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Counsel for Deutsche Bank Trust Company Americas, as Administrative Agent

Electronically Filed on May 21, 2010

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

STATION CASINOS, INC.

- ☐ Affects this Debtor
- ☒ Affects all Debtors
- ☐ Affects Northern NV Acquisitions, LLC
- ☐ Affects Reno Land Holdings, LLC
- ☐ Affects River Central, LLC
- ☐ Affects Tropicana Station, LLC
- ☐ Affects FCP Holding, Inc.
- ☐ Affects FCP Voteco, LLC
- ☐ Affects Fertitta Partners LLC
- ☐ Affects FCP MezzCo Parent, LLC
- ☐ Affects FCP MezzCo Parent Sub, LLC
- ☐ Affects FCP MezzCo Borrower VII, LLC
- ☐ Affects FCP MezzCo Borrower VI, LLC
- ☐ Affects FCP MezzCo Borrower V, LLC
- ☐ Affects FCP MezzCo Borrower IV, LLC
- ☐ Affects FCP MezzCo Borrower III, LLC
- ☐ Affects FCP MezzCo Borrower II, LLC
- ☐ Affects FCP MezzCo Borrower I, LLC
- ☐ Affects FCP PropCo, LLC

Chapter 11

Case Nos. BK-N-09-52470-GWZ through BK-N-09-52487-GWZ

Jointly Administered Under BK-N-09-52477-GWZ

RESPONSE OF THE ADMINISTRATIVE AGENT FOR THE PREPETITION LENDERS TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE DISSIDENT LENDERS' SUPPLEMENTAL OBJECTIONS TO THE DEBTORS' PLAN FACILITATION MOTIONS AND JOINT EVIDENTIARY OBJECTION TO THE DECLARATION OF ROBERT CARUSO

Hearing Date: May 27, 2010
Hearing Time: 9:00 a.m.
Place: 300 Booth Street
Reno, Nevada 89509

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Deutsche Bank Trust Company Americas, as administrative agent for the prepetition senior secured lenders (the "Administrative Agent"), by and through its undersigned counsel, hereby submits this response, together with the Declaration of Michael C. Ledley, sworn to on May 21, 2010 ("Ledley Decl."), to (1) the Second Supplemental Objection of the Official Committee of Unsecured Creditors (the "Committee") to the Debtors' Motion to Approve (I) Revised Second Amended and Restated Lease Compromise Agreement, (II) Bidding Procedures, and (III) OpCo Plan Support Agreement (the "Plan Facilitation Motions" or "Motions"); (2) and the Independent Lenders' Supplemental Brief Re the "New" Witnesses (together with the Committee's supplemental objection, the "Supplemental Objections"); and (3) the Joint Evidentiary Objection of the Committee and the Dissident Lenders to the Declaration of Robert Caruso (the "Joint Evidentiary Objection").[1]

PRELIMINARY STATEMENT

1. At the hearing on May 4th and 5th, the Court denied the Committee's motion to strike the declarations of Michael Genereux of Blackstone and Robert Caruso of Alvarez & Marsal ("A&M") and permitted the Committee and self-styled Independent Lenders (the "Dissident Lenders") to take the deposition of Messrs. Genereux and Caruso, as well as declarant Scott Kreeger, the Senior Vice President of Corporate Operations of Station Casinos, Inc., prior to the adjourned hearings on the Plan Facilitation Motions scheduled for May 27th and 28th. The Court also permitted the parties to make supplemental submissions strictly limited to such declarants' testimony.

