

FONTAINEBLEAU RESORT LAS VEGAS
RETAIL LEASE FORM

respectively, of Lessor and Lessee. Each term and each provision of this Lease to be performed by Lessee shall be construed to be both an independent covenant and a condition. The reference contained to successors and assigns of Lessee is not intended to constitute a consent to assignment by Lessee, but refers only to those instances in which Lessor may have given consent to a particular assignment.

32.05. The titles of the articles throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this instrument.

32.06. As used in this indenture of Lease and when required by the context, each number (singular or plural) shall include all numbers, and each gender shall include all genders; and, unless the context otherwise requires, the word "person" shall include "corporation, firm or association".

32.07. The terms, conditions and covenants contained herein are confidential and may not be disclosed by Lessee to any third party, except to its attorney or to the extent required by applicable law, subpoena or similar legal process. Any such disclosure shall constitute an Event of Default.

32.08. Lessor shall be responsible for compliance in the Common Areas with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder ("ADA"). Notwithstanding the foregoing, Lessor may perform, or require that Lessee perform, at Lessee's cost in either case, work required by ADA "path of travel" provisions due to alterations in the Premises. Lessee shall be responsible for compliance with ADA Title III in the Premises, including any leasehold improvements.

ARTICLE XXXIII Warranty and Authority

33.01. Lessee represents and warrants that (a) there are no proceedings pending or, to the knowledge of Lessee, threatened before any court or administrative agency that would materially adversely affect the financial condition of Lessee, the ability of Lessee to enter into this Lease or the validity or enforceability of this Lease; (b) there is no provision of any existing mortgage, indenture, contract or agreement binding on Lessee which would conflict with or in any way prevent the execution, delivery or performance of the terms of this Lease; (c) the financial statements of Lessee provided to Lessor in connection with this Lease are complete and correct and fairly present the financial condition of Lessee as of the date and for the period referred to therein and have been prepared in accordance with generally accepted accounting principles consistently applied; and (d) there has been no material adverse change in the financial condition of Lessee since the date of such financial statement and, to the knowledge of Lessee, no such material adverse changes are pending or threatened. Lessor is executing this Lease in reliance upon the foregoing representation and warranty and that such representation and warranty is a material element of the consideration inducing Lessor to enter into and execute this Lease. If this Lease is executed by more than one party (whether any such party is an individual or a corporation, partnership, limited partnership, joint venture, sole proprietorship or any other firm, person or entity), the parties executing this Lease shall be jointly and severally liable hereunder. If Lessee is a corporation, then the officers of Lessee executing this Lease on behalf of Lessee represent and warrant that this Lease has been authorized and approved by the Board of Directors of Lessee at a duly held meeting of

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Master Retail Lease Form

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the Board of Directors of Lessee (or pursuant to a valid unanimous vote or other valid action of the Board of Directors of Lessee).

ARTICLE XXXIV Relocation

34.01. Lessor reserves the right at any time during the Term hereof to require Lessee to relocate to other premises in the Retail Facility (the "New Premises") upon the following terms and conditions: (a) the New Premises shall contain a Floor Area which shall not vary more than ten percent (10%) from the Floor Area contained in the Premises; (b) Lessor shall notify Lessee not less than ninety (90) days prior to the date Lessee is required to surrender possession of the Premises; (c) Lessor shall, at Lessor's cost and expense, complete the leasehold improvements in the New Premises, in accordance with Plans and Specifications approved by Lessor with respect to Lessee's original work in the Premises; (d) Lessee shall, within fifteen (15) days after possession of the New Premises has been tendered to Lessee, open for business in the New Premises; and (e) Lessee shall surrender possession of the Premises to Lessor in accordance with the provisions of ARTICLE XVIII within fifteen (15) days after possession of the New Premises has been tendered to Lessee. If the Floor Area of the New Premises differs from the Floor Area of the Premises, then the Minimum Rent, Percentage Break Point and Security Deposit shall be proportionately adjusted. Upon the occurrence of any relocation pursuant to this Article, the parties hereto shall promptly execute an amendment to this Lease reflecting such relocation of Lessee and, if applicable, any adjustments to the Minimum Rent, Percentage Break Point or Security Deposit.

ARTICLE XXXV Radius Restriction

35.01. In order for Lessor to obtain a fair and equitable rental, Lessee must concentrate all of its business efforts at the Premises rather than in competitive geographical areas so as to maximize Lessee's Adjusted Gross Sales. Any activity by Lessee within the competitive geographical area of the Retail Facility in operating or participating in the operation of a similar or competing business necessarily shall have an adverse effect on the volume of Adjusted Gross Sales by Lessee at the Premises to the detriment of Lessor and shall deprive Lessor of a fair rental. Therefore, if Lessee (and, if Lessee is a corporation, then any officer, director, principal shareholder, parent, subsidiary or affiliated company of Lessee or, if Lessee is a partnership, then any general or limited partner of Lessee) shall at any time during the Term hereof acquire, own, operate, or have any interest in, directly or indirectly, within a radius of _____ miles [Lessor and Lessee, having carefully considered all factors, agree that _____ miles is reasonable] from any outside boundary of the Retail Facility, any additional stores, including a department or concession in another store, conducting any business which is similar to or competing with the business to be conducted by Lessee in the Premises (except those businesses owned or operated as of the date of this Lease), then, in such event, the gross sales of any such business within the restricted radius shall be included in the Adjusted Gross Sales for the Premises and the Percentage Rent provided for in ARTICLE V shall be computed upon the aggregate of the Adjusted Gross Sales for the Premises and the gross sales for such other business.

ARTICLE XXXVI Parking

36.01. Lessee will use its diligent efforts to require its agents, employees, tenants and concessionaires, and each of their agents and employees to park their respective vehicles in or at such locations in the Common Parking Areas set forth in the REA as may from time to time be designated by Tower Owner. Employee parking for the Retail Parcel and any other parcel in the Resort will be handled in the same way as parking for the employees of Tower Owner is handled (for example, if Tower Owner requires its employees to park offsite, the employees of each other parcel owner and their tenants will have to park offsite). Lessee shall abide by such reasonable non-discriminatory and, to the extent applicable, uniformly enforced rules and regulations as may be promulgated from time to time by Tower Owner for use of parking spaces within the Resort. Tower Owner and Lessor shall not be responsible for any loss or damage to any car, its occupant(s) or its contents by fire, theft, trespassing, vandalism, negligence or willful misconduct of third parties, or any other causes. The costs of operating maintaining, repairing, insuring, and paying taxes on the Common Parking Area shall be included as part of Lessee's Common Area Maintenance Costs.

ARTICLE XXXVII Relationship of Parties

37.01. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Lessor and Lessee. Neither the computation of rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

ARTICLE XXXVIII Third Party Beneficiary

38.01. Lessee acknowledges that Tower Owner is a third-party beneficiary of this Lease with respect to all provisions in this Lease that incorporate the requirements of any of Sections 6.2, 6.6(b), 6.6(c), 6.7 and 16.3 of the REA and that Tower Owner has the right, but not the obligation, to take all appropriate action to enforce such provisions (by any and all remedies available to it or to Lessor, at law, equity or under this Lease) to the extent any action or inaction by Lessee results in a breach or default by Lessor under the REA, except that Tower Owner shall not have the right to initiate any eviction proceedings against Lessee.

Complete Agreement

THIS WRITING CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO, AND NO AGENT, REPRESENTATIVE, SALESMAN OR OFFICER OF LESSOR HERETO HAS AUTHORITY TO MAKE, OR HAS MADE, ANY STATEMENT, AGREEMENT OR REPRESENTATION, EITHER ORAL OR WRITTEN, IN CONNECTION HEREWITH, MODIFYING, ADDING OR CHANGING THE TERMS AND CONDITIONS HEREIN SET FORTH. NEITHER LESSOR NOR ANY AGENT OR REPRESENTATIVE OF LESSOR, INCLUDING ANY LEASING AGENT ACTING ON BEHALF OF LESSOR, HAS MADE, AND LESSEE HAS NOT RELIED UPON, ANY REPRESENTATIONS OR ASSURANCES AS TO LESSEE'S PROJECTED OR LIKELY SALES VOLUME, CUSTOMER TRAFFIC OR PROFITABILITY. TO THE EXTENT

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ANY PROJECTIONS, MATERIALS OR DISCUSSIONS HAVE RELATED TO LESSEE'S PROJECTED OR LIKELY SALES VOLUME, CUSTOMER TRAFFIC OR PROFITABILITY, LESSEE UNDERSTANDS THAT ANY AND ALL SUCH PROJECTIONS, MATERIALS AND DISCUSSIONS ARE BASED SOLELY UPON LESSOR'S EXPERIENCES AT OTHER PROPERTIES OR UPON STANDARDIZED MARKETING STUDIES, AND THAT SUCH PROJECTIONS, MATERIALS AND DISCUSSIONS SHALL NOT BE CONSTRUED AS A PROMISE OR GUARANTEE THAT LESSEE SHALL REALIZE THE SAME OR SIMILAR RESULTS. NO MODIFICATION OF THIS LEASE SHALL BE BINDING UNLESS SUCH MODIFICATION SHALL BE IN WRITING AND SIGNED BY THE PARTIES HERETO. LESSEE HEREBY FURTHER RECOGNIZES AND AGREES THAT THE SUBMISSION OF THIS LEASE FOR EXAMINATION BY LESSEE DOES NOT CONSTITUTE AN OFFER OR AN OPTION TO LEASE THE PREMISES, NOR IS IT INTENDED AS A RESERVATION OF THE PREMISES FOR THE BENEFIT OF LESSEE, NOR SHALL THIS LEASE HAVE ANY FORCE OR VALIDITY UNTIL AND UNLESS A COPY OF IT IS RETURNED TO LESSEE DULY EXECUTED BY LESSOR.

