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IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FBCY ASSOCIATES, LLC, NESWES, LLC, LIEBA NESIS, NORTON NESIS, ROSLYN NESIS, MIRIAM WEISS and ROBERT WEISS, individuals.

CASE NO:2026-000808-CA-01

Plaintiffs,

v.

FONTAINEBLEAU FLORIDA HOTEL, LLC doing business as Fontainebleau Miami Beach, FONTAINEBLEAU FLORIDA TOWER 2, LLC and FONTAINEBLEAU FLORIDA TOWER 3, LLC

Defendants.
_____/

VERIFIED AMENDED COMPLAINT FOR INJUNCTIVE RELIEF & REQUEST FOR SPEEDY HEARING (FLA. STAT. § 86.111)

Plaintiffs FBCY ASSOCIATES, LLC, NESWES, LLC, Lieba Nesis, Norton Nesis, Roslyn Nesis, Miriam Weiss and Robert Weiss (hereinafter "Plaintiffs") by and through undersigned counsel file this Amended Complaint against the above-captioned parties and allege:

JURISDICTION, PARTIES AND VENUE

1. This is an action for injunctive and declaratory relief under Fla. Stat. §86.011.
2. Defendants FONTAINEBLEAU FLORIDA HOTEL, LLC doing business as Fontainebleau Miami Beach, FONTAINEBLEAU FLORIDA TOWER 2, LLC, and FONTAINEBLEAU FLORIDA TOWER 3, LLC (collectively referred to as "Defendants") are all Delaware limited liability companies with their principal place of business in Miami-Dade County, Florida.

3. This action concerns eight (8) condominium-hotel rental units (hereinafter "Rental Units"), all of which are located on the premises of the Fontainebleau Hotel in Miami Beach, Florida.
4. Four (4) of these Rental Units are located in the condominium-hotel Fontainebleau II, Tresor Tower, 4401 Collins Avenue, Miami Beach, Florida (hereinafter "Fontainebleau II"). Plaintiff FBCY ASSOCIATES, LLC, a Florida limited liability company, owns Rental Unit 2-1001, Unit 2-1003, Unit 2-1201, and Unit 2-1203.
5. The remaining four (4) Rental Units listed below are located in the condominium-hotel Fontainebleau III, Sorrento, 4391 Collins Avenue, Miami Beach, Florida (hereinafter "Fontainebleau III").
6. Plaintiff NESWES, LLC, a Florida limited liability company, owns Rental Unit 3-307.
7. Plaintiff Lieba Nesis owns Rental Unit 3-506,
8. Plaintiffs Norton and Roslyn Nesis own Rental Unit 3-507
9. Plaintiffs Miriam Weiss and Robert Weiss own Rental Unit 3-605.

Nature of the Action

10. This is an action for emergency injunctive relief to enforce two court-approved Settlement Agreements (Exhibits B and C) that prohibit Defendants from interfering with condominium unit owners that are not participants in the Fontainebleau Hotel Rental program run by Defendant FONTAINEBLEAU FLORIDA HOTEL, LLC ("FB Rental Program").
11. On January 7, 2026, Defendants, through their affiliated entities, implemented a coordinated set of rules, which were later amended and postponed following the filing of this lawsuit.

12. Defendants' New Rules ("New Rules") will now take effect on May 15, 2026, and are attached as **Exhibit A.**
13. These New Rules are intended to coerce unit owners into the FB Rental Program by imposing burdens and requirements on non-participating owners that are not applied to program participants.
14. The New Rules consist of (i) a multi-step, time-restricted check-in regime requiring owner or agent presence and completion of paperwork and waivers; (ii) a mandatory power-of-attorney requirement for designated agents; (iii) new and discretionary fees, including per-check-in and after-hours charges; (iv) exorbitant and undefined housekeeping costs; (v) restrictive vendor requirements, including sworn oaths and indemnity obligations; and (vi) restrictions on a unit owner's ability to reference the Fontainebleau in any advertising or online platform.
15. Plaintiffs currently have nine (9) confirmed reservations scheduled to commence on or after May 15, 2026.
16. These reservations were accepted, priced, and confirmed through Defendants' own reservation system under longstanding check-in procedures. **Exhibit D.**
17. Many of Plaintiffs' reservations were accepted and confirmed before the New Rules were even distributed to unit owners.
18. Defendants have not provided any notice to incoming guests of Plaintiffs of the New Rules they intend to impose.

19. These reservations include approximately twenty-three (23) individuals, including at least four (4) children, who collectively have already booked flights, taken time off from work and school, and planned long-awaited vacations.

20. If Defendants effectively block check-in and Plaintiffs are forced to cancel reservations at arrival, the Plaintiffs face being banned from the VRBO platform, an online vacation rental platform which Plaintiffs use to promote their bookings. A mass cancellation will result in de-platforming based on VRBO's Host Cancellation Policy. A copy of VRBO's Terms and Conditions are attached hereto as **Exhibit E.**

21. Being banned would destroy Plaintiffs' ability to rent ever again through VRBO. 100% of Plaintiffs' online rentals are through VRBO.

22. Plaintiffs have also invested significant time and effort to achieve and maintain VRBO Premier Partner Status[1], which is critical to their reputation and algorithmic visibility.

23. Negative reviews resulting from Defendants' New Rules will jeopardize that status and materially impair Plaintiffs' ability to secure rentals. A copy of VRBO's Premier Host policy is attached as **Exhibit F.**

24. As explained below, the New Rules render Plaintiffs' ability to rent their units commercially impracticable and, as a practical matter, will eliminate their ability to rent altogether.