2. The Genereux and Caruso depositions confirmed the substance of their declarations and further demonstrated that the Plan Facilitation Motions should be granted:

- The stalking horse bid, Bidding Procedures and Second Amended MLCA were the result of vigorous, arm's length negotiations by the OpCo Steering Committee

[1] Capitalized terms not defined herein shall have the meaning set forth in the Administrative Agent's Consolidated Response to the Objections to the Plan Facilitation Motions [Docket # 1317] or the OpCo Loan Agreement (attached as Exhibit A to the Response of the Administrative Agent to the Motion of the Debtors Regarding Cash Collateral, dated August 21, 2009 [Docket # 160]), as applicable.

with Fertitta Gaming/PropCo and Boyd, the two biggest players in the Las Vegas locals casino market, as well as discussions with their other major competitors, Penn Gaming and Ameristar. See, e.g., Deposition of Michael Genereux, attached as Exhibit A to the Ledley Decl. (hereinafter "Genereux Dep.") at 177-80, 206-07. As Mr. Genereux succinctly put it, "if you have Coke and Pepsi pursuing your Red Bull, your asset . . . then you have a robust auction. And then you're speaking with RC Cola [in] Penn Gaming and, you know, some other beverage [in] Ameristar, you have . . . four of the biggest competitors in the space looking at your asset." Id. at 177.

- The Steering Committee's negotiations resulted in (1) a $772 million stalking horse bid for OpCo, (2) commercially reasonable bidding procedures for a subsequent auction, and (3) a resolution of disputes concerning the potential separation of OpCo and PropCo pursuant to which (a) Fertitta Gaming/PropCo would receive from OpCo certain assets (the "Excluded Assets") and transition services in return for $35 million in cash and the assumption of $13 million in net working capital liabilities; (b) an orderly separation of OpCo and PropCo can be effected in furtherance of Nevada gaming public policy considerations and minimal business disruption to both estates; and (c) the Texas Station Put Liability was fixed at $75 million.

- The Steering Committee, in consultation with its advisors, determined that the stalking horse bid was the highest and best bid and is subject to topping bids, that the compensation for the Excluded Assets was within the range of indicative values for the assets estimated by A&M, that the fixing of the Texas Station Put Liability at $75 million was significantly less than both the amount proposed by the Landlord's advisors and the amount Boyd attributed to the liability, and that the overall stalking horse transaction provides the greatest available recovery to the OpCo estate and the opportunity for more via an auction for OpCo. Genereux Dep. at 19, 21, 48-49, 154, 206-07, 211, 217-18; Caruso Decl. ¶ 8; A&M Report [Annexed as Exhibit to Docket # 1320] at 4.

3. The Committee and Dissident Lenders continue to allege in their Supplemental Objections that the Fertitta Gaming/PropCo stalking horse bid, the Bidding Procedures and the Second Amended MLCA negotiated by the OpCo Steering Committee constitute a nefarious insider deal through which the OpCo Lenders "have sought . . . to create lock-ups and poison pills that will chill bidding and amount to a cost free conveyance of OpCo Assets to Fertitta Gaming, Deutsche Bank and JP Morgan." Committee's Second Supplemental Objection at 3. The Supplemental Objections, however, provide no factual basis for these assertions. Indeed, the Committee – in violation of the Court's explicit directive to limit supplemental submissions to the Genereux, Caruso and Kreeger testimony (May 5, 2010 Hr. Tr. at 86:6-16) – largely ignores

that testimony in lieu of arguments that can and should have been made prior to the May 4th and 5th hearing.[2] The Dissident Lenders simply cherry picked snippets of deposition testimony to make misleading or irrelevant points. The Administrative Agent respectfully submits that, when read in its entirety, the deposition testimony rebuts each objection.

4. Finally, it is undisputed that Steering Committee members Bank of Scotland and Wells Fargo, who hold approximately 23% of the OpCo debt and have no conceivable interest in PropCo, were active participants in the negotiations and consideration of the potential bids.[3] Genereux Decl. ¶ 15; Genereux Dep. at 26. The Committee and Dissident Lenders ignore Bank of Scotland and Wells Fargo's participation, and for obvious reasons: their approval of the transaction cannot be reconciled with the Committee and Dissident Lenders' litigation narrative that the Steering Committee intentionally left money on the table to provide the Fertittas with a windfall.