(SIGNATURE PAGES FOLLOW)

FONTAINEBLEAU RESORT LAS VEGAS
RETAIL LEASE FORM
2/2007

IN TESTIMONY WHEREOF, Lessor and Lessee have caused this Lease to be signed as of the _____
day of _____, 2007.

Signed in the presence of:

LESSOR:

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

LESSEE:

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

Acknowledgment Page Follows

Lessor's Acknowledgment

STATE OF)
) SS
COUNTY OF)

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, _____ known by me, and has proved to my satisfaction to be the person described in and who executed the foregoing instrument as _____ of _____, who acknowledged that she did sign and seal the foregoing instrument for, and on behalf of said limited liability company, and that the same is her free act and deed as such officer and the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, this ___ day of _____, 2007.

My Commission Expires:

NOTARY PUBLIC

Lessee's Acknowledgment

STATE OF)
) SS
COUNTY OF)

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, _____, who is personally known by me or has produced _____ as identification and has proved to my satisfaction to be the person described in and who executed the foregoing instrument as _____ of _____, a _____ corporation, who acknowledged that he/she did sign and seal the foregoing instrument for, and on behalf of said corporation, being thereunto duly authorized by its Board of Directors and that the same is his/her free act and deed as such officer and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, this ___ day of _____, 2007.

My Commission Expires:

NOTARY PUBLIC

EXHIBIT "A"

PART I - LESSOR'S WORK DONE AT LESSOR'S EXPENSE

Lessor's work which shall conform to all applicable governing codes shall be limited to the following work:

- A. STRUCTURE: Lessor will provide a shell structure.
 - 1. COLUMNS: Unprimed structural steel members Columns shall be fireproofed.
 - 2. OVERHEAD STRUCTURE: As required to support second floor and/or roof above. All of Lessee's HVAC unit locations are subject to Lessor's final approval. Lessor shall provide chilled /heating hot water stubbed and capped with valves ONLY. Lessee's HVAC units shall meet Lessor's Store Design and Construction manual for such units.

- B. ROOF: Insulated roof system.

- C. WALLS AND PARTITIONS:
 - 1. Exterior walls shall be structural steel studs or such other materials selected by Lessor.
 - 2. Exterior walls of shell construction are exposed when in Lessee's areas.
 - 3. Interior finishes on Lessor's exterior and demising walls and/or columns in demised premises shall be provided by the Lessee.

- D. FLOORS: – No Floor. 6" 3000 psi concrete slab provided by Lessor. Floors shall be depressed in leased spaces to accommodate floor finishes provided by Lessee.

- E. CEILINGS: Will be left exposed to the structural systems overhead.

- F. UTILITIES, VENTILATION AND EXHAUST AIR:
 - 1. The following utilities shall be stubbed into Lessee's Premises by Lessor:
 - a. Domestic water; water line main is located overhead;
 - b. Sprinkler system to be stubbed and a individual control valve provided at each space only;
 - c. Sanitary sewer; 4" Sewer line main is located beneath the floor;
 - d. Electrical (empty conduit only); .
 - e. Telephone (1" empty conduit only);
 - f. 4" Grease waste line main is located beneath floor at restaurant locations only;
 - g. Natural Gas to be stubbed and capped with valve above ceilings at restaurant locations only;

 - h. Lessor shall provide a duct main for ventilation based on 20 sf/person based on the total SF when tenant space is below the building roof line only;
 - i. Lessor shall provide make-up air duct and shaft at 3 cfm/sf for 30% of the total floor area of the restaurants when tenant space is below the roof line only.
 - 2. Lessor shall not be responsible for Lessee's and/or its contractor's verification of all utilities and the placement location of the mechanical equipment prior to the start of its work.

G. STOREFRONT EXTERIOR: Lessor shall provide all items relating to the buildings' exterior decorative facade/piers with the exception of the area between the Lessor's building façade piers which is designated for Lessee's storefront glazing/finish system.

SPECIAL EQUIPMENT: Lessor shall provide for the Fire Alarm system one speaker/strobe combination for each space. Any additional equipment and devices that may be required, shall be preformed by the Lessor's contractor at Lessee's expense.

EXHIBIT "B"

PART II - LESSEE'S WORK DONE AT LESSEE'S EXPENSE

Lessee understands that this is a LEED project and shall comply with all requirements for credits. Lessee's work shall comply with American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) Standard 90.1-2004

A. Owner has established environmental objectives and implementation strategies for the project based upon the LEED Green Building Rating System™ for New Construction & Major Renovations (LEED-NC) Version 2.2, Second Edition September 2006, as developed by the U.S. Green Building Council (USGBC), 1015, 18th Street, NW, Suite 508, Washington, DC 20036, Internet Address: www.usgbc.org. The project may also use elements of the USGBC Core & Shell and LEED Commercial Interiors Rating Systems.

1. A copy of the environmental objectives and implementation strategies for this project is on file at the office of the Owner's LEED Consultant, K2 Integrated Project Solutions, 5512 South Fort Apache Road, Suite 100, Las Vegas, NV 89148. E-mail Address: chris@k2ips.com.
- B. Documentation submittals are specified in the Project Specifications Manual. Refer to Division 1 Section 01 3 25 "LEED Requirements" and individual specification sections. Documentation is to assure compliance with the Environmental Objectives and is instrumental in the auditing of this project for compliance to these Environmental Objectives and Implementation Strategies. Secure and deliver to the Owner's LEED Consultant, K2 Integrated Project Solutions. Sales tax documentation is required for compliance with the local sales tax deferral and exemption established for the project by the State of Nevada.
- C. Suggestions and input from Lessee's Contractor and Subcontractors for implementing these goals are encouraged. A team approach is encouraged.
- D. Any questions concerning the LEED requirements should be directed to Owner's LEED Consultant, K2 Integrated Project Solutions.

Lessee's work shall conform to all applicable governing codes and shall include, but not be limited to, the following: Lessee to construct and equip the Premises in accordance with the requirements of the Lessor's Store Design and Construction Manual and complete plans and specifications approved in writing by Lessor prior to commencement of said construction as provided for in this Lease. All Mechanical, Electrical, Lighting and Plumbing works shall comply with the American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) Standard 90.1-2004, without amendments. Lessee must follow the provisions of Lessor's Store Design and Construction Manual in the submission of preliminary and final construction plans to Lessor. Upon approval by Lessor of Lessee's final plans and specifications, Lessee shall furnish or cause its contractor to furnish to Lessor a Performance and Labor and Material Payment bond in the form of AIA Document A312, 1987, Ed., that allows Lessor to complete construction to bring

the space into conformance with the approved plans and specifications in an amount equal to the total cost of Lessee's construction. Said bond shall name Lessor as an additional beneficiary and shall be issued by a surety authorized to write bonds for the U.S. Government. In the event Lessee shall fail to furnish or fail to cause its contractor to furnish to Lessor said Performance and Labor and Material Payment bond, then Lessee and/or its contractors will not be given permission to start construction in the Premises. All of the following work shall be performed by Lessee (unless otherwise expressly provided), at Lessee's expense. Lessee to comply with project's Construction Waste Management Plan.

A. STRUCTURE:

1. FLOOR: Hard troweled finished concrete surface to be furnished and installed by Lessor. Slab capacity shall be in accordance with Lessor's Store Design and Construction Manual and LOD Package.
2. OVERHEAD STRUCTURE: Structural modifications (including floor and/or roof penetrations) required by Lessee shall be subject to Lessor's approval, and shall be performed by Lessor's contractor at Lessee's expense. Major structural modifications must be performed by Lessor's contractor at Lessee's expense. The cost to Lessee shall be Lessor's cost, including labor and materials, plus fifteen percent (15%) for administration. If there is an upper level above the Premises, lower level tenants are allowed a miscellaneous loading equivalent to 5 pounds per square foot on the upper level floor system.
3. ROOF: No Lessee required penetrations of the roofing system shall be allowed.
4. STOREFRONT SYSTEM: Lessee shall be responsible for extending a tenant storefront system/finish consistent with tenant's flagship level storefront above Lessor's building mounted canopies/arcade in designated areas with coordinated door locations. Lessee is required to refer to Lessor's Tenant Criteria Manual for storefront build out guidelines.
5. Main line sanitary cleanouts and piping are installed as a necessary function of the sanitary sewer system. These cleanouts do not occur in all tenant spaces and those spaces in which they occur shall be clearly identified. The cleanouts shall be a complete installation by Lessor, and it shall be Lessee's responsibility to install finish floor covering material to these main line sanitary cleanouts in a workmanlike manner (Lessee will be responsible for additional cleanouts needed for their engineered system).
6. All floor coverings.

