement, all moneys available to Lender for application in payment or reduction of the Debt may be applied by Lender in such manner and in such amounts and at such time or times and in such order and priority as Lender may see fit to the payment or reduction of such portion of the Debt as Lender may elect.

Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, or any and all notice of non-payment, non-performance or non-observance, or other proof, or notice or demand, provided that the foregoing shall not be deemed to be a waiver of any notice, grace or cure period granted to Borrower in the Loan Agreement or any other Loan Document.

Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired (a) by reason of the assertion by Lender of any rights or remedies which it may have under or with respect to either the Note, the Loan Agreement, or the other Loan Documents, against any person obligated thereunder or the Collateral, or (b) by reason of any failure to file or record any of such instruments or to take or perfect any security intended to be provided thereby, or (c) by reason of the release of the Collateral covered under the Pledge Agreement or Loan Agreement or other collateral for the Loan, or (d) by reason of Lender's failure to exercise, or delay in exercising, any such right or remedy or any right or remedy Lender may have hereunder or in respect to this Guaranty, or (e) by reason of the commencement of a case under the Bankruptcy Code by or against any person obligated under the Note, the Loan Agreement or the other Loan Documents, or the death of any Guarantor, or (f) by reason of any payment made on the Debt or any other indebtedness arising under the Note, the Loan Agreement, or the other Loan Documents, whether made by Borrower or Guarantor or any other person, which is required to be refunded pursuant to any bankruptcy or insolvency law; it being understood that no payment so refunded shall be considered as a payment of any portion of the Debt, nor shall it have the effect of reducing the liability of Guarantor hereunder. It is further understood, that if Borrower shall have taken advantage of, or be subject to the protection of, any provision in the Bankruptcy Code, the effect of which is to prevent or delay Lender from taking any remedial action against Borrower, including the exercise of any option Lender has to declare the Debt due and payable on the happening of any default or event by which under the terms of the Note, the Loan Agreement, or the other Loan Documents, the Debt shall become due and payable, Lender may, as against Guarantor, nevertheless, declare the Debt due and payable and enforce any or all of its rights and remedies against Guarantor provided for herein.

Guarantor further covenants that this Guaranty shall remain and continue in full force and effect as to any modification, extension or renewal of the Note, the Loan Agreement, or the other Loan Documents, that Lender shall not be under a duty to protect, secure or insure the Collateral, and that other indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done or suffered without notice to, or further consent of, Guarantor.

Guarantor agrees to furnish to Lender from time to time, by such dates as Lender may reasonably require (but no more frequently than annually unless an Event of Default under the Loan Agreement or any other Loan Document exists which remains uncured and is continuing after all applicable notice and grace period, in which event Lender may require same from time to time), Guarantor's Federal and State income tax returns, a personal financial statement if Guarantor is an individual and a balance sheet and statement of changes in Guarantor's financial position if Guarantor is not an individual, in each case certified by Guarantor as complete and accurate. Such financial statements shall be in reasonable detail and prepared in accordance with consistently applied accounting methods reasonably acceptable to Lender.

Guarantor will maintain (a) an aggregate Net Worth equal to at least \$350,000,000 and (b) an aggregate Liquidity equal to at least \$75,000,000.00.

Guarantor hereby represents and warrants that Guarantor is not a Plan and none of the assets of Guarantor constitute or will constitute, by virtue of the application of 29 C.F.R. §2510.3-101(f) as modified by section 3(42) of ERISA, "Plan Assets" of one or more Plans. If Guarantor is not a natural person, Guarantor further represents and warrants that (a) Guarantor is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Guarantor are not subject to State statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Guaranty.

If Guarantor is not a natural person, Guarantor hereby covenants and agrees with Lender that:

(a) During the term of the Loan or of any obligation or right hereunder, Guarantor shall not be a Plan and none of the assets of Guarantor shall constitute Plan Assets.

(b) Guarantor further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion and represents and covenants that (A) Guarantor is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title IV of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Guarantor is not subject to State statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) one or more of the following circumstances is true:

(i) Equity interests in Guarantor are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) None of the assets of Guarantor are, by virtue of the application of 29 C.F.R. §2510.3-101(f) as modified by section 3(42) of ERISA, regarded as assets of any Plan, or

(iii) Guarantor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(e) or (e).

As a further inducement to Lender to make the Loan and in consideration thereof, Guarantor further covenants and agrees (a) that in any action or proceeding brought by Lender against Guarantor on this Guaranty, Guarantor shall and does hereby waive trial by jury, (b) that the Supreme Court of the State of New York for the County of New York, or, in a case involving diversity of citizenship, the United States District Court for the Southern District of New York, shall have exclusive jurisdiction of any such action or proceeding, and (c) that service of any summons and complaint or other process in any such action or proceeding may be made by registered or certified mail directed to Guarantor at Guarantor's address set forth above, Guarantor waiving personal service thereof. Nothing in this Guaranty will be deemed to

preclude Lender from bringing an action or proceeding with respect hereto in any other jurisdiction.

This is a guaranty of payment and not of collection and upon any default of Borrower under the Note, the Loan Agreement, or the other Loan Documents beyond any applicable notice, grace or cure periods set forth therein, Lender may, at its option, proceed directly and at once, without notice, against Guarantor to collect and recover the full Guaranteed Amount or any portion thereof, without proceeding against Borrower or any other person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against the Collateral or other collateral for the Loan. Guarantor hereby waives the pleading of any statute of limitations as a defense to the obligation hereunder.

Each reference herein to Lender shall be deemed to include its successors and assigns, to whose favor the provisions of this Guaranty shall also inure. Each reference herein to Guarantor shall be deemed to include the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor, all of whom shall be bound by the provisions of this Guaranty. This Guaranty shall be terminated, and Guarantor shall be released from all liability hereunder, in the event that Borrower delivers to Lender a guaranty by a replacement guarantor acceptable to Lender in its sole discretion.

If any party hereto shall be a partnership, the agreements and obligations on the part of Guarantor herein contained shall remain in force and application notwithstanding any changes in the individuals composing the partnership and the term "Guarantor" shall include any alternate or successive partnerships but the predecessor partnerships and their partners shall not thereby be released from any obligations or liability hereunder.

Guarantor (and its representative, executing below, if any) has full power, authority and legal right to execute this Guaranty and to perform all its obligations under this Guaranty.

All understandings, representations and agreements heretofore had with respect to this Guaranty are merged into this Guaranty which alone fully and completely expresses the agreement of Guarantor and Lender with respect to the subject matter hereof.

This Guaranty may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement of Guaranty. The failure of any party hereto to execute this Guaranty, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

This Guaranty may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Lender or Borrower, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Guaranty shall be governed, construed and interpreted as to validity, enforcement and in all other respects, in accordance with the laws of the State of New York.

Guarantor waives any right or claims of right to cause a marshalling of Borrower's assets or to proceed against Guarantor, Borrower or any other guarantor of any of Borrower's

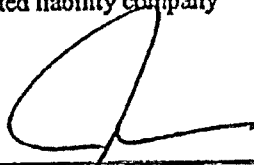
obligations in any particular order, including, but not limited to, any right arising out of NRS 40.430.


[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the date first above set forth.

FONTAINEBLEAU RESORTS, LLC, a
Delaware limited liability company

By:


Name: Jeffrey Soffer
Title: Executive Chairman


Jeffrey Soffer, an individual

MEZZANINE GUARANTY OF PAYMENT

Dep. Ex. 888

From: Bolio, Brandon. Sent: 8/5/2008 3:54 PM.
To: Bill Scott; Naval, Ronaldo; Bill Scott; Naval, Ronaldo.
Cc: Susman, Jeff; Susman, Jeff.
Bcc:
Subject: FW: FDIC.

Bill:

Per Jeff's voicemail, attached is the letter from the FDIC giving notice of First National Bank of Nevada's closure and their intent to sell the paper.

Redacted--Privileged

Redacted--Privileged

Thanks,
Brandon

From: Bill Bewley [mailto:bbewley@fontainebleau.com]
Sent: Tuesday, August 05, 2008 2:08 PM
To: Bolio, Brandon
Subject: FDIC

Brandon: Attached for your information is a notice from the FDIC concerning First National Bank of Nevada. Apparently they have some of our loan? Do you believe that any action needs to be made on this?

Let me know. Thanks,

Bill

Bill Bewley / Senior Vice President Treasurer and Chief Accounting Officer

Fontainebleau Resorts LLC

bbewley@fontainebleau.com / fontainebleau.com

O 702 495 8200 / C 702 218 1603 / F 702 495 8203

2827 Paradise Road/Las Vegas NV 89109

THE STAGE IS YOURS. LIVE YOUR PART.

please take note of my new email address

EXHIBIT 388
WIT: Susman
DATE: 4-28-11
A. MANCUSO



Federal Deposit Insurance Corporation
1601 Bryan Street, Dallas, TX 75201

Division of Resolutions and Receiverships

July 30, 2008

**SUBJECT: First National Bank of Nevada
Reno, Nevada – In Receivership
Closing Date: July 25, 2008**

FONTAINEBLEAU LAS VEGAS, LLC FONTAINEBLEAU LAS VEGAS II, LLC
2827 PARADISE RD FL 4
LAS VEGAS, NV 891095279

LOAN NUMBER(S): 1310031005

Dear Customer,

On July 25, 2008, First National Bank of Nevada, Reno, Nevada (the "Institution"), was closed by order of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation was appointed as Receiver of the Institution (the "Receiver"). Under the laws of the United States, the Receiver is charged with the duty of winding up the affairs of the former Institution.

The records of the Institution indicate you have a loan obligation to the former bank. Your loan is now held by the Receiver. The Receiver expects that you will continue to abide by the terms and conditions of your loan agreement or promissory note. If, in the future, your loan should be sold or transferred, resulting in any changes to these payment instructions, you will be advised in writing by the Receiver.

Following the closure of First National Bank of Nevada advances to outstanding Home Equity Line of Credit accounts (Equi Check) have been suspended. FDIC loan servicing personnel are available to talk to you about your options if you have an outstanding Home Equity Line of Credit account.

The Receiver intends to market and sell the assets of the Institution, including your loan, beginning approximately 90 days from the date of the closing of the Institution. The Receiver, therefore, encourages you to refinance your loan within the next 90 days.

Please make your check or money order payable to "FDIC as Receiver for First National Bank of Nevada, Reno, Nevada" and send all future correspondence and payments to the same address you are currently forwarding these items to.

Thank you for your cooperation. If you have any questions, please call and ask for a FDIC loan servicing representative at (888) 226-5262.

Federal Deposit Insurance Corporation
as Receiver of First National Bank of Nevada

By: Diane Jackson
Title: Asset Manager

HIGHLY CONFIDENTIAL

BANA_FB00873654

Dep. Ex. 890

From: Bolio, Brandon. Sent: 10/17/2008 5:34 PM.
To: Bill Scott; Bill Scott.
Cc: Susman, Jeff; Naval, Ronaldo; Susman, Jeff; Naval, Ronaldo.
Bcc: .
Subject: FW: Fontainebleau Las Vegas - Wells Fargo Letter 10.06.08.

Bill:

Redacted - Privileged

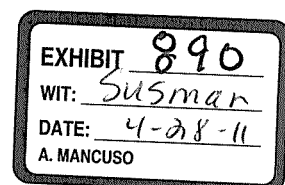
Thanks in advance,
Brandon

From: Naval, Ronaldo
Sent: Thursday, October 09, 2008 9:15 AM
To: Susman, Jeff; Bolio, Brandon
Subject: Fontainebleau Las Vegas - Wells Fargo Letter 10.06.08

Jeff and Brandon,

I received the attached letters this morning from Wells Fargo advising us that the Second Mortgage Proceeds account is exhausted. Do we need to post these?

Ron





Corporate Trust Services
MAC N9311-110
625 Marquette Avenue
Minneapolis, MN 55479
612 667-9825 Fax

Wells Fargo Bank, N.A.

October 6, 2008

Fontainebleau Las Vegas, LLC, on behalf of the Project Entities
~~Attn: Whitney Thier, Esquire~~
General Counsel
2827 Paradise Road
Las Vegas, NV 89109

Bank of America, N.A., as Bank Agent
Donna F. Kimbrough, Assistant Vice President
Mail Code: TX1-492-14-11
Bank of America Plaza
901 Main Street
Dallas, TX 75202-3714

Lehman Brothers Holdings Inc., as Retail Agent
c/o Lehman Brothers Holdings
399 Park Avenue
New York, New York 10022
Attention: Josh Freedman

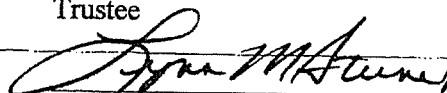
Bank of America, N.A., as Disbursement Agent for Fontainebleau Resorts
Mail Code: TX1-492-14-11
Bank of America Plaza
~~901 Main Street~~
Dallas, Texas 75202-3714

RE: Master Disbursement Agreement dated as of June 6, 2007 (the "MDA"), among Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Capital Corp., Fontainebleau Las Vegas Retail, LLC, Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, Bank of America, N.A., as the initial Bank Agent (as defined therein), Wells Fargo Bank, N.A., as the initial Trustee (as defined therein) (the "Trustee"), Lehman Brothers Holdings Inc., as the initial Retail Agent (as defined therein), and Bank of America, N.A., as the initial Disbursement Agent (as defined therein). All capitalized terms used and not otherwise defined in this notice shall have the meanings ascribed thereto in the MDA.

Ladies and Gentlemen,

You are hereby notified that after giving effect to the funding on September 25, 2008, the Second Mortgage Proceeds Account is Exhausted and, therefore, pursuant to Section 11.18 of the MDA, but subject to the proviso and other provisions thereof, (i) the Trustee ceased to be a party to the MDA on such date and (ii) from and after such date, the Trustee shall have no further rights or obligations under the MDA.

Wells Fargo Bank, N.A., as
Trustee



Lynn M. Steiner
Vice President

Cc: Jones Day, Stacey Lefont



**WELLS
FARGO**

Corporate Trust Services
MAC N9311-110
625 Marquette Avenue
Minneapolis, MN 55479
612 667-9825 Fax

Wells Fargo Bank, N.A.

October 6, 2008

Fontainebleau Las Vegas, LLC, on behalf of the Project Entities

Attn.: Whitney Thier, Esquire
General Counsel
2827 Paradise Road
Las Vegas, NV 89109

Bank of America, N.A., as Bank Agent
Donna F. Kimbrough, Assistant Vice President
Mail Code: TX1-492-14-11
Bank of America Plaza
901 Main Street
Dallas, TX 75202-3714

Lehman Brothers Holdings Inc., as Retail Agent
c/o Lehman Brothers Holdings
399 Park Avenue
New York, New York 10022
Attention: Josh Freedman

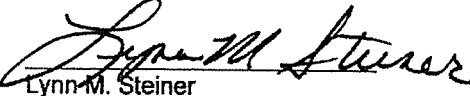
Bank of America, N.A., as Disbursement Agent for Fontainebleau Resorts
Mail Code: TX1-492-14-11
Bank of America Plaza
901 Main Street
Dallas, Texas 75202-3714

RE: Master Disbursement Agreement dated as of June 6, 2007 (the "MDA"), among Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Capital Corp., Fontainebleau Las Vegas Retail, LLC, Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, Bank of America, N.A., as the initial Bank Agent (as defined therein), Wells Fargo Bank, N.A., as the initial Trustee (as defined therein) (the "Trustee"), Lehman Brothers Holdings Inc., as the initial Retail Agent (as defined therein), and Bank of America, N.A., as the initial Disbursement Agent (as defined therein). All capitalized terms used and not otherwise defined in this notice shall have the meanings ascribed thereto in the MDA.

Ladies and Gentlemen,

You are hereby notified that after giving effect to the funding on September 25, 2008, the Second Mortgage Proceeds Account is Exhausted and, therefore, pursuant to Section 11.18 of the MDA, but subject to the proviso and other provisions thereof, (i) the Trustee ceased to be a party to the MDA on such date and (ii) from and after such date, the Trustee shall have no further rights or obligations under the MDA.

Wells Fargo Bank, N.A., as
Trustee



Lynn M. Steiner
Vice President

Cc: Jones Day, Stacey Lefont

Dep. Ex. 891

2827 Paradise Road
 4th Floor
 Las Vegas, NV 89109
 Phone (702) 495-8010 FAX (702) 495-8011



OWNER CHANGE ORDER

Project: **Podium**
 Fontainebleau Resorts, Las Vegas

CONTRACT: 10500
 Change Order: 13
 Date: 5/23/08

To Contractor:
 Turnberry West Construction, Inc.
 2755 Las Vegas Blvd. S
 Las Vegas, NV 89109
 (702) 495-7360 FAX (702) 495-7366

~~The Contract is changed as follows:~~
 - POC # 19 - Structural Drawing Updates from Bid Set; Structural Revisions for Column Areas 1, 2A & 2B. Designed as boxed W 14 x 730, fabricated from separate Plates and assembled (preassembly was required due to Material Availability and Schedule Restraints).

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is fully executed.

Request #	Description	Amount
POC #19A	Structural Drawing Drawing Updates from Bid Set	\$ 41,568,038.00

Total Change \$ 41,568,038.00


The Original Contract Amount was	\$	609,115,666.00
Net Change by previously authorized Change Orders through 12	\$	52,556,393.12
The Contract Amount prior to this Change Order was	\$	661,672,059.12
The Contract will be increased/decreased by this Change Order in the Amount of	\$	41,568,038.00
The New Contract Amount including this Change Order will be	\$	703,240,097.12

The Contract Time will be: Unchanged
 The date of Substantial Completion as of the date of this Change Order therefore is: 9/30/09

NOT VALID UNTIL SIGNED BY THE OWNER AND CONTRACTOR

Turnberry West Construction, Inc.
CONTRACTOR
 2755 Las Vegas Blvd. S
 Las Vegas, NV 89109

Fontainebleau Las Vegas, LLC
OWNER
 2827 Paradise Road, 4th Floor
 Las Vegas, NV 89109


 (Signature)
 By Robert Ambler
 Date 6/14/08

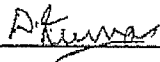
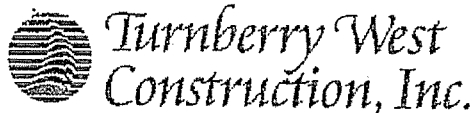

 (Signature)
 By Deven Kumar
 Date 6/4/08

EXHIBIT 891
 WIT: Susman
 DATE: 4-28-11
 A. MANCUSO



2755 S. Las Vegas Blvd
 Las Vegas, NV 89109
 Ph: 702.495.7360

Change Request

To: Fontainebleau Las Vegas
 2827 Paradise Road
 Las Vegas, NV 89109

Number: 28
 Date: 8/6/07
 Job: 10500 2-Podium
 Phone: (702) 495-7360

Description: POC # 19A - Structural Drawing Updates from Bid Set

Reason: Design Change

Initiated by: John A. Martin & Assoc. of NV (Nevada)

We are pleased to offer the following specifications and pricing to make the following changes:

POC # 19 - Structural Drawing Drawing Updates from Bid Set

Structural Revisions for Column Areas 1, 2A & 2B. Designed as boxed W 14 x 730, fabricated from separate Plates and assembled (preassembly was required due to Material Availability and Schedule Restraints).

Description	Labor	Material	Equipment	Subcontract	Other	Price
Structural Steel - WW S COR #1 (Partial)				#####		\$41,568,038.00
					Subtotal:	\$41,568,038.00
					Total:	\$41,568,038.00

The schedule is not affected by this change.

If you have any questions, please contact me at (702)495-7377.

Submitted by: Leo Estrada
 Turnberry West Construction

Approved by: _____
 Date: _____

Cc:



*Turnberry West
Construction, Inc.*

May 8, 2008

Fontainebleau Resorts
2827 Paradise Road
Las Vegas, NV 89109
Attn: Deven Kumar

Re: **Fontainebleau Resort - Las Vegas**
Status of Structural Steel Design and GMP Update

Mr. Kumar:

Please see attached change order Number 13 regarding the update to the Structural Steel costs associated with this project. The costs associated with these added values have been analyzed based on the progress drawings and shop drawings received starting April 20, 2007 through June 21, 2007.

Turnberry West Construction, W & W Steel and John A Martin Associates have been working together through the detailing and procurement of steel to minimize the cost and tonnage increases. The attached change reflects the resolution of this coordination of the added tonnage and costs for the design changes during the above referenced time frames.

Please feel free to contact me should you need further information regarding this issue.

Sincerely
Turnberry West Construction, Inc.

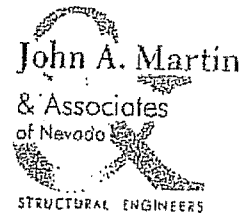

Leo Estrada
Senior Project Manager

c/c: Roger McElfresh
Glen Russo

May 29, 2008

Fontainebleau LLC
Roger McElfresh
2827 Paradise Road
Las Vegas, NV 89109

Subject: Fontainebleau Podium Clarifications
JAMA NV Job. No. 6289.200



John A. Martin, S.E.
John A. Martin, Jr., S.E.
Gregory L. Clapp, S.E.
Steve Schiller, S.E.
Eugen I. Darlou

Dear Roger:

It is my understanding that WW Steel provided a steel bid based upon a Design Development set of structural drawings, approximately 25 percent of contract documents. At this stage of design, John A. Martin & Associates of Nevada was showing only preliminary beam sizes which were not refined for all loading conditions. The drawings at this stage do not indicate column sizes, brace sizes and all associated connections. At the Design Development phase, we did not show any structures above the pool deck level or the framing at the basement level, now level 2. These areas were not available from the designers at this stage of the project. Between Design Development when we submitted the structural steel for plan check, there were many changes to the structure due to space planning, designer changes and additional information regarding the structures above the pool level. During the Design Development period, the theater had not been defined and was not shown on the drawings until we submitted the steel to the Building Department.