DISCUSSION

I. The Steering Committee Marketed the OpCo Assets to Potential Buyers Who Were the Most Motivated and Most Likely to Offer the Highest Price

5. The Dissident Lenders' assertion that the Steering Committee "failed to actively market OpCo" is contradicted by the record. Dissident Lenders Supp. Br. at 3. Mr. Genereux testified that, in addition to negotiating with Boyd and Fertitta Gaming/PropCo (the "Coke and Pepsi" of Las Vegas locals casinos (Genereux Dep. at 177)), Blackstone also solicited interest from two other potential strategic buyers in the Las Vegas market – Penn Gaming and Ameristar – who would likely be most interested in OpCo and could offer an attractive price:

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[2] The Committee and Dissident Lenders also circumvented the Court's firm 15 page limit on supplemental submissions by including their challenges to the A&M indicative value estimates in a separate "Joint Evidentiary Objection" to the Caruso Declaration after the Court denied the previous motion to strike and stated that it will consider the declarations. May 4, 2010 Hr. Tr. at 88:3-6.

[3] The objectors' evidence-free allegation that the Administrative Agent is also the stalking horse purchaser is meritless. The OpCo Loans and the PropCo Credit Facilities are administered by different personnel at each of Deutsche Bank and JPMorgan, respectively, and each has their own counsel and financial advisors.

> Q. . . . [D]id Blackstone contact anyone that didn't contact Blackstone with respect to purchasing the OpCo assets?
>
> A. Certainly, yes. Penn and Ameristar are two. It wasn't lost on us that these – these two, in particular, strategic players in the Vegas market could potentially be interested in owning the assets . . .
>
> * * * *
>
> A. Well, I believed – I think my belief was shared by others, you know closely involved in the steering committee – that the optimal and best bids were going to come from a strategic player, FG, Boyd, Ameristar, Penn.
>
> * * * *
>
> A. . . . And our conclusion, the steering committees and Blackstone's recommendation was to focus on well fortified strategic players that have a true interest in the asset and can pay a high price and still return to its shareholders an attractive return.

Genereux Dep. at 96-97, 98, 180. Mr. Genereux also spoke to other strategic players in the locals casino market such as Cannery, M Resort and Palm about their potential interest in buying OpCo. Genereux Dep. at 198-201. Mr. Genereux explained, however, that he did not believe potential financial buyers, like hedge funds, would offer a competitive price because "they don't have a single dollar of synergies to use to raise their bid and still meet a return on invested capital that is acceptable." Genereux Dep. at 179-80; see also id. at 178 ("The object here is to get the high bid. It's not to go, in our view – and we spoke a lot with the steering committee about this – is spending the time where the outcome we probably understand it already, spending the time calling hedge funds that will give you – not to knock Carl [Icahn] – a Carl [Icahn] type bid where, you know, he bid one to $200 million for an asset that cost over a billion to build. You know, we have a bid in this at an 87 cent recovery, we weren't getting anywhere close to that talking to Platinum Equity."). Nevertheless, Mr. Genereux did speak to a number of potential financial buyers in the course of his business and discussed Station Casinos, but there was not much interest. Generux Dep. at 194-96; see also Genereux Decl. ¶ 18.

6. Further, as Mr. Genereux explained:

> It takes two very capable, well resourced bidders to create a great and robust auction. No more. If you have two that really want this asset, that's what drives bids up because where there's a ying, there's a yang. And you don't need three, you don't need four, you don't need five. You need two really good ones. And we had them in Frank and Boyd.

Genereux Dep. at 178-79.

7. Neither the Committee nor the Dissident Lenders have offered any proof that there are other potentially interested buyers that the Steering Committee could or should have contacted or that doing so would have resulted in a higher stalking horse bid.