B. WALLS AND PARTITIONS:

1. Demising Partitions between tenants and/or between tenant and corridor shall be furnished and installed by Lessor at Lessee's expense and shall meet all applicable government codes, including fire rating. Walls to be insulated by Lessor with a minimum of R-10 insulation at Lessee's expense or as required by code, whichever is greater.

2. Walls may or may not coincide with column centerlines; columns being thicker than the walls will extend into Lessee's areas. All treatments, finishes, or furring desired by Lessee shall be by Lessee.
3. No deduction in leased area is allowed for columns.
4. No penetration of any exterior walls shall be allowed.
5. Interior partitions shall be constructed of noncombustible materials in accordance with applicable sections of the code. If codes permit noncombustible wood, all materials shall bear the Underwriter's Laboratories stamp indicating material is treated and labeled. Lessee shall provide certifications that all materials are in accordance with applicable code.
6. No exposed studs and/or concrete masonry units are permitted (except exposed concrete masonry units permitted in stock areas not visible to the public).
7. All painting and decorating of interior walls and ceilings.
 - a. Select low-VOC paints, coatings, lacquers, curing compounds, floor coatings, wood preservatives and faux finishes per Green Seal's standard GS-11.
8. Expansion joints are installed as a necessary function of the structure. These joints do not occur in all tenant spaces and those spaces in which they occur shall be clearly identified. It shall be Lessee's responsibility to design for expansion in the construction of the Premises in the event an expansion joint is located in the Premises.

C. DOORS:

1. To the extent the design of the Shopping Center permits the same, Lessee will furnish and install service/exit door(s) in an exterior building wall(s) or corridor wall(s), including lockset, security bar and tenant identification sign.
2. Lessee will furnish and install all other doors necessary for the access to, exiting from, and operation of the Premises.
3. All wood doors on the Premises shall have cores that are free of any added urea-formaldehyde. Provide submittals of doors to be used showing evidence that the doors comply.

D. CEILINGS:

1. Lessee shall perform all interior finishes beyond the exposed structural systems, including coves, soffits, drops and ceilings. Ceilings to be constructed of Underwriter's Laboratories approved noncombustible materials.
2. Certain pipes, conduits, ducts, and utilities are passing through tenant spaces and are supported by the overhead structure.
3. Combustible materials of any nature will not be permitted above finished ceilings.
4. In addition to the certain pipes, conduits, ducts, etc. covered under item No. 2 above, if there is an upper level above the Premises, lower level tenants agree and recognize that the upper level tenants will have certain plumbing lines, conduits or other related items located in the ceiling space of the lower level tenant's leased space. Lower level tenants further agree and recognize that upper level tenants have the right to install the above mentioned lines, conduits or other related items from within the lower level tenant's space. The lower level tenant shall cooperate with the upper level tenant for the installation of these items. In the event the tenants cannot agree to a reasonable solution, Lessor shall arbitrate and Lessor's judgment shall be final.
5. Fireproofing that is altered or destroyed by Lessee or its contractors shall be replaced by a contractor designated by Lessor at Lessee's expense, using the same material.

E. UTILITIES, FRESH AIR, EXHAUST AIR:

1. Lessee shall provide all connections to the following utilities, including payment of all fees and installation of all meters, equipment, connections and extensions to make a complete, approved and operating system:
 - a. Domestic water system. Water line main is located overhead;
 - b. Fire sprinkler system;
 - c. Sanitary sewer system. 4" Sewer line main is located beneath the floor;
 - d. 4" Grease waste line main is located beneath floor at restaurant locations only;
 - e. Natural Gas to be stubbed and capped with valve above ceilings at restaurant locations only.
3. Lessor shall provide a duct main for general exhaust based 300 cfm at retail spaces and 500cfm at restaurants when tenant space is below the building roof (pool level).
4. Lessor shall provide make-up air duct and shaft at 3 cfm/sf for 30% of the total floor area of the restaurants when tenant space is below the building roof (pool level).
5. Lessee shall provide individual outside air for ventilation when tenant space is above the building roof (pool level).

6. Lessor shall provide routing for grease duct. Lessee to provide grease duct (including fire protection) to a pollution control unit for the exhaust with a maintenance contract to service and clean the units as mandated by the Lessor.
7. Beauty salons, pet shops or any other areas on lower level which require special exhaust and make-up air systems shall be responsible for providing all necessary equipment and materials to accommodate these systems. These special exhaust systems must be extended through the roof. System design subject to approval of Lessor.
8. Penetrating exterior walls for mechanical equipment will not be permitted.
9. Lessee shall provide for CO2 sensors which to provide alert to ensure the ventilation systems maintain design minimum ventilation requirements.
10. If there is an upper level above the Premises, Lessee must run sanitary sewer vents to the vent stub provided by Lessor within leased space. If there is no upper level above the Premises, Lessee will extend vent(s) from their plumbing system and through the roof as required.
11. Utility lines may pass through the Premises to service other tenants and building areas.

F. HEATING, VENTILATING AND AIR-CONDITIONING:

1. Lessee shall design and install the heating, ventilating and air-conditioning system in accordance with all governmental codes and requirements. Design of the HVAC systems must comply with the American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) Standard 90.1-2004, without amendments. Lessee shall provide evidence of the systems compliance with this standard.
2. Lessee shall utilize Lessor furnished central chilled water and heating hot water systems based upon the following design criteria: chilled water entering of 45 degrees Fahrenheit/chilled water leaving of 60 degrees Fahrenheit; heating hot water entering of 180 degrees Fahrenheit/heating hot water leaving of 140 degrees Fahrenheit.
3. Air Distribution System:
 - a. Lessee shall provide a complete HVAC system in the Premises, consisting of fan coil unit/units, duct work, diffusers, piping, automatic temperature controls, supply, return and outside air ductwork with required grilles, registers, diffusers and fire dampers when required.
 - b. Fan-coil units shall be located in an accessible manner within the Premises. Units shall be suspended from the structural framing system above the ceiling space within practical physical limits. Larger units shall be floor mounted when suspension is impractical or when weight dictates.

- c. Roof mounted equipment if required (package units or condensing units) shall be located by Lessee on over-designed structural areas provided by Lessor (unless otherwise designated). Any modifications to such structural areas shall be subject to Lessor's approval, and shall be completed by Lessor's contractor (see provisions of Item II.A.2. above), at Lessee's expense.
 - d. Roof mounted equipment (package units or condensing units) shall be located on full perimeter prefabricated unit curbs and shall be provided by Lessor's contractor at Lessee's expense, which such curbs are subject to Lessor's approval. Flashing of such curbs shall comply with Item II.A.3. above. Mounting systems requiring penetrations through the roof deck, or wood runners will not be permitted. Mechanical equipment shall be CFC free and comply with LEED Energy and Atmosphere credit EAc4, Enhanced Refrigeration Management. Refer to the LEED-NC 2.2 Reference Guide for compliant refrigerants.
4. Commissioning:
- a. Lessee shall provide for commissioning of the HVAC system in the Premises. Verify that the energy related systems are installed, calibrated and perform as intended. Provide evidence of the Commissioning Process. The following Commissioning Process activities shall be completed:
 - 1. Designate an individual as the Commissioning Authority to lead the commissioning process activities.
 - 2. Clearly document the owner's project requirements and the basis of design for the Premise's energy related systems.
 - 3. Develop and incorporate commissioning requirements into the construction documents.
 - 4. Develop and utilize a Commissioning Plan. Forward plan to Lessor.
 - 5. Verify that the installation and performance of the energy consuming systems meet the owner's project requirements and basis of design.
 - 6. Complete a Commissioning Report.
 - b. The energy related systems to be included in the commissioning process activities include:
 - 1. Heating, ventilating, air conditioning and refrigeration systems and associated controls.
 - 2. Lighting controls
 - 3. Domestic hot water systems.
 - c. Submittals – Provide documentation as follows:
 - 1. Signed statement declaring that the commissioning requirements for the Premise's energy related systems have been successfully executed.

2. Signed statement declaring that the 6 Commissioning Process Activities have been completed.
 3. A narrative and diagrams indication how the HVAC system works.
 4. A copy of the Commissioning Plan and the Commissioning Report.
5. Mechanical system design shall comply with ASHRAE Standard 90.1-(2004).
- G. **PLUMBING:** All plumbing and fixtures including a minimum six (6) gallon water heater or instant tankless type for toilet rooms to be provided by Lessee if required. Plumbing fixtures for the building shall not exceed the following guidelines for plumbing fixture performance:
- i. Water Closets: 1.28 gpf
 - ii. Urinals: .5 gpf
 - iii. Lavatory Faucets: 1.8 gpm
 - iv. Showerheads: 1.6 gpm
 - v. Kitchen Faucets: 1.6 gpm
- H. **TOILET FACILITIES:** Lessee shall provide one ADA complete toilet room(s), including separate rooms for each sex if required by code equipped with a floor drain and all required fixtures, partitions, floor and wall finishes, ventilation, etc. In the event that the occupancy requires only one (1) toilet room, rough-in provisions shall be made for the second toilet room. Handicapped facilities shall be provided per requirements of state and local building codes and all other authorities having jurisdiction. Plumbing Fixtures shall comply with the guidelines for plumbing fixtures listed above in Section "G".
- I. **FIRE PROTECTION SYSTEM:** Lessee shall provide complete fire sprinkler system, including all branch lines, heads, etc. (pursuant to Part I, Section F1 (b) hereof) subject to Lessor's, Lessor's insurance rating bureau's and State Rating Bureau's approvals and subject to State and local building codes and all other authorities having jurisdiction. A completed "Sprinkler Contractor's Material and Test Certificate" must be submitted to Lessor as outlined in the Lessor's Store Design and Construction Manual. In the event Lessee has not commenced installation of the sprinkler system in the Premises within sixty (60) days prior to the scheduled Grand Opening of the Shopping Center or in the opinion of Lessor, Lessee will be unable to complete the installation of the sprinkler system in the Premises prior to the scheduled Grand Opening of the Shopping Center, then Lessor may elect to (but is not obligated to) install, at Lessee's expense, a sprinkler system in accordance with applicable building codes and in accordance with the requirements of Lessor's insurance company and rating bureau.
- J. **ELECTRIC EQUIPMENT:** Lessee shall provide all necessary equipment, including but not limited to light fixtures, meters, wiring, disconnects, distribution panels, transformers, lamps, equipment, etc., including installation, connections and support. Lighting fixtures with exposed fluorescent tubes are not permitted in sales areas or areas accessible to the public, except as permitted in the Store Design and Construction Manual.