From Delta S1 to Delta S8, our drawings have been evolving due to refinements by the designers and landscape architects. Structural drawings are typically issued six months in advance of the architectural and mechanical designs being completed. We have made clarifications to our drawing in deletion of the pool villas, added mechanical mezzanines, refinements to the spa, added mechanical openings, modified exterior slab edges, addition of pool canopies and bar structures, façade modifications and the addition of a restaurant at the pool deck level. Other clarifications have been due to elevator, escalator, stair refinements and value engineering as requested.

In conclusion, our structural drawings have been through an evolution process with the architectural and designer's drawings which is very common for fast track projects.

Should you have any additional questions, please do not hesitate to call.

Sincerely,

John A. Martin & Associates of Nevada

Gregory L. Clapp, S.E.
Principal

GLC/jlh

\\HOME-ADMIN\Jobs\6289 Letters-Roger McElfresh 05219K.doc

John A. Martin & Associates of Nevada -- Structural Engineers

Office 702.248.7000 • Fax 702.253.5353

1969 South Jones Boulevard • Las Vegas, Nevada 89146



Box 25369
OKLAHOMA CITY, OK 73125
1730 W. RENO 73106
PH 405.235.3621
FX 405.236.4842

CHANGE ORDER REQUEST

June 21, 2007

Turnberry West Construction, Inc.
2827 Paradise Road
Las Vegas, NV 89109
Attn: Leo Estrada

RE: W&W Steel Contract #6-15
Fontainebleau Casino & Resort – Podium COR #1
Las Vegas, NV

Subject: Budget Update

Mr. Estrada,

At Turnberry's request W&W Steel has up-dated our pricing based on structural revisions and tonnage increases thru 6/21/07. A copy of our proposal, as previously submitted, is enclosed. Pricing is as follows:

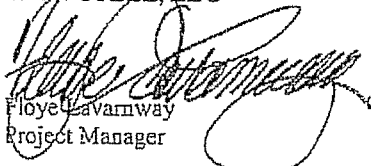
Revised structural steel weight – 36,477 tons

Revised square footage – 2,479,700

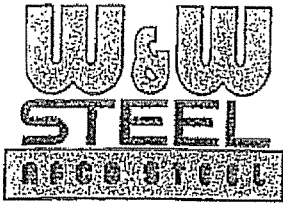
The total price added based on our contract unit prices is \$41,568,038.00.

Please contact me should questions arise.

Respectfully,
W&W STEEL, LLC


Floye Lavarney
Project Manager

Attachment: Proposal dated June 13, 2007



BOX 25369
OKLAHOMA CITY, OK 73125
1730 W. RENO 73106
PH 405.235.3621
FX 405.236.4842

June 13, 2007

RE: Fontainebleau
Podium Structural Steel
Las Vegas, NV

Gentlemen:

Under satisfactory terms and agreement, we propose to furnish the following material for the subject project in accordance with drawings PA0.1.01, PA0.2.01, PA0.2.02, PA0.2.03, PA0.2.04, PA2.0.03, PS1.0.1, PS1.0.2, PS2.0.01, PS2.0.02, PS2.0.03, PS2.0.04, PS2.0.05, PS2.0.07, PS2.0.08, PS2.0.09, PS2.0.11, PS2.1.01D, PS2.1.01E, PS2.1.02G, PS2.1.01H, PS2.1.01J, PS2.1.01K, PS2.1.01M, PS2.1.01P, PS2.1.01R, PS2.1.01S, PS2.1.01T, PS2.1.01W, PS2.1.01X, PS2.1.01Y, PS2.1.01Z, PS2.1.02A, PS2.1.02D, PS2.1.02E, PS2.1.02F, PS2.1.02G, PS2.1.02H, PS2.1.02J, PS2.1.02K, PS2.1.02M, PS2.1.02P, PS2.1.02R, PS2.1.02S, PS2.1.02T, PS2.1.02W, PS2.1.02X, PS2.1.02Y, PS2.1.02Z, PS2.1.03A, PS2.1.03D, PS2.1.03E, PS2.1.03F, PS2.1.03G, PS2.1.03H, PS2.1.03J, PS2.1.03K, PS2.1.03M, PS2.1.03P, PS2.1.03R, PS2.1.03S, PS2.1.03T, PS2.1.03U, PS2.1.03W, PS2.1.03X, PS2.1.03Y, PS2.1.03Z, PS2.1.04G, PS2.1.04W, PS2.1.04X, PS2.1.05A, PS2.1.05D, PS2.1.05E, PS2.1.05F, PS2.1.05G, PS2.1.05H, PS2.1.05J, PS2.1.05K, PS2.1.05M, PS2.1.05P, PS2.1.05R, PS2.1.05S, PS2.1.05T, PS2.1.05U, PS2.1.05W, PS2.1.05X, PS2.1.05Y, PS2.1.05Z, PS2.1.07E, PS2.1.07G, PS2.1.07G, PS2.1.07H, PS2.1.07K, PS2.1.07M, PS2.1.07P, PS2.1.07S, PS2.1.07T, PS2.1.07W, PS2.1.07X, PS2.1.07Y, PS2.1.07Z, PS2.1.08A, PS2.1.08E, PS2.1.08F, PS2.1.08G, PS2.1.08H, PS2.1.08J, PS2.1.08K, PS2.1.08M, PS2.1.08P, PS2.1.08R, PS2.1.08S, PS2.1.09A, PS2.1.09D, PS2.1.09E, PS2.1.09F, PS2.1.09G, PS2.1.09H, PS2.1.09J, PS2.1.09K, PS2.1.09M, PS2.1.09N, PS2.1.09P, PS2.1.09R, PS2.1.09S, PS2.1.09T, PS2.1.09U, PS2.1.09W, PS2.1.09X, PS2.1.09Y, PS2.1.09Z, PS2.1.10E, PS2.1.10G, PS2.1.10J, PS2.1.10K, PS2.1.10M, PS2.1.10P, PS2.1.10R, PS2.1.10S, PS2.1.10W, PS2.1.11E, PS2.1.11G, PS2.1.11H, PS2.1.11K, PS2.1.11M, PS2.1.11P, PS2.1.11S, PS2.1.11T, PS2.1.11U, PS2.1.11W, PS2.1.11X, PS2.1.11Y, PS2.1.11Z, PS2.1.12K, PS2.1.12T, PS2.1.12Z, PS2.1.13G, PS2.1.13K, PS2.1.13M, PS2.1.13S, PS2.1.13T, PS2.1.13Y, PS2.1.13Z, PS2.1.14G, PS2.1.14K, PS2.1.14M, PS2.1.14T, PS2.1.14Y, PS2.1.15G, PS2.1.15K, PS2.1.15M, PS2.1.15Z, PS4.01, PS4.02, PS4.03, PS4.04, PS4.05, PS4.06, PS4.07, PS4.08, PS4.09, PS4.20, PS4.21, PS4.22, PS4.23, PS4.25, PS4.30, PS4.31, PS4.35, PS4.36, PS5.01, PS5.10, PS5.20, PS6.01, PS6.02, PS6.03, PS6.04, PS6.20, PS6.21, PS6.22, PS6.23, PS6.24, PS6.25, PS6.26, PS6.27, PS6.28, PS6.30

Structural Steel 36,477 Tons
 Clean: Handtool
 Paint: No Paint

- S1 Wide Flange Columns
- S2 Column Anchor Bolts
- S3 Wide Flange Beams
- S4 Wide Flange Braces
- S5 Tube Steel Braces
- S6 Tube Steel Beams
- S7 Wide Flange Trusses (PS4.35; PS4.36)
- S8 Plate Girders (PS5.10)
- S9 Tube Steel Posts
- S10 Angle Hangers
- S11 Catwalk Framing
- S12 Channel Beams at Grid Iron
- S13 Continuous Bent Closure [Field Welded]
- S14 Embed Plates at Beam to Concrete Connection (PS6.27)
- S15 Embed Angles at Lever Pit
- S16 Deck Support Angles
- S17 Field Bolts

Metal Deck 2,479,700 Square Feet

- MD1 18GA., 3", G-60 Galvanized Composite Deck (22,663 sqs.)
- MD2 18GA., 2", G-60 Galvanized Composite Deck (1,541 sqs.)
- MD3 18GA., 1 1/2" Type "B", G-60 Galvanized Composite Deck (593 sqs.)
- MD4 Shear Studs

Base Bid Price for material, unloading and field erection including all applicable taxes is \$161,199,811.00. Delivery is subject to our ability to procure material from our suppliers.

Not doing

ALLOWANCE ADD – Add for temporary power

\$1,800,000.00

NOTE: This price is based on current pricing as of June 12, 2007, for the following: structural steel, metal deck, metal joist, bolts, tube, plate, etc. from our mill sources and material suppliers. Any subsequent base mill price increases or surcharges will be an add to our base and unit prices.

WE DO NOT INCLUDE ANY OTHER ITEMS OR WORK EXCEPT THOSE LISTED ABOVE. THE FOLLOWING ITEMS ARE SPECIFICALLY EXCLUDED BUT ARE NOT NECESSARILY ALL OF THE ITEMS EXCLUDED:

- Anchors for wood to masonry and concrete
- No shop paint will be applied around the bolt patterns of "slip critical connections and the entire surfaces of gusset plates

Responsibility for any design deficiencies in the project documents that fail to meet industry standards, federal, state or local codes, including Federal Code ADA 1-26-92

Holes for work by others unless shown on structural and architectural drawings

Field measurements

Cost of any tests or inspection other than by W&W Steel, LLC personnel for quality control or per diem pay and travel costs for inspectors traveling to or from W&W Steel, LLC

Payment and Performance Bonds

Fixed glass settings

Framing for floor or roof openings not shown or located on structural drawings

Furring channels and angles

Light gage metal framing and clip angles for same

Miscellaneous items on mechanical drawings

Stainless steel work

Supports for mechanical and electrical equipment

Unistrut framing and anchors

THE FOLLOWING EXCLUSIONS PERTAIN ONLY TO METAL DECK:

- a. Opening reinforcement
- b. Countersunk, swedged or prepunched deck

Miscellaneous steel (see miscellaneous bid package)

Coordination of other trades work

Reinforcing for deck penetrations (4,5/PS6.21)

CMU wall supports (12/PS6.21) (1/PS6.28)

All deck accessories

All demolition, cutting and patching

Dust control at jobsite

Field engineering, layout, lines and grades, elevations at each individual anchor bolt setting (General Contractor to set nuts to elevation at each anchor bolt set.)

Framing for floor or roof openings not shown or located on structural or architectural drawings

Grout and/or grouting

Hoisting of reinforcing steel or wire mesh

Manlift (if required)

Mockups

Required permits

Safety rail or opening protection (except as required for erection of structural steel)

Safety requirements for all trades other than field erection

Setting of anchor bolts

Shoring of metal deck for concrete pours

Survey

Temporary floor planking or safety netting

Toeboards for safety rails

Touch-up painting or any other coatings

Unloading and erection of F.O.B. items

Core drilling and layout for same

- NOTE: Our proposal and price is based upon our retention being a maximum of 5% for the first 50% of this subcontract total and 0% thereafter, with our retention being released no later than 60 days after substantial completion of this Subcontractor's work.
- NOTE: Quoted prices are based on monthly progress payments for raw material as received in our shops and for detailing costs as the work is performed. The balance of the project cost will be invoiced as the fabricated steel is fab and stored, delivered and/or erected.
- NOTE: All engineering, detailing, fabrication and erection are strictly and only in accordance with the current AISC Code of Standard Practice.
- NOTE: Project schedule for start of erection and over-all duration will be agreed to based on completion of design drawings and final erection sequencing.
- NOTE: All power for field erection is to be by Turnberry.
- NOTE: Splice welding for (5) plate columns is to be the square root of $T/6 + 1/4$ " partial penetration weld.
- NOTE: W&W Steel, LLC is based on substituting (3) plate built up "W" shapes that are not on order or available from domestic mills. Flange to web welds shall be fillets.
- NOTE: W&W Steel, LLC pricing is based on cover plate thickness to be the larger of the web thickness or 1" @ "W" shape with cover plates at vertical bracing.
- NOTE: Charpy testing provided only for tension members that are group 4 & 5.
- NOTE: W&W Steel, LLC pricing is based on all truss chord splices to be field welded.
- NOTE: All column splices are to be field welded.

If you have any questions or need any additional information, please feel free to call me.

Yours very truly,
W & W STEEL, LLC

Paul De Maggio
Senior Vice President, Marketing

PD/dc

Re: 6-15-H Fontainebleau Podium / Comparison against 6-15-A
 Customer W & W Steel Steve Wiger Blue designates change

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.02D	Level 2 / D	24	0	0
6-15-H	PS2.1.02E	Level 2 / E	133.05	0	0
6-15-H	PS2.1.02F	Level 2 / F	0	0	0
6-15-H	PS2.1.02G	Level 2 / G	75.02	0	0
6-15-H	PS2.1.02H	Level 2 / H	196.01	0	0
6-15-H	PS2.1.02J	Level 2 / J	399	0	0
6-15-H	PS2.1.02K	Level 2 / K	294	0	0
6-15-H	PS2.1.02M	Level 2 / M	323	0	0
6-15-H	PS2.1.02P	Level 2 / P	324	0	0
6-15-H	PS2.1.02R	Level 2 / R	389	0	0
6-15-H	PS2.1.02S	Level 2 / S	433	0	0
6-15-H	PS2.1.02T	Level 2 / T	363	0	0
6-15-H	PS2.1.02W	Level 2 / W	195	0	0
6-15-H	PS2.1.02X	Level 2 / X	312	0	0
6-15-H	PS2.1.02Y	Level 2 / Y	353	0	0
6-15-H	PS2.1.02Z	Level 2 / Z	283	0	0
	Sub-Total	LEVEL 2	4096	0	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.03A	Level 3 / A	69	0	0
6-15-H	PS2.1.03B	Level 3 / B	0	0	0
6-15-H	PS2.1.03C	Level 3 / C	0	0	0
6-15-H	PS2.1.03D	Level 3 / D	75	0	0
6-15-H	PS2.1.03E	Level 3 / E	315	0	0
6-15-H	PS2.1.03F	Level 3 / F	19	0	0
6-15-H	PS2.1.03G	Level 3 / G	163	0	0
6-15-H	PS2.1.03H	Level 3 / H	196	0	0
6-15-H	PS2.1.03J	Level 3 / J	399	0	0
6-15-H	PS2.1.03K	Level 3 / K	378	0	0
6-15-H	PS2.1.03M	Level 3 / M	340	0	0
6-15-A	PS2.1.03N	Level 3 / N	0	0	0
6-15-H	PS2.1.03P	Level 3 / P	326	0	0
6-15-H	PS2.1.03R	Level 3 / R	389	0	0
6-15-H	PS2.1.03S	Level 3 / S	433	0	0
6-15-H	PS2.1.03T	Level 3 / T	363	0	0
6-15-H	PS2.1.03U	Level 3 / U	0	0	0
6-15-H	PS2.1.03W	Level 3 / W	195	0	0
6-15-H	PS2.1.03X	Level 3 / X	313	0	0
6-15-H	PS2.1.03Y	Level 3 / Y	357	0	0
6-15-H	PS2.1.03Z	Level 3 / Z	288	0	0
	Sub-Total	LEVEL 3	4618	0	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-A	PS2.1.04D	Level 4 / D	0	0	0
6-15-H	PS2.1.04G	Level 4 / G	69	0	0
6-15-A	PS2.1.04H	Level 4 / H	0	0	0
6-15-A	PS2.1.04K	Level 4 / K	0	0	0
6-15-A	PS2.1.04P	Level 4 / P	0	0	0
6-15-H	PS2.1.04W	Level 4 / W	92	0	0
6-15-H	PS2.1.04X	Level 4 / X	96	0	0
Sub-Total		LEVEL 4	257	0	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.05A	Level 5 / A	108	0	0
6-15-A	PS2.1.05B	Level 5 / B	0	0	0
6-15-A	PS2.1.05C	Level 5 / C	0	0	0
6-15-H	PS2.1.05D	Level 5 / D	49	0	0
6-15-H	PS2.1.05E	Level 5 / E	297	0	0
6-15-H	PS2.1.05F	Level 5 / F	17	0	0
6-15-H	PS2.1.05G	Level 5 / G	163	0	0
6-15-H	PS2.1.05H	Level 5 / H	196	0	0
6-15-H	PS2.1.05J	Level 5 / J	167	0	0
6-15-H	PS2.1.05K	Level 5 / K	377	0	0
6-15-H	PS2.1.05M	Level 5 / M	344	0	0
6-15-A	PS2.1.05N	Level 5 / N	0	0	0
6-15-H	PS2.1.05P	Level 5 / P	366	0	0
6-15-H	PS2.1.05R	Level 5 / R	184	0	0
6-15-H	PS2.1.05S	Level 5 / S	436	0	0
6-15-H	PS2.1.05T	Level 5 / T	308	0	0
6-15-H	PS2.1.05U	Level 5 / U	84	0	0
6-15-H	PS2.1.05W	Level 5 / W	308	0	0
6-15-H	PS2.1.05X	Level 5 / X	339	0	0
6-15-H	PS2.1.05Y	Level 5 / Y	375	0	0
6-15-H	PS2.1.05Z	Level 5 / Z	185	0	0
Sub-Total		LEVEL 5	4301	0	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-A	PS2.1.07D	Level 7 / D	0	0	
6-15-H	PS2.1.07E	Level 7 / E	102.69	0	0
6-15-H	PS2.1.07G	Level 7 / G	0	11	0
6-15-H	PS2.1.07H	Level 7 / H	153	0	0
6-15-A	PS2.1.07J	Level 7 / J	0	0	0
6-15-H	PS2.1.07K	Level 7 / K	195	0	0
6-15-H	PS2.1.07M	Level 7 / M	0	94	0
6-15-H	PS2.1.07 P	Level 7 / P	58.32		
6-15-H	PS2.1.07S	Level 7 / S	233	0	0
6-15-H	PS2.1.07T	Level 7 / T	46	78	0
6-15-H	PS2.1.07W	Level 7 / W	161	0	0
6-15-H	PS2.1.07X	Level 7 / X	196	0	0
6-15-H	PS2.1.07Y	Level 7 / Y	121	0	0
6-15-H	PS2.1.07Z	Level 7 / Z	78	0	0
	Sub-Total	LEVEL 7	1344.01	183	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.08A	Level 8 / A	88	0	0
6-15-H	PS2.1.08E	Level 8 / E	308.82	0	0
6-15-H	PS2.1.08F	Level 8 / F	15	0	0
6-15-H	PS2.1.08G	Level 8 / G	137	0	0
6-15-H	PS2.1.08H	Level 8 / H	56	0	0
6-15-H	PS2.1.08J	Level 8 / J	461.74	0	0
6-15-H	PS2.1.08K	Level 8 / K	197.28	0	0
6-15-H	PS2.1.08M	Level 8 / M	76	0	0
6-15-H	PS2.1.08P	Level 8 / P	260.64	0	0
6-15-H	PS2.1.08R	Level 8 / R	412.82	0	0
6-15-H	PS2.1.08S	Level 8 / S	126	0	0
	Sub-Total	LEVEL 8	2139.3	0	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.09A	Level 9 / A	80.25	0	0
6-15-A	PS2.1.09B	Level 9 / B	0	0	0
6-15-A	PS2.1.09C	Level 9 / C	0	0	0
6-15-H	PS2.1.09D	Level 9 / D	47	0	0
6-15-H	PS2.1.09E	Level 9 / E	284	0	0
6-15-H	PS2.1.09F	Level 9 / F	15	0	0
6-15-H	PS2.1.09G	Level 9 / G	145.74	0	0
6-15-H	PS2.1.09H	Level 9 / H	236	0	0
6-15-H	PS2.1.09J	Level 9 / J	209	0	0
6-15-H	PS2.1.09K	Level 9 / K	336	0	0
6-15-H	PS2.1.09M	Level 9 / M	123	0	0
6-15-H	PS2.1.09N	Level 9 / N	9	0	0
6-15-H	PS2.1.09P	Level 9 / P	346	0	0
6-15-H	PS2.1.09R	Level 9 / R	345.12	0	0
6-15-H	PS2.1.09S	Level 9 / S	381	0	0
6-15-H	PS2.1.09T	Level 9 / T	185	0	0
6-15-H	PS2.1.09U	Level 9 / U	72	0	0
6-15-H	PS2.1.09W	Level 9 / W	322	0	0
6-15-H	PS2.1.09X	Level 9 / X	328	0	0
6-15-H	PS2.1.09Y	Level 9 / Y	226	0	0
6-15-H	PS2.1.09Z	Level 9 / Z	116.28	0	0
	Sub-Total	LEVEL 9	3806.39	0	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.10E	Level 10 / E	0	0	22.5
6-15-H	PS2.1.10 G	Level 10 G	0	0	0
6-15-H	PS2.1.10 J	Level 10 J	0	0	45.61
6-15-H	PS2.1.10 M	Level 10 M	0	0	0
6-15-H	PS2.1.10 K	Level 10 / K	0	90	0
6-15-H	PS2.1.10 P	Level 10 / P	0	0	21.42
6-15-H	PS2.1.10 R	Level 10 / R	0	0	61.2
6-15-H	PS2.1.10 S	Level 10 / S	0	0	100.26
6-15-A	PS2.1.10T	Level 10 / T	0	0	0
6-15-H	PS2.1.11 W	Level 10 / S	0	0	58.08
6-15-A	PS2.1.10Z	Level 10 / Z	0	0	0
	Sub-Total	LEVEL 10	0	90	309.07