[1] A VRBO Premier Partner (or Premier Host) is an exclusive, invite-only status for property owners who consistently offer excellent guest experiences, marked by high ratings, booking acceptance, and low cancellations, and granting benefits such as increased visibility (a premier host badge, improved search ranking, access to Boost listings) and priority support. Qualification involves meeting strict criteria (e.g., 95%+ acceptance, <1% owner cancellation, 4.4+ rating, Minimum of 5 bookings or 60+ booked nights in the last 365 days) and is reviewed quarterly, automatically granting status once criteria are met across all listings.

25. The interference with rentals and discriminatory application of the New Rules will disrupt operations, create confusion for guests, and cause immediate and irreparable reputational harm unless enjoined by this Court.

Standing

26. Plaintiffs have standing to bring this action pursuant to two existing Settlement Agreements which control the dispute at hand.

27. Specifically, the Settlement Agreements both provide that "[a]n action to enforce the terms and conditions of [the Settlement Agreements] may be brought by any Party" or "any Residential Unit Owner."[2]

28. In Section 2 of both Settlement Agreements, a "Residential Unit Owner" is defined as "the record owner of legal title to a condominium parcel, otherwise known as a Residential Unit located within the Condominium property."

29. As the record owners of legal title to condominium parcels in Fontainebleau II or Fontainebleau III, Plaintiffs satisfy this definition and therefore possess the proper standing to bring this action.

Venue

30. Venue is proper in this Judicial Circuit because Defendants have their principal place of business in Miami-Dade County, the events giving rise to this cause of action accrued in Miami-Dade County, Florida, and the properties that are the subject of this action are located in Miami-Dade County, Florida.

[2] This provision is located in Section 12 of the Fontainebleau II Settlement Agreement and Section 14 of the Fontainebleau III Settlement Agreement.

GENERAL ALLEGATIONS

Background: The Condominium-Hotel Structure and FB Rental Program Economics

31. Fontainebleau II and Fontainebleau III are condominium–hotels in which individual owners may either: a) Participate in the FB Rental Program; or b) Rent their units independently while still receiving hotel services and access.
32. Participation in the FB Rental Program requires owners to relinquish approximately 55% of their rental revenue to Defendants and cedes control over pricing, availability, guest relations, and occupancy.
33. Even then, owners remain responsible for all carrying costs, including condominium fees, property taxes, and any mortgage obligations.
34. Plaintiffs are non-program owners who deliberately chose independent rentals to retain control, avoid excessive revenue loss, and preserve the economic value of their condominium ownership (hereinafter "Non-Members").
35. The Settlement Agreement guarantees to owners, (1) the right to rent without interference (2) non-discriminatory and unrestricted guest services for their renters (3) the freedom to use outside vendors and (4) equal vendor access.
36. The Declaration of Fontainebleau II is recorded in the Official Records Book 22955, beginning on page 1343 in the official records of Miami-Dade County, Florida.
37. The Declaration of Fontainebleau III is recorded in the Official Records Book 26167, beginning on page 3643 in the official records of Miami-Dade County, Florida.

Previous Litigation

38. On or around November 6, 2009, the Fontainebleau II Condominium Association, Inc. filed a Complaint on behalf of its members against Defendants and/or their predecessors.

39. Similarly, on or around June 6, 2010, the Fontainebleau III Ocean Club Condominium Association, Inc. filed a Complaint on behalf of its members against Defendants and/or their predecessors.

40. Both lawsuits concerned disputes between the parties over the defendants' practice of increasingly shifting hotel costs and expenses onto condominium unit owners. This led to unpredictable and high monthly costs for condominium unit owners which were inconsistent with similar condominiums in the area.

The Settlement Agreements

41. On November 17, 2012, parties to the lawsuit concerning Fontainebleau II entered into a settlement agreement (hereinafter "Fontainebleau II Settlement Agreement") which establishes specific rights and obligations of the parties and strictly limits Defendants' ability to impose new costs, restrictions, or operational changes on unit owners. The Fontainebleau II Settlement Agreement is attached to this Complaint as **Exhibit B** and governs the four Rental Units owned by FBCY Associates, LLC.

42. That same day, parties to the lawsuit concerning Fontainebleau III entered into a settlement agreement (hereinafter "Fontainebleau III Settlement Agreement") which also lays out virtually identical rights and obligations of the parties. The Fontainebleau III Settlement Agreement is attached to this Complaint as **Exhibit C** and governs the four remaining Rental Units owned by NESWES, LLC, Lieba Nesis, Norton and Roslyn Nesis, and Miriam and Robert Weiss.

43. For years the condominium-hotels operated in the manner contemplated in both of the Settlement Agreements.

The March 9, 2026 Updated Rules and Onerous Policy Changes

44. On March 9, 2026, Defendants circulated a letter announcing New Rules, effective May 15, 2026. **Exhibit A.**

45. The New Rules are facially neutral but discriminatory in design and effect because they impose meaningful burdens only on non-participating unit owners while leaving participants in Defendants' Rental Program largely unaffected.

46. The New Rules interfere with the longstanding check-in process in place since the condominium's inception approximately 20 years ago.

47. Although Defendants invoke "safety, security and quality of our community," the structure, timing, and selective application of the rules reveal their true purpose: to make independent rentals so burdensome and unprofitable that owners are forced into the FB Rental Program, thereby surrendering control and more than half of their rental income.

Plaintiffs' Rights Under the Settlement Agreements

48. Both Settlement Agreements define the rights and protections of condominium unit owners operating outside of the FB Rental Program.

