

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
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In re:

FONTAINEBLEAU LAS VEGAS
HOLDINGS, LLC, et al.,

Case No. 09-21481-BKC-AJC
Chapter 11
(Jointly Administered)

Debtors.

TURNBERRY WEST CONSTRUCTION, INC.,

Plaintiff,

vs.

Adv. Pro No.

AVENUE FUND, LTD.; AVENUE II, LTD.;
AVENUE III, LTD.; AVENUE IV, LTD.;
AVENUE V, LTD.; AVENUE VI, LTD.;
BABSON LTD. 2004-I; BABSON LTD. 2004-II;
BABSON LTD. 2005-I; BABSON LTD. 2005-II;
BABSON LTD. 2005-III; BABSON LTD. 2006-I;
BABSON LTD. 2006-II; BABSON LTD. 2007-I;
ARTUS LOAN FUND 2007-I LTD.; BABSON LOAN
OPPORTUNITY, LTD.; JFIN 2007 LTD.;
SAPPHIRE VALLEY CDO I, LTD.; JEFFRIES FINANCE
CP FUNDING LLC; BRIGADE LEVERAGED CAPITAL
STRUCTURES FUND, LTD.; BATTALION 2007-I LTD.;
CANYON CAPITAL ADVISORS, LLC; CASPIAN COR-
PORATE LOAN FUND, LLC; CASPIAN CAPITAL PART-
NERS, L.P.; CASPIAN SELECT CREDIT MASTER FUND, LTD.;
MARINER OPPORTUNITIES FUND, LP; SANDS POINT
FUNDING LTD.; COPPER RIVER LTD.; KENNECOTT
FUNDING LTD.; NZC OPPORTUNITIES (FUNDING) II, LTD;
GREEN LANE LTD.; 1888 FUND LTD.; ORPHEUS
FUNDING LLC; ORPHEUS HOLDINGS LLC; LFC2 LOAN
FUNDING LLC; HALCYON LOAN INVESTORS I LTD.;
HALCYON LOAN INVESTORS II LTD.; HALCYON
STRUCTURED ASSET MANAGEMENT LONG SECURED/
SHORT UNSECURED 2006-I LTD.; HALCYON
STRUCTURED ASSET MANAGEMENT EUROPEAN
2008-II B.V.; HALCYON STRUCTURED ASSET MANA-

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GEMENT I LTD.; HALCYON STRUCTURED ASSET
 MANAGEMENT LONG SECURED/SHORT UNSECURED
 2007-I LTD.; HALCYON STRUCTURED ASSET MANA-
 GEMENT LONG SECURED/SHORT UNSECURED 2007-2 LTD.;
 HALCYON STRUCTURED ASSET MANAGEMENT LONG
 SECURED/SHORT UNSECURED 2007-3 LTD.; ABERDEEN
 LOAN FUNDING, LTD.; ARMSTRONG LOAN FUNDING,
 LTD.; BRENTWOOD LTD.; EASTLAND , LTD.;
 EMERALD ORCHARD LTD.; GLENEAGLES , LTD.;
 GRAYSON , LTD.; GREENBRIAN , LTD.;
 HIGHLAND CREDIT OPPORTUNITIES CDO, LTD.;
 HIGHLAND LOAN FUNDING V, LTD.; HIGHLAND
 OFFSHORE PARTNERS, L.P.; JASPER , LTD.;
 LIBERTY , LTD.; LOAN FUNDING IV LLC; LOAN
 FUNDING VII LLC; LOAN STAR STATE TRUST;
 LONGHORN CREDIT FUNDING, LLC; RED RIVER ,
 LTD.; ROCKWALL CDO LTD; ROCKWALL CDO II, LTD.;
 SOUTHFORK , LTD.; STRATFORD , LTD.;
 WESTCHESTER , LTD.; ING PRIME RATE TRUST;
 ING SENIOR INCOME FUND; ING INTERNATIONAL (II) –
 SENIOR BANK LOANS EURO; ING INTERNATIONAL (II) –
 SENIOR BANK LOANS USD; ING INVESTMENT MANA-
 GEMENT I, LTD.; ING INVESTMENT MANAGEMENT
 II, LTD.; ING INVESTMENT MANAGEMENT III,
 LTD.; ING INVESTMENT MANAGEMENT IV, LTD.;
 ING INVESTMENT MANAGEMENT V, LOTD.;
 ENCORE FUND LP; NUVEEN FLOATING RATE INCOME
 FUND; FORTISSIMO FUND; NUVEEN FLOATING RATE
 INCOME OPPORTUNITY FUND; NUVEEN SENIOR INCOME
 FUND; SYMPHONY CREDIT OPPORTUNITY FUND, LTD.;
 SYMPHONY I, LTD.; SYMPHONY II, LTD.,
 SYMPHONY III, LTD.; SYMPHONY IV, LTD.;
 SYMPHONY V, LTD.; CARLYLE PARTNERS 2008-I,
 LTD.; CARLYLE HIGH YIELD PARTNERS V, LTD.;
 CARLYLE HIGH YIELD PARTNERS VI, LTD.; CARLYLE
 HIGH YIELD PARTNERS VII, LTD.; CARLYLE HIGH
 YIELD PARTNERS VIII, LTD.; CARLYLE HIGH YIELD
 PARTNERS IX, LTD.; CARLYLE LOAN INVESTMENT,
 LTD.; CENTURION CDO VI, LTD.; CENTURION CDO VII,
 LTD.; CENTURION CDO 8, LIMITED; CENTURION CDO 9,
 LIMITED; CENT CDO 10 LIMITED; CENT CDO XI, LIMITED;
 CENT CDO 14, LIMITED; CENT CDO 15, LIMITED;
 VENTURE II CDO 2002, LIMITED; VENTURE OOO CDO
 LIMITED; VENTURE IV CDO LIMITED; VENTURE

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V CDO LIMITED; VENTURE VI CDO LIMITED;
 VENTURE VII CDO LIMITED; VENTURE VIII CDO
 LIMITED; VENTUREIX CDO LIMITED; VISTA
 LEVERAGED INCOME FUND; VEER CASH FLOW
 , LIMITED; DUANE STREET II, LTD.;
 DUANE STREET III, LTD.; DUANE STREET
 IV, LTD.; DUANE STREET V, LTD.;
 JAY STREET MARKET VALUE I, LTD.;
 RIVA RIDGE MASTER FUND, LTD.; MARINER LDC;
 GENESIS 2007-I LTD.; BANK OF AMERICA, N.A.;
 MERRILL LYNCH CAPITAL CORPORATION;
 JPMORGAN CHASE BANK, N.C.; BARCLAYS BANK
 PLC; DEUTSCHE BANK TRUST COMPANY AMERICAS;
 THE ROYAL BANK OF SCOTLAND PLC; SUMITOMO
 MITSUI BANKING CORPORATION; BANK OF SCOTLAND;
 HSF NORDBANK AG; MB FINANCIAL BANK, N.A.;
 CAMULOS MASTER FUND, L.P.; SERENGETI ASSET
 MANAGEMENT, LP; MFC GLOBAL INVESTMENT
 MANAGEMENT (US) LLC; FRANKLIN TEMPLETON
 INVESTMENTS; GOLDMAN SACHS GLOBAL SITUA-
 TIONS GROUP; EATON VANCE MANAGEMENT INC.;
 SATELLITE ASSET MANAGEMENT; BANK OF AMERICA
 LLC; PRUDENTIAL INVESTMENT MANAGEMENT-FIXED
 INCOME; NOMURA CREDIT RESEARCH & ASSET
 MANAGEMENT; DIMAIO AHMAD CAPITAL LLC;
 PIONEER INVESTMENT MANAGEMENT INC.;
 MFS INVESTMENT MANAGEMENT; NEW YORK LIFE
 INVESTMENT MANAGEMENT LLC; REGIMENT CAPITAL
 ADVISORS LLC; WESTERN ASSET MANAGEMENT CO.
 (WAMCO); JPMORGAN HIGH YIELD PARTNERS;
 THRIVENT FINANCIAL FOR LUTHERANS; BLACKROCK
 FINANCIAL MANAGEMENT INC.; DENVER INVESTMENT
 ADVISORS LLC; FIDELITY MANAGEMENT & RESEARCH;
 GOLDMAN SACHS ASSET MANAGEMENT LP (GSAM)(USA);
 RIVERSOURCE INVESTMENTS LLC; FEDERAL INVESTORS
 INC.; ARES MANAGEMENT, LP; DEUTSCHE ASSET
 MANAGEMENT (DEAM) (NYC); TATTERSALL ADVISORY
 GROUP INC (PHILADELPHIA); ING INVESTMENT MANA-
 GEMENT LLC (ATLANTA); LOGAN CIRCLE PARTNERS LP;
 STATE STREET GLOBAL ADVISORS (SSGA); UBI
 PRAMERICA SRG SPA; BARCLAYS CAPITAL, INC.; PPM
 AMERICA, INC.; BRIGADE CAPITAL MANAGEMENT, LLC;
 CREDIT SUISSE ASSET MANAGEMENT AMERICAS (CSAM)(NY);
 ALLEGIANT ASSET MANAGEMENT CO.;

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FAF ADVISIORS, INC.; INVESCO INC (NEW YORK);
NEWBERGER BERMAN MANAGEMENT LLC;
RICHARD WENZ, and JOHN DOE 1-50,

Defendants.