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-A	PS2.1.11A	Level11 / A	0	0	0
6-15-A	PS2.1.11B	Level11 / B	0	0	0
6-15-A	PS2.1.11C	Level11 / C	0	0	0
6-15-A	PS2.1.11D	Level11 / D	0	0	0
6-15-H	PS2.1.11E	Level11 / E	102	0	0
6-15-A	PS2.1.11F	Level11 / F	0	0	0
6-15-H	PS2.1.11G	Level11 / G	0	16	0
6-15-H	PS2.1.11H	Level11 / H	227	0	0
6-15-A	PS2.1.11J	Level11 / J	0	0	0
6-15-H	PS2.1.11K	Level11 / K	0	90	0
6-15-H	PS2.1.11M	Level11 / M	0	98.64	0
6-15-A	PS2.1.11N	Level11 / N	0	0	0
6-15-H	PS2.1.11P	Level11 / P	154	0	0
6-15-A	PS2.1.11R	Level11 / R	0	0	0
6-15-H	PS2.1.11S	Level11 / S	32	0	0
6-15-H	PS2.1.11T	Level11 / T	61.74	76	0
6-15-H	PS2.1.11U	Level11 / U	59	0	0
6-15-H	PS2.1.11W	Level11 / W	281	0	0
6-15-H	PS2.1.11X	Level11 / X	252	0	0
6-15-H	PS2.1.11Y	Level11 / Y	155.61	0	0
6-15-H	PS2.1.11Z	Level11 / Z	62.46	0	0
	Sub-Total	LEVEL 11	1386.81	280.64	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.12K	Level 12 / K	0	90	0
6-15-H	PS2.1.12T	Level 12 / T	0	0	0
6-15-H	PS2.1.12Z	Level 12 / Z	0	135.84	0
	Sub-Total	LEVEL 12	0	225.84	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.13G	Level 13 / G	0	83	0
6-15-H	PS2.1.13K	Level 13 / K	0	109.62	0
6-15-H	PS2.1.13M	Level 13 / M	0	116	0
6-15-H	PS2.1.13S	Level 13 / S	151.56	0	0
6-15-H	PS2.1.13T	Level 13 / T	107	0	0
6-15-H	PS2.1.13Y	Level 13 / Y	140	0	0
6-15-H	PS2.1.13Z	Level 13 / Z	117.09	0	0
	Sub-Total	LEVEL 13	515.65	308.62	0

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.14G	Level 14 / G	0	59	
6-15-H	PS2.1.14K	Level 14 / K	0	0	100.68
6-15-H	PS2.1.14M	Level 14 / M	0	65.66	0
6-15-H	PS2.1.14T	Level 14 / T	0	142.35	0
6-15-H	PS2.1.14Y	Level 14 / Y	68.04	0	0
6-15-H	PS2.1.14Z	Level 14 / Z	0	0	177
	Sub-Total	Level 14	68.04	267.01	277.68

ISSUE	Drawing #	AREA	3W-18	2W-18	B-18
6-15-H	PS2.1.15G	Level 15 / G	0	72.6	0
6-15-H	PS2.1.15K	Level 15 / K	0	0	4.95
6-15-H	PS2.1.15M	Level 15 / M	0	112	0
6-15-H	PS2.1.15Z	Level 15 / Z	131	0	0
	Sub-Total	Level 15	131	184.6	4.95

RECAP SUMMARY

6-15-H

Level	3W-18	2W-18	B-18
2	4096	0	0
3	4618	0	0
4	257	0	0
5	4301	0	0
7	1344	183	0
8	2139	0	0
9	3806	0	0
10	0	90	310
11	1387	281	0
12	0	226	0
13	516	309	0
14	68	267	278
15	131	185	5
Total	22663	1541	593

Squares 24797

6950*

Fontainebleau Podium

Las Vegas

ID			ext len	
1,402	BTS	BOLT-TO-SHIP Total	1,402.00	0
87	C	12X20.7 Total	1,254.00	25,958
48	H4L	1/2X5-5/16 Total	48.00	16
7,127	H4L	1/2X6-1/8 Total	7,127.00	2,801
1,245	S3L	3/4X5-3/16 Total	1,245.00	913
16	HSS	4X4X1/2 Total	163.00	3,526
72	HSS	5X5X1/2 Total	672.00	19,105
13	HSS	5X5X1/4 Total	130.00	2,031
2	HSS	5X5X3/16 Total	20.00	239
6	HSS	5X5X3/8 Total	56.00	1,253
202	HSS	6X4X1/2 Total	1,997.50	56,789
99	HSS	6X6X1/2 Total	1,358.00	47,856
4	HSS	6X6X5/8 Total	52.00	2,198
2	HSS	8X8X1/2 Total	34.00	1,661
207	HSS	8X8X5/8 Total	4,622.00	274,177
48	HSS	10X10X1/2 Total	1,368.00	85,445
235	HSS	10X10X5/8 Total	4,700.00	358,751
26	HSS	12X12X5/8 Total	750.00	70,005
1,423	L	2X2X1/4 Total	3,557.50	11,348
118	L	3X3X1/4 Total	29.50	145
120	L	4X3-1/2X3/8 Total	179.00	1,629
4	L	4X4X1/2 Total	2.00	26
209	L	4X4X3/8 Total	4505	44149
125	L	5X5X3/8 Total	1,476.00	15,530
6	L	6X4X1/2 Total	8.50	138
969	L	6X4X5/8 Total	2,551.50	51,030
821	L	6X4X7/8 Total	2,566.50	69,809
94	L	6X6X1 Total	767.67	28,711
38	MC	18X58 Total	1,216.00	70,528
612	PL	1/16x 4 Total	68.00	173
4,367	PL	1/2" PL Total	4,463.73	91,135
2,898	PL	1/4" PL Total	14,755.29	150,626
1,240	PL	1/8" PL Total	167.84	857
791	PL	1-1/2" PL Total	20,490.49	1,255,042
907	PL	1-1/4" PL Total	7,978.66	407,244
28	PL	1-1/8" PL Total	84.28	3,872
267	PL	1-3/4" PL Total	817.37	58,408
41	PL	1-3/8" PL Total	292.83	16,441

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Fontainebleau Podium

Las Vegas

ID			ext len	
80	PL	1-5/8" PL Total	78.11	5,183
2,065	PL	1" PL Total	30,635.66	1,250,956
247	PL	2" PL Total	5,125.79	523,258
225	PL	2-1/4" PL Total	1,095.19	100,621
15	PL	2-3/4" PL Total	81.44	9,146
42	PL	2-5/8" PL Total	7,543.86	808,608
1,074	PL	2" PL Total	7,097.09	579,596
549	PL	3/16" PL Total	7,517.75	57,558
2,830	PL	3/4" PL Total	8,966.97	274,614
3,943	PL	3/8" PL Total	5,441.88	83,329
232	PL	3-1/2" PL Total	14,376.69	2,054,670
20	PL	3-1/4" PL Total	23.83	3,163
36	PL	3" PL Total	996.97	122,129
20	PL	4-1/2" PL Total	379.11	69,441
4	PL	4-3/4" PL Total	30	5,883
494	PL	4" PL Total	23,262.67	3,799,568
24	PL	5/16" PL Total	41.67	532
8,722	PL	5/8" PL Total	12,015.46	306,643
23	PL	5-1/2" PL Total	206.14	46,295
4	PL	5-3/4" PL Total	38.06	8,934
297	PL	5" PL Total	14,307.47	2,921,109
7	PL	6-1/2" PL Total	69.50	18,446
5	PL	6-3/4" PL Total	51.50	14,194

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Fontainebleau Podium

Las Vegas

ID			ext len	
22	PL	6" PL Total	181.15	44,382
272	PL	.7/8" PL Total	547.60	19,565
1	PL	7-1/2" PL Total	16.00	4,900
1,102	S3L	3/4X6-3/16 Total	1,102.00	949
5,346	S3L	3/4X8-3/16 Total	5,346.00	5,945
9	W	8X10 Total	68.00	680
247	W	8X18 Total	2,115.00	38,070
1	W	10X12 Total	16.00	192
24	W	10X26 Total	178.00	4,628
295	W	12X14 Total	2,833.00	39,662
1,261	W	12X16 Total	12,738.00	203,808
14	W	12X19 Total	302.00	5,738
6	W	12X22 Total	69.00	1,518
40	W	12X26 Total	311.00	8,086
1	W	12X30 Total	12.00	360
1	W	12X50 Total	35.00	1,750
83	W	12X65 Total	664.00	43,160
62	W	12X72 Total	173.00	12,456
501	W	14X22 Total	9,162.00	201,564
9	W	14X26 Total	203.00	5,278
17	W	14X30 Total	304.00	9,120
1	W	14X34 Total	25.00	850
19	W	14X68 Total	222.00	15,096
54	W	14X74 Total	644.00	47,656
35	W	14X82 Total	414.00	33,948
284	W	14X90 Total	4,167.33	375,060
1	W	14X99 Total	30.00	2,970
48	W	14X109 Total	726.00	79,134
110	W	14X120 Total	1,524.60	182,953
34	W	14X132 Total	1,152.00	152,064
54	W	14X145 Total	1,553.62	225,275
29	W	14X159 Total	818.00	130,062
116	W	14X176 Total	2,310.73	406,688
32	W	14X193 Total	1,093.16	210,980
16	W	14X211 Total	571.08	120,499
29	W	14X233 Total	874.75	203,817
9	W	14X257 Total	217.00	55,769
99	W	14X283 Total	3,411.00	965,313
32	W	14X311 Total	1,186.00	368,846
41	W	14X342 Total	425.75	145,607
10	W	14X370 Total	337.00	124,690
33	W	14X398 Total	1,265.00	503,470
21	W	14X426 Total	725.00	308,850
34	W	14X455 Total	1,077.33	490,187
26	W	14X500 Total	910.00	455,000
34	W	14X550 Total	1,215.67	668,617
39	W	14X605 Total	1,409.67	852,848
20	W	14X665 Total	681.00	452,865
185	W	14X730 Total	6,330.00	4,620,900

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Fontainebleau Podium

Las Vegas

ID			ext len	
806	W	16X26 Total	15,639.00	406,614
73	W	16X31 Total	1,796.00	55,676
3	W	16X40 Total	90.50	3,620
1	W	16X45 Total	31.00	1,395
449	W	18X35 Total	12,217.50	427,613
147	W	18X40 Total	3,707.00	148,280
3	W	18X46 Total	81.00	3,726
6	W	18X50 Total	135.00	6,750
1	W	18X60 Total	35.00	2,100
727	W	21X44 Total	21,375.50	940,522
4	W	21X48 Total	94.00	4,512
18	W	21X50 Total	508.00	25,400
7	W	21X55 Total	145.00	7,975
2	W	21X83 Total	42.00	3,486
5	W	21X101 Total	195.00	19,695
391	W	24X55 Total	12,452.67	684,897
98	W	24X62 Total	3,724.50	230,919
284	W	24X68 Total	8,586.00	583,848
175	W	24X76 Total	6,958.50	528,846
10	W	24X84 Total	421.00	35,364
7	W	24X94 Total	265.00	24,910
6	W	24X104 Total	194.00	20,176
1	W	24X131 Total	26.00	3,405
457	W	27X84 Total	18,791.67	1,578,500
11		27X94 Total	418.00	39,292
10		27X102 Total	380.00	38,760
412		30X90 Total	17,676.50	1,590,885
158		30X99 Total	6,748.50	668,102
15		30X108 Total	622.00	67,176
13		30X116 Total	595.00	69,020
6		30X148 Total	200.00	29,600
2		30X191 Total	115.00	21,965
1		30X391 Total	60.00	23,460
694		33X118 Total	35,771.17	4,220,998
339		33X130 Total	19,401.00	2,522,130
1		33X141 Total	39.00	5,499
8		33X152 Total	272.00	41,344
735		36X135 Total	36,838.50	4,973,198
9		36X150 Total	310.00	46,500
14		36X160 Total	540.00	86,400
1		36X170 Total	25.00	4,250
3		36X182 Total	180.00	32,760
3		36X210 Total	111.00	23,310
5		36X232 Total	184.50	42,804
10		36X256 Total	404.00	103,424
7		36X302 Total	344.00	103,888
1		36X330 Total	60.00	19,800
307		40X149 Total	15,661.50	2,333,564
118		40X167 Total	5,054.00	844,018
209		40X183 Total	11,415.00	2,088,945
42		40X199 Total	2,095.00	417,104
66		40X211 Total	2,860.50	603,566
123		40X215 Total	6,232.50	1,339,988
18		40X235 Total	882.50	207,388
99		40X249 Total	4,855.00	1,208,895

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Fontainebleau Podium

Las Vegas

ID			ext len	
1	40X264 Total		60.00	15,840
79	40X277 Total		4,403.00	1,219,631
3	40X297 Total		135.00	40,095
83	40X324 Total		4,038.17	1,308,365
1	40X327 Total		60.00	19,620
32	40X362 Total		1,593.00	576,666
28	40X372 Total		1,473.00	547,955
1	40X392 Total		40.00	15,680
79	40X397 Total		3,390.50	1,346,029
25	40X431 Total		1,364.50	588,100
97	40X503 Total		5,413.00	2,722,739
112	40X593 Total		5,986.00	3,549,698
35	44X230 Total		2,313.00	531,990
6	44X262 Total		305.00	79,910
18	44X290 Total		636.00	184,440
10	44X335 Total		481.50	161,303
65,332	GRAND TOTAL		612,556	71,609,292

35, 204, 65 Ten5

Estrada, Leo

From: Paul DeMaggio [pdemaggio@sandia.net]
Sent: Tuesday, June 19, 2007 7:39 AM
To: Estrada, Leo; Greg Naso
Subject: FW: Tonnage Justification

-----Original Message-----

From: Steve Wiger [mailto:SWiger@WWSteel.com]
Sent: Tuesday, June 19, 2007 8:30 AM
To: Paul DeMaggio
Cc: Krupicki, Roger
Subject:

Paul,
Here is the justification of the weight. JAMA model is 26,454 Tons. If we add the componets as listed in the Fontainebleau Justification file this adds 10,137.1 tons for a total of 36,591 tons. Call if you have any questions

The Following Items Need be added to the excell take - off from JAMA to get a complete project

Embeds	35593	
	15299	
	18249	
	14192	
	54302	
	81032	
	24563	
	7226	
		250456
Plate Girders	803336	
	55755	
	1761378	
	156973	
	433994	
	96688	
	30399	
	18053	
	76210	
	869451	
	50210	
	316559	
	466622	
129581		
		5264209
Closures & Deck Support	4737	
	61002	
	5761	
	94610	
	2251	
	28088	
	2301	
	79426	
	4870	
	14377	
	32371	
	5275	
	85688	
	448	
	50289	
	10675	
44789		
5397		
2914		
		535267

Vertical Bracing (wf with cover plates) & Loose Gusset Plates	69536	
	11528	
	292262	
	447403	
	70480	
	2164	
	9829	
	102294	
	35493	
	334984	
	5764	
		1381737

Built-Up 5 Plate Columns & Wide Flange Columns with Cover Plate	1429204	
	1214699	
	348722	
	74373	
	197536	
	271536	
	790163	
	180192	
	3239683	
		7746108

Loose Connections, Shim Plates, Templates, checkered plate	3016	
	1088	
	1615	
	1077	
	1031	
	3963	
	59	
	39	
	241	
	324	
	367	
	1776	
	56	
	301	
	1096	
	56	
	918	
	1082	
	367	
	512	
	26690	
	680	
	1096	
	26	
	61261	
		108737

Catwalk Channels	26814	
	72850	
		99664

Dep. Ex. 892

From: Bolio, Brandon. Sent: 6/11/2008 12:03 PM.
To: Susman, Jeff; Bender, Kyle D; Yunker, Bret D; Varnell, Jon M; Susman, Jeff; Bender, Kyle D; Yunker, Bret D; Varnell, Jon M.
Cc: Bonvicino, Paul R.; Bonvicino, Paul R..
Bcc: .
Subject: RE: Fontainebleau - IVI reports for Initial Bank Advance Date.

Paul and I discussed the outcome from yesterday's call and the plan of action. We're 20-20.

Paul: Lets have a follow-up call once you have had a chance to digest the supporting information for the \$201MM of additional costs. Please keep us apprised of your progress.

Separately, the project has achieved 95% of GMPs for Hard Costs and IVI will ask for the detail regarding the 50% of Costed FF&E (both are requirements prior to funding from bank proceeds, which is obviously delayed due to the equity injection). IVI will begin working on an updated construction consultant report, which is also due prior to funding from bank proceeds.

From: Bolio, Brandon
Sent: Tuesday, June 10, 2008 11:46 AM
To: 'Bonvicino, Paul R.'
Cc: Susman, Jeff; Bender, Kyle D
Subject: Fontainebleau - IVI reports for Initial Bank Advance Date

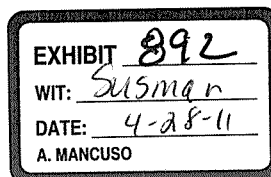
Paul:

As you likely know, the Initial Bank Advance Date for Fontainebleau Las Vegas is approaching (draws have been funded with proceeds from the bonds until now, which are down to ~\$19MM, net of interest payments due). The Initial Bank Advance Date would have happened this month if not for the \$xxxMM of additional costs / equity; and we still haven't reached resolution on this months' draw so I don't know when it will happen.

Whenever it does happen, the Disbursement Agreement requires certain benchmarks to be met and calls for an updated construction consultant report (see requirements below). When you get back in the office, please take a look at these requirements and let us know where Fontainebleau stands on the % of contracts complete and what your thoughts are on the IVI reports.

Thanks,
Brandon

3.3.14 Updated Consultant Certificates and Reports. Solely with respect to the initial Advance of funds from the Bank Proceeds Account made concurrently with or after Exhaustion of the Second Mortgage Proceeds Account, each of the Funding Agents and the Disbursement Agent shall have received an updated Construction Consultant Report which is consistent with the Construction Consultant Engagement Agreement and in form and substance satisfactory to the Bank Agent which will address (i) construction progress for the period from the Closing Date through the Initial Bank Advance Date and (ii) the Final Plans and Specifications that have been completed through such period to the extent not



theretofore delivered.

3.3.15 Subcontracts.

(c) Solely with respect to the Initial Bank Advance Date, there shall be in place (i) fixed price or guaranteed maximum price Contracts with Subcontractors in respect of 95% of the Total Hard Costs, and (ii) fixed price contracts in respect of not less than 50% of the Costed FF&E.

(d) In each case specified in clauses (a) through (c) above, the Project Entities shall have certified in the Project Entities' Advance Certificate that such Subcontracts and Contracts are consistent with the Resort Budget, the Project Schedule and the plans and specifications for the Project then in effect.

(e) In the case of each Advance from the Bank Proceeds Account made concurrently with or after Exhaustion of the Second Mortgage Proceeds Account, the Project Entities shall have delivered a copy of (i) each Contract or series of related Contracts with the same Person entered into between the Project Entities and any Contractor with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of \$25,000,000, (ii) each first tier Subcontract with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of \$25,000,000 (or any or series of related Contracts with the same person), and (iii) a copy of any Payment and Performance Bond required pursuant to Section 5.8 to the Disbursement Agent, the Construction Consultant and Bank Agent promptly after mutual execution and delivery thereof.

Brandon Bolio
Corporate Debt Products - Gaming & Leisure
Bank of America
214.209.3795 | work
214.209.0085 | fax

Dep. Ex. 896

From: Susman, Jeff. Sent: 9/15/2008 9:14 AM.
To: Keyston, Douglas.
Cc:
Bcc:
Subject: RE: WSJ NEWS ALERT: Lehman to Declare Bankruptcy; BofA Buys Merrill Lynch.

A big issue.

-----Original Message-----

From: Keyston, Douglas
Sent: Monday, September 15, 2008 7:52 AM
To: Susman, Jeff
Subject: Re: WSJ NEWS ALERT: Lehman to Declare Bankruptcy; BofA Buys Merrill Lynch

So. My estimate was off 50 - 60, helps but clearly still issues

D

Douglas Keyston
Cell: +1.415.640.0152

----- Original Message -----

From: Susman, Jeff
To: Keyston, Douglas; Howard, David; Bolio, Brandon; Varnell, Jon M; Yunker, Bret D; Bender, Kyle D
Sent: Mon Sep 15 04:59:08 2008
Subject: RE: WSJ NEWS ALERT: Lehman to Declare Bankruptcy; BofA Buys Merrill Lynch

Lehman has a total of \$400MM committed to the Retail component. There is a mezz loan of \$85MM which was fully funded at closing in June '07. There is also a \$315MM senior credit facility of which \$120MM was funded at closing. The unfunded amount is allocated as follows:

\$83MM for shared construction costs. \$5MM was funded in August '08 and the remainder will come in monthly as construction progresses.

\$62MM for tenant improvements / tenant allowances. The construction has not yet reached the point where TI / TA is being done.

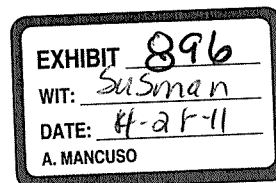
\$50MM for interest, fees, and expenses. I do not know how much of this has been spent to date.

There is approximately \$140MM unfunded costs plus any unfunded interest. Max unfunded is \$190MM.

Regards...Jeff

-----Original Message-----

From: Keyston, Douglas
Sent: Monday, September 15, 2008 1:03 AM
To: Susman, Jeff
Cc: Howard, David



Subject: Fw: WSJ NEWS ALERT: Lehman to Declare Bankruptcy; BofA Buys Merrill Lynch

FB: what is it, about a \$250MM hole, the unfunded piece?

Jeff, let's discuss the risk rating.

David, I welcome any and all bright ideas - will be a tough gap to plug....