49. Specifically, Section 7 of both of the Settlement Agreements state that (**emphasis added**):

    a. **Right to Rent Without Interference**: "A Residential Unit Owner who is not a participant in the FONTAINEBLEAU HOTEL Rental Program will enjoy the right to rent or lease his or her Unit as a hotel room or accommodation or otherwise **without interference, restriction, limitation, fee or cost imposed by the HOTEL UNIT OWNER as a result or consequence of doing so**."

b. **Non-Discriminatory Guest Services**: "Anyone to whom a Residential Unit Owner leases or rents his Residential Unit on an overnight basis… **will receive without discrimination or restriction all of the guest services** that the HOTEL UNIT OWNER provides to any Residential Unit Owner."

c. **Freedom to Use Outside Vendors**: "The HOTEL UNIT OWNER will assure (and do nothing to impede) the right of any Residential Unit Owner to lawfully[3] contract, purchase, receive and use any good or service from anyone at any price as part of his or her use and enjoyment of the Residential Unit[4]."

d. **Equal Vendor Access**: "All vendors and service providers shall have the same access to the condominium property and shall use the service elevators and loading docks under the same privileges and rules that HOTEL UNIT OWNER allows vendors and service providers that it retains for the same services."

e. Security Procedures: ".. for the protection and safety of the Condominium, Hotel and all Residential Unit Owners, any and all vendors or service providers for such goods or services shall (i) be licensed, if licensure is legally required … to comply with other regulations by said government agencies in order to perform or provide the service or product for which they are retained; (ii) wear an ID badge on the condominium property, to be issued without unreasonable delay by the Hotel Unit Owner upon the arrival of the vendor or provider at the Security or Reception desk; (iii) obtain any and all legally required governmental permits(s) for the work or service they are providing the Residential Unit Owner, and (iv) check in at the security / front desk upon their

[3] Section 7 of the Fontainebleau III Settlement Agreement omits the word "lawfully."
[4] With the exception of licensing and other requirements for vendors, which Plaintiffs do not raise an issue with in this case.

arrival at the Condominium property….Personal services such as housekeeping, cooking, massage therapy… are among the type of services for which any bonding requirement would not apply."

50. The New Rules depart from the *status quo* established by the Settlement Agreements and directly contravene their express terms.

Proposed Check-In Procedures (Violation of Section 7)

51. **Multi-step check-in regime for Non Rental Program owners:** The New Rules alter the check-in procedure for Non-Members by requiring that "the Unit Owner, or the Unit Owner's designated agent, must be present during guest check-in." Check-in will proceed as follows:

    a. Step 1: "The Unit Owner, or its designated agent, will first accompany the guest to the Tresor Front Desk to provide guest photo identification."

    b. Step 2: "the Unit Owner, or its designated agent, and the guest will proceed to the relevant Owner Services Desk, located on Tresor Floor 7 and Sorrento Floor 5, where the remainder of the check-in process will be completed (e.g., completion of required paperwork and waivers, payment verification, and processing (if necessary), etc.)... which is "staffed between 7 a.m. - 7 p.m."

    c. Step 3: After this, "the guest may obtain wristbands to access Hotel amenities from the Tresor Front Desk."

    d. **After-hours check-in fee**: If the guest arrives after hours of operation for Owner's Services, after 7 p.m. and before 7 a.m, "the Tresor Front Desk will conduct an after-hours guest check-in for a fee to be determined by the Hotel *in its reasonable*

business judgment Effective April 15, 2026, the fee will be $75." Owners must notify the Hotel.

52. **Power of Attorney for Designated Agent:** If a unit owner chooses to employ a designated agent, the "Unit Owner must provide the Hotel with a valid and executed power of attorney that identifies its designated agent and authorizes such agent to act on behalf of the Unit Owner." and must provide the Hotel with that power of attorney at least 24 hours before any check-in that will be attended by such designated agent.

53. **Fee for Check-In by the Hotel: "**Should a Unit Owner prefer, they may arrange for a Hotel employee to manage the check-in process for their guests at the Tresor front desk. Effective April 15, 2026, the fee per check-in will be $75. A Unit Owner who desires for the Hotel to provide check-in services must make such arrangements *at least ten (10) days prior to guest check-in*. To notify the Hotel, please contact miacondoteam@fontainebleau.com."

54. The above policies do not apply to FB Rental Program members or their guests.

55. Guests of Non-Member units arriving during operational hours must be accompanied by an owner or designated agent and subjected to a multi-step check-in process requiring them to go to the front desk, then upstairs to owner services, and then back downstairs again simply to access their unit and amenities. This process departs from standard hotel check-in procedures and is inherently confusing and burdensome for guests.

56. Guests of Non-Member units are also required to execute unspecified paperwork and waivers as a condition of check-in, a requirement not imposed on guests participating in the Hotel Rental Program.

57. It is unrealistic and virtually impossible for a unit owner to be present at check-in, as many condominium owners live out of state, are elderly, or are in poor health, such as Plaintiffs[5].

58. The New Rules further require that any designated agent act pursuant to a power of attorney, a formal, notarized legal instrument that grants broad authority to a third party and is wholly inappropriate for a routine hotel check-in.

59. The New Rules will lead to delays, confusion, and guest frustration, and create a real risk that guests will refuse to complete check-in or be unable to access their unit.

60. Guests of Non-Rental Program units arriving after operational hours are subject to an after-hours check-in fee set at Defendants' purported "reasonable business judgment," leaving both the amount and its application open-ended, subject to unilateral increases, and without any defined limits or standards.

61. The New Rules also impose a notice requirement for after-hours check-in, which is impracticable where a guest's arrival is delayed or unexpected, rendering compliance impossible in practice.

62. Unit owners of Non-Rental Program units may utilize hotel-assisted check-in at the Tresor front desk for a $75 fee; however, the Rules do not specify whether that fee, or the separate $75 after-hours charge, is imposed on the guest or the owner. If imposed on guests at check-in, it creates a material risk of refusal, denied access, cancellations, and negative reviews. If imposed on owners, it constitutes a discriminatory out-of-pocket cost tied directly to renting the unit.