8. The Dissident Lenders' suggestion that the Steering Committee's selection of the Fertitta Gaming/PropCo bid as the stalking horse bid was the result of undue pressure by the Debtors or the Fertittas because the Boyd bid was subject to increased execution risk due to the risk of litigation with the Debtors over exclusivity is misleading. Choosing Boyd as the stalking horse would have led to protracted litigation because of Boyd's insistence that: (1) exclusivity be terminated so that it could be a co-proponent of OpCo's Chapter 11 plan; (2) its bid procedures be approved; (3) and certain assets remain with OpCo even though they had limited value to OpCo or Boyd; and, of course, fixing the Texas Station Put Liability would likely have resulted in additional litigation.

9. Moreover, Mr. Genereux testified that litigation risk was only one of three "buckets" of execution risk to which the Boyd bid was subject. The other two "buckets" were, respectively, (1) that the Boyd bid was subject to substantial outstanding due diligence (in contrast to the Fertitta Gaming/PropCo bid, which is subject to narrow due diligence on certain tax matters) and (2) that the Boyd bid involved a significant risk to the operations of the company from, among other things, increased risk of unionization. Genereux Dep. at 141-43. Accordingly, while concern about potentially costly and time consuming litigation is reasonable given the desire of most debtors to maintain control of the process, nothing in Mr. Genereux's testimony indicates that litigation threats from the Debtors or the Fertittas unduly influenced let

alone was a decisive factor in the selection of the Fertitta Gaming/PropCo over Boyd as the stalking horse bid.

10. Finally, Mr. Genereux testified unequivocally that the Fertitta Gaming/PropCo bid provides the highest value to the OpCo estate and the greatest recovery to the OpCo Lenders, and the objectors have proffered no evidence to the contrary.[4]

II. The Transfer of the Excluded Assets is Fair and Reasonable in the Context of the Overall Transaction and Was Already Subject to a Pre-Auction Market Check Through Arm's Length Negotiations Between the Steering Committee and Fertitta Gaming/PropCo

11. The Committee and the Independent Lender make two principal arguments challenging the agreement concerning the Excluded Assets: (1) the compensation for the Excluded Assets is purportedly inadequate because it is at the bottom of the range of indicative values estimated by A&M and A&M did not conduct a formal valuation and allegedly failed to consider the value of certain categories of Excluded Assets; and (2) regardless of the range of values estimated by A&M, the Excluded Assets should be subject to a "market check."

A. A&M's Valuation Work Provides a Reasonable Basis for the Excluded Asset Transfers in the Context of the Overall Transaction

12. A&M did not perform a formal valuation, and the Administrative Agent has never contended otherwise. There can be no dispute, however, that A&M did a substantial amount of work in providing the Steering Committee with a range of indicative values and/or otherwise gave due consideration for the Excluded Assets to assist the Steering Committee in its

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[4] REDACTED

negotiations. Prior to the May 4th and 5th hearing, A&M produced over 6,500 pages in response to the Committee's subpoena, including its work papers and the materials it considered in performing its value assessments. A&M's work included providing indicative values with respect to certain Information Technology ("IT"), Intellectual Property ("IP") and Real Estate assets and concluded the range of indicative values for these assets was between $34 million and $63 million. Caruso Decl. ¶ 6; A&M Report at 4. In using the term "indicative value," A&M was indicating that "[i]t was not intended to be a full expert valuation, but it was intended to give some idea of a range of values . . . it's an assessment of what we believe the market value to be as we use the word indicative." Deposition of Robert Caruso, attached as Exhibit B to the Ledley Decl. (hereinafter "Caruso Dep.") at 15.