D

Douglas Keyston
Cell: +1.415.640.0152

----- Original Message -----

From: WSJ.com Editors <access@interactive.wsj.com>

To: Keyston, Douglas

Sent: Sun Sep 14 21:54:16 2008

Subject: WSJ NEWS ALERT: Lehman to Declare Bankruptcy; BofA Buys Merrill Lynch

NEWS ALERT

from The Wall Street Journal

Sept. 15, 2008

Lehman Brothers said it would declare Chapter 11 bankruptcy, spelling the end of the 158-year-old firm. Separately, Bank of America said it will acquire Merrill Lynch in a \$50 billion, all-stock deal.

FOR MORE INFORMATION, go to: <http://online.wsj.com/>

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Dep. Ex. 898

From: Bill Scott. Sent: 9/26/2008 5:22 PM.
To: [-] Susman, Jeff; Varnell, Jon M; Yunker, Bret D; Bender, Kyle D; Bolio, Brandon; Howard, David; Fuad, Peter H - Legal; Richard Brunette; Fred Puglisi.
Cc: .
Bcc: .
Subject: RE: Conference call with Fontainebleau Las Vegas.

All:

As you probably know, the Fontainebleau disbursement has been funded.

I had a call just before the funding with the Highland lawyer **Redacted - Privileged**
Redacted - Privileged

He asserted that the Financing Agreements were not in full force and effect because of the Lehman filing, and that the condition was intended to convey a right to reasonable assurances that funding would be coming in the future.

I told him that we appreciated that Lehman Brothers Holdings, Inc. was in bankruptcy, but that the plain language of the Bankruptcy Code suggested that the agreements would remain in place and unaltered (notwithstanding the bankruptcy).

Highland takes the view that we are under a duty of diligence past the naked representations of the Company.

WMS

Sheppard Mullin 333 South Hope Street
48th Floor
Los Angeles, CA 90071-1448
213.620.1780 office
fax
www.sheppardmullin.com
William M. Scott IV

213.617.4276 direct | 213.443.2717 direct fax
818.515.3679 cell
bscott@sheppardmullin.com | Bio

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EXHIBIT 898
WIT: Susman
DATE: 4-28-11
A. MANCUSO

another party any transaction or matter addressed herein (or in any attachments).

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From: Susman, Jeff [mailto:jeff.susman@bankofamerica.com]
Sent: Friday, September 26, 2008 11:53 AM
To: Varnell, Jon M; Yunker, Bret D; Bender, Kyle D; Bolio, Brandon; Howard, David; Fuad, Peter H - Legal; Bill Scott
Subject: Conference call with Fontainebleau Las Vegas

When: Friday, September 26, 2008 2:00 PM-3:00 PM (GMT-06:00) Central Time (US & Canada).
Where: 866-285-7709; Access Code: 2162709

~~*~*~*~*~*~*~*~*

Dep. Ex. 899

From: Keyston, Douglas. Sent: 9/28/2008 12:31 PM.
To: Susman, Jeff.
Cc:
Bcc:
Subject: Fw: Key Risk Review.

Did we do well here or were we wide of the mark? Don't forward.

I think you and the team did well. Thanks. With the review Wed we should turn this info asap.

D

Douglas Keyston
Cell: +1.415.640.0152

----- Original Message -----
From: Barrett, John K - Risk
To: Keyston, Douglas
Sent: Sun Sep 28 09:22:34 2008
Subject: RE: Key Risk Review

I hear your point about Maintain strategy on deteriorating credits, but I would have more sympathy for it if they weren't Key Risk Names. The point of my question is that it will most likely be asked during Key Risk and I would like to be prepared to answer it. And I think we would be hard pressed not to call almost all Gaming deals deteriorating at this point, and I don't think that's being liberal.

John K. Barrett
Senior Risk Executive
Phone: 646-855-5605
Mobile: 469-853-5474
john.k.barrett@bankofamerica.com

-----Original Message-----
From: Keyston, Douglas
Sent: Saturday, September 27, 2008 9:40 PM
To: Barrett, John K - Risk
Cc: Susman, Jeff
Subject: Re: Key Risk Review

We'll clearly help however is necessary.

Redacted--Not Responsive

FB Miami is on budget. FBLV, as they finalized working drawings compared to design drawings, ran into cost overruns of \$190MM (recall this is a \$3Bn plus project). The owners have covered these costs with an equity contribution. The more material issue currently, is the Lehman financing of the retail

EXHIBIT 899
WIT: Susman
DATE: 4-28-11
A. MANCUSO

component, as advised

Condo sales have not commenced, however one of the downside scenarios in the CAM underwriting was no sales and renting the units as rooms which elevates leverage but works as a downside case.

We will send you the latest CAMs for **Redacted--Not Responsive**

Redacted--Not Responsive

We were - in this environment - liberal with the deteriorating moniker.

Redacted--Not Responsive

D

Douglas Keyston
Cell: +1.415.640.0152

----- Original Message -----
From: Barrett, John K - Risk
To: Keyston, Douglas
Sent: Sat Sep 27 15:55:31 2008
Subject: Key Risk Review

Doug

I'm preparing for the Key Risk Review and have a few questions:

Redacted--Not Responsive

Fontainebleau: Sounds like the Vegas condos aren't being sold yet, but do we have any color on what to expect? Are they still on budget?

Redacted--Not Responsive

Redacted--Not Responsive

Thanks

John K. Barrett
Senior Risk Executive
Phone: 646-855-5605
Mobile: 469-853-5474
john.k.barrett@bankofamerica.com

Dep. Ex. 901

From: Naval, Ronaldo. Sent: 9/22/2008 12:02 PM.
To: jfreeman@fontainebleau.com; wthier@fbresorts.com; jfreeman@fontainebleau.com; wthier@fbresorts.com.
Cc: Bill Scott; Susman, Jeff; Howard, David; Bill Scott; Susman, Jeff; Howard, David.
Bcc:
Subject: Fontainebleau Las Vegas Letter.

Dear Jim and Whitney,

Attached is a signed letter from Bank of America, N.A. as Administrative Agent.

Regards,
Ron Naval

Agency Management
Bank of America, N.A.
901 Main Street
Mail Code TX1-492-14-11
Dallas, TX 75202
Phone: (214) 209-1162
Fax: (877) 511-6124

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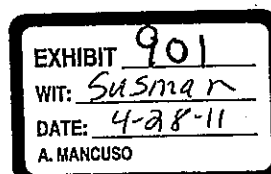
Replying to this e-mail:

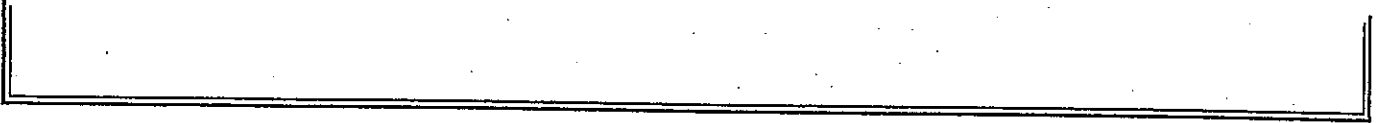
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Keeping your financial information secure is one of our most important responsibilities. You can learn how Bank of America keeps your personal information secure and how you can help protect yourself by clicking here.

Thank you.







September 22, 2008

Via Electronic Mail and Overnight Courier

James Freeman, Chief Financial Officer
Whitney Their, General Counsel
FONTAINEBLEAU LAS VEGAS, LLC and
FONTAINEBLEAU LAS VEGAS II, LLC
2827 Paradise Road, Fourth Floor
Las Vegas, Nevada 89109

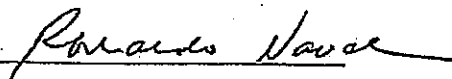
Re: Credit Agreement dated as of June 6, 2007 among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC, as Borrowers, the Lenders, and Bank of America, N.A., as Administrative Agent.

Dear Jim and Whitney:

With this letter, Bank of America, as Administrative Agent, is requesting you to schedule a telephone conference as soon as possible with the Lenders to discuss the implications of the recent bankruptcy filing by Lehman Brothers Holdings, Inc. on Fontainebleau's Las Vegas resort project.

Sincerely,

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

By: 

Title: Ronaldo Naval, Vice President

cc. Jeff Susman
David Howard



Recycled Paper

Dep. Ex. 902
FILED UNDER SEAL

Dep. Ex. 903

From: Kevin Rourke. Sent: 10/9/2008 10:51 AM.
To: Susman, Jeff; Howard, David; Susman, Jeff; Howard, David.
Cc: Andrei Dorenbaum; Carl Moore; Brad Means; Andrei Dorenbaum; Carl Moore; Brad Means.
Bcc: .
Subject: RE: Fontainebleau Las Vegas - follow up.

David / Jeff,

The memo posted by the Company doesn't address our concerns, and Highland requests that a lender call be scheduled for as soon as possible. Please advise timing and logistics for this call as soon as it is scheduled.

Thank you,

Kevin Rourke
Highland Capital Management, LP
13455 Noel Road, Suite 800
(972) 628-4100
krourke@hcmlp.com

-----Original Message-----

From: Susman, Jeff [mailto:jeff.susman@bankofamerica.com]
Sent: Wednesday, October 08, 2008 9:15 AM
To: Kevin Rourke
Subject: RE: Fontainebleau Las Vegas - follow up

It came in late yesterday. There was nobody here that could post it then. It will be posted shortly.

-----Original Message-----

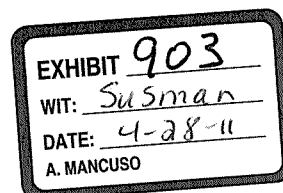
From: Kevin Rourke [mailto:KRourke@hcmlp.com]
Sent: Wednesday, October 08, 2008 9:13 AM
To: Susman, Jeff
Subject: RE: Fontainebleau Las Vegas - follow up

Jeff - any updates on the status of the expected letter from the Company? Thanks.

Kevin Rourke
Highland Capital Management, LP
13455 Noel Road, Suite 800
(972) 628-4100
krourke@hcmlp.com

-----Original Message-----

From: Howard, David [mailto:david.howard@bankofamerica.com]



Sent: Friday, October 03, 2008 11:27 AM
To: Kevin Rourke
Cc: Susman, Jeff
Subject: Re: Fontainebleau Las Vegas - follow up

Call postponed...waiting on company to re-schedule...pushing for Monday...pls let Brad know.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Kevin Rourke <KRourke@hcmlp.com>
To: Howard, David
Sent: Thu Oct 02 16:23:56 2008
Subject: Fontainebleau Las Vegas - follow up

David,

Any updates on timing of a lender call? Thanks.

Kevin Rourke
Highland Capital Management, LP
13455 Noel Road, Suite 800
(972) 628-4100
krourke@hcmlp.com

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Dep. Ex. 904

From: Howard, David. Sent: 10/10/2008 2:35 PM.
To: Susman, Jeff.
Cc:
Bcc:
Subject: Fw: Fontainebleau Resorts.

Just was making sure we had all of Highland's issues.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Kevin Rourke <KRourke@hcmlp.com>
To: Howard, David
Sent: Thu Oct 09 16:22:47 2008
Subject: FW: Fontainebleau Resorts

David ,

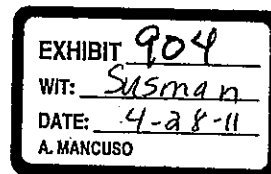
I am forwarding a note from our internal counsel that identifies the items he has discussed with Bill Scott of Sheppard Mullin, . . .

Kevin Rourke
Highland Capital Management, LP
13455 Noel Road, Suite 800
(972) 628-4100
krourke@hcmlp.com

From: Andrei Dorenbaum
Sent: Thursday, October 09, 2008 3:06 PM
To: Kevin Rourke
Subject: FW: Fontainebleau Resorts

Kevin-

We discussed with Bill the following:



1. 3.3.23 of the financing agreement requires confirmation the retail lenders funded (the remaining lenders need proof – wire confirmations, etc.)
2. If equity funds for the retail lenders then this does not satisfy 3.3.23
3. Under circumstances (lehman bk, etc.), agent must play a more active role when it has reason to know that reps/covenants are not satisfied by borrower and retail lenders

Andrei Dorenbaum

Assistant General Counsel

Highland Capital Management, L.P.

13455 Noel Road, Suite 800

Dallas, Texas 75240

office: 972-419-2573

fax: 972-628-4147

adorenbaum@hcmlp.com <BLOCKED::mailto:adorenbaum@hcmlp.com>

From: Bill Scott [mailto:bscott@sheppardmullin.com]

Sent: Friday, September 26, 2008 3:04 PM

To: Andrei Dorenbaum

Subject: Fontainebleau Resorts

Dear Andrei:

I just attempted to reach you on the telephone and left you a voice message. I was not able to zero through to reach an attendant.

I have a copy of your e-mail to Jeff Susman. We do not understand your assertion that the Financing Agreements are not in full force and effect by reason of the Lehman bankruptcy. Bankruptcy Code Section 365(e)(1) specifically provides that no executory contract may be terminated or modified solely based on the commencement of a Chapter 11 case. Do you have authority or documents supporting a contrary conclusion?

Please call me at the number below.

WMS

Sheppard Mullin <<http://www.sheppardmullin.com/images/smrhlogo-mini.jpg>>

333 South Hope Street
48th Floor
Los Angeles, CA 90071-1448
213.620.1780 office
fax
www.sheppardmullin.com <<http://www.sheppardmullin.com/>>

William M. Scott IV

213.617.4276 direct | 213.443.2717 direct fax.
818.515.3679 cell

bscott@sheppardmullin.com | Bio <<http://www.sheppardmullin.com/attorneys-101.html>>

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Dep. Ex. 905

From: Susman, Jeff. Sent: 12/30/2008 2:43 PM.
To: Lynch, Phillip J; Keyston, Douglas.
Cc:
Bcc:
Subject: RE: Re: FBLV.

Each month since Lehman's bankruptcy filing, the retail funds have come, but a day or two after the scheduled advance date. This is not a big deal since the scheduled advance date is just a date on the calendar each month off of which the due dates and response dates for the advance process are based. The actual advance date is the date on which all of the conditions have been met, including the receipt of the funds from the retail lenders.

As we understand, each month Lehman has funded its share of the advance. For December, we understand that Lehman is not going to fund, but one of the other retail lenders (ULLICO) will be funding Lehman's share. ULLICO had previously told the company that it would fund for Lehman for a short time until a permanent solution could be found.

In keeping with recent months, the scheduled advance date was yesterday...and it did not occur. The update that I have so far today is that, according to the servicer of the Retail Facility, ULLICO has funded its share and that of Lehman. The servicer is currently waiting to collect funds from the other retail lenders (Sumitomo and Nat City). Once collected, it will send the funds to the Disbursement Agent (BofA) and then we will fund the bank proceeds. Note that the bank proceeds are those from the funded term loan. BofA's commitment is REV. That will begin to fund sometime in mid '09.

Let me know if you have any questions or wish to discuss.

Regards...Jeff

From: Lynch, Phillip J
Sent: Tuesday, December 30, 2008 1:13 PM
To: Keyston, Douglas; Susman, Jeff
Subject: Re: FBLV

Hi Jeff/Doug,

Just trying to follow up on a question from earlier this month. Have there been any issues with Lehman funding the retail portion of FBLV or any other issues that have come up prior to year end with this name?

Hope all is well,

EXHIBIT 905
WIT: Susman
DATE: 4-28-11
A. MANCUSO

Phil

Phillip J. Lynch

Vice President

Credit Review | Enterprise Credit Risk

Bank of America

100 Federal Street|Boston, MA 02110

Ma5-100-12-01

(p)617.434.0513|(m)617.455.1774|(f)617.434.1411

Dep. Ex. 906

From: Lynch, Phillip J. Sent: 1/13/2009 2:35 PM.
To: Susman, Jeff; Keyston, Douglas; Susman, Jeff; Keyston, Douglas.
Cc: .
Bcc: .
Subject: RE: Re: QAR discussion.

Attached is the QAR. It was included in invite yesterday. Doug, I will be at my desk through 6:45 tonight if you get a chance to call me.

Jeff, I can call you in about ten minutes.

From: Susman, Jeff
Sent: Tuesday, January 13, 2009 2:33 PM
To: Lynch, Phillip J; Keyston, Douglas
Subject: RE: Re: QAR discussion

I am available.

Is there a report to review?

From: Lynch, Phillip J
Sent: Tuesday, January 13, 2009 1:29 PM
To: Keyston, Douglas
Cc: Susman, Jeff
Subject: RE: Re: QAR discussion

If you have availability, we can talk right now. (2:30)?

From: Keyston, Douglas
Sent: Tuesday, January 13, 2009 2:26 PM
To: Susman, Jeff; Lynch, Phillip J

EXHIBIT 906
WIT: Susman
DATE: 4-28-11
A. MANCUSO

Subject: RE: Re: QAR discussion

I'm available today per my Outlook calendar.

Doug

Douglas Keyston

Senior Risk Manager

Gaming & Sports

douglas.keyston@bankofamerica.com

+1 (415) 913-5808 (office)

+1 (415) 640-0152 (mobile)

From: Susman, Jeff
Sent: Tuesday, January 13, 2009 11:06 AM
To: Lynch, Phillip J; Keyston, Douglas
Subject: RE: Re: QAR discussion

I am available the rest of the day today.

I have one meeting tomorrow. My Outlook calendar is up to date.

From: Lynch, Phillip J
Sent: Tuesday, January 13, 2009 12:45 PM

To: Susman, Jeff; Keyston, Douglas
Subject: Re: QAR discussion

Hi Jeff & Doug,

Given the time constraints that exist for publishing the QAR and a tight schedule for Doug, I was hoping that I could schedule a meeting for just Jeff and I tomorrow to review the document and answer any questions, and that Doug could shoot an email to me with any questions/comments. This will allow for the document to be distributed and allow the OCC to review. Then we can circle back at some point over the next two weeks if further discussion is required. Let me know if this works for you and I can schedule a ½ hour meeting for tomorrow afternoon.

Thanks,

Phil

Phillip J. Lynch

Vice President

Credit Review | Enterprise Credit Risk

Bank of America

100 Federal Street|Boston, MA 02110

Ma5-100-12-01

(p)617.434.0513|(m)617.455.1774|(f)617.434.1411



Credit Review – Quarterly Assessment Report
December 31, 2008
Corporate Debt Products – Gaming & Sports



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1
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3
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Focus Credits			
Borrower	Risk Rating	TRE (\$MM)	Comments and Recommendations

Redacted - Not Responsive

Fontainebleau Las Vegas	7+	\$100.5	Fontainebleau remains a Focus Credit as a result of: (i) a lack of condo sales, the proceeds of which were to be used to reduce leverage, and (ii) uncertainty surrounding the client's access to separate retail financing facilities (\$400MM) of which Lehman Brothers holds a significant share. Prior to December, Lehman had funded its share of advances; however, in December, Lehman did not fund. An alternative retail lender (ULLICO) funded Lehman's share and has indicated it will fund Lehman's portion for a short time until a permanent solution can be attained.
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Redacted - Not Responsive

Borrower	Risk Rating	TRE (\$MM)	Comments and Recommendations
----------	-------------	------------	------------------------------

Redacted - Not Responsive

]

Redacted - Not Responsive

Attachment:
Appendix A – Rating Definitions

Credit Review –Quarterly Assessment Report
Appendix A – Rating Definitions

Level of Risk: an assessment of aggregate risk severity within a portfolio which could lead to a credit or capital loss during the next twelve months.

Rating	Description
<i>Low</i>	Current or prospective exposure to loss of earnings or capital is minimal. Credit-related losses do not meaningfully impact current reserves or result in modest provisions (or result in modest mark-to-market adjustments) relative to earnings or capital.
<i>Moderate</i>	Current or prospective exposure to loss of earnings or capital does not meaningfully impact financial condition. Credit-related losses do not seriously deplete current reserves or necessitate large provisions (or do not result in large mark-to-market adjustments) relative to earnings or capital.
<i>High</i>	Current or prospective exposure to loss of earnings or capital is meaningful. Credit-related losses may seriously deplete current reserves or necessitate large provisions (or result in substantive mark-to-market adjustments) relative to earnings or capital.

Direction of Risk: an independent assessment addressing the impact of prospective influences on portfolio performance over the coming 12 months. It provides a forward-looking indicator of portfolio performance. Five key influences are considered and judgmentally weighted each quarter for the Direction of Risk rating: (i) Asset Quality & Internal/External default probabilities, (ii) Credit Decisioning practices, (iii) Industry Segmentation of the portfolio, (iv) Account Concentrations, and (v) Capital Markets.

Rating	Description
<i>Decreasing</i>	Analysis of data indicates that positive changes in the current risk profile are expected over the next twelve months.
<i>Stable</i>	Analysis of data indicates that meaningful change in the current risk profile, either to the positive or negative, is not expected over the next twelve months.
<i>Increasing</i>	Analysis of data indicates increasing risk in the portfolio such that asset quality is expected to deteriorate meaningfully over the next twelve months.

Credit Process Evaluation: an assessment of overall effectiveness of credit processes in a business unit

Rating	Description
<i>Satisfactory</i>	Performance meets the established requirements for aspects being evaluated and, when considered in totality, reflects both comprehensive analyses and execution of credit procedures.
<i>Needs Improvement</i>	The business minimally meets the requirements in most aspects being evaluated. Ongoing performance at this level, however, is not sustainable and numerous opportunities for improvements exist that must be effectively addressed immediately by management.
<i>Unsatisfactory</i>	The overall performance of the credit practices reflect significant and intolerable deviation from established and accepted standards. Sufficient mitigating factors are not present and comprehensive corrective action is warranted.

Dep. Ex. 907

From: Susman, Jeff. Sent: 1/14/2009 3:18 PM.
To: Howard, David; Howard, David.
Cc:
Bcc:
Subject: RE: some time today?.

I am here and off of the phone. Call me if you can.

From: Howard, David
Sent: Wednesday, January 14, 2009 1:53 PM
To: Susman, Jeff
Subject: FW: some time today?

Hey, I'm speaking with Vinnie in about 10 minutes... Soffer is trying to get them to possibly "help out" the Lehman/retail situation in LV. Want me to loop you in?