[5] Plaintiffs Norton and Roslyn Nesis are Florida residents, but are ninety (90) and eighty-seven (87) years old, respectively. They both suffer from various health ailments. Plaintiffs Miriam and Robert Weiss both live in the state of New Jersey. Plaintiff Lieba Nesis lives in the state of New York.

63. The Settlement Agreement permits only a $15 check-in fee per rental, which the Hotel already charges as a Transient Rental Fee. The imposition of a $75 fee exceeds that allowance.

64. The New Rules also require up to ten days' advance notice to utilize hotel-assisted check-in, rendering the option commercially impracticable, as most of Plaintiffs' reservations are booked last-minute.

65. Plaintiffs sought clarification as to whether this 10-day requirement applies per rental or how it operates in practice, but Defendants refused to provide any guidance.

66. The multi-step check-in process, the power-of-attorney requirement for designated agents, and the after-hours and advance notice restrictions collectively impose substantial interference with Plaintiffs' ability to rent in direct violation of the Settlement Agreement. Requiring owner presence at check-in is itself a material restriction on that right.

67. These policies also violate Section 7's non-discrimination mandate, which guarantees Non-Member renters the same guest services as others. Check-in is a core guest service, and imposing a separate, more burdensome process on Non-Member renters creates a discriminatory two-tier system.

Discriminatory Housekeeping Charges (Violation of Section 7)

68. The New Rules dramatically increase housekeeping rates and impose disparate charges, with higher fees applied to non-FB Rental Program users than to unit owners participating in the FB rental program.

69. For instance, whereas all condominium unit owners currently pay eighty dollars ($80.00) a day for housekeeping of a one bedroom, owners will soon be required to pay seven-hundred and fifty dollars a day ($750.00).
70. Likewise, housekeeping for the departure day of a one bedroom will cost members of the FB Rental Program guests one-hundred and eighty dollars ($180.00) whereas Non-Members' guests will be charged one-thousand dollars ($1,000.00) upon check out.
71. This creates two classes of owners: those whose guests receive housekeeping, linens, and towels at a reasonable, built-in cost through the Hotel Rental Program, and those whose guests are forced to pay up to $1,000 for the same services.
72. In reference to the exorbitant fee, Defendants have not and cannot justify charging between 500% and 900% more for basic housekeeping services on small condominium-hotel units ranging in size from five-hundred and sixteen (516) square feet to a maximum of nine-hundred and eighty (980) square feet.
73. Additionally, these housekeeping charges are left to the Hotel's "reasonable business judgment," placing Plaintiffs at the Hotel's discretion and subjecting them to increases or changes at any time without notice or limitation.
74. Plaintiffs have always used Defendants' housekeeping services rather than contracting with outside vendors.
75. All renters, whether renting from Non-Members or members of the FB Rental Program, pay Defendants directly for housekeeping costs.
76. Thus, any increases in cost will automatically be shifted to the renters.
77. If non-members adjust their rental rates to account for the increased housekeeping costs, nightly rates will effectively triple, rendering Plaintiffs unable to compete in the market.

Even if non-members do not adjust their rates, their renters will still be confronted with excessive and unjustified housekeeping charges on their final bill.

78. Additionally, although Plaintiffs currently make every effort to inform renters of the additional housekeeping costs, they frequently receive complaints from renters who did not expect an additional bill at the end of their visit. Therefore, massive increases in housekeeping costs will only exacerbate the aforementioned complaints.

79. As a result, this policy will inevitably make Plaintiffs' Rental Units unrentable and lead to negative online reviews which will damage Plaintiffs' reputation and lead to further reductions in bookings.

80. Plaintiffs are dependent on online reviews as they facilitate reservations using VRBO.

81. Reviews are a key decision-making factor when potential renters search for properties on VRBO. Plaintiffs are currently a "Premier Partner" on VRBO. Therefore, negative reviews will greatly harm Plaintiffs' reputation, and in turn, their bookings.

82. This exorbitant housekeeping charge will strip the units of their economic viability. This is especially concerning for owners with mortgages, unable to generate sufficient income to cover their debt obligations.

83. The housekeeping policy violates Non-Member rights under Section 7 of both of the Settlement Agreements.

84. By dramatically and unjustifiably raising housekeeping prices, Defendants interfere with Plaintiffs and other Non-Members rights to operate their rental unit outside of the FB Rental Program.

85. Section 7 expressly forbids imposing any "fee or cost" as a consequence of renting outside the FB Rental Program.

86. Section 7 requires that guest services be provided "without discrimination or restriction." These housekeeping rules create two tiers of owners and renters.

Elimination of Linens and Towel Services (Violation of Section 7)

87. Defendants announced that they will eliminate bed linens and towel services for Non-Members and require them to arrange and maintain those items at their own expense unless they opt into the Hotel's exorbitantly priced housekeeping program, while continuing to provide those same services to FB Rental Program units; an intentionally punitive measure designed to coerce and disadvantage Non-Member owners.

88. Even if Plaintiffs arrange for third-party vendors to supply linens and towels at check-in, Defendants refuse to provide linens to Non-Members' guests on demand, depriving them of an essential hotel service and leaving guests without basic accommodations.

89. Guests reasonably expect access to clean linens and towels as part of a hotel stay. If linens are soiled, such as when a child dirties bedding in the middle of the night, guests of Non-Members will not be able to receive linens or towels, while Hotel Rental Program guests will have access to linens and towels at any time.

90. This disparity will lead to guest dissatisfaction, negative reviews, and additional interference with Plaintiffs' ability to operate their rentals.

91. As a result, this policy violates the rights of Non-Member pursuant to Section 7 of both Settlement Agreements as it interferes with their right to operate their rental unit outside of the FB Rental Program and discriminates against Non-Member renters by refusing to provide them linens and towels.