- K. **ELECTRIC CONDUIT:** Lessor will furnish empty conduit ONLY from Lessor's electrical distribution equipment to the Lessee space. Lessor shall provide circuit breaker in the Lessor's electrical distribution equipment. Any modifications shall be the responsibility of the Lessee.
- L. **TELEPHONE CONDUIT:** Lessor will furnish and install empty telephone conduit from Lessor's designated areas to the Premises. All conduits and wires for telephone service in the Premises shall be by Lessee. Lessee shall make all necessary arrangements with telephone company for service.
- M. **SPECIAL EQUIPMENT:** Alarm systems, devices or other protective devices; public address system; fire extinguishers; conveyors; escalators; dumbwaiters; time clocks; delivery door buzzers; dry chemical fire protection systems; pilot light for heating, ventilating and air-conditioning equipment; etc. Satellite dishes or antennae shall not be permitted without Lessor's approval, and no satellite or antennae equipment may be visible from ground level. Lessee shall employ Lessor's Fire Protection contractor to perform all work associated with the fire protection system. Do not install fire suppression systems that contain ozone-depleting substances (CFC's HCFC's or Halon).
- N. **LIGHTING:**
1. All lighting designs shall comply with the Lighting Power Density requirements of ASHRAE 90.1-2004, Chapter 9, Lighting. The lighting systems and equipment shall comply with 9.1, General; 9.4 Mandatory Provisions; and the prescriptive requirements of either
 - a. 9.5 Building Area Method, or
 - b. 9.6, Space-by-Space Method
 2. Provide lighting controls per 9.4 Mandatory Provisions. Install lighting controls and light responsive sensors to conserve power when occupants are not present and as daylight levels change throughout the time of day and year.
 3. Include in preliminary design all lamp sources, fitting schedule and intended control. Some cases may require fixture submittal sheets and/or photometrics. Include lighting fixture schedule showing fixture types, lamps, wattages, quantities and manufacturer's catalog numbers and cut sheets.
- O. **ROOF OPENINGS:** All roof openings, reinforcing, curbs, flashing, etc. for heating, ventilating, air-conditioning, plumbing and electrical equipment. All Lessee required penetrations of the roofing system shall be held to a minimum. Lessee shall employ Lessor's Roofing Contractor to perform all work associated with the roofing system, including but not limited to all roof openings, flashings, patching of roof membrane, etc. Installation of prefabricated curbs for roof-mounted equipment, as well as reinforcing of roof structure if required due to Lessee's roof openings, shall be performed by Lessor's contractor at Lessee's expense.
- P. **SIGNS:** Shall be in accordance with Lessor's storefront design criteria and sign restrictions, outlined in the Lessor's Store Design and Construction Manual.

- Q. **WATER USE REDUCTION:** Any landscaping or plantings should limit water consumption. Planting a dry garden or using native, drought-tolerant species which have low water demands is recommended.
- R. **STORAGE AND COLLECTION OF RECYCLABLES:** Tenants can participate in Owner's recycling program. The Owner will be recycling cardboard, paper, glass, aluminum and plastics as part of their LEED commitment.
- S. **MATERIALS SELECTION:**
1. **Recycled Content Products** – Give preference to products with recycled content such as systems furniture, seating, countertops, upholstery and drapery fabrics, paneling, wall covering, carpet fiber & backing, ceramic and glass tiles, gypsum board, insulation and ceiling tiles.
 2. **Local/Regional Materials** – Give preference to materials and products that are extracted, processed and manufactured within 500 miles of Las Vegas.
 3. **Low-Emitting Materials:**
 - a. Select low-VOC adhesives for installing carpet, wall panels or flooring
 - b. Select low-VOC paints, coatings, lacquers, curing compounds, floor coatings, wood preservatives and faux finishes per Green Seal's standard GS-11.
 - c. Select composite wood products, such as MDF and particleboard, with no added urea-formaldehyde.
 - d. Select carpet systems that meet the Carpet & Rug Institute's (CRI) Green Label Plus program.
 - e. Inquire from manufacturers as to whether they have tested their products for VOC emissions.
- T. **SMOKING** – The Resort will be a non-smoking facility, with the exception of the Casino proper. The smoking area shall be at least 25 feet from adjacent areas. Designated smoking areas will be available outside at least 25 feet from any building entryways, operable windows and air intakes.
- U. **CONSTRUCTION INDOOR AIR QUALITY (IAQ) MANAGEMENT PLAN** – The Owner has established a Construction IAQ Management Plan for the project. Lessee's Contractors and Subcontractors shall comply with the requirements of this plan. The compliance requirements follow the SMACNA guidelines. Plan is available for review. Lessee's Contractor will be required to:
1. **Develop own IAQ Management Plan for Premises.** Plan should include:
 - a. **HVAC Protection:**
 1. Seal ducts and equipment with plastic during construction
 2. Use high-efficiency (MERV 8) filters during construction and replace all filtration media prior to occupancy.
 - b. **Source Control** – Specify low-VOC emitting materials

- c. Pathway Interruptions – Isolate areas of work where VOC emitting materials or dust generating activities are occurring.
 - d. Housekeeping – Use HEPA vacuum cleaners and green cleaning products.
 - e. Scheduling – Sequence construction to avoid disruption to occupied spaces and minimize impact on air quality. Sequence the installation of materials, installing the soft, porous materials last.
 2. Smoking will not be permitted during the construction of the Premises.
- V. FIXTURES: All store fixtures, cases, paneling, cornices, etc.
- W. Lessee's contractor shall use Union Labor on all work performed on site. Lessee shall perform and cause Lessee's contractor and subcontractors to perform Lessee's work in a manner so as not to damage, delay or interfere with the prosecution or completion of any work being performed by Lessor or its contractors in the Premises or in or about any other portion of the Shopping Center, and shall comply with all construction procedures and regulations prescribed in, or pursuant to, this Exhibit "A" or Lessor's Store Design and Construction Manual for the prosecution of Lessee's work and the coordination of such work with any work being performed by Lessor and its contractors. Lessor, in its sole discretion, and for any reason, shall have the right to order Lessee to terminate any construction work being performed by or on behalf of Lessee in the Premises. Upon notification from Lessor to Lessee to cease any such work, Lessee shall forthwith remove from the Premises all agents, employees and contractors of Lessee performing such work until such time as Lessor shall have given its consent for the resumption of such construction work and Lessee shall have no claim for damages of any nature whatsoever against Lessor in connection therewith.
- X. Lessee and/or its contractor and/or subcontractors shall obtain and pay for all permits and comply with all building codes, ordinances, ADA requirements, OSHA regulations, regulations and requirements of Fire Insurance Rating Bureau, etc. Lessor's approval of Lessee's plans and specifications does not release Lessee from this obligation.
- Y. Lessee shall require its contractor and subcontractors to furnish Lessor Certificates of Insurance evidencing liability coverage prior to Lessee's contractor and subcontractors performing any work in the Premises. Such contractor and subcontractors shall procure and have in effect:
 1. Workers Compensation coverage as required by the state in which the Premises is located and Employers Liability coverage with a limit of not less than One Million Dollars (\$1,000,000) per accident and per employee;
 2. Commercial General Liability Insurance on an Occurrence form including Products/Completed Operations with a limit of not less than Four Million Dollars (\$4,000,000) and Personal Injury coverage with a limit of not less than Two Million Dollars (\$2,000,000) per occurrence;
 3. Umbrella or Excess insurance in an amount of not less than Five Million Dollars (\$5,000,000); and

4. Automobile Liability coverage with a limit of not less than One Million Dollars (\$1,000,000) Combined Single Limit.

All insurance policies hereunder (except Workers Compensation coverage) shall name Lessor, Lessor's property manager and Lessor's designee(s) as additional insureds, and shall be considered primary insurance applying without the contribution of any other insurance which may be available to Lessor, Lessor's property manager or Lessor's designee(s). Lessee shall indemnify and hold harmless Lessor and all other additional insureds from and against any claims, actions or damages resulting from acts or neglects of Lessee, its agents, employees, contractor or subcontractors in the performance of Lessee's work.