13. Among the most valuable Excluded Assets are the IT systems located on the PropCo properties Sunset Station and Red Rock. Although located on PropCo property, these IT systems serve both OpCo and PropCo operations and data for each is commingled on the hardware. OpCo has its own IT system at Texas Station, but that system is not sufficient to run all OpCo casinos. Mr. Caruso, in consultation with OpCo, determined that the most reasonable plan to separate the companies was for the IT systems to remain at the PropCo properties where they are presently located and for OpCo to expand its Texas Station system to make it self-sufficient. Caruso Dep. at 33-36, 104; A&M Report at 14. Mr. Caruso called this the "OpCo Standup" scenario, and the value of the transferred IT systems under this scenario is the cost for OpCo to expand its Texas Station system, estimated by A&M to be $16-20 million. A&M Report at 15. Mr. Caruso deemed this more cost effective and operationally less risky to both OpCo and PropCo than the alternative "PropCo Replacement" scenario, which involves tearing out the two IT systems at the PropCo properties, installing them somewhere at OpCo and requiring PropCo to pay for all new systems. Caruso Dep. at 33-36; A&M Report at 14. The objectors argue that OpCo should have insisted that PropCo pay the full PropCo Replacement value because it has a higher price ($39-54 million), even though this approach is not defensible from a commercial perspective. See Caruso Dep. at 104 ("I think in the context of trying to get a consensual resolution, I didn't really view the PropCo replacement scenario was one that

would have a lot of legs in terms of getting to an outcome"). A&M did, in fact, use the PropCo Replacement value as the starting point in its negotiations with Fertitta Gaming/PropCo and succeeded in getting them to agree to a price that was much higher than their original offer. Caruso Dep. at 166-68.

14. In addition to quantifying the value of the core IT, IP and real estate assets, A&M also gave consideration to other Excluded Assets but did not determine a specific value; e.g., software licenses, primary customer lists, employees and Furniture, Fixtures and Equipment ("FF&E"). Caruso Dep. at 17, 68, 163. With respect to these categories of assets, A&M and the Steering Committee either determined that there was minimal value or OpCo was already required to transfer some or all of the assets to PropCo pursuant to the existing MLCA. Genereux Dep. at 225-27, Caruso Dep. at 163.

15. For example, the Committee criticizes A&M, in particular, for failing to determine a specific value for primary customer lists. Mr. Caruso explained, however, that "it was determined that there were already provisions for customer information to be transferred out of the original MLCA, so it was less of a need from their perspective to value because that information was already being provided." Caruso Dep. at 52-53; see also MLCA [Docket # 698] at ¶ K(iii) (providing for provision of a copy of primary customer lists to PropCo). Similarly, A&M did not the value the potential loss of non-corporate level employees to PropCo because that was permitted under the existing MLCA. See MLCA at ¶ K(vi). As to corporate employees, the Steering Committee determined that it was not worth it to try to enforce non-compete agreements "a loyal employee to Frank and Fertitta gaming will probably, at the end, be a lo[y]al employee to him and so what is it worth to create a blocker when you're not going to stop, you know, human will to work for who he wants to work for?" Genereux Dep. at 227.

16. The Committee also faults A&M for purportedly undervaluing the proprietary software licenses being transferred to PropCo. Mr. Caruso explained, however, that the value of the software licenses was limited to the value of comparable software available on the market because A&M's IT experts determined that "what was available from third party suppliers off the shelf was [not] any worse than the player tracking software that the company had developed

over time. . . " Caruso Dep. at 106. The Committee falsely asserts that A&M "chose to disregard OpCo's assessment" of the software, but Mr. Kreeger of OpCo, in fact, agreed that "you could acquire an off-the-shelf product that provides the same functionality as the current software with the related patent" and even testified that "it's arguable that the off-the-shelf IGT system has more functionality and benefit than the current proprietary system." Deposition of Scott Kreeger, attached as Exhibit C to the Ledley Decl., at 164-65.

17. With respect to FF&E, the Committee claims that millions are being "given away" based on a book value of $10 million. However, the fact that used desks and equipment have a book value of $10 million does not mean those assets have any significant market value today. The Committee also makes a number of criticisms of A&M's valuation of trademarks, but offers no authority, fact testimony or expert opinion to support those criticisms.