Restrictions on Outside Vendors (Violation of Section 7)

92. The New Rules and procedures restrict outside vendors' access to Monday through Friday from 10:00 a.m. to 4:00 p.m. and prohibit outside vendors from working and using the loading dock or elevators on weekends or holidays (with the exception of housekeeping service), while also granting Defendants the right to deny usage of the loading dock and elevators at any time.

93. This is in direct violation of the Settlement Agreement which states "All vendors and service providers shall have the same access to the condominium property and shall use the service elevators and loading docks under the same privileges and rules that Hotel Unit Owner (Fontainebleau FLA Tower 2, LLC) allows vendors and service providers that it retains for the same services."

94. The New Rules and procedures are not applied uniformly, as they impose materially different obligations on owners participating in the FB Rental Program compared to those who are not. In particular, they subject Non-Member owners to more restrictive access requirements for vendors, further exacerbating the disparate treatment.

95. The policy also gives Defendants the ability to arbitrarily deny use of the elevators or service docks at any time. Therefore, even if Plaintiffs abide by these new restrictions, they may still be restricted from receiving goods or services without any reason. This is not what either of the Settlement Agreements envisioned or bargained for.

96. The New Rules require the unit owner or designated agent to execute a sworn "Oath of Affirmation" as a condition of permitting third-party vendors on the property, obligating the owner to indemnify Defendants, attest to vendors' compliance with all work and

immigration laws, and assume responsibility for their conduct, despite vendors being independent contractors with their own insurance.

97. This improperly shifts risk from the vendor to the owner, exposing the owner to broad liability for matters outside their control.

98. The New Rules further provide that the vendor's "insurance limits will be reviewed by the Hotel," without any standards as to what those limits are, how they are determined, or whether they may change, creating an open-ended and discretionary regime subject to arbitrary approval.

99. This conflicts with the Settlement Agreement, which expressly provides that personal services such as housekeeping do not require bonding, yet the New Rules impose undefined insurance requirements on all outside vendors.

100. As a result, owners cannot reliably retain vendors, who may be rejected or delayed based on vague criteria, while owners are also required to attest to compliance with laws they cannot reasonably verify, effectively preventing vendor use altogether.

101. These burdens do not apply to FB Rental Program participants, who receive seamless vendor coordination through the Hotel.

102. In both design and effect, these requirements materially restrict Plaintiffs' ability to engage vendors and service their units and directly violate the Settlement Agreement's express protections.

Restrictions on Use of "Fontainebleau" Name in Marketing and Advertising
(In Violation of Section 7)

103. The New Rules also impose restrictions on Plaintiffs' ability to use the "Fontainebleau" name in connection with advertising their units.

104. The Rules provide, in relevant part, that "Unit Owners may not advertise, in any medium, any express or implied affiliation with the 'Fontainebleau' Trade Name… in connection with offering a Unit for rental," and that the "use of the "Fontainebleau" Trade Name is not permitted without prior written approval of the Hotel".

105. Defendants also reserve their right to monitor listings, such as monitoring rental listings on VRBO and report alleged violations to rental platforms for removal.

106. This restriction prevents Plaintiffs from accurately describing the location of their units, which are physically located within the Fontainebleau Miami Beach resort complex.

107. The buildings themselves are identified as Fontainebleau Tower II and Fontainebleau Tower III, and Plaintiffs purchased their units at a premium based in part on their association with the Fontainebleau property.

108. Prohibiting Plaintiffs from referencing "Fontainebleau" as a location will materially impair their ability to market their units, as guests search for accommodations by recognizable location names, and rental platforms rely on those terms for algorithm search visibility and ranking.

109. As a result, Plaintiffs' listings will be less visible, less competitive, and less likely to appear in search results, directly reducing bookings and harming Plaintiffs' business.

110. This restriction is particularly harmful on platforms such as VRBO, the platform Plaintiffs rely on for all of their online rentals, where visibility, search ranking, and partner status are critical to securing rentals and maintaining reputation.

111. Although the Rule purports to apply to all unit owners, that assertion is plainly absurd. Owners participating in the Hotel Rental Program are prohibited from renting

their units independently and therefore do not advertise at all. As a result, these restrictions operate exclusively against Non-Member owners.

112. This creates a discriminatory effect, as only Non Rental Program owners are burdened with restrictions that impair their ability to market and rent their units.

113. Plaintiffs understand Defendants' desire to ensure that it is clear a unit is a privately owned condominium and not operated or managed by the Hotel, and have no objection to including such disclaimers in their listings as the New Rules require.

114. However, once that distinction is made clear, prohibiting the use of the "Fontainebleau" name solely as a location serves no legitimate purpose and instead operates to materially interfere with Plaintiffs' ability to effectively market and rent their units, in violation of the Settlement Agreement.

115. The New Rules violate Section 7 of both Settlement Agreements by impermissibly creating a second class of condominium unit owners and renters, unnecessarily interfering with Non-Member's rentals, and denying condominium unit owners the benefit of purchase.

116. The reasons behind Defendants' actions boil down to a simple calculation of profitability, which is greatly increased through participation in the FB Rental Program, owned, managed and controlled by the Defendants.

117. Aside from the obvious benefit of receiving management and booking fees, participation in the FB Rental Program increases Fontainebleau profits when occupancy is low because it monopolizes central control over room supply.

118. The aim of the policies and procedures outlined in the Letter is clear: to extract more money from Non-Members while coercing them into joining the FB Rental Program by

restricting or eliminating services, creating unrealistic procedures, and creating a second class of condominium unit owners. This upends the fundamental bargain made by Defendants in the Settlement Agreements and decimates Plaintiffs' entire business.

Pretextual Security Justification

119. Defendants cite their commitment to "maintaining the safety, security and quality of our community" as the justification for these New Rules.