COMPLAINT FOR DECLARATION THAT: (I) THE CERTAIN SUBORDINATION AGREEMENT BY AND BETWEEN TURNBERRY WEST CONSTRUCTION, INC AND THE DEBTORS' LENDERS IS VOID AND UNENFORCEABLE, AND (II) TO DETERMINE THE STATUTORY LIEN OF TURNBERRY WEST CONSTRUCTION, INC ON ITS OWN BEHALF AND ON BEHALF OF ALL LIEN HOLDERS CLAIMING BY AND THROUGH THE LIEN OF TURNBERRY WEST CONSTRUCTION, INC IS A VALID LIEN SUPERIOR TO THE LIENS OF THE LENDERS

Plaintiff, Turnberry West Construction, Inc. ("TWC"), by and through undersigned counsel, sues Fontainebleau Las Vegas LLC ("FBLV") as owner and developer, Bank of America N.A as Administrative Agent, Issuing Lender, and Swing Line Lender, Avenue CLO Fund, Ltd., Avenue CLO II, Ltd., Avenue CLO III, Ltd., Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Babson CLO Ltd. 2004-I, Babson CLO Ltd. 2004-II, Babson CLO Ltd. 2005-I, Babson CLO Ltd. 2005-II, Babson CLO Ltd. 2005-III, Babson CLO Ltd. 2006-I, Babson CLO. Ltd. 2006-II, Babson CLO Ltd. 2007-I, Artus Loan Fund 2007-I Ltd., Babson Loan Opportunity CLO, Ltd., Jfin CLO 2007 Ltd., Sapphire Valley CDO I, Ltd., Jeffries Finance CP Funding LLC, Brigade Leveraged Capital Structures Fund, Ltd., Battalion CLO 2007-I Ltd., Canyon Capital Advisors, LLC, Caspian Corporate Loan Fund, LLC, Caspian Capital Partners, L.P., Caspian Select Credit Master Fund, Ltd., Mariner Opportunities Fund, LP, Mariner LDC, Sands Point Funding Ltd, Copper River CLO Ltd., Kennecott Funding ltd., NZC Opportunities (Funding) II Limited, Green lane CLO Ltd., 1888 Fund, Ltd., Orpheus Funding LLC, Orpheus Holdings LLC, LFC2 Loan Funding LLC, Halcyon Loan Investors CLO I Ltd., Halcyon Loan Investors CLO II ltd., Halcyon Structured Asset Management Long Secured/Short Unsecured

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CLO 2006-I Ltd., Halcyon Structured Asset Management European 2008-II B.V., Halcyon Structures Asset Management I Ltd., Halcyon Structured Management Long Secured/Short Unsecured 2007-I Ltd., Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-2 Ltd., Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-3 Ltd., Aberdeen Loan Funding, Ltd., Armstrong Loan Funding, Ltd., Brentwood CLO, Ltd., Eastland CLO, Ltd., Emerald Orchard Limited, Gleneagles CLO, Ltd., Grayson CLO, Ltd., Greenbriar CLO, Ltd., Highland Credit Opportunities CDO, Ltd., Highland Loan Funding V, Ltd., Highland Offshore Partners, L.P., Jasper CLO, Ltd., Liberty CLO, Ltd., Loan Funding IV LLC, Loan Funding VII LLC, Loan Star State Trust, Longhorn Credit Funding, LLC, Red River CLO, Ltd., Rockwall CDO Ltd., Rockwall CDO II, Ltd., Southfork CLO, Ltd., Stratford CLO, Ltd., Westchester CLO, Ltd., ING Prime Rate Trust, ING Senior Income Fund, ING International (II) – Senior Bank Loans Euro., ING International (II) – Senior Bank Loans USD, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO III, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd., Encore Fund LP, Nuveen Floating Rate Income Fund, Fortissimo Fund, Nuveen Floating Rate Income Opportunity Fund, Nuveen Senior Income Fund, Symphony Credit Opportunity Fund, Ltd., Symphony CLO I, Ltd., Symphony CLO II, Ltd., Symphony CLO III, Ltd., Symphony CLO IV, Ltd., Symphony CLO V, Ltd., Carlyle High Yield Partners 2008-I, Ltd., Carlyle High Yield Partners V, Ltd., Carlyle High Yield Partners VI, Ltd., Carlyle High Yield Partners VII, Ltd., Carlyle High Yield Partners VIII, Ltd., Carlyle High Yield Partners IX, Ltd., Carlyle Loan Investment, Ltd., Centurion CDO VI, Ltd., Centurion CDO VII, Ltd., Centurion CDO 8, Limited, Centurion CDO 9, Limited, Cent CDO 10 Limited, Cent CDO

XI Limited, Cent CDO 12 Limited, Cent CDO 14 Limited, Cent CDO 15 Limited, Venture CDO 2002, Limited, Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture V CDO Limited, Venture VIII CDO Limited, Venture IX CDO Limited, Vista Leveraged Income Fund, Veer Cash Flow CLO, Limited, Duane Street CLO I, Ltd., Duane Street CLO II, Ltd., Duane Street CLO III, Ltd., Duane Street CLO IV, Ltd., Duane Street CLO V, Ltd., Jay Street Market Value CLO I, Ltd., Riva Ridge Master Fund, Ltd., Mariner LDC, and Genesis CLO 2007-I Ltd. (collectively the “Term Lenders”), Bank of America N.A as Administrative Agent, Issuing Lender, and Swing Line Lender, Bank of America, N.A., Merrill Lynch Capital Corporation, JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation, Bank of Scotland, HSN Nordbank AG, MB Financial Bank, N.A., and Camulos Master Fund, L.P. (“Revolving Lenders”) and Wells Fargo N.A., as Trustee and Lender, Serengeti Asset Management, LP, MFC Global Investment Management (US) LLC, Franklin Templeton Investments, Goldman Sachs Global Special Situations Group, Eaton Vance Management Inc., Satellite Asset Management, Bank of America LLC, Prudential Investment Management-Fixed Income, Nomura Corporate Research & Asset Management, DiMaio Ahmad Capital, LLC, Pioneer Investment Management, Inc., MFS Investment Management, New York Life Investment Management LLC, Regiment Capital Advisors LLC, Western Asset management Co, JPMorgan High Yield Partners, Thrivent Financial For Lutherans, BlackRock Financial Management, Inc., Denver Investment Advisors LLC, Fidelity Management & Research Co, Goldman Sachs Asset Management LP (GSAM)(USA), RiverSource Investments LLC, Federated Investors, Inc., Ares Management, LP, Deutsche Asset Management

(DeAM)(NYC), Tattersall Advisory Group Inc. (Philadelphia), ING Investment Management (Atlanta), Logan Circle Partners LP, State Street Global Advisors (SSgA), UBI Pramerica SGR SpA, Barclays Capital, Inc., PPM America Inc., Brigade Capital Management, LLC, Crédit Suisse Asset Management Americas (CSAM)(NY), Allegiant Asset Management Co., FAF Advisors Inc., INVESCO Inc. (New York), Newberger Berman Management LLC and Richard Wenz (“2nd Mortgage Lenders”) and John Does 1-50 representing any unknown successor lender under either the Term Loan (as hereinafter defined) Delayed Draw Loan (as hereinafter defined) or Swing Line Loan (as hereinafter defined), pursuant to Federal Rule of Bankruptcy Procedure 7001 and 11 U.S.C. §§ 105 and 506.¹ TWC alleges as follows:

JURISDICTION

1. This is an adversary proceeding brought by TWC for: (i) a declaration that the Subordination Agreement, as defined hereinafter, is void and unenforceable under applicable law and (ii) to determine the validity, priority and extent of TWC’s lien on its own behalf and on behalf of all construction lien holders claiming by and through the lien of TWC² finding that the Term Lenders, Swing Line Lenders, Revolving Lenders and 2nd Mortgage Lenders (collectively “The Lenders”) liens are inferior to that of TWC in the full amount of its claim.

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 157 and 1334(b).

¹ In compliance with Local Rule 7003-1(D)(1) and in accordance with Federal Rule of Bankruptcy Procedure 7020(a)(2)(A), all parties herein and all relief sought arise out of the same or a series of related transactions or occurrences.

² TWC expects lien holders to intervene in this action and to allay any of the concerns of the lien holders who have asserted before this Court an issue of conflict, encourage lien holders to intervene in this action; however TWC intends to fully assert its lien rights through this action on behalf of itself and its sub-contractors.

3. This is a core proceeding for which the Court is authorized to hear and determine all matters regarding this case in accordance with 28 U.S.C. § 157 (b)(2)(A), (K) and (O), and this Court has taken jurisdiction of this matter by the compelled filing of this complaint in its *Second Interim Order (I) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (II) Providing Adequate Protection to Prepetition Secured Parties Pursuant to Sections 361, 362 and 363, of the Bankruptcy Code, and (III) Scheduling Final Hearing* [D.E. 242].

4. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

PROLOGUE

5. TWC did not wish to bring this lawsuit at this time. TWC attempted to persuade the Term Lenders to not require the filing of this Adversary as a condition precedent to its consent to the Debtors use of Cash Collateral. TWC does not wish to destabilize this case and believes that the issues raised in this complaint could have been more efficiently and effectively resolved later and at a less fragile time in the case. TWC failed to persuade the Term Lenders³ to eliminate the requirement that this complaint be filed on or before July 14, 2009.

PARTIES

6. TWC is a Nevada Corporation and the general contractor of the Project, as defined herein.

³ TWC understands from Counsel for the Debtors that they also tried to persuade the Term Lenders to eliminate TWC's obligation to bring this lawsuit at this time without success.

7. Fontainebleau Las Vegas LLC (“FBLV” or “Debtor”) is one of the Debtors in these Chapter 11 cases. It owns the real estate upon which the Project is being constructed. FBLV contracted with TWC to act as general contractor for the Project.

8. Defendant Bank of America N.A.(“BOA”), is a nationally chartered bank with its main office in Charlotte, North Carolina. BOA is the Administrative Agent for the Term Lenders and the Revolving Lenders. It was the Initial Term Loan lender, the Initial Swing Line Lender, and Initial Delayed Draw Lender, as well as a Revolving Lender.

9. Defendant Merrill Lynch Capital Corporation (“Merrill”) is a Delaware corporation with a principal place of business in New York. Merrill is now indirectly owned by BOA. It is a Revolving Lender.

10. Defendant Deutsche Bank Trust Company Americas is a New York State chartered bank with its principal office in New York, New York. It is a Revolving Lender.

11. Defendant Barclays Bank PLC is a public limited company in the United Kingdom with its principal place of business in London, England. It is a Revolving Lender.