18. In short, Mr. Caruso's deposition testimony confirms that the Steering Committee was reasonably informed as to the range of values of the Excluded Assets when it negotiated the Excluded Asset schedule and price, and A&M's conclusions provided a reasonable basis on which the Steering Committee agreed on the terms of the Excluded Asset transfers. Caruso Decl. ¶ 6. That is all that is required under Rule 9019. See, e.g., In re Hilsen, 404 B.R. 58 (Bankr. E.D.N.Y. 2009) (approving settlement regarding disputed assets even though trustee had not obtained appraisal for the assets). The Court need not make a finding as to the value of the assets. In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983) ("responsibility of the bankruptcy judge . . . is not to decide the numerous questions of law and fact raised . . . but rather to canvass the issues and see whether the settlement, fall[s] below the lowest point in the range of reasonableness") (internal citations omitted); In re Blair, 538 F.2d 849, 851 (9th Cir. 1976) (court need not conduct a "mini-trial" on the merits of a proposed settlement).

B. In the Context of the Overall Transaction, the Transfer of the Excluded Assets Reflects the Price a Willing Buyer Would Pay a Willing Seller Following an Arm's Length Negotiation

19. The objectors' insistence on a "market check" for the Excluded Assets through the auction is misplaced because the Excluded Assets were already the subject of vigorous

negotiations between parties with competing goals. Fair market value is defined as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." *United States v. Cartwright*, 411 U.S. 546, 551 (1973) (quoting Treas. Reg. § 20.2031-1(b)). The stalking horse transaction arose out of arm's length negotiations between the Steering Committee and Fertitta Gaming/PropCo. The Steering Committee (and, indisputably, Bank of Scotland and Wells Fargo) were incentivized to negotiate the best possible deal for the OpCo estate, as was Fertitta Gaming/PropCo for the PropCo estate. As discussed above, A&M's analysis provided the Steering Committee with reasonable knowledge of the relevant facts concerning the value range of the Excluded Assets. In addition to the cash consideration for, and assumption of liabilities related to, the Excluded Assets, OpCo is receiving substantial benefits by securing a stalking horse bid that is subject to overbids, fixing the Texas Station Put Liability, and setting the stage for a smooth transition should that become necessary. The Excluded Assets are merely one (albeit critical) spoke of the wheel. Accordingly, the global agreement reached between the Steering Committee and Fertitta Gaming/PropCo – a willing seller and a willing buyer – is the best evidence of the fair market value of the Excluded Assets.

20. The bottom line is that a competing bidder will not be bidding to acquire the Excluded Assets, but will receive instead $48 million in cash and liability reductions if the competing bidder is the successful bidder. The Committee and the Dissident Lenders have provided no basis for the Court to determine that this single component of the entirety of the stalking horse bid and the Bidding Procedures is so grossly undervalued so as to justify the Court's refusal to defer to the business judgment of the Debtors and the Steering Committee on the Plan Facilitation Motions.

III. The Bidding Procedures Are Commercially Reasonable and Fair

21. The Committee and the Dissident Lenders make a number of complaints about the Bidding Procedures that Mr. Genereux's testimony refutes. Overall, Mr. Genereux testified that in his substantial experience as a restructuring specialist and investment banker the Bidding Procedures were fair, reasonable and "quite commercial." Genereux Dep. at 39. In particular,

the absence of a breakup fee and a small overbid requirement ($17.5 million) relative to the purchase price in the Bidding Procedures "are two examples of very commercial and market based terms." Id. Moreover, the overbid requirement is actually lower than the $25 million requirement Boyd was insisting on if it was to be the stalking horse. Genereux Dep. at 205. The fact that the Committee has identified a small number of bidding procedures with different or arguably more favorable terms for the debtor is not evidence that the current Bidding Procedures are unreasonable.