- Z. Lessee and/or its contractors and/or subcontractors are limited to performing their work including any office or storage for construction purposes within the Premises only. Lessee and/or its contractors and/or subcontractors shall each be responsible for daily removal from the Shopping Center of all trash, rubbish and surplus materials resulting from construction, fixturing and merchandising of the Premises. Lessee is cautioned against having trash accumulated within its space. Should this develop, Lessor's Tenant Coordinator will remove Lessee's and Lessee's contractors' trash, and the charge to Lessee will be based on market rate plus a fifteen percent (15%) administrative fee.
- AA. Lessee and/or its contractors and/or subcontractors are responsible for temporary utilities for their work including payment of utility charges. Lessor may make provision for temporary electric within the Shopping Center at Lessor's discretion and providing sufficient capacity is available, Lessee and/or its contractors may avail themselves of this temporary service under the following conditions:
 1. That service is available only during working hours designated by Lessor.
 2. That termination of this service is at Lessor's sole election.
 3. Service charge for temporary power is \$0.03 per square foot per month, plus \$1,000.00 as a one-time security deposit. If at the conclusion of construction, Lessee makes all required payments to Lessor, the security deposit amount of \$1,000.00 shall be returned to the Lessee.
 4. Lessor is not responsible for interruption of said services.
 5. One hook-up per premises up to 5,000 square feet.
 6. If Lessor does not elect to provide such temporary service, Lessee must make his own arrangement for same.
- BB. Upon approval by Lessor of Lessee's final plans and specifications, Lessee shall cause construction to promptly commence and will use every effort to cause the Premises to be completed (including the use of double shift labor if necessary) in order to open for business in accordance with the terms of this Lease.
- CC. Lessor shall install at Lessee's expense temporary walls to close off the Premises from the common areas to screen the Premises from public view during construction.

DD. Lessee-and/or its contractor must present to Lessor's Tenant Coordinator at the project one (1) complete set of plans and specifications approved by Lessor and applicable governing authorities including, without limitations, copies of building permits, before permission will be given to start construction in the Premises. Upon completion of construction, Lessee and/or its agent or contractor will obtain final inspection of the Premises by building authorities to obtain necessary certificate of occupancy. Lessee shall deliver a copy of any such certificate to Lessor.

EXHIBIT B
RULES AND REGULATIONS

EXHIBIT I

RESERVED

EXHIBIT J
FORM OF MANAGEMENT AGREEMENT

PROPERTY MANAGEMENT AGREEMENT

THIS PROPERTY MANAGEMENT AGREEMENT (this "Agreement") is made as of the 6th day of June, 2007 (the "Effective Date"), by and between FONTAINEBLEAU LAS VEGAS RETAIL, LLC, a Delaware limited liability company ("Owner") and TB REALTY, INC., a Nevada corporation ("Agent").

WITNESSETH:

WHEREAS, Owner owns or leases all those certain air rights parcels more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Retail Facility"), together with the improvements contained therein, as the same shall be changed from time to time, constituting the retail portion of a mixed use resort, hotel and casino to be known as the "Fontainebleau Hotel" and to be constructed on the land more particularly described on Exhibit B; and

WHEREAS, Owner and Agent desire to enter into this Agreement for certain property management and related services in connection with the management of a portion of the Retail Facility indicated to be included on Exhibit C attached hereto (the "Shopping Center"), and specifically excluding all other areas of the Retail Facility (i.e., the "Entertainment Center"), all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Employment.

(a) Commencing on the Effective Date, Owner hereby employs Agent exclusively to manage the Shopping Center, upon the terms and conditions hereinafter set forth, for a term of five (5) years. Notwithstanding the foregoing, if this Agreement has not been terminated prior to the expiration of the fifth (5th) anniversary of the Effective Date hereof, then it shall continue thereafter on a month-to-month basis and be terminable by either party hereto upon thirty (30) days prior written notice.

(b) Subject to Section 5, Owner may terminate this Agreement upon thirty (30) days advance written notice to Agent after the occurrence of any of the following events:

- (i) a sale of the Shopping Center to an unaffiliated third party;
- (ii) a taking by condemnation or right of eminent domain of all or substantially all of the Shopping Center, the Project and/or the Property; or

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(iii) damage by fire or other casualty affecting all or substantially all of the Shopping Center and/or the Project.

2. **Agreements of Agent.** During the term of this Agreement, Agent agrees:

To accept the management of the Shopping Center to the extent, for the period, and upon the terms herein provided and agrees to furnish the services of its organization for the management of the Shopping Center. Agent shall, on behalf of Owner, implement or cause implementation of the decisions of Owner and shall conduct the ordinary and usual business affairs of Owner as provided in this Agreement. In connection therewith, Agent shall have the following duties, which duties shall be subject to reasonable modification based upon the actual service requirements of Owner once the Shopping Center is in operation:

(a) To hire, discharge, and pay all employees (where applicable) employed at or in connection with the Shopping Center. All persons hired by Agent in connection with the management of the Shopping Center shall be employees of Agent and not of Owner.

(b) With respect to those hired by Agent to work on Shopping Center on behalf of Owner, to cause the appropriate insurance to be obtained.

(c) To continue throughout the term of this Agreement to be an equal opportunity employer.

(d) To negotiate and enter into agreements for non-recurring items.

(e) To collect any rents and/or assessments and other items due or to become due and give receipts therefor and to remit all funds collected hereunder to Owner.

(f) To handle tenant's security deposits and to comply, on Owner's behalf, with applicable state or local laws concerning Agent's responsibility for security deposits and interest thereon, if any.

(g) To execute and file all returns and other instruments and to perform all acts required as an employer with respect to employees hired to work at the Shopping Center under the Federal Insurance Contributions Acts, the Federal Unemployment Tax Act and Subtitle C of the Internal Revenue Code of 1954 with respect to wages paid by Agent.

(h) To notify Owner to the extent it becomes aware, of the need for any necessary repairs, alterations, replacements, installations, decorating landscaping, and supplies necessary for the proper operation of the Shopping Center in order to keep the Shopping Center in a clean, safe and sightly condition which is consistent with the Five Star Standard (as defined below). It is understood that Agent shall not be required to undertake any such action in furtherance of the foregoing, except after written agreement between the parties.

(i) To handle promptly complaints and requests from tenants, to notify Owner of any major complaint made by a tenant, and to the extent Agent has knowledge of the same, notify Owner promptly (together with copies of supporting documentation) of any notice of violation of any governmental requirements, any defect in the Shopping Center, any fire or other damage to the Shopping Center and, in the case of any serious fire or other serious damage to the Shopping Center, to also provide telephone notice thereof to Owner's in-house risk manager; maintain complaint files containing all complaints, claims, notices and correspondence to and from tenants, tenants' employees and agents, inspectors or agents of any state, Federal, county or municipal agent or department, and customers of tenants in the Shopping Center.

(j) Upon the prior written approval of Owner, to institute all necessary legal action or proceedings for the collection of rent or the income from the Shopping Center, or the ousting or dispossessing of tenants or other persons therefrom, and all other matters requiring legal attention. Agent agrees to use its good faith commercially reasonable efforts to collect rent and other charges from tenants in a timely manner, to secure performance of all other tenant obligations under the leases, and to pursue Owner's legal remedies. Owner reserves the right to designate or approve counsel hired by Agent, and to control litigation of any character affecting or arising out of the operation of the Shopping Center. Agent does not assume and is not given responsibility for compliance of any building components constituting the Shopping Center or any equipment therein with the requirements of any statute, ordinance, law or regulation of any governmental body or of any public authority or official thereof having jurisdiction except to notify Owner promptly or forward to Owner promptly any complaints, warnings, notices, or summons received by it relating to such matters. Owner represents that, to the best of its knowledge, the Shopping Center and such equipment comply with all such requirements and agrees to indemnify, defend, protect and hold harmless Agent, its members, partners, shareholders, officers, directors, representatives, servants, and employees (each, an "Indemnified Party"), of and from all loss, cost, expense and liability whatsoever which may be imposed on them or any of them by reason of any present or future violation or alleged violation of such laws, ordinances, statutes or regulations.

(k) To comply with any and all laws applicable to its performance as property manager under this Agreement.

(l) To prepare and submit to Owner an initial proposed annual operating budget for the promotion, and operation of the Shopping Center for the forthcoming calendar year within thirty (30) days after written request from Owner. After submission of initial budget, preliminary and final budgets will be due sixty (60) and thirty (30) days, respectively, prior to the end of each calendar year. Such budgets shall be prepared on a cash basis, showing a month-by-month projection of income and expense and capital expenditures, and shall be accompanied by proposed leasing guidelines for the following calendar year, which shall contain a brief narrative description of the anticipated market, listing expiring leases for the next following year, and projecting ranges of rental rates and term for new or renewal leases, estimates of concessions to tenants, and cost of alterations for space to be leased, along with other estimated Owner costs.

After approval of each such budget by Owner, Agent agrees to use diligence and to employ all reasonable efforts to ensure that the actual cost of operating the Shopping Center shall not exceed said budget.

(m) To indemnify, defend and hold the Owner harmless from liability resulting from the criminal, grossly negligent acts or omissions or willful misconduct of Agent, its affiliates, shareholders, partners, members, officers, directors, employees or agents, arising from activities carried out pursuant to the obligations of this Agreement.