12. Defendant Royal Bank of Scotland PLC is a banking association organized under the laws of the United Kingdom with a branch in New York, New York. It is a Revolving Lender.

13. Defendant Bank of Scotland is chartered under the laws of Scotland, with its principal place of business in Edinburgh, Scotland. It is a Revolving Lender.

14. Defendant Sumitomo Mitsui Banking Corporation New York is a Japanese corporation with offices in New York, New York. It is a Revolving Lender.

15. Defendant HSH Nordbank AG, New York Branch is a German banking corporation with a branch in New York. It is a Revolving Lender.

16. Defendant JPMorgan Chase Bank, N.A. is a nationally chartered bank with its headquarters in New York. It is a Revolving Lender.

17. Defendant MB Financial Bank, N.A. is a nationally chartered bank with its main office in Chicago, Illinois. It is a Revolving Lender.

18. Defendant Federal Deposit Insurance Corporation as the successor to First National Bank of Nevada. First National Bank was a Revolving Lender.

19. Defendant Wells Fargo N.A. ("Wells Fargo"), is a nationally chartered bank with its main office in Sioux Falls, South Dakota. Wells Fargo is the Trustee for the 2nd Mortgage Lenders.

20. Brigade Capital Management LLC is the Fund Manager for Brigade Leveraged Capital Structures Fund, Ltd.

21. Canyon Capital Advisors LLC, is the Fund Manager for Canpartners Investments IV, LLC and Canyon Special Opportunities Master Fund (Cayman), Ltd.

22. The Carlyle Group is the Fund Manager for the following Funds: Carlyle High Yield Partners 2008-I, Ltd, Carlyle High Yield Partners VI, Ltd., Carlyle High Yield Partners VII, Ltd., Carlyle High Yield Partners VIII, Ltd., Carlyle High Yield Partners IX, Ltd., Carlyle High Yield Partners X, Ltd., and Carlyle Loan Investment, Ltd.

23. Guggenheim Investment Management, LLC is the Fund Manager for the following Funds: Green Lane CLO Ltd., Copper River CLO Ltd., Sand Point Funding, Ltd.,

Kennecott Funding Ltd., 1888 Fund, Ltd., Orpheus Funding LLC, Orpheus Holdings LLC, NZC Opportunities (Funding) II Limited and LFC2 Loan Funding LLC.

24. Halcyon Loan Investors LP and Halcyon Structures Asset Management, LP are the Fund Managers for the following Funds: Halcyon Loan Investors CLO, Ltd., Halcyon Loan Investors CLO II Ltd., Halcyon Structured Asset Management Long Secured/Short Unsecured CLO 2006-I Ltd., Halcyon Structured Asset Management European 2008-II B.V., Halcyon Structures Asset Management I Ltd., Halcyon Structured Management Long Secured/Short Unsecured 2007-I Ltd., Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-2 Ltd., Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-3 Ltd.

25. Highland Capital Management, LP is the Fund Manager for the following Funds: Aberdeen Loan Funding, Ltd., Armstrong Loan Funding, Ltd., Brentwood CLO, Ltd., Eastland CLO, Ltd., Emerald Orchard Limited, Gleneagles CLO, Ltd., Grayson CLO, Ltd., Greenbriar CLO, Ltd., Highland Credit Opportunities CDO, Ltd., Highland Loan Funding V, Ltd., Highland Offshore Partners, L.P., Jasper CLO, Ltd., Liberty CLO, Ltd., Loan Funding IV LLC, Loan Funding VII LLC, Loan Star State Trust, Longhorn Credit Funding, LLC, Red River CLO, Ltd., Rockwall CDO Ltd., Rockwall CDO II, Ltd., Southfork CLO, Ltd., Stratford CLO, Ltd., Westchester CLO, Ltd.

26. Avenue Capital Management II, L.P. is the Fund Manager for Avenue CLO Fund, Ltd., Avenue CLO II, Ltd., Avenue CLO III, Ltd., Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd.

27. Babson Capital Management and Jeffries Finance LLC are the Fund Managers for the following Funds: Babson CLO Ltd. 2004-I, Babson CLO Ltd. 2004-II, Babson CLO Ltd.

2005-I, Babson CLO Ltd. 2005-II, Babson CLO Ltd. 2005-III, Babson CLO Ltd. 2006-I, Babson CLO. Ltd. 2006-II, Babson CLO Ltd. 2007-I, Artus Loan Fund 2007-I Ltd., Babson Loan Opportunity CLO, Ltd., Jfin CLO 2007 Ltd., Sapphire Valley CDO I, Ltd., and Jeffries Finance CP Funding LLC.

28. DiMaio Ahmad Capital LLC is the Fund Manager for the following Funds: Duane Street CLO I, Ltd., Duane Street CLO II, Ltd., Duane Street CLO III, Ltd., Duane Street CLO IV, Ltd., Duane Street CLO V, Ltd., Jay Street Market Value CLO I, Ltd.

29. ING Investment Management Co., along with ING Investments, LLC, ING Alternative Asset Management, LLC and ING Investment Management Luxembourg S.A. are the Fund Managers for the following Funds: ING Prime Rate Trust, ING Senior Income Fund, ING International (II) – Senior Bank Loans Euro., ING International (II) – Senior Bank Loans USD, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO III, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd.

30. MJX Asset Management, LLC is the Fund Manager for the following Funds: Venture CDO 2002, Limited, Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture V CDO Limited, Venture VIII CDO Limited, Venture IX CDO Limited, Vista Leveraged Income Fund, Veer Cash Flow CLO, Limited.

31. Ore Hill Partners LLC is the Fund Manager for Genesis CLO 2007-I, Ltd. Fund.

32. Mariner Investment Group, LLC is the Fund Manager for Caspian Corporate Loan Fund, LLC, Caspian Capital Partners, L.P., Caspian Select Credit Master Fund, Ltd., Mariner Opportunities Fund, LP, Mariner LDC.

33. Riva Ridge Capital Management, LP and Mariner Investment Group, LLC are the Fund Managers for Riva Ridge Master Fund, Ltd.

34. RiverSource Investments, LLC is the Fund Manager for Centurion CDO VI, Ltd., Centurion CDO VII, Ltd., Centurion CDO 8, Limited, Centurion CDO 9, Limited, Cent CDO 10 Limited, Cent CDO XI Limited, Cent CDO 12 Limited, Cent CDO 14 Limited, and Cent CDO 15 Limited Funds.

35. Symphony Asset Management LLC is the Fund Manager for the Following Funds: Encore Fund LP, Nuveen Floating Rate Income Fund, Fortissimo Fund, Nuveen Floating Rate Income Opportunity Fund, Nuveen Senior Income Fund, Symphony Credit Opportunity Fund, Ltd., Symphony CLO I, Ltd., Symphony CLO II, Ltd., Symphony CLO III, Ltd., Symphony CLO IV, Ltd., Symphony CLO V, Ltd.

36. Defendants all known holders of the 2nd Mortgage Notes are as follows: Serengeti Asset Management, LP, MFC Global Investment Management (US) LLC, Franklin Templeton Investments, Goldman Sachs Global Special Situations Group, Eaton Vance Management Inc., Satellite Asset Management, Bank of America LLC, Prudential Investment Management-Fixed Income, Nomura Corporate Research & Asset Management, DiMaio Ahmad Capital ,LLC, Pioneer Investment Management, Inc., MFS Investment Management, New York Life Investment Management LLC, Regiment Capital Advisors LLC, Western Asset management Co, JPMorgan High Yield Partners, Thrivent Financial For Lutherans, BlackRock Financial Management, Inc., Denver Investment Advisors LLC, Fidelity Management & Research Co, Goldman Sachs Asset Management LP (GSAM)(USA), RiverSource Investments LLC, Federated Investors, Inc., Ares Management, LP, Deutsche Asset Management (DeAM)(NYC),

Tattersall Advisory Group Inc. (Philadelphia), ING Investment Management (Atlanta), Logan Circle Partners LP, State Street Global Advisors (SSgA), UBI Pramerica SGR SpA, Barclays Capital, Inc., PPM America Inc., Brigade Capital Management, LLC, Crédit Suisse Asset Management Americas (CSAM)(NY), Allegiant Asset Management Co., FAF Advisors Inc., INVESCO Inc. (New York), Newberger Berman Management LLC and Richard Wenz.

37. Defendants John Doe 1-50 are the subsequent transferees of any portion of: (1) the Term Loan note, (2) the Delayed Draw note, or (3) the Swing Line note.

ALLEGATIONS COMMON TO ALL COUNTS

38. On June 9, 2009 (the “Petition Date”), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Code”) with this Court.

39. Prior to filing their petitions, the Debtors had been actively engaged in construction and development of “Fontainebleau Las Vegas” (the “Project”). The Project was conceived as a large luxury resort. It is located on approximately 24.4 acres on the North end of the Las Vegas Strip, on land that was formerly the site of the El Rancho Hotel and the Algiers Hotel. The plans for the Project, as of the Petition Date, include a 63 story glass skyscraper, featuring: (i) 3,815 guest rooms; (ii) a 100,000 square-foot casino; (iii) 394,000 square feet of convention and meeting space; (iv) a 60,000 square-foot state of the art spa; (v) a roof top pool and (vi) a theater featuring live entertainment and shows.

40. As of the Petition Date, the Debtors have estimated that the Project, is approximately 70% complete.

41. On June 6, 2007, TWC entered into a construction contract with FBLV for the construction of the Project (the "Construction Contract"). The amount of the original contract was \$1,761,757,004.00⁴. In addition to that sum, TWC was to be compensated for any changes or additional work that TWC was required or requested to perform in accordance with the terms of the Construction Contract. As of June 4, 2009, there is \$319,295,043.70⁵ of additional or changed work, materials and equipment for which payment is due. Pursuant to the Construction Contract TWC also is entitled to a fee of \$62,431,561.43 and a soft cost fee of \$1,466,899.76 for the construction of the Project. After application of all payments received by TWC from FBLV as of May 31, 2009, TWC claims a lien of 675,260,792.68⁶, plus interest at a rate of 15%, as provided for under the Construction Contract, in respect of accrued and unpaid draws.