22. Mr. Genereux also addressed the Committee's argument that the overbid requirement is unfair and requires a third-party bidder to bid more for fewer assets because the Excluded Assets would be transferred to PropCo in the event a third-party wins the auction. This misunderstands the terms of the transaction. Because the Excluded Assets will be exchanged for $35 million and $13 million in assumed liabilities, a third-party, whether Boyd or another bidder, is bidding on the OpCo assets less the Excluded Assets but including $35 million in cash and a $13 million net reduction in liabilities. Mr. Genereux explained that a third-party bidder will get credit for the $35 million in its bid, and the intent of the overbid provision was to require that any overbid be at least $17.5 million better on a net economic basis than the stalking horse bid. Genereux Dep. at 81, 83.[5] Simply put, OpCo is converting the Excluded Assets to cash so another buyer is not getting less; rather, it is getting additional cash on OpCo's balance sheet (subject to the OpCo Lenders' liens) in lieu of the Excluded Assets. Moreover, the Steering Committee does not view the transfer of the Excluded Assets as "detrimental to OpCo" (and, in fact, the $35 million may be a windfall for a third-party strategic bidder that has its own IT systems), Genereux Dep. at 212, so the transfer of the Excluded Assets is unlikely to negatively impact third-party bids.

[5] The Plan Facilitation documents will be clarified to reflect this understanding. Genereux Dep. at 82-83.

IV. The Resolution of the Texas Station Put Liability in the Second Amended MLCA and OpCo Support Agreement Is Not Unfair to OpCo

23. In considering the arguments of the Committee and the Dissident Lenders on the Texas Station Put Liability, the Court should keep in mind the context. The Texas Station Put Liability is not a naked liability, but instead a forced purchase of the real estate underlying the Texas Station casino. Once exercised, OpCo would pay in a single lump sum the present value of the future stream of lease payments, but in so doing would acquire title to the underlying real estate and would be relieved of the liability to make future lease payments. In theory, if the discounting to present value of the future lease payments reflects a market discount rate, the Texas Station Put Liability will be the economic equivalent to paying years of lease payments.

24. The Committee argues that the resolution of the Texas Station Put Liability provides an unfair windfall to the Fertittas at the expense of OpCo for two reasons: (1) the Second Amended MLCA and the OpCo Support Agreement require OpCo to pay the Texas Station Put Liability even where there is no change of control at OpCo if the Plan is not confirmed and (2) the $75 million compromise amount for the Texas Station Put Liability is too high because the Texas Station Put could be invalidated through Section 365 the Bankruptcy Code. Second Supplemental Objection at 14-15. The first argument is a misreading of the deal documents – events that trigger payment of the Texas Station Put Liability will almost certainly coincide with a change in control. The latter is a legal argument that was disputed in the negotiations and which the Landlord would surely dispute if the matter is not resolved by agreement.

25. Under the Term Sheet incorporated into the OpCo Support Agreement and the Second Amended MLCA, OpCo is required to pay the Texas Station Put Liability upon the earlier of (i) the sale of OpCo to a buyer other than Fertitta Gaming/PropCo or (ii) one year after consummation of the "Assert Transfers." Second Amended MLCA ¶ M(x); Term Sheet at 49 of

50.[6] The Asset Transfers are triggered, in turn, when (1) a buyer other than Fertitta Gaming/PropCo wins the auction; (2) the OpCo Lender class does not support the Plan and the Plan is not confirmed; or (3) a OpCo Lender that has signed the OpCo Support Agreement breaches a material obligation that causes the Plan not to be confirmed, and a stand alone plan of reorganization for PropCo becomes effective. Second Amended MLCA ¶ M(iv)(1)-(3); Term Sheet at 47 of 50.

26. The effective date of a PropCo plan will almost certainly result in a change of control under the Texas Station Lease because the Fertittas will no longer be running OpCo.[7] In that event, the OpCo Lenders negotiated for an up-to-one year grace period after a PropCo plan becomes effective and the Asset Transfers are triggered. As Mr. Genereux testified, this is a favorable term for the OpCo Lenders (and OpCo) because otherwise the Landlord could declare a change of control as soon as the PropCo plan becomes effective and demand payment of the Texas Station Put Liability. Genereux Dep. at 54-55.