(n) To reasonably cooperate with Owner to deliver each of the items required to be delivered by Owner with respect to tenants, leasing plans and other matters pursuant to any loan agreement entered into by Owner relating to a financing involving the Shopping Center (including, without limitation, the Loan Agreement dated as of June 6, 2007, between owner and Lehman Brothers Holdings, Inc., as lender);

(i) To render a monthly statement of receipts, disbursements, and charges to the address provided in Section 9 below, or such other persons designated from time to time by Owner and to remit to Owner each month the net proceeds (provided Agent is not required to make any mortgage, escrow or tax payment on the first day of the following month). Agent will remit the net proceeds or the balance thereof, after making allowance for such payments to be transferred to such money market or the account as may be designated by Owner in writing from time to time;

(ii) In case the disbursements and charges shall be in excess of the receipts, Owner agrees to pay such excess promptly, but nothing herein contained shall obligate Agent to advance its own funds on behalf of Owner; and

(iii) Agent shall ensure that all employees of Agent who handle or are responsible for the safekeeping of any moneys of Owner are covered by a fidelity bond (at cost of Agent) in an amount and with a company determined by Agent.

3. Agreements of Owner. During the term of this Agreement, Owner agrees:

(a) To self-insure or, at its option and expense, carry insurance upon the Shopping Center and shall look solely to such insurance for indemnity against any loss or damage to the Shopping Center, except to the extent caused by the gross negligence or willful misconduct of Agent or its employees, agents, contractors or subcontractors, and to the extent that policies shall be procured, Owner shall obtain waivers of subrogation against Agent under such policies.

(b) With respect to liabilities in connection with the Shopping Center and arising out of this Agreement, to indemnify, protect, hold harmless and defend Agent and the Indemnified Parties, with counsel reasonably acceptable to Agent, from and against all claims, losses and liabilities resulting from damages to property or injury to or death of persons, defamation and false arrest (including, but not limited to, the property and person of the parties hereto and their agents, contractors, subcontractors, and employees), or occasioned by or in

connection with or arising out of acts or omissions, except to the extent caused by the gross negligence or willful misconduct of Agent, its employees, contractors, or subcontractors. Owner's liability to Agent for any negligence or misconduct shall be limited to the extent of insurance coverage contemplated under this Agreement and the extent of Owner's interest in the Shopping Center, and Agent hereby waives any other personal recourse against Owner with respect to its negligence.

(c) To make available to Agent sufficient funds to perform Agent's duties hereunder as set forth in Section 4 below, and to keep the Shopping Center in good repair and condition and adequately staffed and otherwise maintained in a manner consistent with the Five Star Standard. In the event Owner fails to provide funds under this Section, except in emergency situations when Agent is unsuccessful in contacting Owner, Agent shall have no liability for failure to comply with this Section.

(d) To provide such office space as is reasonably required by Agent to perform its on-site duties hereunder.

(e) That Agent does not assume, and is not given responsibility for, compliance of any building improvement constituting the Shopping Center or any equipment therein with the requirements of any statute, ordinance, law, or regulation of any governmental body or of any public authority or official thereof having jurisdiction. Owner represents that to the best of its knowledge the Shopping Center and any equipment therein comply and will comply throughout the term hereof, with such requirements.

(f) To give adequate advance written notice to Agent if Owner desires that Agent make payment, out of the rental proceeds generated by the Shopping Center, of mortgage indebtedness, general taxes, special assessments, or fire, steam, boiler or any other insurance premiums. In no event shall Agent be required to advance its own money in payment of any such indebtedness, taxes, assessments, or premiums.

4. Compensation.

(a) In consideration of the services to be provided by Agent hereunder, Owner agrees to pay Agent each month three percent (3%) of any and all gross revenues ("Gross Revenues" from the operation of the Shopping Center received from tenants, licensees and occupants of the Shopping Center during the period this Agreement remains in effect, including without limitation all rents, and any and all charges, chargebacks or other amounts recovered from tenants, licensees and occupants of the Shopping Center as reimbursement (collectively, "Reimbursements") for expenses incurred or payable by Owner (including without limitation on account of insurance and other common maintenance costs); provided that, Gross Revenues shall not include Reimbursements for real estate taxes, except to the extent a management or administrative fee is payable by a tenant, licensee or occupant of the Shopping Center on such real estate tax Reimbursements, then Agent shall receive one hundred percent (100%) of such fee. Agent's compensation under this Agreement (A) for the first calendar year (or remaining portion thereof) shall be estimated based upon a pro forma of Gross Revenues mutually acceptable to Owner and Agent, and (B) for each subsequent calendar year shall be estimated

based upon the actual Gross Revenues for the immediately preceding calendar year, and in each case subject to adjustment for actual Gross Revenues within ninety (90) days after the expiration of such calendar year.

(b) Agent shall not be required to advance any moneys for the care or management of the Shopping Center, and Owner agrees to promptly advance all moneys necessary therefor. Owner shall, without limitation, be responsible for payment of:

(i) Salaries, benefits and applicable payroll taxes for a property manager, assistant property managers, administrative assistants and any other employees hired by Agent to work at the Shopping Center, as required to enable the proper management of the Shopping Center in accordance with the Five Star Standard;

(ii) central office expenses directly related to the Shopping Center, including but not limited to, postage, overnight courier, long distance telephone calls, travel and copying;

(iii) costs incurred by Agent to comply with any of Owner's loan agreements;

(iv) fees, fines or penalties associated with compliance with applicable laws; and

(v) all pre-approved legal actions or proceedings for collection of rent or the income from the Shopping Center.

(c) Agent shall secure the approval of Owner for any alterations to be performed by Agent, if any, or expenditures not included in the operating budget to the extent such expenditures would result in a material change to the approved budget, except for pre-approved monthly or recurring operating charges. If Agent shall elect to advance any money in connection with the management of the Shopping Center, Owner agrees to reimburse Agent forthwith and hereby authorizes Agent to deduct such advances from any moneys due Owner. Agent shall, upon instruction from Owner, impound reserves each month for payment of real estate taxes, insurance or any other special expenditure.

5. Termination.

(a) In the event that either party fails to comply with the provisions hereof, and such failure continues for thirty (30) days after receipt of written notice from the other party of such failure, then such other party may terminate this Agreement by written notice to such party, and this Agreement shall automatically terminate ten (10) days after the giving of such termination notice. Notwithstanding anything herein to the contrary, if such failure is capable of being cured by such party, and if such party shall deliver prompt notice to such other party that such party has commenced to cure such failure, prosecutes the steps required to cure such failure with due diligence, and cures such failure within a commercially reasonable period of time not to exceed ninety (90) days after such party's receipt of written notice from such other

party, then such other party shall not have the right to terminate this Agreement on account of such default.

(b) Upon termination of this Agreement for any reason, Agent shall deliver the following to Owner's duly appointed agent on or before ten (10) days following the termination date:

(i) A final accounting, reflecting the balance of income and expenses for the Shopping Center as of the date of termination;

(ii) Any balance or moneys due to Owner or tenant security deposits or both held by Agent with respect to the Shopping Center; and

(iii) All records, contracts, drawings, leases, correspondence, receipts for deposits, unpaid bills, summary of all leases in existence at the time of termination, and all other papers or documents which pertain to the Shopping Center. Such data and information and all such documents shall at all times be the property of Owner, subject to the right of Agent to photocopy same.

(c) Any fees and amounts due Agent at termination shall be paid simultaneously with delivery of the items set forth in subparagraphs (i), (ii) and (iii) above.

6. Suitability.

Agent acknowledges that Owner or its affiliates conduct, or in the future may conduct, a business that is or may be subject to and exist because of privileged licenses issued by applicable governmental authorities in the state of Nevada or elsewhere that regulate gaming and related matters (a "Gaming Authority"). If requested to do so by Owner, Agent and its agents, employees and subcontractors, at its own expense, shall obtain any license, qualification, clearance or the like which shall be requested or required of any of them by a Gaming Authority. If Agent, or its agents, employees, or subcontractors, fail to satisfy such requirement, or if Owner is directed to cease business with Agent or its agents, employees or subcontractors by any such Gaming Authority, or if Owner shall in good faith determine, in Owner's sole and exclusive judgment, that Agent, or any of its agents, employees, subcontractors, or representatives: (a) is or might be engaged in, or is about to be engaged in, any activity or activities, or (b) was or is involved in any relationship, either of which could or does jeopardize Owner's business or such licenses, or if any such license is threatened to be, or is, denied, curtailed, suspended or revoked, this Agreement may be immediately terminated by Owner, without further obligation, liability or recourse to Agent. Further, Agent, (i) acknowledges its understanding that it is illegal for a denied gaming license applicant or a revoked gaming licensee, or a business organization under such a person's control, to enter or attempt to enter into a contract with a gaming licensee, without the prior approval of the Nevada Gaming Commission; (ii) affirms that Agent and its affiliates are not such a person and are not under the control of such a person; and (iii) agrees that this Agreement is subject to immediate termination by Owner, without further obligation, liability or recourse to Agent, if Agent or an affiliate of Agent is or becomes such a person or is or becomes under the control of such a person. In addition, Agent will provide all information

about its officers, directors, owners, employees, agents and subcontractors as is reasonably requested by Owner in order for it to conduct its internal due diligence review of the suitability of Agent.