42. Pursuant to the Construction Contract, FBLV was to issue a notice to proceed with an effective date of April 1, 2007. Notice was actually issued on April 1, 2007. Excavation and other work commenced on the Project in November 2006 and from that time the existence of construction work at the Project was open, notorious and obvious. Pursuant to the Construction Contract, TWC was to provide and did provide "labor, materials, equipment and services" to fulfill its obligations under thereunder.

43. The construction of a structure of this size, magnitude and luxury, as the Debtor admits in its pleadings and supporting papers, requires many hundreds if not thousands of

⁴ This amount is the total contract amount, including the work done on the project itself and the work done on the "Staging Area" pursuant to section §2.4 of the Construction Contract. The breakdown of the amount is \$1,753,634,074.00 for the Project and \$8,122,930.00 for the Staging Area.

⁵ This amount includes: \$318,371,262.75 for changes to the Project and \$923,780.95 for the Staging Area.

⁶ The amounts claimed in the June 4, 2009 recorded lien of TWC are less than the amounts claimed herein. TWC plans to seek consent of the Debtors, The Official Committee of Unsecured Creditors and The Lenders to record an amended lien or in the alternative file a permitted motion for limited stay relief consistent with 11 USC §§ 362(b)(3) to record an amended claim of lien.

laborers and materialmen. Most of them have left the jobsite and many of them have filed mechanics liens in accordance with Nevada law.

44. On or about June 6, 2007 The Lenders and The Debtors closed loans⁷ to fund the continued construction of the Project. (“The June 6 Loans”). As part of the June 6 Loans the Lenders required disclose of all material contracts. This included all of the contracts between TWC and its subcontractors. These subcontracts, which number more than 20, were included in the June 6 Loan closing binder.

45. In direct reliance on the statements and documents pertaining to the issuance of the June 6 Loans, TWC continued to employ subcontractors with workers and materialmen and proceeded with the scope of work provided for under the Construction Contract. As a direct result of the Debtors inability to obtain access to the promised funds, TWC was not paid and was unable to pay its subcontractors. Consequently, on June 4, 2009, TWC filed and recorded a claim of lien in the public records of Clark County Nevada bearing Doc Number 2009060400011772, in accordance with Nevada law, for \$668,990,933.27. The vast majority of this amount is for money owed to various subcontractors who have performed work for which they have not been paid because TWC, in turn, has not been paid by FBLV because its funding has been cut off.

46. Moreover, TWC has received demand for payment from many of its subcontractors and in many instances has been sued. The primary, if not sole, reason that TWC has been sued by its subcontractors is because of the Debtors inability to fund the Project; a situation that was ostensibly caused by the Revolving Lenders.

⁷ The loans made to the Debtors fall into four categories: (1) the Initial Term Loan of \$700,000,000 (the “Term Loan”). This loan was initially funded by BOA; (2) the Delayed Draw Loan of \$350,000,000 (the “Delayed Draw Loan”). This loan was initially funded by BOA; (3) the Swing Line Loan of \$10,000,000 (the “Swing Line Loan”). This loan was initially funded by BOA; and (4) the 2nd Mortgage Loan, a \$675,000,000.00 issuance of notes.
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47. At all times material hereto, N.R.S. 108.2453 and 108.2457 were applicable to the Project. On June 6, 2007, in contravention of these Nevada laws, the Lenders caused TWC and certain related companies along with the Debtors to enter into an “Affiliate Subordination Agreement” (the “Subordination Agreement”) in favor of BOA, as Administrative Agent and Wells Fargo, as Trustee. *See Subordination Agreement* attached hereto as Exhibit A. On the same date, the Debtors and their related entities closed on the June 6 Loans.

48. The Subordination Agreement, in paragraph 2.02, states that TWC shall not “at any time prior to the full, indefeasible performance and payment in cash of the Senior Debt and the termination or expiration of the Senior Debt Documents and the lending commitments thereunder... obtain any Lien on any assets of the Fontainebleau Companies.” The Subordination Agreement further and states “Nonetheless, in the event that any such Lien exists or is any time hereafter obtained, each Fontainebleau Affiliate and each Fontainebleau Company covenants and agrees that any Lien held by such Fontainebleau Affiliate on the property of any Fontainebleau Company, regardless of its origin, shall be subordinate... in priority, operation and effect to the priority, operation and effect of all of the Liens securing all or any part of the Senior Debt...”

49. In conjunction with the Motion to Use Cash Collateral [D.E.12] in the Debtors’ jointly administered main case (“Cash Collateral Motion”), the Debtors have acknowledged that the prepetition lenders have valid first position liens that are “not subject to avoidance, re-characterization, reduction, disallowance, impairment, or subordination under the Bankruptcy Code or applicable non-bankruptcy law...” At the insistence of the Term Lenders, paragraph 19(a) of the Second Interim Order Authorizing the Use of Cash Collateral [D.E.242] in the Debtors’ jointly administered main case (“Second Cash Collateral Order”) imposes a deadline of

July 14, 2009, for TWC to file an action to determine the extent, priority and validity of its prepetition liens with respect to the Prepetition Agent and Prepetition Term Lenders, as those terms are defined in the Second Cash Collateral Order.

COUNT I
DECLARATION THAT THE SUBORDINATION AGREEMENT IS
UNENFORCEABLE AND OR VOID UNDER NEVADA LAW

50. Plaintiff restates and re-alleges herein each and every allegation set forth in paragraphs 1 through 49 of this Complaint.

51. Notwithstanding any statement in the Subordination Agreement, including section 6.03, pursuant to which the Lenders purport to make the laws of the State of New York applicable to the agreement, the law of Nevada and Florida choice of law rules require the invalidation of the Subordination Agreement pursuant to Nevada law.

52. Nevada law, in NRS 108.2453, states that a “condition, stipulation or provision in a contract or other agreement for the improvement of property or for the construction, alteration or repair of a work of improvement in this state that attempts to do any of the following is contrary to public policy and is void and unenforceable: -

(c) Make the contract or other agreement subject to the laws of a state other than this state;”

53. NRS 108.2453 by its own express terms makes it clear that any choice of law provision that applies the law of any state other than Nevada for work that is conducted within Nevada is void and unenforceable as a matter of public policy. The statute is clear and unambiguous.

54. Moreover, even if Florida choice of law precedent were followed, the result would be the same. Several Florida courts have recognized the applicability of Restatement of Conflicts (Second) § 187 (1988). *See e.g. Welt v. Sasson (In re Dollar Time Group)*, 223 B.R. 237, 244 (Bankr. S.D. Fla. 1998); *International Ins. Co. v. Johns*, 874 F.2d 1447, 1458 (11th Cir. 1989); *Merriman v. Convergent Business Sys., Inc.*, 1993 U.S. Dist. LEXIS 10528, at * 12 (M.D. Fla. 1993)(stating that “Florida courts do recognize that the strong public policy of the law of a state with a relationship to the transaction can override the parties’ contractual choice of applicable law. This exception to the normal enforcement of the parties’ contractual choice of law is analogous to standards set out in § 187 of the Restatement.”). Restatement of Conflicts (Second) § 187 (1988) states that

The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless- (b) [the] application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

55. The law governing mechanics’ liens in Nevada states that a contract that calls for work of improvement within Nevada is “contrary to public policy and is void and unenforceable” if the contract is made subject to the laws of another state. N.R.S. 108.2453. This legislative pronouncement that such a contract term “is contrary to public policy” is sufficient to require, under Florida choice of law provisions, that the Subordination Agreement be measured against and subsequently rendered void under Nevada law.

56. Pursuant to Nevada Law, which governs the any mechanics' liens within that state, a contractor or subcontractor may not waive or impair their lien rights, unless very specific statutory requirements are met.

57. Pursuant to N.R.S. 108.2457:

Any term of a contract that attempts to waive or impair the lien rights of a contractor, subcontractor or supplier is void. An owner, contractor or subcontractor by any term of a contract, or otherwise, may not obtain the waiver of, or impair the lien rights of, a contractor, subcontractor or supplier, except as provided in this section. Any written consent given by a lien claimant that waives or limits his lien rights is unenforceable unless the lien claimant:

a) Executes and delivers a waiver and release that is signed by the lien claimant or his authorized agent in the form set forth in this section; and

(b) In the case of a conditional waiver and release, receives payment of the amount identified in the conditional waiver and release.

58. Section 2.02 does not conform to the limited and permitted wavier requirements of N.R.S. 108.2457. Accordingly, to the extent Section 2.02 of the Subordination attempts to impair or subordinate TWC's statutory rights under Nevada Law to perfect and enforce its mechanic's lien, it is rendered void by N.R.S. 108.2457.

59. Pursuant to 108.2453(1) "Except as otherwise provided in N.R.S. 108.221 to 108.246, inclusive, a person may not waive or modify a right, obligation or liability set for in the provisions of N.R.S. 108.221 to 108.246, inclusive."

60. Section 2.02 of the Subordination Agreement would purport to modify and waive TWC's right to impose, perfect and enjoy its statutorily mandated priority position. This is in direct contravention of N.R.S.. 108.2453(1). Accordingly, the Subordination Agreement is unenforceable and void with respect to TWC's mechanics' lien claim.

WHEREFORE TWC respectfully requests that this Court determine that the Subordination Agreement violates the relevant provisions of Nevada law and is void, in whole or in part, or in the alternative unenforceable against TWC and any claimant that claims through it and award TWC attorneys' fees and costs as permitted by the Subordination Agreement and applicable Nevada law.

COUNT II
DETERMINATION OF VALIDITY, PRIORITY AND EXTENT OF
TWC LIEN AGAINST THE PROPERTY

61. Plaintiff restates and re-alleges herein each and every allegation set forth in paragraphs 1 through 49 of this Complaint.