David Howard
(704) 386-8316 phone
(704) 386-0255 fax
Mail Code: NC1-027-20-01
214 North Tryon St.
Charlotte, NC 28255

From: Tria, Vincent A
Sent: Wednesday, January 14, 2009 12:05 PM
To: Howard, David
Cc: Peterson, Mark A; Juall, Matthew
Subject: some time today?

David,

Can we get some time to continue our conversation on Turnberry / FB today? Trying to get Ron Curtis up to speed on FB so he can get GG in the loop. We are trying to figure out a way to help the Turnberry entities, but we need to know what's up w FB in order to make proper assessment.

Have to take my Dad to doc at 1. Should be open from 2:30 until a client meeting at 4. Does some time in that range work for you guys?

Vinnie Tria
Florida Region Executive
Commercial Real Estate Banking
305.533.2453 o

EXHIBIT 907
WIT: Susman
DATE: 4-28-11
A. MANCUSO

305.533.2456 f
vincent.a.tria@bankofamerica.com

Dep. Ex. 910

**CONFIDENTIAL—SUBJECT TO CONFIDENTIALITY STIPULATION
AND PROTECTIVE ORDER**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
CASE NO.: 09-2106-MD-GOLD/GOODMAN**

IN RE:

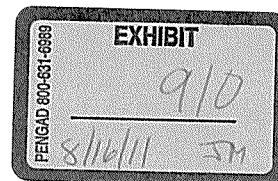
**FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION**

MDL NO. 2106

This document relates to all actions.

EXPERT REPORT OF PETER V. BADALA

June 29, 2011



**CONFIDENTIAL—SUBJECT TO CONFIDENTIALITY STIPULATION
AND PROTECTIVE ORDER**

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I. QUALIFICATIONS

1. My name is Peter V. Badala. I am a Managing Director at Navigant Consulting, Inc. (“Navigant”) and a senior member of the Global Construction Practice. Navigant is a consulting firm that provides dispute and investigation, economics, financial advisory and management consulting services in a variety of industries including real estate, construction and financial services.
2. I was previously President and a founder of the Barrington Consulting Group as well as a professional at Peterson Consulting. I began my career at the accounting firm of Arthur Andersen after receiving a Bachelor’s degree in Business Administration at Georgetown University.
3. Over the past thirty (30) years of practice, I have been retained on behalf of public and private owners and developers, contractors, sureties and financial institutions on over two hundred (200) construction projects around the world including the United States, Canada, Mexico, Europe, South America, the Caribbean, Asia and the Middle East. Hotels, resorts and casinos as well as other significant capital projects in Las Vegas have been among these matters.
4. My work has primarily involved (a) cost verification and contract close-out reviews, (b) project status reviews, (c) the evaluation and pricing of changed work, (d) preparation and analysis of claims for delay and disruption, (e) termination claims, (f) false claims investigations, and (g) economic damages studies. I have also been retained by sureties to analyze a contractor’s financial condition and assess financial exposure on troubled projects.
5. I have presented my findings in expert testimony at deposition and trial in federal and state courts, domestic and international arbitration, and before special administrative panel proceedings.

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6. In addition to my trial and arbitration testimony, I am a frequent and active participant in numerous alternative dispute resolution (ADR) settings including mediations, mini-trials, and settlement negotiations. I have been appointed by mediators and special masters to assist in the analysis of construction accounting, claims pricing, and economic damages issues thereto.

7. I lecture frequently on topics that include (a) construction claims analyses, (b) change order pricing and damage theories, (c) construction contract accounting practices and procedures, and (d) strategies to successfully resolve construction disputes prior to litigation. Specifically, I have participated as a speaker at the national and global SuperConferences, and the ABA Construction Forum/TIPS programs on topics that include theories and techniques in construction accounting and claims pricing. In addition, I served as a faculty member for PESI Law & Accounting CLE and a guest lecturer at the University of California at Berkeley's Extension Program. My focus in these seminars was related to construction contract accounting practices and procedures, change order analysis, and claims pricing methodology.

8. I am an associate member of the American Bar Association (ABA) and a member of the Association for the Advancement of Cost Engineering International (AACE International).

9. Matters where I have provided deposition or trial testimony in the last four (4) years and authored articles in the last ten (10) years are provided in a true and correct copy of my curriculum vitae attached as Exhibit A hereto.

10. For the services rendered in this matter, I am compensated at an hourly rate of \$700. Hourly rates for professionals working under my direction range from \$250 to \$700.

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II. ASSIGNMENT

11. I was retained by O'Melveny & Myers LLP, counsel for Bank of America, N.A., to review and evaluate the analysis and opinions set forth in the Report of Donald R. Boyken, CCC, FRICS, dated for reference purposes May 23, 2011 ("Boyken Report"). In addition to the Boyken Report, I was asked to consider select portions of the report of Shepherd G. Pryor IV, dated for reference purposes May 23, 2011 ("Pryor Report"). Mr. Pryor's opinions were based, in part, on an assessment of the construction process for the Project.

12. The opinions and observations set forth in this Report are based on documents and information I have considered as described in Section IV below. I understand that to date there have been no depositions taken of either Mr. Boyken or Mr. Pryor in this matter and that discovery is ongoing. Accordingly, my work is ongoing.

13. If I receive additional data, facts or information, I will review, evaluate and analyze these additional items as they become available and I may modify or supplement my Report as necessary to reflect any additional information that I receive.

III. SUMMARY OF OPINIONS

14. Based on my review of the Boyken Report, the Pryor Report, relevant documents and deposition testimony, and my analyses of data in the instant matter, I assert the following opinions:

Opinion 1: Mr. Boyken's opinion is of limited relevance.

Opinion 2: Mr. Boyken's analysis of the change files is flawed.

Opinion 3: Mr. Pryor's Opinion No. 2 is erroneous because his conclusions are based on an incomplete presentation of the facts.

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IV. INFORMATION CONSIDERED

15. Exhibit B to my Report provides a listing of the various categories of documents and information I relied on in this matter as of the date of this Report. The documents and other sources of information listed in Exhibit B are examples of the materials supporting my opinions and are not intended to be an all-inclusive list of relevant information. Select pages of the documents and information listed on Exhibit B may be used as exhibits at trial. Additionally, I may prepare graphic or illustrative exhibits to use at trial based on documents and information relied upon and my analysis of those documents and information. The documents and other sources of information noted in this report are examples of the materials supporting my opinions and are not intended to be an all-inclusive list of relevant information.

V. BACKGROUND

A. The Parties to the Litigation

16. I understand that Bank of America, N.A. ("BANA"), a nationally chartered bank with its main office in Charlotte, North Carolina, is the Defendant. BANA has been sued in its capacity as Bank Agent and Disbursement Agent under the Disbursement Agreement. The Disbursement Agreement appoints BANA as the Disbursement Agent for the various financing facilities for the Fontainebleau Las Vegas project. (Disbursement Agmt. § 9.1.) BANA was also appointed Administrative agent under the Credit Agreement for the Senior Credit Facilities. (Credit Agmt. § 9.1.) I further understand that one of BANA's duties as Administrative Agent was to serve as the "Bank Agent" for the Senior Secured Facilities under the Disbursement Agreement.

17. I understand that the Plaintiffs are a group of sophisticated investment funds that are the lenders, or purported successors-in-interest as lenders, to Fontainebleau Las Vegas under the Credit Agreement. Plaintiffs hold loans under either the Initial Term Loan and/or Delay Draw

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Term Loan Facilities (“Term Lenders”). Plaintiffs have alleged that BANA improperly “authorized the release of funds . . . despite knowing numerous conditions precedent were not satisfied,” and BANA allegedly ignored “other misrepresentations and adverse information” received from Fontainebleau. (Compl. ¶ 151.) In part, at issue in this litigation is what was known or knowable to BANA and the Construction Consultant based on their review of Advance Requests provided by the Borrower and its Contractor pursuant to the terms of the Disbursement Agreement.

B. The Project

18. The Fontainebleau Las Vegas Project is a partially-completed resort and casino development on an approximately twenty four and one-half (24.5) acre parcel at the northern end of the Las Vegas Strip (“Project”). The Project was originally envisioned as a 63-story, 3,800-room luxury hotel and casino, including 1,018 condominium units, approximately 280,000 square feet of retail space, a 100,000 square foot casino, 280,000 square feet of Class A convention and meeting space, 56,000 square foot spa, the world’s largest roof-top pool, a 3,200 seat theater, and upscale lounges and nightclubs. (Offering Memorandum at 27.)

19. The Project’s initial budget was \$2.9 billion. This included approximately \$1.7 billion of hard construction costs. (Disbursement Agmt., App. VII to Ex. C-1.)

C. The Developers and General Contractor

20. Fontainebleau Resorts, LLC (“FBR”) was the Project’s developer and the Borrowers’ parent corporation. FBR was a major developer and operator of luxury hotels, condominiums, convention facilities and gaming operations in key urban markets (Offering Memorandum at 23.) FBR had an experienced management team with a proven track record in the gaming and

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condominium and hotel development businesses, including its CEO and President Glenn Schaeffer and Executive Chairman Jeffrey Soffer.

21. Mr. Schaeffer was the President and Chief Financial Officer of the Mandalay Resorts Group and oversaw the development of numerous large-scale Las Vegas projects, including “THE hotel” at Mandalay Bay, the 1.5 million square foot Mandalay Bay Convention Center, Mandalay Bay Resort and Casino, Monte Carlo Resort and Casino, and Luxor Hotel and Casino. Under Mr. Schaeffer’s leadership, the Mandalay Resort Group built nearly 25,000 hotel rooms in approximately twenty years. And his success was recognized by *Institutional Investor*, which named him one of the top-ten corporate financiers in the United States. (*Id.* at 86.)

22. Mr. Soffer is one of the highest-ranking principals of Turnberry, a leading full service developer of condominiums, shopping centers, hotels and office buildings throughout the United States. Mr. Soffer had significant experience in the Las Vegas high-rise condominium market, which included developing the \$700-million, four-tower Turnberry Place development, the three tower 38-story condominium hotel Residences at MGM Grand, the two tower 45-story Turnberry Towers, and the 1.2 million square foot Town Square retail development. As of 2007, Turnberry had sold approximately \$1.7 billion worth of high-rise condominiums in the Las Vegas market. (*Id.* at 85)

23. Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (which merged into Fontainebleau Las Vegas, LLC) (“Borrowers”) were the borrowers. The Borrowers were wholly-owned, indirect subsidiaries of FBR. The Borrowers’ parent entities contributed significant equity to the Borrowers at the start of the Project, including: (i) \$430 million in cash equity from FBR that was provided at the closing of the Credit Agreement on June 6, 2007 (“Closing”); (ii) \$44 million in cash equity from FBR that was spent by FBLV on pre-Closing

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Project costs; (iii) land with an equity value of \$305.8 million; and (iv) a \$100 million Completion Guarantee from Turnberry Residential Limited Partner, L.P., an affiliate of FBR. (*Id.* at 29, 57.)

24. Turnberry West Construction, Inc. ("TWC" or "Contractor") was the general contractor and the construction manager for the Project. TWC was part of the Turnberry organization and an affiliate of FBR and the Borrowers. TWC was experienced in the Las Vegas market. In 2007, TWC had completed Turnberry Place, a four-tower \$700 million luxury high-rise condominium community near the Las Vegas Strip, and was in late stage development of (i) the Signature at MGM Grand, consisting of three 38-story towers on MGM Grand's property, (ii) Turnberry Towers, two 45-story high rise residential towers, and (iii) Town Square Las Vegas, a hotel and shopping complex on the Las Vegas Strip. (*Id.* at 50.)

D. The Financing

25. I understand that the Project was financed through a combination of debt and equity capital. The largest individual financing component was a \$1.85 billion senior secured debt facility ("Senior Credit Facility"). The Senior Credit Facility was governed by a credit agreement that was entered into on June 6, 2007 between the Borrowers and the lenders, including BANA, as issuing lender and Administrative Agent ("Credit Agreement"). The lenders under the Credit Agreement are referred to in my Report as the "Lenders."

26. Further, I understand that the Senior Credit Facility under the Credit Agreement had three components: (i) a \$700 million senior secured term loan facility ("Initial Term Loan"), (ii) a \$350 million senior secured delay draw term loan facility ("Delay Draw Term Loan," and together with the Initial Term Loan, the "Term Loans"), and (iii) an \$800 million senior secured revolving credit facility ("Revolving Loan").

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27. In addition to the Credit Agreement, Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Capital Corp., Fontainebleau Las Vegas Retail, LLC, Fontainebleau Las Vegas LLC, and Fontainebleau Las Vegas II, LLC, BANA as the Disbursement Agent and as the Bank Agent, Wells Fargo Bank, N.A., a Trustee for the Second Mortgage Notes, and Lehman, as the Retail Agent, entered into the Master Disbursement Agreement dated June 6, 2007 ("Disbursement Agreement"). The Disbursement Agreement governed the disbursement of funds loaned to Fontainebleau under several different credit facilities, including the Senior Credit Facility.

E. The Funding Process

28. I understand that the Credit Agreement and the Disbursement Agreement together created a two-step funding process for the Project. The Initial Term Loan was funded at Closing. Funding to the Borrowers from the Delay Draw Term Loan and Revolving Loan began with a notice requesting a loan under the Credit Agreement ("Notice of Borrowing"). The Lenders then remitted funds to BANA in its capacity as Administrative Agent, and BANA deposited these funds into the Bank Proceeds Account. The funds in the Bank Proceeds Account could not be used by the Borrowers to pay Project costs.

29. Next, the Borrowers submitted an Advance Request seeking the disbursement of funds in the Bank Proceeds Account to pay for Project costs (an "Advance"). The Advance Request's format was specified in the Disbursement Agreement. The Advance Request also required the Borrowers to provide certifications representing (a) the Project's progress and the accuracy of the Project Budget, anticipated costs and available funds, and (b) compliance with the Disbursement Agreement's conditions precedent to funding. (Disbursement Agmt. § 3.3.)

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30. TWC and the Project architect also provided certifications as part of the Advance Request. The Project architect certified, among other things, that “[t]he construction performed on the Project ... is in general accordance with the ‘Drawings and Specifications.’” (*Id.* Ex. C-3.) TWC certified, among other things, that “[t]he Control Estimate ... reflects the costs to be incurred by the General Contractor to complete the remaining ‘Work’ ... on the Project.” (*Id.* Ex. C-4.) BANA received these certifications before each Advance was funded. Moreover, as part of the Advance Request process, the Construction Consultant (*see* discussion at ¶¶ 33-37 below) reviewed the information submitted by Fontainebleau and then provided a certification approving or disapproving of the Advance Request.

31. The necessary conditions for approving a disbursement of funds included, among other things, that as of the date of the Advance Request (“Advance Date”): (a) each representation and warranty of each Project Entity was true and correct in all material respects as if made on such date; (b) no Default or Event of Default shall have occurred and be continuing; (c) the Project Entities shall have submitted an In Balance Report demonstrating that the In Balance Test was satisfied; (d) the Retail Agent and the Retail Lenders shall, on the date specified in the relevant Advance Request, make any Advances required of them pursuant to that Advance Request; (e) the Construction Consultant shall have submitted an Advance Certificate approving the corresponding Advance Request; and (f) each representation and warranty of each Project Entity set forth in Article 4 of the Disbursement Agreement is true. (Disbursement Agmt. § 3.3.)

32. After receiving an Advance Request, the Disbursement Agent “review[ed] the Advance Request and attachments thereto to determine whether all required documentation has been provided.” (Disbursement Agmt. § 2.4.4(a).) The Disbursement Agent also confirmed that the Advance Request contained all the representations, warranties, and certifications necessary to

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establish that the required conditions for an Advance had been satisfied. (*Id.* § 3.3.) If the Disbursement Agent received all required documentation and the Borrowers certified that all conditions had been satisfied, then the Disbursement Agent executed an Advance Confirmation Notice. Upon receipt of the Advance Confirmation Notice, the Bank Agent (along with the other Funding Agents), was required to make the funds available for disbursement to the Borrowers.

F. The Construction Consultant

33. Inspection & Valuation International, Inc. (“IVI”) was hired by BANA as the construction consultant for the Project (the “Construction Consultant”) under an engagement letter dated May 21, 2007. IVI’s role was “[t]o observe, interpret, and advise the funding consortium on the technical and direct cost funding aspects of the Project’s construction.” (IVI Engagement Letter at 3.) IVI has over forty (40) years of experience providing project management oversight for construction lenders, including monitoring large-scale casino projects with multi-billion dollar budgets. They have served as the construction consultant for lenders on Las Vegas projects including the Wynn Las Vegas, Planet Hollywood Las Vegas, and the Cosmopolitan Resort and Casino in Las Vegas.

34. IVI prepared Project Status Reports (“PSR”) for the Lenders, which provided detailed information regarding Project costs, schedule and status based on the information disclosed by the Borrowers and Contractor. A PSR would include (i) status of work completed during the time period covered, (ii) direct cost payment requisition and budget status, (iii) construction and disbursement schedules, and (iv) related documentation. IVI was also tasked with reviewing reports provided by the Borrowers and Contractors, including ACRs and RCRs (discussed below).

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35. The Construction Consultant relied on information maintained and provided by the Contractor and Borrowers. Without disclosure by the Contractor or Borrowers, information regarding the Project's budget and anticipated changes thereto would not be known to the Construction Consultant and, by extension, BANA. There were several sources of information regarding the Project's budget:

- **Advance Requests.** Each Advance Request was accompanied by a comprehensive information package. In addition to the Borrowers' representations and certifications, the Borrowers disclosed information regarding the Project's budget and any changes to the Project's remaining costs. A Remaining Cost Report ("RCR") detailing the remaining costs was included with the Advance Request. Costs were presented in a format that reflected the balance required to complete each line item, calculated as budget less costs incurred to date. This was the singular means for requesting the disbursement of funds and the format for the certification of the status of the project by the Borrowers to the Lenders under the terms of the Disbursement Agreement. (Disbursement Agmt. § 4.17; Ex. C-1, Appendix 8.).
- **Anticipated Cost Reports.** In addition to the Advance Requests, the Contractor (at the Borrowers' direction) periodically provided the Construction Consultant with a report of anticipated remaining costs required to complete the Project. (*See* Ambridge Dep. at 73; Kumar Dep. at 15.) The information was provided in Anticipated Cost Reports ("ACR"). (Barone Dep. at 18-19; Ambridge Dep. at 73.) These ACRs, when provided to IVI, were included as an exhibit to the PSRs. The ACR also provided an itemization of anticipated costs, but not supporting detail for potential changes to the Project budget. IVI understood that these reports were intended to present the totality of known potential costs for completing the Project pursuant to the scope defined in the loan documents.
- **Site Visits.** The Construction Consultant supplemented the information provided in the Advance Requests with attendance at project meetings and site visits, each once a month. (IVI Engagement Letter at 9; *see also* Barone Dep. at 9.) The Construction Consultant would meet with the Borrowers' and Contractor's representatives to discuss the Project's budget and status. The Construction Consultant also toured the Project to observe construction progress at the site. (*See* Construction Consultant Advance Certificate).

36. The Construction Consultant was required to review each Advance Request submitted by the Borrowers and determine whether "all required documentation has been provided, and [to]

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use commercially reasonable efforts to notify the Project Entities of any deficiency....”

(Disbursement Agmt. § 2.4.4.)

37. In connection with each Advance, IVI also affirmed that the information in each Advance Request was complete and complied with the Disbursement Agreement.

G. The Project Timeline

38. The Project broke ground in early 2007. Completion was originally scheduled for the end of 2009. The Borrowers submitted the first Advance Request on July 11, 2007 for a July 25, 2007 Advance, after which Advance Requests were submitted on a monthly basis. The first Advance from the Bank Proceeds Account was disbursed on August 25, 2008.

39. In May 2008, the Project budget was increased by approximately \$190 million through an equity infusion by the Borrowers.

40. For each monthly Advance Request from July 2007 through March 2009, BANA received all required documentation from the Borrowers, as well as the required certifications from the Borrowers, Contractor, Project architect and Construction Consultant. Accordingly, BANA processed the monthly Advance Requests through March 2009.

41. Despite repeated inquiries from IVI and the Disbursement Agent in early 2009 regarding potential Project budget issues (*see, e.g.*, Ambridge Dep. at 126:12-127:14; Yu Dep. at 24, 153, 157-158; Bolio Dep. at 177-178), the Borrowers continued to provide all necessary representations and certifications required by the Disbursement Agreement.

42. The Borrowers did not submit an Advance Request for April 2009. Instead, on April 13, they notified the Lenders that one or more events had “occurred which reasonably could be expected to cause the In Balance test to fail to be satisfied.” (Dep. Ex. 213) The notice further stated that the “Project Entities have learned that (i) the April Advance Request under the Retail

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Loan may not be fully funded, and (ii) as of today, the Remaining Costs exceed Available Funds.” (*Id.*)

43. Immediately thereafter, the Borrowers provided BANA with a schedule of anticipated costs as of April 14, 2009 revealing more than \$186 million in anticipated costs (Dep. Ex. 826), many of which were previously unreported, and proposed a Lender meeting to discuss the Project’s budget.

44. 

45. On April 20, 2009, the Revolving Loan lenders (“Revolving Lenders”) terminated the Revolving Loan. BANA, as Administrative Agent, sent a letter to the Borrowers and other lenders notifying them that the Revolving Lenders had determined that “one or more Events of Default have occurred and are continuing” and had terminated the Revolving Loan. (Dep. Ex. 827 and Credit Agmt. § 8.)

46. In May 2009, the Borrowers provided a revised budget for the “enhanced plan” (the “Enhanced Budget”) that increased the Project’s budget by \$375 million over the previous

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budget. At BANA's direction, IVI reviewed and prepared an analysis of the Enhanced Budget's construction costs ("Cost-To-Complete Review").