27. The Committee argues that OpCo could invalidate the Texas Station Put under Section 365. This was an issue that arose in the negotiations between the Steering Committee and the Landlord. In those negotiations, the Landlord asserted counter arguments that Section 365 would not apply to the Texas Station Put. If the Landlord were to prevail in that dispute, OpCo would potentially be liable for an amount significantly in excess of $75 million. Moreover, the uncertainty arising out of that open issue would likely have a significant impact on third-party bidders. For example, Boyd discounted its bid by up to $100 million to reflect the risk associated with the Texas Station Put. Genereux Dep. at 154. Accordingly, the resolution of the Texas Station Put Liability negotiated by the Steering Committee at an amount below the

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[6] To the extent the Second Amended MLCA is ambiguous on this point, it was clarified at the May 5 hearing. May, 2010 Hr'g Tr. at 52-54.

[7] It is theoretically possible for the Fertittas to remain in control of OpCo after the effective date of a stand alone PropCo plan if Frank Fertitta is retained as manager of OpCo. Because the Fertittas would have no equity in OpCo and OpCo would not want to pay him management fees, this scenario is highly unlikely.

Landlord's $115 million demand (and below Boyd's calculation of the liability) is reasonable and in the best interests of OpCo and all of its creditors.

V. The Joint Evidentiary Objection to the Caruso Declaration Should Be Denied

28. The Joint Evidentiary Objection is based on the mistaken premise that the Caruso Declaration and accompanying A&M Report were submitted as either expert opinion or lay opinion testimony in order to prove the value of the Excluded Assets. The Administrative Agent has repeatedly acknowledged that "it is not trying to establish the value of the Excluded Assets", Opp. To Motion to Strike, ¶ 13, and "we're not having a mini-trial on issues of value." May 4, 2010 Hr'g Tr. at 70.

29. Instead, as stated in the Caruso Declaration itself, the purpose of the declaration and A&M Report was to show that "the indicative values (as to certain information technology, intellectual property and real estate) and other analyses we provided, all of which are described in the Report, gave the Steering Committee a sound basis for negotiation, and ultimately, agreement as to many of the items that were included in the category Excluded Assets." Caruso Decl. ¶ 6; see also Opp. To Motion to Strike (stating that the purpose of the Caruso Declaration was to show "the Steering Committee negotiated the Excluded Asset schedule and price on an informed basis, including on the basis of the indicative values that A&M performed."). Ultimately, as set forth above, the best evidence of the reasonableness of the overall transaction, including the transfer of the Excluded Assets, is that it reflects the price a willing buyer agreed to pay a willing seller following an arm's length negotiation.

30. The objectors' arguments regarding the qualifications of Mr. Caruso are similarly misplaced. As leader of the A&M engagement, Mr. Caruso is fully competent to testify regarding the work performed by the appropriate subject matter experts on his team and the conclusions communicated to the Steering Committee. There is no legitimate question as to the expertise and qualifications of the A&M team, which are set forth on pages 5 and 6 of the Report.

31. Because the Caruso Declaration and A&M Report are not being offered as opinion testimony to establish the value of the Excluded Assets but as competent fact testimony regarding the information and conclusions provided to and relied on by the Steering Committee in negotiating the scope and price of the Excluded Assets, the Joint Evidentiary Objection should be denied.

32. Finally, the Court has already ruled that it will consider the Caruso Declaration and can be expected to give it the appropriate weight. May 4, 2010 Hr. Tr. at 88:3-6. It is well settled in federal courts that evidentiary rulings are within the sound discretion of the trial court, and "[t]his standard of deference is even greater when the objected-to evidentiary ruling is made during a bench trial because it is presumed that the district judge will rely only upon properly admitted and relevant evidence." Tampa Bay Shipbuilding & Repair Co. v. Cedar Shipping Co., Ltd., 320 F.3d 1213, 216 (11th Cir. 2003).

CONCLUSION

33. For all of the foregoing reasons, the Administrative Agent hereby respectfully requests that this Court approve the Plan Facilitation Motions and deny the Joint Evidentiary Objection.

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Respectfully submitted,

/s/ Kaaran Thomas

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