62. While 11 U.S.C. §506 and Federal Rule of Bankr. P. 7001 provide the Federal statutory and procedural authority for this action, the determination of the validity, extent and priority is made by examining the relevant state law. *Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 450-51 (2007)(noting “the settled principle that creditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code. That principle requires bankruptcy courts to consult state law in determining the validity of most claims.”); accord *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20 (2000)(stating that “Creditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code.”) In this case the lien is created by operation of Nevada state law.

a. **TWC Meets The Requirements Under Nevada Law to Create a Statutory Lien**

63. The statutory liens created by N.R.S. §108.221 through §108.246 are purely creatures of statute and the right to enforce such liens emanates entirely from statutory provisions. *Lamb v. Goldfield Lucky Boy Mining Co.*, 138 P. 902, 904 (Nev.1914)(Stating, while interpreting a prior similar statute “Mechanics' liens are purely creatures of statute, and the right to enforce such liens emanated entirely from statutory provisions.”); *accord Bovis v. Bullock Insulation, Inc.*, 185 P.3d 1055, 1062 (Nev. 2008)(stating that a “contractor has a statutory right to a mechanic lien for the unpaid balance of the price agreed upon for labor, materials, and equipment furnished.”).

64. The creation or existence of the lien is determined by N.R.S. §108.222, which provides that “a lien claimant has a lien upon the property, any improvements for which the work, materials and equipment were furnished or to be furnished, and any construction disbursements accounts established pursuant to N.R.S. 108.2403, for:” either: (a) the unpaid balance of the price agreed upon for such work, material or equipment if the parties had agreed on the price of the work, material, or equipment; or (b) if the parties had not agreed on the price then the lien is for “an amount equal to the fair market value of such work.”

65. TWC has performed work on the property, furnished materials and equipment or has work, materials and equipment that are to be performed and furnished. This is sufficient, under Nevada law, to establish a valid lien under N.R.S. §108.222.

b. TWC’S Lien Primes Any Subsequent Mortgage Or Other Encumbrance

66. Pursuant to N.R.S. § 108.225:

1. The liens provided for in N.R.S. 108.221 to 108.246, inclusive, are preferred to:

(a) Any lien, mortgage or other encumbrance which may have attached to the property after the commencement of construction of a work of improvement.

(b) Any lien, mortgage or other encumbrance of which the lien claimant had no notice and which was unrecorded against the property at the commencement of construction of a work of improvement.

2. Every mortgage or encumbrance imposed upon, or conveyance made of, property affected by the liens provided for in N.R.S. 108.221 to 108.246, inclusive, after the commencement of construction of a work of improvement are subordinate and subject to the liens provided for in N.R.S. 108.221 to 108.246, inclusive, regardless of the date of recording the notices of liens.

67. Work on the Project commenced on or about November 2006. The commencement of this work was prior to the signing and closing of the June 6 Loans. Therefore any valid mechanics' liens are superior to the liens granted to The Lenders in connection with the June 6 Loans. Pursuant to applicable Nevada law, this priority scheme holds regardless of the date of recording of the liens.

c. TWC Has Properly Perfected its Lien Under N.R.S. 108.226

68. Pursuant to N.R.S. 108.226:

1. To perfect his lien, a lien claimant must record his notice of lien in the office of the county recorder of the county where the property or some part thereof is located in the form provided in subsection 5:

(a) Within 90 days after the date on which the latest of the following occurs:

(1) The completion of the work of improvement;

(2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or

(3) The last performance of work by the lien claimant for the work of improvement; or

(b) Within 40 days after the recording of a valid notice of completion, if the notice of completion is recorded and served in the manner required pursuant to N.R.S. 108.228.

2. The notice of lien must contain:

(a) A statement of the lienable amount after deducting all just credits and offsets.

(b) The name of the owner if known.

(c) The name of the person by whom he was employed or to whom he furnished the material or equipment.

(d) A brief statement of the terms of payment of his contract.

(e) A description of the property to be charged with the notice of lien sufficient for identification.

3. The notice of lien must be verified by the oath of the lien claimant or some other person. The notice of lien need not be acknowledged to be recorded.

69. TWC recorded its lien in the amount of \$668,990,933.27.⁸

70. It was recorded on June 4, 2009. This was within 90 days after the last delivery of materials or furnishing of equipment by TWC. It was also within 90 days of the last performance of work by TWC.

71. The notice of lien substantially meets all of the requirements of 108.226(2). *See* Notice attached hereto as Exhibit B.

72. The notice of lien is verified by Robert R. Ambridge. *See* Exhibit B.

73. Accordingly TWC's lien is properly perfected.

d. Validity, Priority and Extent of TWC's Lien

⁸ As set forth in footnote 3 above, TWC reserves the right to amend its lien.

74. This Court seeks a determination of the validity, priority and extent of liens or interests. By way of this proceeding, Plaintiff seeks a determination of the validity, priority and extent of Plaintiff's liens against the Project.

75. The Nevada Mechanics Liens statute is remedial in nature. The underlying policy for the law is the "notion that contractors are generally in a vulnerable position because they extend large blocks of credit; invest significant time, labor, and materials into a project; and have any number of workers vitally depend upon them for eventual payment." *Bovis v. Bullock Insulation, Inc.*, 197 P.3d 1032, 1041 (Nev. 2008).

76. TWC has the right to and has indeed perfected its mechanic's lien. Pursuant to 506 and applicable Nevada law. TWC requests this Court find its lien is superior to any other type of mortgage or encumbrance that was incurred after construction had begun.

WHEREFORE, TWC respectfully request that this Court enter a judgment in its favor and against the Defendants:

- (A) Declaring that TWC holds a valid, perfected first priority lien and security interest against The Project in the full amount of its lien (as may be hereafter amended), superior to the liens of The Lenders and to the interests of the Debtors.
- (B) Awarding TWC such other and further relief as would be just and proper under the circumstances, including interest, costs and attorneys' fees.

Dated: July 14, 2009

Respectfully Submitted,

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EXHIBIT "A"

SUBORDINATION AGREEMENT

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BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

AFFILIATE SUBORDINATION AGREEMENT
(Las Vegas)

This **AFFILIATE SUBORDINATION AGREEMENT** (this "*Agreement*") dated as of June 6, 2007, is made by TURNBERRY WEST CONSTRUCTION, INC., a Nevada corporation ("*General Contractor*"), TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P., a Delaware limited partnership ("*Completion Guarantor*"), FONTAINEBLEAU RESORTS, LLC, a Delaware limited liability company ("*Parent*"), FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, a Nevada limited liability company ("*Las Vegas Holdings*"), FONTAINEBLEAU LAS VEGAS, LLC, a Nevada limited liability company ("*Las Vegas*"), and FONTAINEBLEAU LAS VEGAS II, LLC, a Florida limited liability company ("*Las Vegas II*" and collectively with Las Vegas, "*Borrowers*"), in favor of (a) BANK OF AMERICA, N.A. ("*Bank of America*"), as Administrative Agent (in such capacity, together with its successors and assigns or replacement in any refinancing where such replacement becomes party to the Project Lenders Intercreditor Agreement, the "*Bank Agent*") for the Lenders referred to below, and (b) WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee (in such capacity, together with its successors and assigns or replacement in any refinancing where such replacement becomes party to the Project Lenders Intercreditor Agreement, "*Trustee*"), under the Second Mortgage Indenture referred to below.

RECITALS

1. Pursuant to the Bank Credit Agreement of even date herewith (as amended, restated, extended, supplemented or otherwise modified from time to time including by any agreement extending the maturity thereof or restructuring any portion thereof or any refinancing thereof to the extent the agent thereunder becomes party to the Project Lenders Intercreditor Agreement, the "*Bank Credit Agreement*"), among Borrowers, the lenders from time to time parties thereto (collectively, the "*Lenders*"), and Bank Agent, the Lenders have provided certain credit facilities to Borrowers.
2. Pursuant to the Second Mortgage Indenture dated as of June 6, 2007 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "*Second Mortgage Indenture*"), among Las Vegas Holdings, Fontainebleau Las Vegas Capital Corp., a Delaware corporation ("*Las Vegas Capital Corp.*", and collectively with Las Vegas Holdings, the "*Issuers*") Borrowers, and Trustee, Issuers have agreed to issue the Second Mortgage Notes due 2015.
3. Pursuant to the Master Disbursement Agreement of even date herewith among Borrowers, Issuers, Fontainebleau Las Vegas Retail, LLC, a Delaware limited liability company, Bank Agent, Trustee, Lehman Brothers Holdings, Inc., and Bank of America, as Disbursement Agent (as amended, restated, extended, supplemented or otherwise modified from time to time, the "*Disbursement Agreement*"), the proceeds of certain financings for the development of the Fontainebleau Resort in Las Vegas, Nevada, including without limitation the Bank Credit Agreement and the Second Mortgage Indenture, will be disbursed.
4. General Contractor and Las Vegas have entered into the Standard Form

Agreement (AIA Form A114) between Owner and Contractor for Fontainebleau Las Vegas dated as of June 6, 2007 to be effective as of April 1, 2007 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "*Prime Construction Agreement*"), pursuant to which (a) General Contractor has agreed to build the Project and (b) in consideration thereof, Las Vegas has agreed to pay the Construction Fees to General Contractor.

5. Completion Guarantor has executed a Completion Guaranty of even date herewith in favor of the Disbursement Agent, the Trustee and the Bank Agent. In consideration thereof, Borrowers and Completion Guarantor have entered into the Credit Enhancement Fee Agreement dated as of June 6, 2007 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "*Credit Enhancement Fee Agreement*"), pursuant to which Borrowers, jointly and severally, have agreed (a) to pay the Credit Enhancement Fees to Completion Guarantor, (b) to reimburse Completion Guarantor for the Completion Guaranty Reimbursement Obligations and (c) to pay the Funds Costs to Completion Guarantor.

6. Parent, Las Vegas Holdings, and Borrowers have entered into the Reimbursement Agreement dated as of June 6, 2007 to be effective as of January 1, 2007 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "*Reimbursement Agreement*"), pursuant to which Las Vegas Holdings and Borrowers have agreed to reimburse Parent for Allocated Overhead Expense.