7. Assignment.

(a) This Agreement shall not be assignable by Agent without the express written consent of Owner, which consent, subject to the remaining terms of this Section, shall not be unreasonably withheld. Any such assignment without Owner's consent shall be void and shall constitute a breach of this Agreement and no assignment shall be permitted after notice of termination of this Agreement.

(b) An assignment shall be deemed to occur if a sale or transfer of over FIFTY PERCENT (50%) (cumulatively) of the beneficial interests in Agent, or the profits or proceeds relating thereto, occurs. Agent agrees to promptly notify Owner of any such sale or transfer; provided, however, that notwithstanding the foregoing, the sale or transfer of any membership interest in Agent by a current member of Agent to any other current member of Agent shall be permitted, subject to Agent's duty to notify Owner. In addition, notwithstanding anything herein to the contrary, Agent shall be permitted to assign this Agreement to a parent, subsidiary, or affiliated entity without Owner's prior written consent provided Agent gives Owner a copy of such assignment within ten (10) days after such assignment.

(c) As a condition to an assignment, the assignee shall agree in writing to perform all of the terms and conditions of this Agreement.

(d) Upon consent and assignment, as specified in subsections (a)-(c) above, Agent shall no longer be obligated by any of the terms and provisions of this Agreement.

(e) Consent by Owner to any single assignment shall, under no circumstances, be deemed to be consent to a subsequent assignment.

8. Survival of Certain Provisions. All provisions of this Agreement that require Owner to have insurance or to protect, defend, hold harmless, reimburse or indemnify Agent shall survive any termination and, if Agent is or becomes involved in any proceeding or litigation by reason of having been Owner's agent, such provisions shall apply as if this Agreement were still in effect. The parties understand and agree that Agent may withhold sufficient amounts of funds for thirty (30) days after the end of the month in which this Agreement is terminated to pay bills previously incurred but not yet invoiced.

9. Notices. Any notices required or permitted to be given pursuant to this Agreement (herein collectively called "Notice") shall be in writing and delivered personally, by nationally recognized courier or mailed by registered or certified mail, postage prepaid and return receipt requested, or by telecopier, as follows:

IF TO OWNER: c/o Fontainebleau Las Vegas, LLC
101 Convention Center Drive P-250
Las Vegas, NV 81909
Attention: President
Fax # (702) 495-7720

with a copy to:

c/o Fontainebleau Resorts, LLC
2827 Paradise Road
Las Vegas, NV 81909
Attention: General Counsel
Fax # (702) 495-8112

IF TO AGENT: TB Realty, Inc.
c/o Turnberry Development
19501 Biscayne Blvd., Suite 400
Aventura, Florida 33180
Attention: Kenneth Bernstein

Each of the above addresses for notice purposes may be changed by providing appropriate notice hereunder. Notice given by personal delivery or registered mail shall be effective upon actual receipt. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next normal business day after receipt if not received during the recipient's normal business hours. All Notices by telecopier shall be confirmed by the sender thereof promptly after transmission in writing by registered mail or personal delivery.

10. Miscellaneous.

(a) The "Five Star Standard" shall mean a first-class retail enclosed shopping center operated in a commercially reasonable manner that is substantially consistent with the operating standards of retail shopping facilities located within first-class luxury mixed-use resorts located in or around Las Vegas Boulevard South, Las Vegas, Nevada.

(b) Each provision of this Agreement is intended to be severable. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement, and shall not affect the validity of the remainder of this Agreement.

(c) No consent or waiver, express or implied, by either party hereto or of any breach or default by the other party in the performance by the other of its obligations hereunder shall be valid unless in writing, and no such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continued, shall not constitute a waiver by

such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of Owner shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

(d) The venue of any action or proceeding brought by either party against the other arising out of this Agreement shall, to the extent legally permissible, be in the state and county in which the Shopping Center are located.

(f) This Agreement shall be construed in accordance with the laws of the State of Nevada.

(g) This Agreement embodies the entire understanding of the parties and there are no further agreements or understanding, written or oral, in effect between the parties relating to the subject matter hereof. Any modification or amendment of this Agreement to be effective must be in writing and be signed by both parties to this Agreement by their respective officers.

(h) This Agreement shall be binding upon the successors and assigns of Agent and Owner.

[SIGNATURES APPEARING ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

OWNER:

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: _____
Name: GLENN SCHAEFFER
Title: President and CEO

AGENT:

TB REALTY, INC., a Nevada corporation

By: _____
Name: DANIEL RIORDAN
Title: President

PGH1 #4138387

EXHIBIT A
AIR RIGHTS PARCELS

PGH1 #4138387

EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1:

ALL THAT LAND SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE EAST HALF (E 1/2) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 9; THENCE SOUTH 04°36'30" EAST ALONG THE EAST LINE THEREOF, A DISTANCE OF 208.50 FEET TO A POINT; THENCE NORTH 88°42'15" WEST ALONG THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED BY CLIFFORD A. JONES, ET AL TO BONANZA HOTEL, INC., BY DEED RECORDED SEPTEMBER 01, 1948, AS INSTRUMENT NO. 294620, CLARK COUNTY NEVADA RECORDS, A DISTANCE OF 1256.11 FEET TO A POINT; THENCE NORTH 26°29'15" EAST, A DISTANCE OF 33.15 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 26°29'15" EAST, A DISTANCE OF 200.39 FEET TO A POINT; THENCE NORTH 76°55'30" WEST, A DISTANCE OF 603.45 FEET TO A POINT ON THE EAST LINE OF U.S. HIGHWAY NO. 91 (ORIGINAL ALIGNMENT - 80 FEET WIDE); THENCE SOUTH 28°00' WEST, A DISTANCE OF 340.97 FEET TO A POINT; THENCE SOUTH 88°42'15" EAST, A DISTANCE OF 659.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND AS CONVEYED TO THE STATE OF NEVADA BY DEED RECORDED MARCH 15, 1951 AS DOCUMENT NO. 365998 IN BOOK 63 OF DEEDS, PAGE 572, OF OFFICIAL RECORDS, AND RECORDED NOVEMBER 21, 1951 IN BOOK 65 OF DEEDS, PAGE 415 AS DOCUMENT NO. 377766, OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT CERTAIN TRACT OR PARCEL OF LAND CONVEYED TO CLARK COUNTY, NEVADA BY DEED RECORDED NOVEMBER 21, 1967 AS DOCUMENT NO. 671884 OF OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF THE NORTHEAST QUARTER (NE 1/4) AND THAT PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., MORE PARTICULARLY DESCRIBED AS PARCEL ONE (1) AS SHOWN ON PARCEL MAP IN FILE 37, PAGE 44, RECORDED MARCH 22, 1982 IN BOOK 1538, AS DOCUMENT NO. 1497782 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

PGH1 #4138387

EXHIBIT C
SHOPPING CENTER DESCRIPTION

PGH1 #4138387

EXHIBIT G

FORM OF STATEMENT RE: NON-BANK STATUS

EXHIBIT K

FORM OF STATEMENT RE: NON-BANK STATUS

Reference is made to the Loan Agreement dated as of June [], 2007 (as amended, supplemented, replaced or otherwise modified from time to time, the "Loan Agreement"), between Fontainebleau Las Vegas Retail, LLC, as Borrower; and Lehman Brothers Holdings Inc., individually and as Agent for one or more Co-Lenders, as Lender. Capitalized terms used herein that are not defined herein shall have the meanings ascribed to them in the Loan Agreement. [] (the "Non-U.S. Entity") is providing this certificate pursuant to Section 2.2.8(b) of the Loan Agreement. The Non-U.S. Entity hereby represents and warrants that:

1. The Non-U.S. Entity is the sole record and beneficial owner of the Loans or the obligations evidenced by Note(s) in respect of which it is providing this certificate.

2. The Non-U.S. Entity is not a "bank" for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "Code"). In this regard, the Non-U.S. Entity further represents and warrants that:

(a) the Non-U.S. Entity is not subject to regulatory or other legal requirements as a bank in any jurisdiction; and

(b) the Non-U.S. Entity has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;

3. The Non-U.S. Entity is not a 10-percent shareholder of Borrower within the meaning of Section 881(c)(3)(B) of the Code; and

4. The Non-U.S. Entity is not a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

IN WITNESS WHEREOF, the undersigned has duly executed this certificate.

[NAME OF NON-U.S. ENTITY]

By: _____
Name:
Title:

Date:

Plaintiffs' Exhibit 1511

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 Case Numbers:

09-CV-23835-ASG
10-CV-20236-ASG

**DEFENDANT BANK OF AMERICA, N.A.'S RESPONSES
AND OBJECTIONS TO PLAINTIFF TERM LENDERS'
SECOND SET OF RULE 26.1.G INTERROGATORIES**

Defendant Bank of America, N.A. ("BANA") by its undersigned attorneys, hereby responds to Plaintiff Term Lenders' Second Set of Rule 26.1G Interrogatories (the "Interrogatories") as follows:

GENERAL OBJECTIONS

The following General Objections are incorporated by reference into BANA's response to each individual interrogatory as if set forth fully therein.