47. In connection with the Cost-To-Complete Review, the Borrowers provided IVI with an ACR dated as of April 30, 2009, together with certain back-up for the ACR. (*See* Cost-To-Complete Review, at 19, Ex. B.) In addition, IVI met with the Contractor's representatives and also reviewed the supporting documentation for certain pending items that it selected from the ACR.

48. IVI determined that, among other things, "[t]he [April 30, 2009] ACR includes \$298,053,918 in Pending Owner Changes; which have been detailed in attached summary sheets for each of the components. It 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 in prior ACRs submitted to IVI." (Cost-To-Complete Review, at 20. (BANA_FB00808826-955).)

49. The Borrowers declared bankruptcy on June 9, 2009.

H. The Boyken and Pryor Reports

1. The Boyken Report

50. According to his report, Mr. Boyken was retained: (1) "to review the 'Enhanced Budget' changes offered by the Developer in May 2009 and determine whether these items were new changes initiated by the Owner shortly before May 2009 or items had that [sic] been committed elements of the project for a longer period of time." (Boyken Report at 3); and (2) "to review the May 2008 Podium change orders for structural steel to determine whether changes were known and/or committed prior to May 2008." (*Id.* at 6.)

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51. Based on his review of 12 changes files (comprising 23 line items) of 400 open change files representing approximately \$26 million of the \$375 million in additional costs included in the May 2009 “Enhanced Budget”, Mr. Boyken concludes that “a significant portion of the claimed additional costs for the enhanced budget were costs that were previously known and / or committed [to by the Borrower] . . . I saw little or no documentation to suggest that some of the changes I reviewed were new, as represented by the Developer.” (Boyken Report at 19.)

52. As to the May 2008 Podium changes, Mr. Boyken reviewed a single change order and related documentation, and from this work concludes that “Turnberry Construction, Fontainebleau Resorts and WW Steel knew significant additional costs were necessary months before preparing the change order.” (*Id.* at 4, 16.)

2. The Pryor Report

53. Mr. Pryor was retained by Plaintiffs’ counsel to provide opinions on “certain banking issues” that involved BANA’s performance of its agency duties. (Pryor Report at ¶ 1.) Specifically, Mr. Pryor considered whether BANA made “commercially reasonable efforts” and utilized “commercially prudent practices in disbursing funds to the Borrowers between September 2008 and April 2009,” and acted in a manner that was “consistent with industry customs and practice and with the standard of care BANA was required to exercise” under the Credit and Disbursement Agreements. (Pryor Report at ¶ 6.) Further, Mr. Pryor evaluated whether BANA acted “with bad faith, fraud, gross negligence or willful misconduct” in disbursing funds between September 2008 and April 2009. (*Id.*)

54. In his Opinion No. 2, Mr. Pryor concluded that BANA “failed to exercise commercially reasonable efforts and commercially prudent practices and was, at a minimum, grossly negligent when it improperly disbursed funds to the Borrowers on a monthly basis from September 2008

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through March 2009.” (Pryor Report at ¶ 7.) One of the bases for Mr. Pryor’s conclusion is BANA’s alleged knowledge that “the Borrowers in all likelihood had failed to fully disclose all costs they anticipated would be required to complete the Project.” (*Id.*)

VI. BASIS FOR OPINIONS

OPINION 1: MR. BOYKEN’S OPINION IS OF LIMITED RELEVANCE.

55. Mr. Boyken’s opinion is not relevant to this case, except to the extent that he confirms the otherwise undisputed fact that the Borrowers and the Contractor had prior knowledge of significant added Project costs that were purposefully hidden from IVI and, by extension, BANA through the Advance Request process and the ACRs prepared by the Contractor.

56. Mr. Boyken opines that “a majority of the selected change orders [disclosed in the Borrowers May 2009 ‘Enhanced Budget’ provided to IVI] were known or committed changes from prior periods.” (Boyken Report at 7.) This opinion describes facts that were previously known to the Borrowers and Contractor, but never disclosed to IVI and BANA. My understanding is that there is no dispute between Plaintiffs and BANA that the Borrowers and Contractor concealed potential change orders and related cost information from BANA and IVI. And nowhere in his report does Mr. Boyken even attempt to demonstrate that IVI, BANA and the Lenders knew or could have known the volume, nature and extent of the costs of the potential change order population and related information disclosed by the Borrowers in its May 2009 “Enhanced Budget” to IVI and BANA.

57. My review of the underlying documents included in Mr. Boyken’s analysis of the limited change files he reviewed, as well as other documents and the sworn deposition testimony submitted in this case, supports my conclusion that BANA and its Construction Consultant, did not and could not know about a significant portion of the undisclosed potential change order costs because the Borrowers and Contractor intentionally misled BANA and the Lenders

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regarding the true state of the Project's budget. This finding is consistent with the conclusion reached by IVI in May 2009 in its Cost-To-Complete Review. In support, I offer Exhibit C to my report presenting a chronological sequence of the change file documentation reviewed by Mr. Boyken. I have grouped the component parts of his change file review into 12 chronologies for clarity of presentation.

OPINION 2: MR. BOYKEN'S ANALYSIS OF THE CHANGE FILES IS FLAWED.

58. With respect to the May 2009 change files, Mr. Boyken states that "I only reviewed a small portion of the total change requests and only a fraction of the documentation and found evidence from this sample that these costs were known and / or committed prior to establishing the Enhanced Budget. I also believe that further investigation would reveal additional known and / or committed costs." (Boyken Report at 17.)

59. Mr. Boyken began with IVI's May 2009 Cost-To-Complete Review and 400 open change files disclosed by the Contractor to IVI on May 4, 2009. For reasons that are not stated in his report, Mr. Boyken selected only forty-two (42) change files for review. (*Id.* at 4.) The Boyken Report does not explain what methodology (if any) he employed to select these items.

60. Mr. Boyken then further narrowed the scope of his analysis because, for many of the 42 change files, he found that he lacked "sufficient information" to reach a conclusion. Again, the Boyken Report does not explain what differentiated the files with "sufficient information" from those he disqualified. (*Id.*)

61. Mr. Boyken's opinion regarding the change files disclosed in May 2009 is based on only 6% of the total population, a figure too small to allow him draw conclusions through any recognized methodology about all of the change files or the state of the Project as a whole. Further, given the unclear basis for the selection of the initial sample of 42 change files and

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subsequent use of only a subset thereof, there is no basis for extrapolating or generalizing these findings to the 400 change orders or the state of the Project as a whole. Thus, Mr. Boyken's conclusions are valid, if at all, only for the files he actually reviewed.

62. Mr. Boyken's "comment" regarding the General Conditions budget is unsupported by the documentation he consulted and cites. (Boyken Report at 15.) He mischaracterizes the extent of the General Conditions budget changes, and provides no analysis the reasons for the changes in the budget. Moreover, he provides no basis for his assertion that the "burn rate" provides an early warning sign. Thus, Mr. Boyken's "comment" is flawed and provides no basis for concluding that the General Conditions budget changes provided any indication that the Project budget was in trouble. (*Id.*)

63. Mr. Boyken's review regarding the Structural Steel change is problematic because it is unsupported by the documents he consults and cites. (Boyken Report at 16.) Mr. Boyken provides no analysis of the process of negotiation, planning and refinement that the Borrowers, Contractor, consultants and subcontractor may have gone through before finalizing the steel-related change order. (*See id.*)

**OPINION 3: MR. PRYOR'S OPINION NO. 2 IS ERRONEOUS BECAUSE HIS
CONCLUSIONS ARE BASED ON AN INCOMPLETE PRESENTATION
OF THE FACTS.**

64. In his report, Mr. Pryor alleges that the Borrowers presented BANA with \$201 million in "change orders" in May 2008 "that had not been previously disclosed" and that "a substantial amount of these change orders had been known to the Borrowers for nearly a year." (Pryor Report at ¶ 64.) Mr. Pryor further states that BANA "failed to exercise commercially reasonable efforts and commercially prudent practices" during the period December 2008 to March 2009.

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(*Id.* at ¶ 7.) My analysis of the documents and information referenced by Mr. Pryor lead me to conclude that his Opinion No. 2 is misleading and factually incorrect.

65. In reference to the May 2008 submission of \$201 million in “change orders,” Mr. Pryor concludes that the “[S]ubmission of this volume of charge orders at a single time should have raised questions at Bank of America.” (Pryor Report at ¶ 63.) My review of the *Potential Change Order Log*, which is the source of the \$201 million cited by Mr. Pryor in his report, shows that many of the items on this list had in fact been: (1) previously disclosed by the Borrower and Contractor in its ACR; and (2) when disclosed to IVI addressed in a previous PSR. (*Id.* at ¶ 63, n.75.) For example, IVI’s PSR No. 12 discusses the fact that the “GC’s ACR identifies \$64,709,322 in potential extra cost exposure due to: the completion of design documents, modifications required to satisfy the neighbor’s concern about the garage façade, reduced LEEDs credit benefit, budget busts and concealed field conditions related to underground utilities. While not all are expected to become change orders, a contingency of \$7,533,952 would result if they did. At this time, the construction costs are not anticipated to exceed the Developer’s revised direct cost budget of \$1,909,734,213.” (IVI PSR No. 12 at ¶ 12 (BANA_FB0047482)).

66. Mr. Pryor makes liberal use of the term “change orders” in his Report. Contract changes, or as they are commonly termed, change orders, modify a construction project’s contract price, schedule, or other terms in a construction project. Changes to a project budget may increase or decrease cost and can be paid for using the project’s equity or debt capital.

67. There are a number of factors that can cause a change to a capital project including, but not limited to, design evolution, previously unanticipated site conditions, and weather delays. It is important to understand that the need for a change order does not necessarily suggest that a

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project is in distress. In fact, changes in a construction project are normal and expected.

However, the existence of a “potential change order” proposal does not suggest it will ultimately be approved and incorporated into the Project as a formal change order. The Borrowers’ decision on whether or not to accept a potential change order proposal is influenced by many factors and issues which can lead to protracted discussions and negotiations that delay approval of the change proposal, or in the end, its rejection.

68. The process that defines how a proposed change order is formally recognized as a change to the work and price is defined by the construction contract. The changes clause of a construction contract is the means by which a proposed scope of work and related cost are formally incorporated into the contract. In this particular matter the contract between FBR and TWC consists of two standard industry forms: AIA Document A114 – 2001, Standard Form of Agreement between Owner and Contractor where the Basis of Payment is the Cost of Work Plus a Fee without a Guaranteed Maximum Price, and AIA Document A201 – 1997, General Conditions of the Contract for Construction (“Construction Contract”).

69. Article 6 of AIA Document A-114 – 2001, Changes in the Work, gives the owner the authority to issue changes to the work, within the general scope of the work, consisting of additions, deletions or other revisions. All such changes must be in writing. This article entitles the contractor to an equitable adjustment in the time and/or cost to perform the work.

70. Article 7 of AIA Document A201 – 1997, Changes in the Work, authorizes changes to the work either by change order or by construction change directive. Change orders have to be agreed upon by the owner, the contractor and the architect. However, construction change directives only have to be agreed upon by the owner and the architect.

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71. Thus, discussions about potential changes, preparation and submission of change order cost and time estimates, procurement of cost quotations from subcontractors, suppliers and vendors, and negotiations with the owner over scope, time and cost of changed work are all necessary to reach agreement on a change order.

72. None of these actions represent authorization to proceed with the changed work. Any work conducted by the Contractor or its sub-contractors would be “at-risk” with no authorized means of paying for such work until such time as a change order was signed by the Borrowers.

73. Thus, the construction contracts contemplate ongoing discussions between the contractor, subcontractors, developer and others involved in the construction process over the work to be performed on a project and its cost. This is an aspect of the construction process ignored by Mr. Pryor.

74. Mr. Pryor’s opinion that the Borrowers’ presentation of \$201 million in what Mr. Pryor incorrectly characterizes as “change orders” in May 2008 would somehow cause BANA to know that the Borrowers in all likelihood had not provided timely and accurate information concerning the increasing costs to complete the Project is misleading and overly simplistic. (*See* Pryor Report at ¶¶ 58-81.) I understand that the Borrower had received a \$190.3 million equity infusion from an outside investor. The construction budget was revised to approximately \$2.099 billion that enabled the funding of the budget change. (*See* PSR No. 14, at 14 (BANA_FB00039760-40499).)

75. Mr. Pryor also incorrectly claims that BANA “did nothing to determine whether the change orders reported in May 2008 were known or pending prior to that date or whether there were additional, undisclosed change orders” and then baldly alleges that, “[BANA] never sought to reconcile the information it had from various sources suggesting that the Borrowers were

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understating the anticipated costs to complete.” (Pryor Report at ¶ 60) By failing to provide the necessary context that Borrowers disclosed these changes and immediately provided equity funding sufficient to satisfy these obligations. Mr. Pryor mischaracterizes the circumstances in May 2008.

76. In fact, IVI pursued additional information from the Borrowers and Contractor and focused on the issues that were discernable from the project reporting, project meetings and IVI’s regularly occurring site walks. As is evident in the PSRs throughout this period, the factors most likely to affect project completion receive the greatest commentary including acceleration impacts, project schedule delays, subcontractor claims and General Conditions costs. Items that could be observed on the Construction Consultant’s regularly occurring site walks were being analyzed and reported in the PSRs. Truthful reporting, representations and reporting by the Borrowers and Contractor were vital to a comprehensive assessment by IVI.

77. Next, Mr. Pryor asserts that BANA and IVI knew that the Borrowers had failed to fully disclose all the costs required to complete the Project between December 2008 through March 2009. Mr. Pryor further asserts that, as a result, BANA failed to exercise reasonable efforts and commercially prudent practices to obtain that information from the Borrowers. (*See* Pryor Report at ¶ 83.) As described above, this conclusion is not consistent with the facts and Project information.

78. As discussed below, the testimony from senior TWC executives clearly shows that the Borrowers and Contractor were purposely withholding hundreds of millions of dollars of cost increases from IVI and BANA. Moreover, the documents and information I reviewed show that both IVI and BANA, in fact, used commercially reasonable efforts to obtain additional data and information to allow IVI to validate the Borrowers’ and Contractor’s representations.

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79. TWC's former CEO Robert Ambridge testified that the Borrowers were building a "modified expanded project" beyond what was disclosed to IVI, BANA and the Lenders. This meant that the Project's construction budget would be significantly higher than what was disclosed by the Borrowers. Mr. Ambridge explained "[s]o budgets in the strict context of the defined project in the loan documents may actually have been achievable; however, the scope of the project as presented to TWC by Fontainebleau was a modified expanded project." (Ambridge Dep. at 30-31.)

80. The Borrowers made false certifications regarding the Project's design and budget. The Budget Amendment Certification requires the Contractor to attest that, "[t]he General Contractor is unaware of any change in the plans and specifications for the Project set forth in the drawing issued for construction as of the date of the previous advance or any other change to the design, layout, architecture or quality of the Project set forth in the drawings issued for construction from that which was contemplated on the date of the previous advance, (unless such change is required by law) (a "Scope Change"), other than as set forth in Schedule 1." (Dep. Ex. 671). Under questioning at his deposition, Mr. Ambridge testified that he refused to sign the Budget Amendment Certification beginning in 2008 because of concerns about the accuracy of the certifications and representations, and insisted that Jeff Soffer sign them instead. (See Ambridge Dep. at 24-25; *see also* Dep. Ex. 667). Mr. Soffer ultimately signed the certifications. (BANA_FB00065858; *see also* Dep. Ex. 669). Clearly, Mr. Ambridge was aware that the information being provided to the Lenders through the Advance Requests was incorrect. In his own words, referring to the Budget Amendment Certification and related information, Mr. Ambridge testified "I had significant reason to be concerned that those were not true representations." (Ambridge Dep. at 30: 1-2).

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81. Mr. Ambridge also testified that the Borrowers and Contractor kept two budgets for the Project. One budget reflected the scope underpinning the financing provided by the Plaintiffs and other Lenders, and another reflecting an “expanded” Project scope. Mr. Ambridge testified that the information provided to IVI in the ACRs “conformed to whatever the approved budget was at the time. . . [m]eaning the bank budget plus any approved budget amendments.”

(Ambridge Dep. at 73-74.) He added that the Borrowers and Contractor kept an “internal ACR” that included costs beyond those that were disclosed to IVI, BANA and the Lenders. (*Id.*)

82. Mr. Ambridge further testified that another senior TWC executive had similar concerns. He claimed that “Roger McElfresh had serious concerns about signing the draw requests, although he had previously signed a fair number of them . . . his concerns were similar to mine, that the representations about being able to complete the project within budget, the approved budget, what’s called the bank budget, as augmented by equity infusions, the 190 million specifically, was inaccurate, and that the completion of the project by the contract date or the loan covenant dates was also not possible.” (*Id.* at 111: 7-22.)

83. As a result of the Borrowers’ and Contractor’s active efforts to intentionally conceal the true status of the Project budget and furnishing misleading certifications, IVI and BANA could not have obtained accurate information regarding the Project’s construction costs. Mr. Pryor ignores this impediment faced by IVI and BANA.

84. Mr. Pryor also fails to acknowledge that between December 2008 and March 2009 IVI and BANA repeatedly and consistently pressed the Borrowers to confirm the accuracy and completeness of their construction cost-related reporting and disclosures. Indeed, it was the pressure from BANA and IVI that forced the Borrowers to disclose additional costs and modify

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the Project budget in 2009. (*See* Ambridge Dep. at 126:12-127:14; Yu Dep. at 236:22-237:25, 240:11-24.)

VII. CONCLUSION

85. I conclude that Mr. Boyken's opinions are relevant only to the extent he correctly describes facts that were previously known to the Borrowers and Contractor, but never disclosed to IVI. Further, given the lack of transparency in the selection of the initial 42 change file sample from the 400 change files disclosed to IVI in May 2009, and subsequent use of only a limited number of that sample, there is no basis for extrapolating or generalizing Mr. Boyken's findings to the 400 change orders or the state of the Project as a whole. Moreover, because the information that comprised the Enhanced Budget was withheld from IVI until May 2009, it was not possible for BANA to have considered it prior to disclosure to IVI in May 2009 by the Borrower and Contractor. Beyond that, in my opinion, the Boyken Report has no relevance to the facts at issue in this lawsuit.

86. In addition, Mr. Pryor's mischaracterization of the issues and events surrounding the May 2008 budget increase leads him to reach erroneous and unfounded opinions. His opinion ignores that neither IVI nor BANA would have been able to learn the truth about the Project's financial condition because the Borrower and Contractor intentionally withheld information regarding change orders and the budget.

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Respectfully Submitted by:



Peter V. Badala
Managing Director
June 29, 2011

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VIII. APPENDIX AND EXHIBITS

EXHIBIT A

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EXHIBIT A

CURRICULUM VITAE OF PETER V. BADALA



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American Bar Association
American Association of Cost
Engineers, Intl.

Peter V. Badala

Mr. Badala is a Managing Director and a senior member of the Global Construction Practice. For the past 30 years, Mr. Badala has provided forensic accounting, cost validation, claims preparation and analysis and expert testimony to clients on more than 200 construction projects around the world. His assignments have included the preparation, defense and resolution of claims for changed/extra work, delay, disruption, lost productivity and terminations (for convenience and default), project status reviews, the review and analysis of contractor billings for reasonableness and compliance with the contract terms and conditions (e.g. allowable and allocable) and the performance of interim and close out contract audits, funds tracing, project risk management evaluations and increased cost studies.

Mr. Badala's work on these engagements has included analyses of original project estimates and contract pricing proposals, the propriety and reasonableness of contract expenditures, the determination of equipment costs, and the application of acceptable claims pricing methodologies to measure the financial impacts due to project delay, acceleration, and lost productivity/loss of efficiency. He is knowledgeable about construction accounting, bid pricing and estimating techniques, as well as Eichleay-type and other formula approaches used in calculating extended home office overhead.

Mr. Badala has also been retained by clients to conduct independent investigations into allegations of false claims, and to quantify the economic damages (e.g. diminution in asset value, lost profits, cost of repair/replacement and/or increased operating costs) that are the consequence of schedule delays, defective construction, product liability litigation or the alleged failure of the contractor to meet the contract's performance specifications. Mr. Badala has also been retained by sureties to analyze a contractors' financial condition and assess their financial exposure on unfinished projects.