7. Subject to the terms and conditions hereof, each of the Fontainebleau Affiliates has agreed to subordinate its rights to receive certain payments under the Affiliate Agreements to payment of the indebtedness of Borrowers and Issuers under the Bank Credit Agreement and the Second Mortgage Indenture.

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

ARTICLE 1. DEFINITIONS

SECTION 1.01. Definitions. Any capitalized terms used in this Agreement (including without limitation the preamble and recitals hereto) which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Disbursement Agreement. For purposes of this Agreement (including without limitation the preamble and recitals hereto), the following terms shall have the meanings set forth below:

"*Affiliate Agreements*" means, collectively, the Prime Construction Agreement, the Credit Enhancement Fee Agreement, and the Reimbursement Agreement.

"*Allocated Overhead Expense*" has the meaning set forth in the Bank Credit Agreement.

"*Applicable Representative*" means (1) until the Senior Debt in respect of the Bank Credit Agreement has been repaid in full in cash and all other obligations under the Bank Credit

Agreement have been fully performed, Bank Agent and (2) after payment in full in cash of all Senior Debt under the Bank Credit Agreement but prior to payment in full in cash of all Senior Debt under the Second Mortgage Indenture, Trustee.

"*Completion Guaranty Reimbursement Obligations*" has the meaning set forth in the Bank Credit Agreement.

"*Construction Fees*" has the meaning set forth in the Bank Credit Agreement.

"*Credit Enhancement Fees*" has the meaning set forth in the Bank Credit Agreement.

"*Disbursement Condition Advances*" has the meaning set forth in the Credit Enhancement Fee Agreement.

"*Fontainebleau Affiliates*" means, collectively, General Contractor, Completion Guarantor, and Parent.

"*Fontainebleau Companies*" means, collectively, Las Vegas Holdings and its present and future subsidiaries.

"*Funds Costs*" has the meaning set forth in the Bank Credit Agreement

"*Loan Documents*" has the meaning set forth in the Bank Credit Agreement.

"*Obligations*" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages, liabilities and other obligations payable of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising under the documentation governing any Indebtedness (including, without limitation, interest accruing at the then applicable rate provided in such documentation after the maturity of such Indebtedness and interest accruing at the then applicable rate provided in such documentation after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, premiums, if any, charges, expenses, attorneys' fees and accountants fees, and all renewals, extensions, refinancings, refundings, amendments, restatements, supplements, and modifications of all of the foregoing obligations.

"*Representative*" means (a) with respect to Senior Debt under the Bank Credit Agreement, Bank Agent under the Bank Credit Agreement, and (b) with respect to Senior Debt under the Second Mortgage Indenture, Trustee under the Second Mortgage Indenture.

"*Senior Creditors*" means, collectively, the Applicable Representative, Representatives, the holders of any Senior Debt, and their respective successors and assigns.

"*Senior Debt*" means all Obligations under the Senior Debt Documents.

"*Senior Debt Documents*" means, collectively, the Second Mortgage Indenture, Second

Mortgage Notes, the Second Mortgage Notes Purchase Agreement, the Second Mortgage Security Documents, the Bank Credit Agreement, the other Loan Documents, and the other documents that from time to time evidence any Obligations thereunder or secure or support payment or performance thereof.

"*Senior Default*" means a Default or Event of Default under any of the Senior Debt Documents.

"*Specified Cash Management Agreement*" has the meaning set forth in the Bank Credit Agreement.

"*Specified Hedge Agreement*" has the meaning set forth in the Bank Credit Agreement.

"*Subordinated Obligations*" means, collectively, (a) all Obligations of the Fontainebleau Companies relating to the payment of Construction Fees, (b) all Obligations of the Fontainebleau Companies relating to the payment of the Credit Enhancement Fees, Funds Costs and the Completion Guaranty Reimbursement Obligations, (c) all Obligations of the Fontainebleau Companies relating to the payment of Allocated Overhead Expense, and (d) all Obligations of the Fontainebleau Companies under any instrument, agreement or other document which secures or otherwise supports any of the Obligations described in clauses (a), (b) or (c) above.

"*Title Indemnity Amount*" shall have the meaning set forth in the Credit Enhancement Fee Agreement.

SECTION 1.02. *Other Definitional Provisions.* Any term used to define any Person shall be deemed to include any and all successors and assigns of such Person.

ARTICLE 2.

SUBORDINATION

SECTION 2.01. *Agreement to Subordinate.* Each of the Fontainebleau Affiliates hereby agrees that the Subordinated Obligations are subordinated, to the extent and in the manner provided in this Article 2, to the full, indefeasible performance and payment in cash of all Senior Debt (whether outstanding on the date hereof or hereafter created, incurred, assumed or guaranteed) but other than (x) contingent reimbursement or indemnification obligations which by their express terms survive the Senior Debt Documents and (y) obligations under Specified Hedge Agreements and Specified Cash Management Agreements that, at such times of payment, are allowed by the terms thereof to remain outstanding, and that the subordination is for the benefit of Senior Creditors.

SECTION 2.02. *Liens.* Notwithstanding any provisions of this Agreement or any Affiliate Agreement to the contrary, no Fontainebleau Affiliate shall, at any time prior to the full, indefeasible performance and payment in cash of the Senior Debt and the termination or expiration of the Senior Debt Documents and the lending commitments thereunder (other than (x) contingent reimbursement or indemnification obligations which by their express terms survive the Senior Debt Documents and (y) obligations under Specified Hedge Agreements and

Specified Cash Management Agreements that, at such times of payment, are allowed by the terms thereof to remain outstanding), obtain any Lien on any assets of the Fontainebleau Companies. Nonetheless, in the event that any such Lien exists or is at any time hereafter obtained, each Fontainebleau Affiliate and each Fontainebleau Company covenants and agrees that any Lien held by such Fontainebleau Affiliate on the property of any Fontainebleau Company, regardless of its origin, shall be subordinate, junior and inferior and postponed in priority, operation and effect to the priority, operation and effect of all of the Liens securing all or any part of the Senior Debt, notwithstanding the perfection, order of perfection or failure to perfect or failure to maintain the perfection of any such Lien or the filing or recording, order of filing or recording or failure to file or record any instrument or other document in any filing or recording office in any jurisdiction.

SECTION 2.03. *Permitted Payments.* Notwithstanding any provision of any Affiliate Agreement to the contrary, each Fontainebleau Affiliate and each Fontainebleau Company agrees that the Subordinated Obligations shall accrue but no payment of any Subordinated Obligations shall be made or received directly or indirectly, and none of the Fontainebleau Affiliates shall exercise any right of set-off or recoupment with respect to any Subordinated Obligations, provided that the Fontainebleau Affiliates may receive, and the Fontainebleau Companies may make, payments on account of the Subordinated Obligations:

(a) if all Senior Debt has been fully and indefeasibly performed and paid in cash and each of the Senior Debt Documents and each of the lending commitments thereunder has expired or been terminated (in each case other than with respect to (x) contingent reimbursement or indemnification obligations which by their express terms survive the Senior Debt Documents and (y) obligations under Specified Hedge Agreements and Specified Cash Management Agreements that, at such times of payment, are allowed by the terms thereof to remain outstanding);

(b) if such payments are then permitted under the terms of the Bank Credit Agreement; or

(c) if the Bank Credit Agreement no longer exists and no event of default existed at the time of the payoff of the Bank Credit Agreement or was directly caused thereby.

SECTION 2.04. *Liquidation; Dissolution; Bankruptcy.* Upon any distribution to creditors of any of the Fontainebleau Companies in a liquidation or dissolution of any of the Fontainebleau Companies or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to any of the Fontainebleau Companies, its property or its operations, in an assignment for the benefit of creditors or any marshaling of any of the Fontainebleau Companies' assets and liabilities:

(a) Senior Creditors will be entitled to receive payment in full of all outstanding Senior Debt (including interest after the commencement of any bankruptcy proceeding at the rate specified in the applicable Senior Debt Documents) before any Fontainebleau Affiliate will be entitled to receive any payment of all or any portion of the

Subordinated Obligations; and

(b) until all Senior Debt (as provided in clause (a) above) is paid in full (other than (x) contingent reimbursement or indemnification obligations which by their express terms survive the Senior Debt Documents and (y) obligations under Specified Hedge Agreements and Specified Cash Management Agreements that, at such times of payment, are allowed by the terms thereof to remain outstanding), any payments of the Subordinated Obligations to which any Fontainebleau Affiliate would be entitled but for this Article 2 will be made to the Applicable Representative.

SECTION 2.05. *Pay Over of Distributions.* In the event that any Fontainebleau Affiliate receives any payment of all or any portion of the Subordinated Obligations at a time that such payment is prohibited by this Agreement, such payment will be held by such Fontainebleau Affiliate, in trust for the benefit of, and will be paid forthwith over and delivered, upon written request, to the Applicable Representative for handling in accordance with the Intercreditor Agreements. No Fontainebleau Affiliate shall be a fiduciary or an agent of any of the Senior Creditors by virtue of any provision of this Agreement.

SECTION 2.06. *Application of Amounts Received by Applicable Representative.* This Article 2 defines the relative rights of Senior Creditors. Nothing in this Agreement will:

(a) impair, as between the Fontainebleau Companies and the Fontainebleau Affiliates, the obligation of the Fontainebleau Affiliates, which is absolute and unconditional, to pay the Subordinated Obligations in accordance with the terms of the Affiliate Agreements; or

(b) affect the relative rights of the Fontainebleau Affiliates and creditors of the Fontainebleau Companies other than their rights in relation to Senior Creditors.

SECTION 2.07. *Subordination May Not Be Impaired.* No right of any Senior Creditor to enforce the subordination of the Subordinated Obligations and other agreements contained herein may be impaired by any act or failure to act by any of the Fontainebleau Affiliates or any of the Fontainebleau Companies or by the failure of any of the Fontainebleau Affiliates or any of the Fontainebleau Companies to comply with this Agreement.