120. Section 7 of the Settlement Agreement states a list of requirements imposed "for the protection and safety of the Condominium," as quoted above; enumerating what the Defendants can impose by way of protection safety and limiting what they can impose.

121. The New Rules purport to add additional "safety" requirements to hire vendors.

122. These restrictions are not allowed by the Settlement Agreement.

123. When guests check into the Fontainebleau II or Fontainebleau III, they are already required to provide their name, form of identification and a credit card, which is verified against the names provided by unit owners and included in the reservation confirmation issued by the Hotel system.

124. Additionally, the Fontainebleau II and Fontainebleau III have security present at the hotel to further ensure the safety of guests and team-members.

125. Requiring unit owners to be present at check-in, despite having no prior relationship with or knowledge of the guest, does nothing to meaningfully verify the guest's identity against the reservation. Hotel guests routinely check in at all hours, often subject to travel delays, making rigid, owner-dependent check-in requirements impractical and unreasonable.

126. The fact that Defendants are willing to perform guest check-in for a fee also demonstrates that the purported security justification underlying these Rules is pretextual, as the same check-in can be performed by Defendants themselves when compensated.

Relief Sought

127. Defendants' failure to comply with the terms of the Settlement Agreement constitutes a material breach without legal excuse.

128. All conditions precedent to this action have been satisfied or are inapplicable to individual condominium unit owners.

129. Plaintiffs have been forced to hire undersigned counsel and seek recovery of their reasonable attorney's fees and costs recoverable under applicable law.

COUNT I - TEMPORARY INJUNCTION

130. Plaintiffs re-allege paragraphs 1 through 129 as though fully set forth herein.

131. This is a Petition for a Temporary Injunction in accordance with Fla. R. Civ. P. 1.610(a).

132. Plaintiffs will suffer irreparable harm if Defendants are allowed to impose the offending policies.

133. Plaintiffs have no adequate remedy at law.

134. Plaintiffs have attempted to resolve the issues discussed in this complaint without court intervention but Defendants have made clear their intention to enforce the New Rules and proceed with litigation.

Irreparable Harm

135. In this case, the irreparable harm is apparent to all Plaintiffs. The harm facing Plaintiffs is not speculative, gradual, or purely economic. It is immediate, unavoidable, and imminent.

136. The fast-approaching implementation of the new policies will cause Plaintiffs to suffer irreparable immediate and long term harm to their reputations.

Immediate Harm to Pre-Existing Reservations

137. This Court has the opportunity to stop this irreparable harm before it occurs and can temporarily stop the new offending policies.

138. Short term, Plaintiffs already have nine (9) confirmed rental reservations for renters scheduled to check in shortly **after** implementation of the new policies and procedures, all of which were accepted, priced, and officially confirmed under Defendants' reservation program.

139. Plaintiffs are therefore forced into an impossible position: either cancel reservations, incur penalties and disrupt dozens of families' travel plans, or allow guests to arrive to chaos, failed check-ins, and shocking undisclosed charges. Either outcome causes immediate and irreparable harm.

140. Additionally, cancelling these reservations could result in Plaintiffs' suspension from VRBO in accordance with VRBO's cancellation policies.

141. All reservation confirmations are issued by Defendants, rather than individual condominium unit owners. These confirmations include the check-in procedures and the housekeeping fees before the New Rules.

142. Reservation confirmations for Plaintiffs' nine upcoming rentals all include the **current** check-in procedures and housekeeping costs even though the reservations will take place after Defendant intends to implement the new policies and procedures. The reservation confirmations are attached hereto as **Exhibit D**.

143. Renters will understandably be shocked and will undoubtedly dispute the exorbitant housekeeping bill.

144. Although it was Defendants' decision to increase the housekeeping fees, renter frustration will undoubtedly fall upon Plaintiffs and inflict reputational damage through negative reviews.

145. A majority of the upcoming renters have already made travel arrangements, taken time off of work, purchased nonrefundable airline tickets and structured long-awaited vacations around these reservations.

Guests Denied Access Create Immediate Safety and Security Risk

146. Guest check-ins are inherently fluid, and as delays occur, it is unclear which "bucket" of procedures a guest falls into or whether any viable check-in option remains available.

147. The multi-step check-in procedure itself, along with the requirement to execute waivers, creates additional delay and confusion, requiring guests to move between multiple locations within the property before obtaining access, increasing the likelihood of failed check-ins and guest frustration leading to negative reviews.

148. These risks are compounded by the requirement that guests may be asked to pay a $75 check-in fee on the spot, with no clear procedure if the guest refuses to pay and the possibility that the guest will be denied access entirely.

149. Plaintiffs are also unable to comply with the new check-in requirements given their out of state residence or advanced age, and unpredictable arrival times, making in-person check-in or last-minute power of attorney execution impracticable.

150. Therefore, Defendants' new check-in requirements will result in confirmed guests arriving at the Fontainebleau after long-distance travel only to discover that they are unable to access the units they lawfully rented.

151. Guests will have relied on Defendants' own reservation confirmations, which reflect the existing check-in procedures and services, and will reasonably believe that lawful accommodations are available upon arrival.

152. The predictable frustration and confusion caused by, at a minimum, guests being subjected to an exhausting and confusing multi-step check-in process with unexpected last-minute fees, and at worst, being denied entry altogether, will cause chaos, emotional distress, and an increased risk of confrontations and security concerns for both guests and hotel personnel.

153. These risks are not hypothetical. They are the natural and foreseeable result of Defendants' unilateral decision to impose an unworkable check-in framework without regard for existing reservations or guest reliance.

154. Once guests arrive and are unable to navigate the multi-step check-in process, fail to satisfy the power of attorney requirement, cannot comply with advance notice requirements, or refuse unexpected on-the-spot fees, they may be denied access to their units, and the resulting safety risks, disruption, emotional distress, and reputational harm cannot be undone or adequately remedied through monetary damages.