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Representative Construction Project Experience

- Airports
- Chemical & Petrochemical Plants
- Courthouses
- Correctional Facilities
- Convention Centers
- Embassies
- Floating Production Offshore Storage (“FPSO”) Facilities
- High Rise Office/Residential/Mixed-Use Projects
- Highways, Roads and Bridges
- Hospitals
- Hotels, Resorts & Casinos
- LNG Facilities
- Manufacturing
- Mixed-Use Projects
- Power Plants (nuclear, cogeneration, geothermal, hydroelectric)
- Oil Refineries
- Pharmaceutical
- Pipelines
- Rail & Light Rail
- Residential Complexes (apartments, condominiums and single family)
- Schools and Universities
- Shopping Centers/Malls
- Shipbuilding & Repair
- Tunnels
- Water & Wastewater Plants

Trial & Arbitration Testimony

Barracuda & Caratinga Leasing Company B.V. v. Kellogg Brown & Root LLC (Uncitral Arbitration, 2010)

Dick Pacific Construction Co., Ltd. vs. Lai Honua, LLC (Dispute Prevention and Resolution, Inc., 2008)

Sierra Blanca Constructors v. URS Corporation (American Arbitration Association, 2007)

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Deposition Testimony

Virgin Valley Water District v. Vanguard Piping Systems (Canada), Inc., Vanguard Pipe & Fittings, Ltd., VG Pipe LLC, C-B Supplies, Ltd., Canada, Viega, LLC and Viega NA, Inc. (United States District Court, District of Nevada, 2010)

Dilbeck & Sons, Inc., et al.; Sharon Dilbeck, an individual; and Fred Wayne Dilbeck, an individual v. Zurich American Insurance Company, Steadfast Insurance Company (Monterey County Superior Court, 2009)

RCMC, Inc. vs. Westchester Surplus Lines Insurance Company, et al. (Superior Court for the State of California, Napa County, 2008)

Sierra Blanca Constructors v. URS Corporation (American Arbitration Association, 2007)

Dick Pacific Construction Co., Ltd. vs. Lai Honua, LLC (Dispute Prevention and Resolution, Inc., 2007)

Lecturing and Publishing Credentials

- *Pricing Contractor Delay Costs*, (Cost Engineering Event, Rotterdam, The Netherlands, April 2011)
- *Construction Claims: Schedule & Cost Analysis*, (University of California Berkeley Extension, 2009)
- *Analyzing Construction Contract Claims*, (PESI California Construction Law Conference, October 2007)
- *Scheduling Issues and Problems That Occur on Infrastructure Projects ~ And How to Avoid Them*, (The “Owner’s” International Construction Superconference, May 2004)
- *Top 10 Secrets to a Successful Project*, (The “Owner’s” Construction Superconference, December, 2003)
- *Doing Business with the Colonies: How to Avoid Another Tea Party*, (The 2nd Global Project Superconference, May, 2003)
- *Counting the Beans: Analyzing Project Costs*, (The ABA Forum on the Construction Industry, 2003 Annual Meeting, May 2003)
- *Path to Successful Claim Dollar Recovery on Construction Claims*, (The “Contractor’s” Construction Superconference, December 2002)
- *Overhead Claims on Public Contracts: Are Both Sides Wrong?* (The Public Construction Superconference, December, 2001)

EXHIBIT B

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MATERIALS CONSIDERED

1. Second Amended Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Relief, Avenue CLO Fund, Ltd., et al., vs. Bank of America, N.A., et al., Case No.: 09-MD-02106-CIV-GOLD/MCALILEY (S.D. Fla. Jan. 15, 2010).
2. Amended Complaint, ACP Master, Ltd. and Aurelius Capital Master, Ltd., vs. Bank of America, N.A., et al., Case No.: 09-CV-8064 (LTS)(THK) (S.D.N.Y., Jan. 15, 2010).
3. Plaintiffs' Rule 26 Initial Disclosures, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/MCALILEY (S.D. Fla. Jan. 22, 2010).
4. Defendants' Joint Motions to Dismiss the Term Lender Complaints and Supporting Memorandum of Law, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Feb. 18, 2010).
5. Declaration of Thomas C. Rice in Support of Defendants' Joint Motions to Dismiss the Term Lenders Complaints, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Feb. 18, 2010).
6. Defendant Bank of America, N.A.'s Motion to Dismiss the Term Lenders' Disbursement Agreement Claims and Support Memorandum of Law, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Feb. 18, 2010).
7. Plaintiffs' Responses to Defendants' First Set of Interrogatories, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Mar. 8, 2010).
8. Corrected Joint Opposition to Defendants' Motion to Dismiss the Term Lenders' Claims Against the Revolving Lenders, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Mar. 22, 2010).
9. Joint Opposition to Defendant Bank of America, N.A.'s Motion to Dismiss the Term Lenders' Disbursement Agreement Claims, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Mar. 22, 2010).
10. Declaration of John B. Heaton, III Opposing Defendants' Joint Motion to Dismiss the Term Lender Complaint, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Mar. 22, 2010).

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11. Defendant Bank of America, N.A.'s Reply Memorandum of Law in Further Support of Its Motion to Dismiss the Term Lenders' Disbursement Agreement Claims, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Apr. 5, 2010).
12. Reply Memorandum in Further Support of Defendants' Joint Motions to Dismiss the Term Lender Complaints, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. Apr. 5, 2010).
13. Amended MDL Order Number Eighteen: Granting in Part and Denying in Part Motions to Dismiss [DE35]; [DE36]; Requiring Answer to Complaints; Vacating Final Judgment, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. May 28, 2010).
14. Plaintiffs Caspian Alpha Long Credit Fund, L.P., Monarch Master Funding Ltd., and Normandy Hill Master Fund, L.P.'s Responses to Defendants' First Set of Interrogatories, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. June 4, 2010).
15. Plaintiffs Caspian Alpha Long Credit Fund, L.P., Monarch Master Funding Ltd., and Normandy Hill Master Fund, L.P.'s Rule 26 Initial Disclosures, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/BANDSTRA (S.D. Fla. June 4, 2010).
16. Plaintiff Genesis CLO 2007-1 Ltd's Amended Responses to Defendants' First Set of Interrogatories, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/GOODMAN (S.D. Fla. Aug. 18, 2010).
17. Plaintiffs Scoggin Capital Management II LLC, Scoggin International Fund Ltd, and Scoggin Worldwide Fund Ltd's Rule 26 Initial Disclosures, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/GOODMAN (S.D. Fla. Oct. 4, 2010).
18. Plaintiffs Scoggin Capital Management II LLC, Scoggin International Fund Ltd, and Scoggin Worldwide Fund Ltd's Responses to Defendants' First Set of Interrogatories, In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/GOODMAN (S.D. Fla. Oct. 4, 2010).
19. Avenue Term Lender Plaintiffs' Responses to Second Set of Interrogatories from Defendant Bank of America, N.A., In Re Fontainebleau Las Vegas Contract Litigation, Case No.: 09-MD-02106-CIV-GOLD/GOODMAN (S.D. Fla. Mar. 24, 2011).

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20. Voluntary Petition, In Re Fontainebleau Las Vegas Holdings, LLC, Case No: 09-21481-AJC (Bankr. S.D. Fla. June 9, 2009).
21. Declaration of Robert W. Barone, In Re Fontainebleau Las Vegas Holdings, LLC, Case No: 09-21481--BKC-AJC (Bankr. S.D. Fla. July 1, 2009).
22. Complaint and Jury Demand for Fraud, Breach of Fiduciary Duty, Negligence and Conspiracy, Brigade Leveraged Capital Structures Fund, LTD., et al v. Fontainebleau Resorts, LLC, et al., Case No.: A-11-637835-B (Clark County Nev. Dist. Ct., Mar. 25, 2011).
23. Expert Report of Donald R. Boyken, with exhibits, *In Re Fontainebleau Las Vegas Contract Litigation*, Case No.: 09-MD-02106-CIV-GOLD/GOODMAN (S.D. Fla. May 23, 2011).
24. Expert Report of Shepherd G. Pryor IV, with exhibits, *In Re Fontainebleau Las Vegas Contract Litigation*, Case No.: 09-MD-02106-CIV-GOLD/GOODMAN (S.D. Fla. May 23, 2011).
25. Deposition Transcript of William Newby, with exhibits (Feb. 7, 2011).
26. Deposition Transcript of Herbert Kolben, with exhibits (Feb. 22, 2011).
27. Deposition Transcript of McLendon P. Rafeedie, with exhibits (Feb. 24, 2011).
28. Deposition Transcript of Bret Yunker, with exhibits (Mar. 1, 2011).
29. Deposition Transcript of David Howard, with exhibits (Mar. 11, 2011).
30. Deposition Transcript of Jon Varnell, with exhibits (Mar. 17, 2011).
31. Deposition Transcript of Jeanne Brown, with exhibits (Mar., 20, 2011).
32. Deposition Transcript of Jim Freeman, with exhibits (Mar. 23, 2011).
33. Deposition Transcript of Deven Kumar, with exhibits (Mar. 24, 2011).
34. Deposition Transcript of Kevin Rourke, with exhibits (Mar. 29, 2011).
35. Deposition Transcript of Brandon Bolio, with exhibits (Mar. 30, 2011).
36. Deposition Transcript of Ronaldo Naval, with exhibits (Apr. 1, 2011).
37. Deposition Transcript of Robert Ambridge, with exhibits (Apr. 4, 2011).
38. Deposition Transcript of Henry Yu, with exhibits (Apr. 7, 2011).

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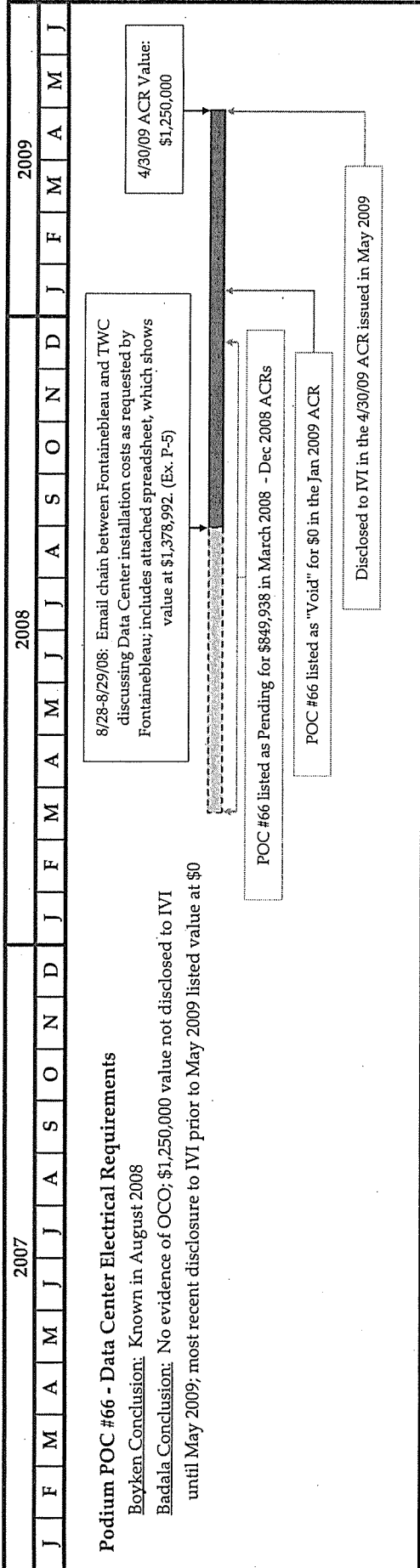
EXHIBIT B

39. Deposition Transcript of Robert Barone, with exhibits (Apr. 11, 2011).
40. Deposition Transcript of Albert Kotite, with exhibits (Apr. 12, 2011).
41. Deposition Transcript of Jeff Susman, with exhibits, (Apr. 28, 2011).
42. Lender's Presentation, Fontainebleau Las Vegas (Mar. 6, 2007).
43. Offering Memorandum (Private), Fontainebleau Las Vegas, \$1,850,000,000 Senior Secured Credit Facilities (Mar. 2007).
44. Offering Memorandum (Public), Fontainebleau Las Vegas, \$1,850,000,000 Senior Secured Credit Facilities (Mar. 2007).
45. Credit Agreement between Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC, as Borrowers, and Bank of America, N.A., as Administrative Agent, Issuing Lender and Swing Line Lender (with exhibits and schedules) (June 6, 2007).
46. Master Disbursement Agreement between Fontainebleau Las Vegas Holdings, LLC et al., and Fontainebleau Las Vegas II, LLC, Bank of America, N.A., as Bank Agent, Wells Fargo Bank, N.A., as the Trustee, Lehman Brothers Holdings INC., as the Retail Agent, and Bank of America, N.A., as the Disbursement Agent (with exhibits) (June 6, 2007).
47. Fontainebleau Notice of Merger (Feb. 2, 2009).
48. Construction Contract between Fontainebleau Las Vegas, LLC and Turnberry West Construction, Inc. (June 6, 2007).
49. Cost to Complete Review, Inspection & Valuation International, Inc. (May 15, 2009).
50. Proposal, Project Management Oversight Services ("IVI Engagement Letter"), Inspection & Valuation International, Inc., (May 21, 2007).
51. Preliminary Opinion Letter, Inspection & Valuation International, Inc., (June 1, 2007).
52. IVI Project Status Reports 1–23, with attachments (June 2007 through Apr. 2009).
53. Advance Requests, with attachments (Aug. 2007 through Mar. 2009).
54. Draw Binders (June 2007 through Apr. 2009).
55. Documents on disk provided by Donald R. Boyken in support of his expert report for plaintiffs.