SECTION 2.08. *Distribution or Notice to Representative.* Whenever a notice is to be given to Senior Creditors pursuant to this Agreement, the notice shall be given to the Representative of such Senior Debt in accordance with Section 6.04. Upon any payment or distribution of assets of any of the Fontainebleau Companies referred to in this Article 2, the Fontainebleau Affiliates will be entitled to rely upon any order or decree made by any court of competent jurisdiction or upon any certificate of the Applicable Representative or the liquidating trustee or agent or other Person making any distribution to the Fontainebleau Affiliates for the purpose of ascertaining the Persons entitled to participate in such distribution, Senior Creditors and other Indebtedness of such Fontainebleau Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this

Article 2.

SECTION 2.09. *Interest on Obligations under the Affiliate Agreements.* The Fontainebleau Affiliates agree that, notwithstanding any provision of the Affiliate Agreements to the contrary, (i) none of the Subordinated Obligations shall accrue interest if not paid when due other than the obligation of the Fontainebleau Companies to reimburse Completion Guarantor for the Completion Guaranty Reimbursement Obligations, Disbursement Condition Advances and Title Indemnity Amount, which shall accrue interest at the rate of 10% per annum pursuant to the Credit Enhancement Fee Agreement, and (ii) none of the obligations under the Affiliate Agreements shall accrue interest for any period prior to the date hereof. It is acknowledged that the obligations of the Fontainebleau Companies to make payments under any of the Affiliate Agreements which are not Subordinated Obligations shall bear interest following the date hereof for any period in which they are not paid when due in accordance with the terms of the Affiliate Agreements.

**ARTICLE 3.
FORBEARANCE BY FONTAINEBLEAU AFFILIATES.**

Until the Senior Debt is fully and indefeasibly performed and paid in full, in cash, and the Senior Debt Documents and each of the lending commitments thereunder are terminated or expire (in each case other than with respect to (x) contingent reimbursement or indemnification obligations which by their express terms survive the Senior Debt Documents and (y) obligations under Specified Hedge Agreements and Specified Cash Management Agreements that, at such times of payment, are allowed by the terms thereof to remain outstanding), or unless requested by the Applicable Representative, none of the Fontainebleau Affiliates shall, without the Applicable Representative's prior written consent, given in their sole and absolute discretion (subject to the Intercreditor Agreements): (a) assert, collect or enforce the Subordinated Obligations, or exercise any right of set-off; (b) exercise any right of possession of any collateral or attach, seize, or realize upon any Collateral or enforce any right, including any right under the UCC against the property of the Fontainebleau Companies; or (c) commence, or cause to commence, prosecute or participate in (other than participate in an action, once commenced, to protect and pursue its rights and remedies as, for example, exercising its rights in a bankruptcy proceeding as described in Section 5.01 hereof) any administrative, legal or equitable action against any Fontainebleau Company or any administrative, legal or equitable action that might adversely affect any Fontainebleau Company or its interest, including, without limitation, any administrative, legal or equitable action which is intended to or which results in the entry of a decree or order for relief in respect of any Fontainebleau Company under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of any Fontainebleau Company or for any substantial part of the property of the Fontainebleau Companies, the commencement by any Fontainebleau Company of a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent by any Fontainebleau Company to the entry of an order for relief in an involuntary case under any such law, or the consent by any Fontainebleau Company to the appointment of, or taking possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) or any of them for any substantial part of the property of the

Fontainebleau Companies, or any Fontainebleau Company's admission in writing of its inability to pay its debts generally, or the making of any general assignment for the benefit of creditors, or the failure generally by any Fontainebleau Company to pay its debts as they become due, or the taking by any Fontainebleau Company of any action in furtherance of any of the foregoing.

If any Fontainebleau Affiliate, other than in accordance with this Section 3, commences, prosecutes or participates in any suit, action or proceeding against any Fontainebleau Company or takes any other action in violation of this Section 3, such Fontainebleau Company may interpose as a defense or a dilatory plea the making of this Agreement, and Senior Creditors may intervene and interpose such defense or plea in such Fontainebleau Company's name. If any Fontainebleau Affiliate, other than in accordance with this Section 3, attempts to enforce any Lien with respect to the Subordinated Obligations, the Applicable Representative, Senior Creditors or the applicable Fontainebleau Company may, by virtue of this Agreement, restrain the enforcement thereof in the name of any Senior Creditor or such Fontainebleau Company.

The Fontainebleau Affiliates shall reimburse each of Senior Creditors upon demand for all reasonable fees and expenses such Senior Creditor incurs in connection with any breach by the Fontainebleau Affiliates of this Article 3, including, but not limited to, the fees and expenses incurred in removing from any Fontainebleau Affiliate's possession Collateral held in breach of this Article 3.

Each Fontainebleau Company covenants and agrees to toll, upon any Fontainebleau Affiliate's request, the statute of limitations with respect to any action which such Fontainebleau Affiliate might bring but for the provisions of this Article 3.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES

SECTION 4.01. *Representations and Warranties.* Each of the Fontainebleau Affiliates and the Fontainebleau Companies which are party hereto hereby represents and warrants as follows, severally and not jointly:

(a) *Authority.* Such Person has the requisite corporate or limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by such Person of this Agreement have been duly approved by all necessary corporate or limited liability company action of such Person and no other corporate or limited liability company proceedings on the part of such Person are necessary to consummate the transactions contemplated by this Agreement.

(b) *Enforceability.* This Agreement has been duly executed and delivered by such Person. This Agreement is the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or

at law).

(c) *Affiliate Agreements.* As of the date hereof, (i) to the best knowledge of the Fontainebleau Affiliates, each of the representations and warranties of the Fontainebleau Companies set forth in Section 4.29 of the Bank Credit Agreement are true and correct, (ii) no interest in any of the Subordinated Obligations has previously been assigned, and (iii) no Lien exists with respect to any of the Fontainebleau Affiliates' rights with respect to the Subordinated Obligations.

ARTICLE 5.

OTHER CONVENTS AND AGREEMENTS

SECTION 5.01. *Modification and Expansion of Senior Debt.*

(a) Notwithstanding any term of the Affiliate Agreements to the contrary, Senior Creditors may (i) grant extensions of time of payment or performance of any Senior Debt, (ii) make compromises and settlements with any Fontainebleau Company and other Persons regarding any Senior Debt, and (iii) increase, expand and/or modify any Senior Debt without the consent of any Fontainebleau Affiliate, and without affecting this Agreement and their rights hereunder. No action that Senior Creditors may take, or refrain from taking, with respect to the Senior Debt or any collateral therefor or any agreements in connection therewith, shall affect this Agreement or Senior Creditors' rights hereunder.

(b) Each Fontainebleau Affiliate further acknowledges and agrees that it is familiar with the terms of the Senior Debt Documents, and that such Fontainebleau Affiliate shall be responsible for staying informed as to any amendments, waivers or other modifications affecting such documents, and as to the status of performance under such documents.

SECTION 5.02. *Subrogation.* Each Fontainebleau Affiliate hereby agrees that no payment or distribution on account of the Senior Debt shall entitle it to exercise any rights of subrogation in respect thereof until all of the Senior Debt has been paid in full in cash and all Senior Debt Documents and all lending commitments thereunder have expired or been terminated.

SECTION 5.03. *Further Assurances.* The Fontainebleau Affiliates shall mark each of the Affiliate Agreements with a legend stating, "CERTAIN OF THE OBLIGATIONS HEREUNDER ARE SUBJECT TO THE AFFILIATE SUBORDINATION AGREEMENT DATED AS OF JUNE 6, 2007, IN FAVOR OF BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT FOR CERTAIN LENDERS AND WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR CERTAIN NOTEHOLDERS."

ARTICLE 6. MISCELLANEOUS

SECTION 6.01. *Counterparts.* This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 6.02. *Severability.* Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 6.03. *Choice of Law; Jurisdiction; Waivers.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of law or choice of law provisions thereof, other than Section 5-1401 of the New York General Obligations Law. To the fullest extent permitted by applicable law, each of the Fontainebleau Affiliates and each of the Fontainebleau Companies hereby irrevocably submits to the non-exclusive jurisdiction of any New York State court or Federal court sitting in the County of New York in respect of any suit, action or proceeding arising out of or relating to the provisions of this Agreement and irrevocably agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. The parties hereto hereby waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereto hereby waive, to the fullest extent permitted by applicable law, any right to trial by jury with respect to any action or proceeding arising out of or relating to this Agreement.

SECTION 6.04. *Notices; Identities of Representatives.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been given or made when delivered, or three business days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed (a) in the case of Completion Guarantor, General Contractor and Parent, as follows, and (b) in the case of each other party hereto, at the address for notice set forth in the Disbursement Agreement:

Completion Guarantor:

Turnberry Residential Limited Partner, L.P.
19950 West Country Club Drive
10th Floor
Aventura, Florida 33180
Attention: Mario Romine, Esquire
Telephone No.: (305) 682-4106
Facsimile No.: (305) 682-4107

General Contractor:

Turnberry West Construction, Inc.
6725 Vice Austi Parkway, Suite 380
Los Vegas, Nevada 89119
Attention: Mario Romine, Esquire
Telephone No.: (702) 836-9100
Facsimile No.: (702) 451-4454

Parent:

Fontainebleau Resorts, LLC,
2827 Paradise Road, Fourth Floor
Las Vegas, NV 89109
Attention: Whitney Thier, Esquire
Telephone No.: (702) 495-8108
Facsimile No.: (702) 495-8112

A party may change its address for notices hereunder by written notice to the other parties to this Agreement. Further, by written notice to the other parties to this Agreement, a Representative with respect to Senior Debt may inform the other parties to this Agreement as to a change in the identity of the Representative for such Senior Debt, and the other parties to this Agreement thereafter shall have the right to treat the successor Representative identified in such notice as the Representative with respect to such Senior Debt.

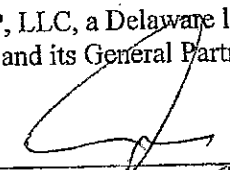
SECTION 6.05. Attorneys' Fees and Costs. In the event of a dispute hereunder, if any party refers this Agreement to an attorney to continue or enforce the provisions of this Agreement, the prevailing party in any such dispute shall be entitled to an award of all costs and expenses (including attorneys' fees) incurred in connection with the dispute.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Affiliate Subordination Agreement to be executed by their respective officers or authorized signatories thereunto duly authorized, as of the date first written above.