155. Absent immediate injunctive relief, Defendants' policies will thus place innocent third parties, families and children who have already traveled to Miami, in an untenable and potentially dangerous situation through no fault of Plaintiffs.

Immediate Reputational Harm

156. Allowing the reservations and housekeeping charges to proceed under Defendants' New Rules will inevitably result in angry guests, failed vacations, and negative online reviews that permanently damage Plaintiffs' businesses and reputations.

157. Plaintiffs are particularly vulnerable to reputational harm because online reviews are the primary driver of bookings; Plaintiffs rely on VRBO's Premier Partner designation and reputational damage compounds rapidly and is not reversible.

158. No award of money damages can undo a safety and security risk, reputational damage, platform suspension, loss of goodwill or lost family vacations.

159. This Court's intervention is required now, before May 15, 2026, to prevent harm that will occur automatically and irreversibly once the policies take effect.

Long Term Harm to Plaintiffs' Reputation and Rental Business

160. The New Rules impose a series of operational burdens, including the multi-step check-in process, power of attorney requirement, after-hours fees, exorbitant housekeeping charges, and restrictive vendor requirements, that collectively make the rental experience confusing, costly, and inconsistent with guest expectations at a resort property.

161. Long-term, these requirements will lead to dissatisfied guests, disputes over unexpected fees, delays at check-in, and reduced services during a guest's stay, all of

which will lead to greatly reduced reservations, lower renter satisfaction, and logistical nightmares.

162. The loss of business and damage to the subject properties cannot be undone. Travelers rely heavily on site reviews before booking.

163. If a wave of negative reviews reflects that guests cannot check in or are subjected to unexpected fees upon departure, Plaintiffs' ability to secure future rentals will be effectively destroyed.

164. No amount of money damages can be calculated to remedy reputational damage of this magnitude, which goes to the heart of the Plaintiffs' businesses.

165. Plaintiffs require rental income to pay their mortgages, maintenance fees, and property taxes. Continued enforcement of these policies will result in a default on mortgage obligations.

166. Even if damages could be assessed in this case, and no amount of damages can fully compensate Plaintiffs, the economic damage is so large it is uncollectible.

167. Additionally, the loss of income and reputational damages are so large they could never be calculated, much less recovered from the Defendants.

Likelihood of Success on the Merits

168. Plaintiffs have a substantial likelihood of success on the merits because the New Rules and procedures violate Section 7 of both Settlement Agreements which states that Defendants will not restrict or interfere with Non-Members' ability to rent out their condominium units, nor discriminate against their renters. Thus the restrictions are discriminatory in violation of both Settlement Agreements

Balance of Harms.

169. The balance of equities overwhelmingly favors Plaintiffs. Absent injunctive relief, Plaintiffs will suffer immediate and irreparable harm, including the inability to check in confirmed guests, reputational damage, loss of booking-platform status, and exposure to mortgage default and foreclosure. Dozens of innocent third parties, including families traveling with children, risk being subjected to a confusing process or stranded upon arrival after relying on Defendants' reservation confirmations.

170. By contrast, Defendants face no cognizable harm. The subject units do not generate revenue for Defendants, and a temporary injunction would simply preserve the status quo that has existed for approximately twenty years pending a decision on the merits. The Court has already expedited discovery, and Plaintiffs are entitled to a prompt hearing under section 86.111. Maintaining the *status quo* for a short period does not impose any undue burden.

171. Defendants have already postponed implementation of the New Rules for three months. They have lost no vested rights, revenue, or operational capability by temporarily refraining from enforcement.

172. Where Plaintiffs face imminent, irreparable harm, the balance of equities decisively favors injunctive relief.

Public Interest

173. A temporary injunction will serve the public interest by ensuring stable and continuous access to accommodations and services for Plaintiffs and other Fontainebleau II and Fontainebleau III unit owners. It will also protect the traveling public by allowing guests with existing reservations to rely on confirmed bookings, rather than arriving after

long-distance travel only to face failed check-ins, confusion, and unexpected charges. Preventing these conditions avoids turning routine travel to South Florida into an unreliable and disruptive experience for out-of-town visitors.

174. Additionally, enforcement of judicial settlements is essential to preserve the authority, integrity, and finality of court proceedings, and permitting a party to disregard a court-approved settlement undermines confidence in the judicial system, discourages settlement of disputes, and imposes unnecessary burdens on the courts.

175. Failure to enforce judicial settlements governing condominium operations causes harm beyond the immediate parties by creating uncertainty that disrupts residents and invitees, impairs property rights and values, and threatens the orderly and safe operation of shared-ownership communities.

176. Finally, stable and predictable condominium governance is a matter of public interest because condominium associations exercise quasi-governmental authority over owners, residents, and guests, and enforcement of judicial settlements ensures that such authority is exercised lawfully rather than through arbitrary or unilateral rulemaking.

Bond

177. Section 12 of the Fontainebleau II Settlement Agreement and Section 14 of the Fontainebleau III Settlement Agreement both provide that in "[a]n action to enforce the terms and conditions of this Settlement Agreement . . . "either Party may seek specific performance and/or injunctive relief without posting bond, against the other party as long as the Party seeking specific performance is not in breach of this Settlement Agreement.

178. Plaintiffs have complied with their obligations under their respective Settlement Agreements.

179. Thus, Plaintiffs are entitled to the injunctive relief requested in this Complaint without posting bond.

WHEREFORE, Plaintiffs demand the entry of a temporary injunction against Defendants enjoining its officers, agents, servants, employees and attorneys from imposing the offending policies until there can be a decision on the merits of this case and for such other relief this Court deems just and proper.