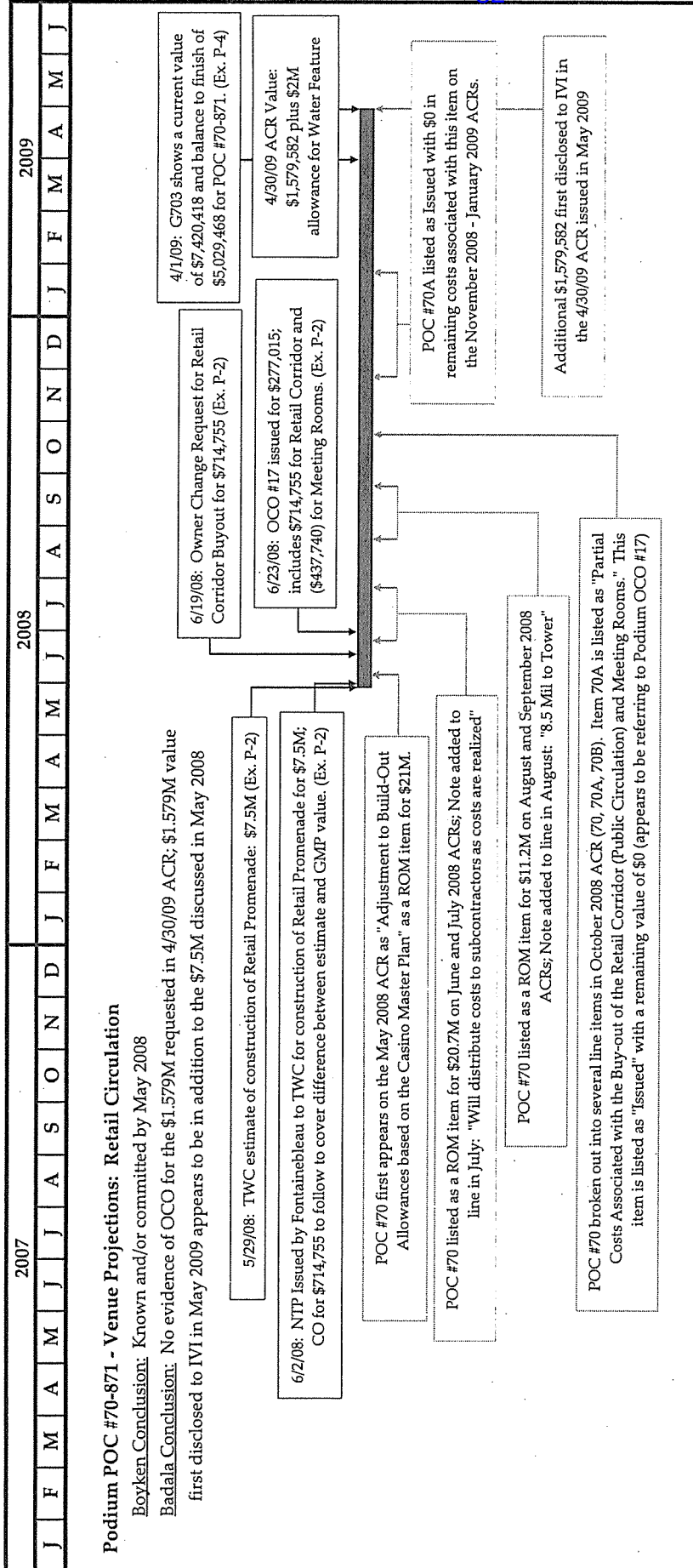
EXHIBIT C

EXHIBIT C

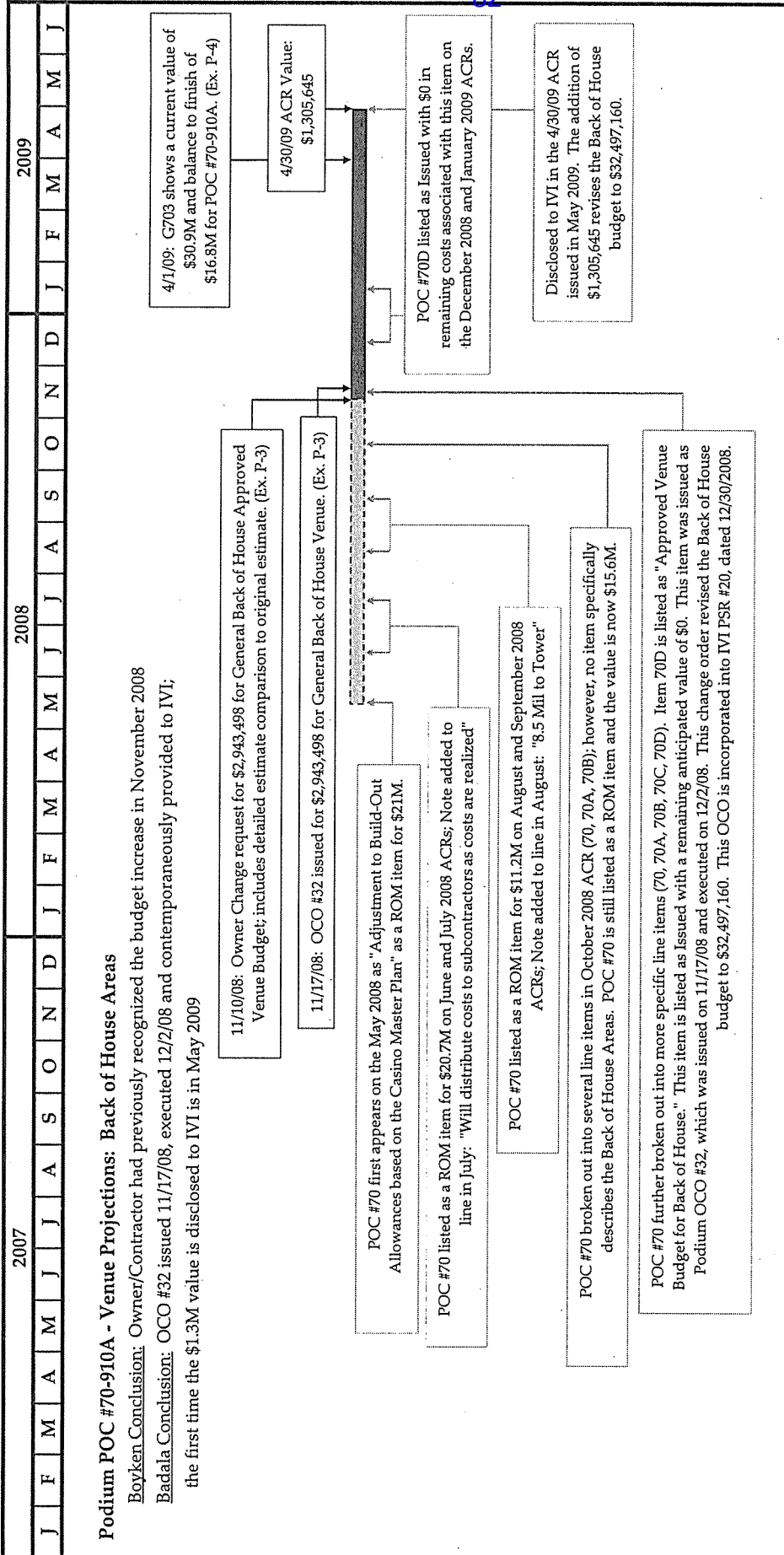
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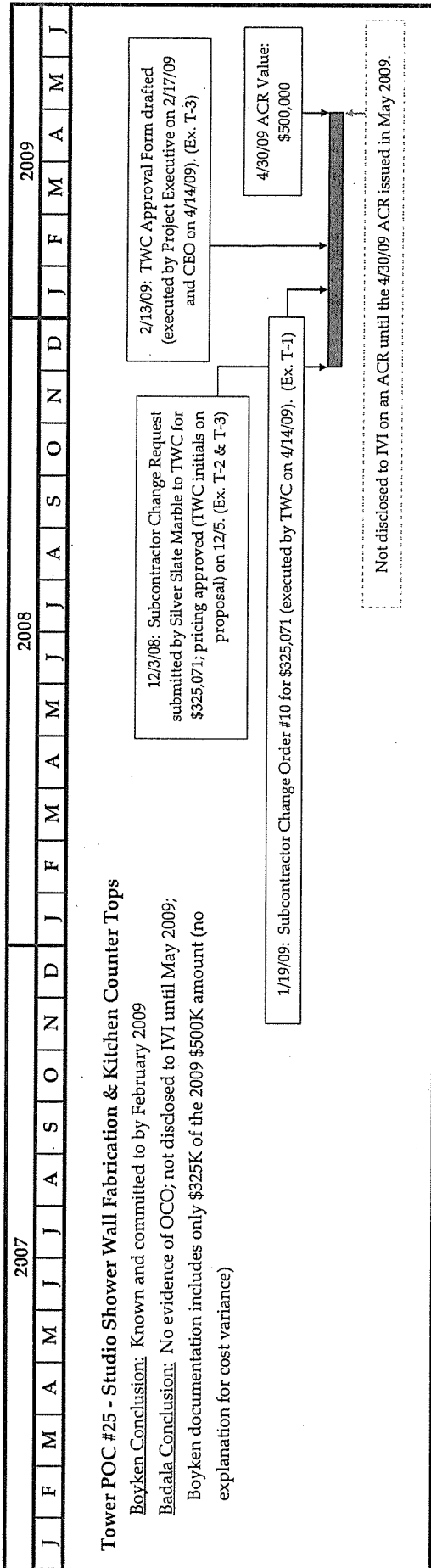
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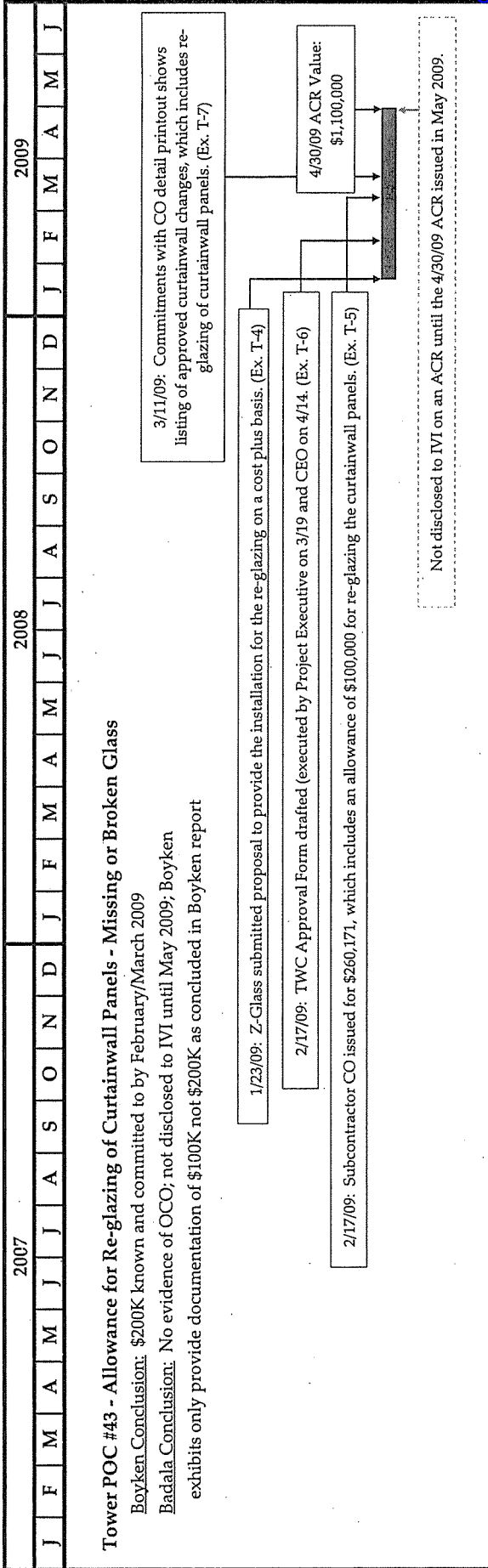
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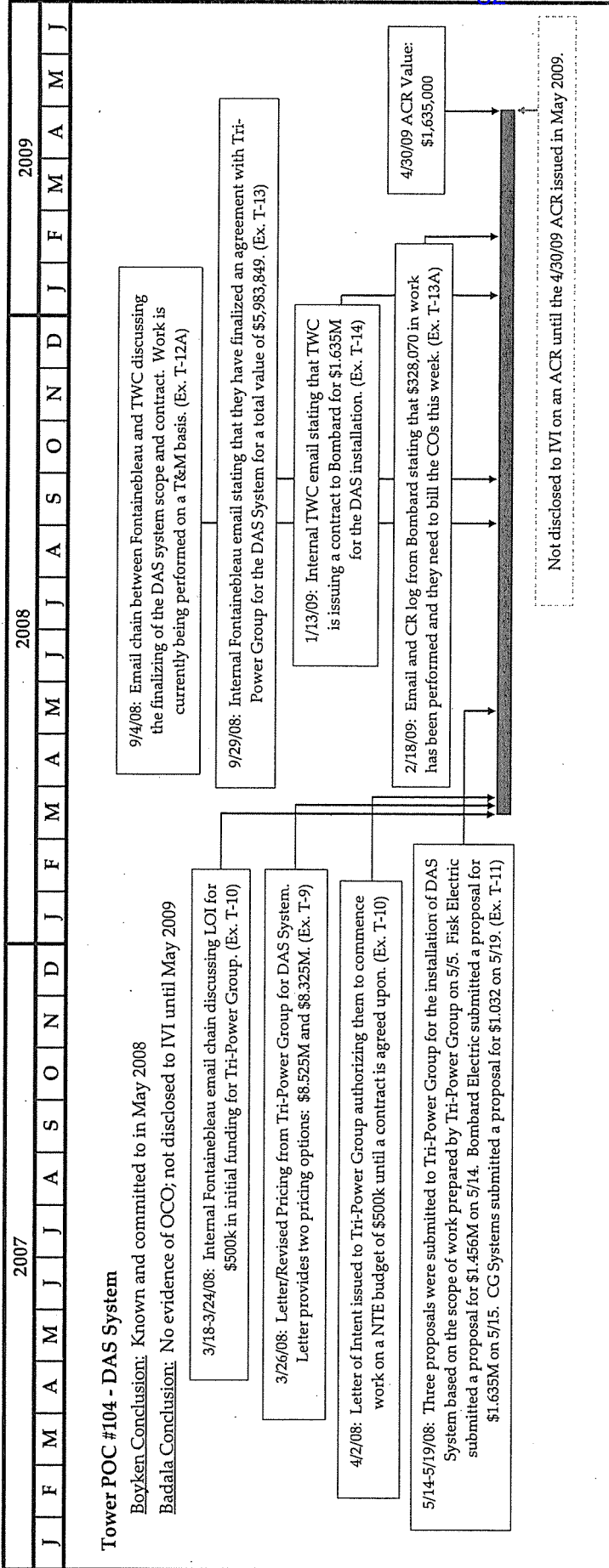
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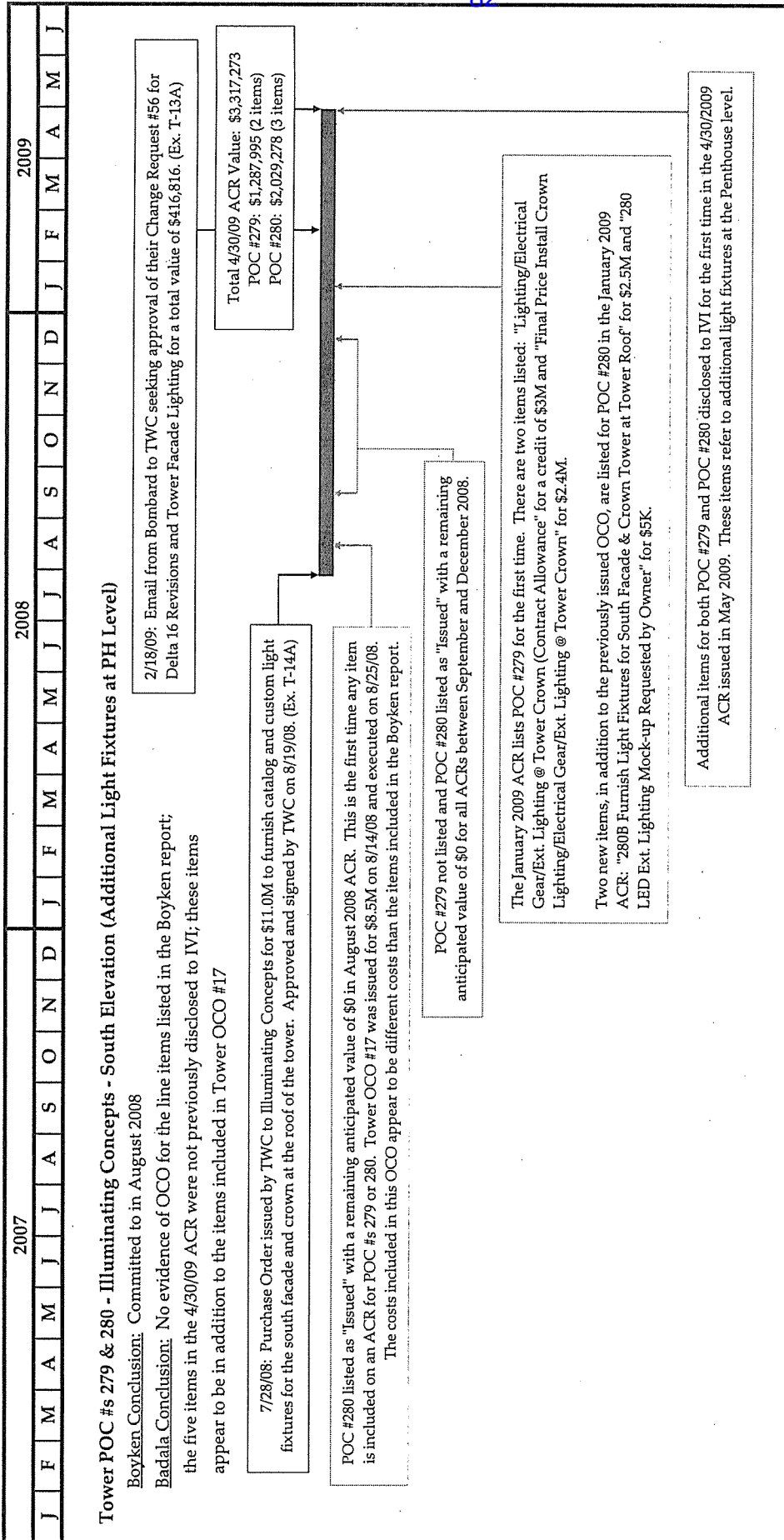
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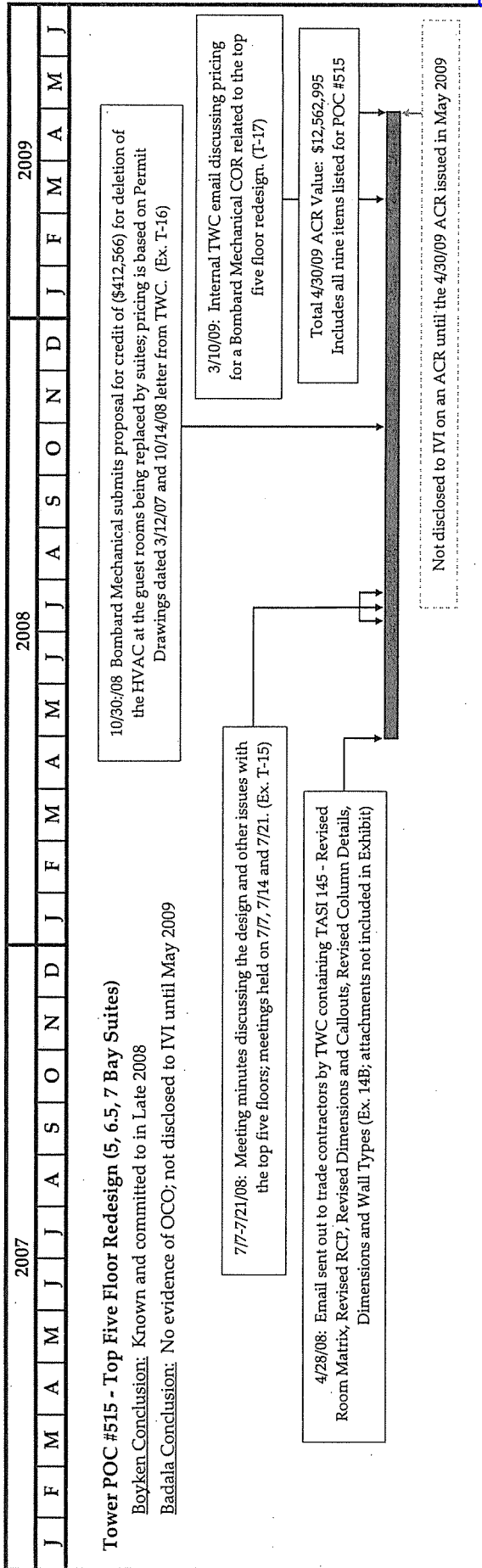
Timelines of Select Change Files



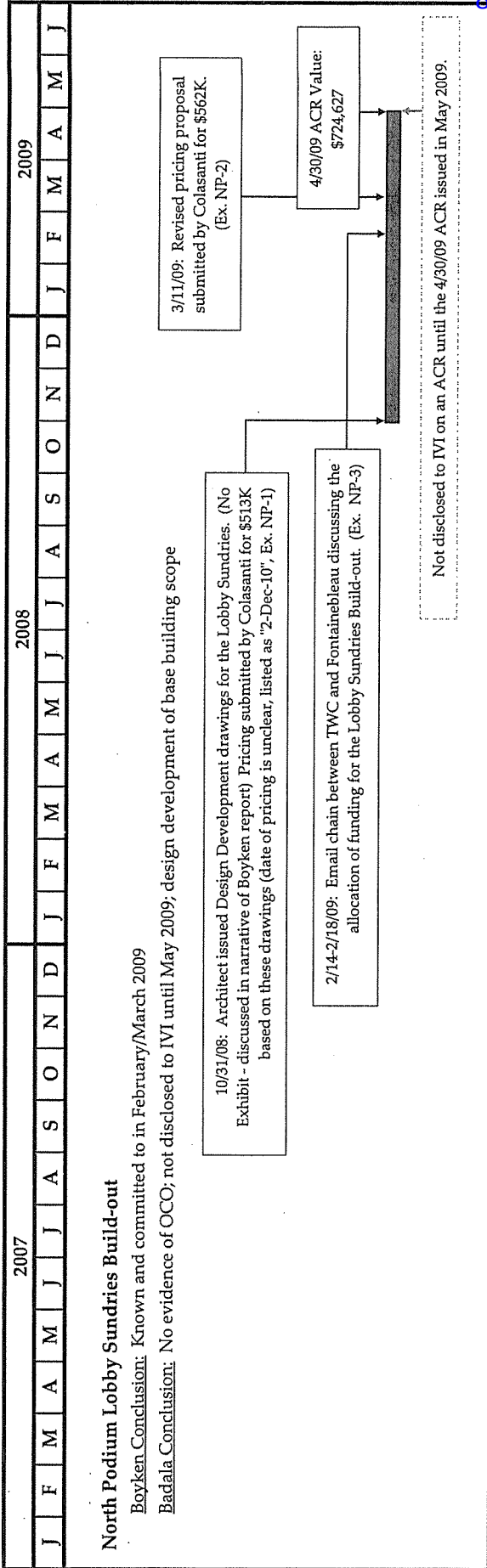
Timelines of Select Change Files



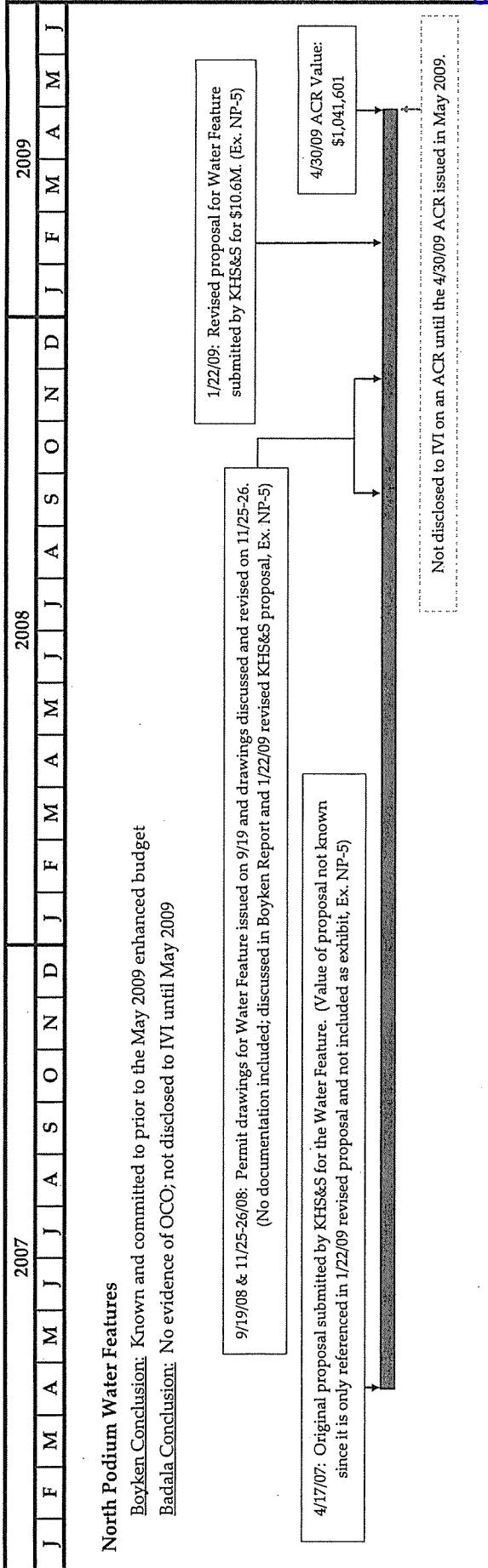
Timelines of Select Change Files



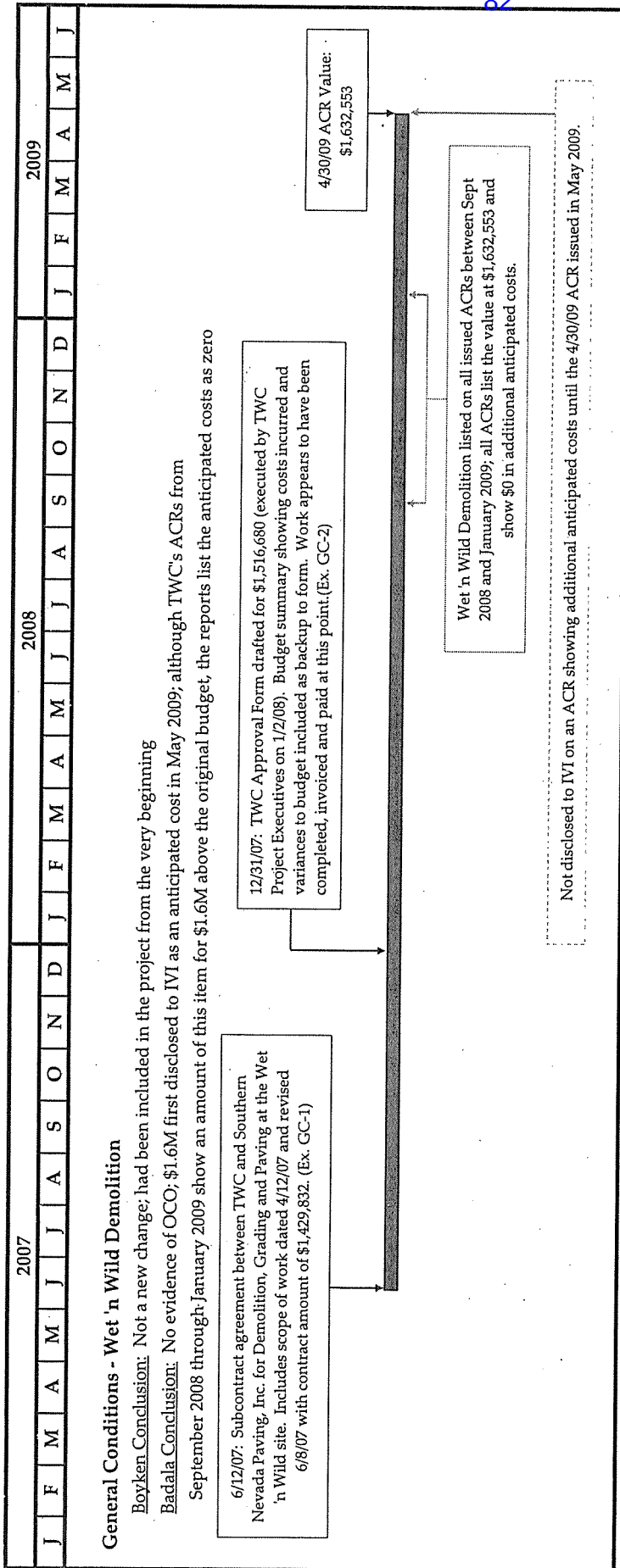
Timelines of Select Change Files



Timelines of Select Change Files



Timelines of Select Change Files



Timelines of Select Change Files

2007												2008												2009											
J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D

Podium - Structural Steel Change Order (OCO #13)

Boyken Conclusion: TWC, Fontainebleau and W&W Steel knew significant additional costs were necessary months prior to preparing the CO.
Badala Conclusion: OCO #13 (dated 5/23/2008; executed 6/12/08)

4/20-6/21/07: Progress drawings released starting in April 2007 that necessitated the increase in steel tonnage and overall cost of steel on the project. (Referenced in Ex. WW-1, 5/8/08 letter from TWC to Fontainebleau)

6/13/07: W&W Steel submits proposal for material, unloading and field erection of structural steel and metal deck for \$161.2M (Ex. WW-1)

6/19/07: Email from W&W Steel to TWC showing their tonnage justification (Ex. WW-1)

6/21/07: W&W Steel submits change order request to TWC for \$41.6M for structural revisions and tonnage increases through 6/21/07. (Ex. WW-1)

8/6/07: Owner Change Request submitted by TWC for \$41.6M. (Ex. WW-1)

5/8/08: Letter from TWC to Fontainebleau submitting Podium OCO #13 for approval. The letter references that the additional costs are based on progress drawings and shop drawings received from 4/20/07-6/21/07 and that TWC has been working closely with W&W Steel and John A. Martin Associates (the structural engineer) to minimize the cost and weight increases. (Ex. WW-1)

5/23/08: Podium OCO #13 issued for "Structural Drawing Updates from Bid Set" for \$41.6M. OCO signed by the owner on 6/4/08. (Ex. WW-1)

5/29/08: Letter from John A. Martin Assoc. to Fontainebleau discussing the structural steel change order at the podium. The letter states that the steel bid estimate was based on 25% DD drawings, which did not show final beam sizes, column sizes, or brace sizes and did not show any structures above the pool deck. Since this set of drawings there have been many changes due to space planning, design changes and additional information received. The letter concludes that this evolution process is very common for fast track projects like this one. (Ex. WW-1).

Not disclosed to IVI on an ACR until the May 2008 ACR. The OCO was issued this period and was included on the ACR as part of the \$217M in anticipated costs that were primarily planned to be funded by the additional \$190M in owner equity.