TURNBERRY RESIDENTIAL LIMITED
PARTNER, L.P., a Delaware limited partnership

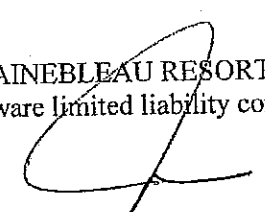
By: Soffer GP, LLC, a Delaware limited liability
company and its General Partner

By: 
Name: Jeffrey Soffer
Title: Partner

TURNBERRY WEST CONSTRUCTION, INC.,
a Nevada corporation

By: _____
Name: _____
Title: _____

FONTAINEBLEAU RESORTS, LLC,
a Delaware limited liability company

By: 
Name: Jeffrey Soffer
Title: Executive Chairman

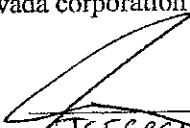
IN WITNESS WHEREOF, the parties hereto have caused this Affiliate Subordination Agreement to be executed by their respective officers or authorized signatories thereunto duly authorized, as of the date first written above.

TURNBERRY RESIDENTIAL LIMITED
PARTNER, L.P., a Delaware limited partnership

By: Soffer GP, LLC, a Delaware limited liability
company and its General Partner

By: _____
Name: _____
Title: _____

TURNBERRY WEST CONSTRUCTION, INC.,
a Nevada corporation

By: 
Name: JEFFREY SOFFER
Title: Authorized Signatory

FONTAINEBLEAU RESORTS, LLC,
a Delaware limited liability company

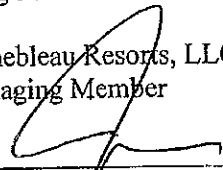
By: _____
Name: _____
Title: _____

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

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

By: Fontainebleau Resort Holdings, LLC,
its Managing Member

By: Fontainebleau Resorts, LLC,
its Managing Member

By: 
Name: Jeffrey Soffer
Title: Executive Chairman

FONTAINEBLEAU LAS VEGAS, LLC,
a Nevada limited liability company

and

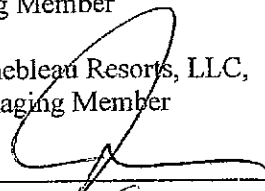
FONTAINEBLEAU LAS VEGAS II, LLC,
a Florida limited liability company

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

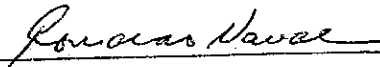
By: Fontainebleau Resort Properties I, LLC,
its Managing Member

By: Fontainebleau Resort Holdings, LLC,
its Managing Member

By: Fontainebleau Resorts, LLC,
its Managing Member

By: 
Name: Jeffrey Soffer
Title: Executive Chairman

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

By: 
Name: Ronaldo Navai
Title: Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

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

ACCT. COPY
TO BE FILED BY RHA
6/3/09

NOTICE OF MECHANIC'S LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$1,753,634,074.00.
2. The total amount of all additional or changed work, materials and equipment, if any is: \$376,193,080.51.
3. The total amount of payments received to date is: \$1,460,836,221.24.
4. The amount of the lien, after deducting all just credits and offsets, is: \$668,990,933.27.
5. The name of the owner, if known, of the property is: Fontainebleau Las Vegas, LLC.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: Fontainebleau Las Vegas, LLC.
7. A brief statement of the terms of payment of the lien claimant's contract is:
Payment due within twenty-five (25) days from receipt of Payment Application or otherwise required by statute.
8. A description of the property to be charged with the lien is: Fontainebleau Las Vegas, 2777 S. Las Vegas Boulevard, Las Vegas, Nevada; APN Nos. 162-09-602-002 & 162-09-704-001, more particularly described in Exhibit "A" hereto.

DATED: June 3, 2009

TURNBERRY WEST CONSTRUCTION, INC.

By:



Name: Robert R. Ambrose

Title: CEO

EXHIBIT "B"

VERIFICATION

STATE OF NEVADA

COUNTY OF CLARK

)
) SS.
)

I, ROBERT R. AMBRIDGE, being first duly sworn on oath
according to law, deposes as says:

I have read the foregoing Notice of Lien, know the contents thereof, and state
that the same is true of my own personal knowledge, except those matters stated
upon information and belief, and, as to those matters, I believe them to be true.

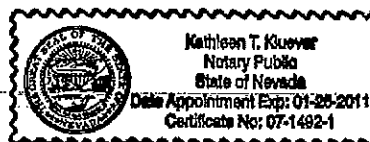
DATED: June 3, 2009

TURNBERRY WEST CONSTRUCTION, INC.

By: Robert R. Ambridge
Name:
Title: CEO

SUBSCRIBED AND SWORN to before me this 3rd day of the month of June,
2009.

Kathleen T. Kuever
NOTARY PUBLIC IN AND FOR SAID
Clark COUNTY AND STATE of Nevada



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Jason C. Gless, Esq.
Wood, Smith, Henning & Berman, LLP
3801 University Ave., Suite 710
Riverside, CA 92506

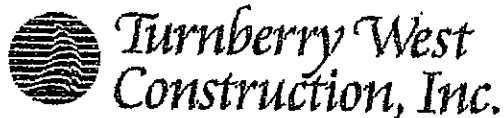


Exhibit A

Fontainebleau Las Vegas

Legal Description "The Site"

Algiers Property

That portion of the East Half (E ½) 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 ¼) 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 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 situated in the County of Clark, State of Nevada and being a portion of the Northwest Quarter (NW ¼) of the Southeast Quarter (SE ¼) of Section 9, Township 21 South, Range 61 East, M.D.M., Nevada, more particularly described as follows:

Commencing at the East one-quarter corner of Section 9, Township 21 South, Range 61 East;
Thence South 04°36'30" East along the East line thereof, a distance of 208.50 feet to a three-quarter inch iron pipe, said point being on the centerline of Riviera Boulevard (60 feet in width);
Thence North 88°42'15" West along said centerline, a distance of 1915.12 more or less, to a three-quarter inch iron pipe set on the East right of way line of U.S. Highway 91 (100 feet in width);
Thence North 28°00'00" East along said East right of way line, a distance of 33.58 feet to the True Point of Beginning, said point being the most Southwesterly corner of Grantor's property;
~~Thence Continuing North 28°00'00" East along said East right of way line, a distance of 64.82 feet;~~
Thence Southeasterly, and Easterly along a curve to the left, tangent to a course which bears South 28°00'00" West having a radius of 40 feet, subtending a central angle of 116°38'42", an arc length of 81.43 feet to a point on the North right of way of Riviera Boulevard (60 feet in width);
Thence North 88°38'42" West along said North line, a distance of 64.82 feet to the True Point of Beginning, as conveyed to Clark County by Deed recorded November 21, 1967 as Document No. 671884 of Official Records, Clark County Nevada.

Also described in an ALTA Survey prepared by Horizon Surveys professional land surveyors as follows:

A portion of the East Half (E ½) of Section 9, Township 21 South, Range 61 East, M.D.M., Clark County, Nevada, described as follows:



Turnberry West Construction, Inc.

Aiglers Property (continued)

Beginning at the Northwest corner of that parcel of land described in a Deed to Western Development, Inc., currently known as Aiglers Inc., recorded in Book 71, Instrument No. 409588, Official Records of Clark County, Nevada, marked by a concrete nail and illegible tag, also being a point on the Easterly right of way of Las Vegas Boulevard and the most Westerly corner of Parcel 1, recorded in File 37 of Parcel Maps, at Page 44, Official Records of Clark County, Nevada;

Thence departing said East right of way and along the boundary of said Lot One (1), South 76°55'05" East, 592.01 feet;

Thence continuing along said boundary of Parcel 1, South 26°31'38" West, 201.07 to the North right of way of Riviera Boulevard marked by a 5/8" rebar with no cap;

Thence along the North right of way of said Riviera Boulevard, North 88°39'00" West, 581.01 feet to the beginning of a curve concave to the Northeast and having a radius of 40.00 feet;

Thence along said curve through a central angle of 116°39'00", an arc length of 81.44 feet to the Easterly right of way of said Las Vegas Boulevard;

Thence along said Easterly right of way, North 28°00'00" East, 273.45 feet to the Point of Beginning.
(Deed Reference 20040716-4857)

El Rancho Property

That portion of the Northeast Quarter (NE ¼) and that portion of the Southeast Quarter (SE ¼) of Section 9, Township 21 South, Range 61 East, M.D.B. & 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



Debbie Conway
Clark County Recorder

CUSTOMER RECEIPT - RECORDING SERVICES

MAIL

J GLESS
3801 UNIVERSITY AVE STE 710
RIVERSIDE CA
92506

Receipt Number: T20090195952
Date/Time: 06/04/2009 11:51:03
Method Received: QUEUE
Clerk: JJF
Customer Name: TURNBERRY WEST
CONSTRUCTION INC

Document Information

<u>Doc Number</u>	<u>Doc Type</u>	<u>Copy Fee</u>	<u>Recording Fee</u>	<u>RPTT</u>	<u>TOTAL</u>
200906040001772	Mech Lien	\$ 0.00	\$43.00	\$0.00	\$43.00

Payment Information

<u>Method of Payment</u>	<u>Payment Control ID</u>	<u>Authorized Agent</u>	<u>Recording Amount</u>	<u>GPS</u>	<u>CC Total</u>
Cash			\$45.00	\$0.00	\$45.00

Amount Paid to Recorder: \$45.00

Less Amount Due: \$43.00

Change Due: \$2.00

Receipt/Conformed Copy

Requestor:

TURNBERRY WEST CONSTRUCTION INC

06/04/2009 11:51:03 T20090195952

Book/Instr: 20090604-0001772

Mech Lien Page Count: 5

Fees: \$18.00 N/C Fee: \$25.00

Debbie Conway
Clark County Recorder