1. BANA objects to the Interrogatories, and each and every definition, instruction, or interrogatory therein, to the extent that they purport to impose on BANA any obligations different from, inconsistent with, or in addition to those imposed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of Florida, the individual practices of Judge Alan S. Gold and Magistrate Judge Jonathan Goodman, and any existing Court Order in this case. In responding to the Interrogatories, BANA will comply with those rules, orders, and applicable laws.

2. To the extent BANA responds to any individual interrogatory, it does not concede that the information requested thereby is relevant, material, competent or admissible. BANA expressly reserves the right to object to further discovery into any subject matter covered by the Interrogatories.

3. BANA objects to the Interrogatories as premature. BANA has not yet completed its factual investigation relating to this action, review of its own documents, review of the documents of non-parties or trial preparation. BANA's responses to the Interrogatories are based on its best present knowledge, information and belief. BANA reserves the right to rely on—and to assert an advice-of-counsel defense based on—any facts, documents or other information that may develop or come to its attention at a later date.

4. BANA objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, attorney work product immunity, joint defense privilege, common interest doctrine, or any other applicable privilege, immunity, rule of privacy or confidentiality, protection, or restriction that protects such information from involuntary disclosure. BANA intends to and does assert such privilege(s) with respect to all such information, and such information will not be disclosed or produced. Any inadvertent disclosure or production of such information is not intended to constitute, and shall not constitute, a waiver in whole or in part of such privilege, doctrine or objections.

5. BANA objects to the Interrogatories to the extent that they purport to require BANA to disclose information where such disclosure would violate any of BANA's constitutional, statutory, or common-law privacy rights, any confidentiality agreement between BANA and any entity or person, the confidentiality of any settlement discussions or agreements, or court orders restricting the disclosure of such information.

6. BANA objects to the Interrogatories, and the Definitions and Instructions thereto, to the extent that they purport to require the disclosure of information that is not in BANA's possession, custody, or control. In responding to the Interrogatories, BANA will provide only information reasonably known to it or within its possession, custody, or control.

7. BANA objects to the Interrogatories, and the Definitions and Instructions thereto, to the extent they purport to require the disclosure of information from outside the time period relevant to this action on the grounds that they are overbroad, unduly burdensome, not reasonably calculated to lead to admissible evidence, and would result in the review of documents and information that are irrelevant to the subject matter of this litigation. Unless otherwise specified in their specific responses, and subject to and without waiving their objections, BANA limits its responses to the relevant time period, which for the purposes of BANA's responses is January 1, 2007, through June 9, 2009.

8. BANA objects to the Interrogatories to the extent they seek information regarding alleged breaches of the Credit Agreement by BANA. That information is not relevant because the Court determined, in its May 28, 2010 Amended MDL Order Number Eighteen; Granting in Part and Denying in Part Motions to Dismiss [DE 35]; [DE 36]; Requiring Answer to Complaints; Vacating Final Judgment ("Amended MDL Order Number Eighteen"), that (a) the Term Lenders lack standing to enforce BANA's lending obligations to Fontainebleau, and (b) that BANA had no obligation to honor Fontainebleau's March 3, 2009 Notice of Borrowing because "fully drawn . . . unambiguously means 'fully funded'; and . . . the Delay Draw Term Loans had not been 'fully drawn' at the time Fontainebleau submitted the March Notices of Borrowing," and dismissed the Term Lenders' claims based on alleged breaches of the Credit Agreement.

9. Subject to the other general and specific objections set forth herein, BANA will use reasonable diligence to obtain responsive information in its possession, custody or control based on an examination of those files reasonably expected to yield responsive information and/or documents, and conversations with those individuals who reasonably may be expected to possess information responsive to the Interrogatories. Information provided by BANA in response to specific interrogatories should not be construed as a representation that each and every document in its possession, custody, or control has been examined or that each and every possible witness has been interviewed in connection with the responses thereto. It is not practicable to review every document in BANA's possession or to identify and interview every possible person with knowledge to determine if any possess information that may be responsive to one of the Interrogatories. Each individual interrogatory will be considered separately in making a determination about where to look and who to interview for responsive information.

10. BANA reserves the right to modify, amend or supplement its objections and responses to the Interrogatories.

OBJECTIONS TO DEFINITIONS

11. BANA objects to the definition of "BofA" on the grounds that it is overbroad, unduly burdensome, vague, and ambiguous. Read literally, this definition encompasses each of Bank of America, N.A.'s "present officers, directors, employees, agents, attorneys, subsidiaries or persons acting on its behalf" without regard to their connection to the events at issue in the actions. In responding to the Requests, BANA shall construe "BofA" to mean only (i) Bank of America, N.A., and (ii) its present directors, officers, employees, and known agents.

12. BANA objects to the definition of "Borrowers" on the grounds that it is overbroad, unduly burdensome, vague and ambiguous. Read literally, the definition

encompasses Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LCC and “any of their present or former officers, directors, employees, agents, attorneys, subsidiaries, persons, or predecessors-in-interest acting on behalf of them” without regard to their connection to the events at issue in this action. Moreover, BANA has no basis for knowing whether a person or entity is or was “acting on behalf” of Fontainebleau Las Vegas, LLC or Fontainebleau Las Vegas II, LCC. In responding to the Requests, BANA will construe “Borrowers” to mean only (i) Fontainebleau Las Vegas, LLC, (ii) Fontainebleau Las Vegas II, LCC, and (iii) their respective employees and agents known to BANA as such.

13. BANA objects to the definition of “identify” on the grounds that it is unduly burdensome and overbroad. The definition’s requirement that BANA provide information such as “the software applications used to create [a document]” and “the relationship of the author and address to each other” imposes an undue burden on BANA, seeks irrelevant information, and exceeds what is required by the Federal Rules of Civil Procedure and Eleventh Circuit law. In identifying documents in response to any of the Interrogatories, BANA will comply with the Federal Rules of Civil Procedure.

19. BANA objects to the definitions of “person(s)” and “individual(s)” on the grounds that it is overbroad, unduly burdensome, vague, and ambiguous. Read literally, the definition encompasses “any natural person, partnership, corporation, joint venture, company, law firm, consultant, independent contractor, or other business entity of any kind and all present officers, directors, partners, agents, employees, attorneys and others acting or purporting to act for or on behalf of such person” without regard to their connection to the events at issue in this action. Moreover, BANA has no basis for knowing whether a person or entity is “acting or purporting to act for or on behalf” of a person or individual. In responding to the Requests,

BANA will construe “person(s)” or “individual(s)” to mean only (i) any natural person, partnership, corporation, joint venture, company, law firm, consultant, independent contractor, or other business entity of any kind, and (ii) their respective employees and agents known to BANA as such.

**RESPONSES AND OBJECTIONS
TO SPECIFIC INTERROGATORIES**

INTERROGATORY NO. 12:

Do you contend that you did not breach the Disbursement Agreement and/or Credit Agreement because you relied in good faith on the advice of counsel in performing any of the acts alleged in the Complaint?

RESPONSE TO INTERROGATORY NO. 12:

BANA objects to Interrogatory No. 12 on the ground that it seeks information that is not relevant to any issue in these lawsuits. *See* General Objection No. 8.

Subject to and without waiving these objections and the General Objections, based upon the best information available to it at this time, BANA responds “No.” BANA expressly reserves the right to modify, amend or supplement its response to this Interrogatory

INTERROGATORY NO. 13:

If your response to Interrogatory No. 12 is anything other than an unqualified “No,” describe in detail all such advice of counsel upon which you relied, including without limitation the contents of such advice, the identity of the lawyer and/or law firm that provided such advice, the identity of the person(s) to whom such advice was provided, and the date upon which such advice was provided.

RESPONSE TO INTERROGATORY NO. 13:

Subject to and without waiving the General Objections, please see BANA’s response to Interrogatory No. 12.

INTERROGATORY NO. 14:

If your response to Interrogatory No. 12 is anything other than an unqualified "No," identify all documents relating to any such advice of counsel.


RESPONSE TO INTERROGATORY NO. 14:

BANA objects to Interrogatory No. 14 on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent it purports to require BANA to identify "all documents relating to any such advice of counsel." It purports to require BANA to identify literally every piece of information in its files that might be responsive to this Interrogatory. It is impracticable to review every document in BANA's possession to determine if any are responsive to this Interrogatory. Accordingly, BANA's identification of documents in response to this Interrogatory should not be construed as a representation that each and every document in its possession, custody, or control has been examined. BANA will use reasonable diligence in identifying responsive documents in its possession, custody, or control based on an examination of those custodians' files that are reasonably expected to contain responsive documents.

Subject to and without waiving the foregoing objections and the General Objections, please see BANA's response to Interrogatory No. 12.

Date: New York, New York
December 24, 2010

O'MELVENY & MYERS LLP

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CERTIFICATE OF SERVICE

I, Bradley L. Rice, hereby certify that on December 24, 2010, I served true and correct copies of the foregoing Defendant Bank of America, N.A.'s Responses and Objections to Plaintiff Term Lenders' Second Set of Rule 26.1G Interrogatories by first class mail on the following counsel:

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**Plaintiffs' Exhibit 1512
FILED UNDER SEAL**

**Plaintiffs' Exhibit 1513
FILED UNDER SEAL**

**Plaintiffs' Exhibit 1514
FILED UNDER SEAL**

Plaintiffs' Exhibit 1515
FILED UNDER SEAL

**Plaintiffs' Exhibit 1516
FILED UNDER SEAL**