COUNT II - INJUNCTION

180. Plaintiffs re-allege paragraphs 1 through 179 as though fully set forth herein.

181. Plaintiffs seek an injunction to prevent Defendants from imposing the offending policies.

182. Plaintiffs lack an adequate remedy at law for irreparable damage to the subject properties.

183. Both Settlement Agreements were incorporated by the Court into final judgments. *See* Exhibit B and Exhibit C.

184. Furthermore, Section 12 of the Fontainebleau II Settlement Agreement and Section 14 of the Fontainebleau III Settlement Agreement allows for injunctive relief.

185. Thus, this Court has jurisdiction to enforce the terms of the two Settlement Agreements.

186. The allegations in this case are directly tied to the failure of the Defendants to abide by the Settlement Agreements. Therefore, the Court is authorized and required to enjoin the above-described actions contrary to the Settlement Agreements.

187. The loss of business and damage to the subject properties cannot be undone.

WHEREFORE Plaintiffs pray this Honorable Court enter order preventing Defendants from imposing these policies and award Court costs, interest, reasonable attorneys' fees and such other relief that this Court deems just and proper.

COUNT III (DECLARATORY RELIEF)

188. Plaintiffs re-allege paragraphs 1 through 129 as though fully set forth herein.

189. In the alternative, Plaintiffs seek a Declaratory Judgment against Defendants regarding the above-cited provisions.

190. Plaintiffs request a speedy hearing in accordance with Fla. Stat. § 86.021.

191. There exists a bona fide, actual present practical need for declaration to determine the rights of the parties in this action vis-a-vis the proper interpretation of the two Settlement Agreements.

192. Plaintiffs' rights are dependent upon the Court's power to construe pursuant to Fla. Stat. §86.021.

193. Defendants reasonably have an actual, present, adverse and antagonistic interest in the subject matter.

194. The relief sought is not merely giving of legal advice or the answer to questions propounded for curiosity.

WHEREFORE, Plaintiffs pray that this Honorable Court enter a declaratory judgment construing the parties' rights and obligations under the two Settlement Agreements, grant a speedy hearing pursuant to section 86.021, Florida Statutes, award Court costs, interest, reasonable attorneys' fees, and grant such other relief as this Court deems just and proper.

COUNT IV (BREACH OF CONTRACT - IN THE ALTERNATIVE)

195. Plaintiffs re-allege paragraphs 1 through 129 as though fully set forth herein.

196. This Count is brought strictly in the alternative, only in the event the Court denies injunctive relief.

197. The Defendants are bound by valid, enforceable Settlement Agreements governing Plaintiffs' right to operate their rental business without interference.

198. Indeed, Plaintiffs are intended third party beneficiaries to the attached Settlement Agreements.

199. Defendants materially breached the Settlement Agreements by implementing policies that interfere with and effectively prevent Plaintiffs from operating their rental business.

200. Defendants' conduct was intentional and designed to coerce Plaintiffs into abandoning their independent rental operations.

201. As a direct result, Plaintiffs' profitable rental business may be entirely destroyed absent injunctive relief.

202. Plaintiffs will suffer damages including lost revenue, lost future business, reputational harm, and loss of goodwill, in an amount exceeding several million dollars.

203. Defendants should be held liable for the loss of Plaintiffs' profitable businesses.

WHEREFORE, Plaintiffs demand judgment for compensatory damages in an amount to be proven at trial, together with costs, interest, and such further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed with the e-portal filing system on this March 23, 2026 and that the parties on the service list will be served as indicated on the service list below.

/s/Zachary Zurich
Zachary Zurich, PA
Florida Bar No. 573353
Counsel for Plaintiffs
2885 Sanford Ave SW # 25343

Grandville, MI 49418-1342
Office Phone Number : 305-852-2569
Cell Phone Number: 954-557-0389
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IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FBCY ASSOCIATES, LLC, NESWES, LLC, LIEBA NESIS, NORTON NESIS, ROSLYN NESIS, MIRIAM WEISS and ROBERT WEISS, individuals.

CASE NO: 2026-000808-CA-01

Plaintiffs,

v.

FONTAINEBLEAU FLORIDA HOTEL, LLC doing business as Fontainebleau Miami Beach, FONTAINEBLEAU FLORIDA TOWER 2, LLC and FONTAINEBLEAU FLORIDA TOWER 3, LLC

Defendants.

VERIFICATION

We, Miriam Weiss, Lieba Nesis, Norton Nesis, Roslyn Nesis, and Robert Weiss, state under oath that we have each reviewed this Verified Amended Complaint and that the facts contained herein are true and correct, based on personal knowledge. With my signature below, I also verify that I have reviewed the exhibits attached hereto and they are true and correct copies of what they purport to be.

FBCY ASSOCIATES, LLC
By: Miriam Weiss
Title: Manager

NESWES, LLC
By: Miriam Weiss
Co-owner of NESWES, LLC

Lieba Nesis

Norton Nesis

Roslyn Nesis

Miriam Weiss

Robert Weiss

EXHIBIT A

Dear Fontainebleau Unit Owners,

We have updates listed below to our Rules, Processes & Regulations impacting our condo-hotel Unit Owners and guests. This bulletin updates and supersedes an earlier bulletin that was circulated on January 7, 2026.

Effective April 15, 2026, the updated Rules, Processes & Regulations below will become effective for all units. All of the updated Rules, Process & Regulations are placed into effect with guest and team member safety as the first priority.

We are committed to maintaining the safety, security, and quality of our community. In recent months, we have identified a number of operational and compliance concerns involving guest safety and identification, unauthorized vendor activity, improper use of Hotel trademarks in rental listings, and violations of state and local licensing requirements for short-term rentals. In response to these concerns, and in order to ensure the continued safety, proper management, legal compliance, parity between program and non-program owners, and the general welfare of our community, we share with you the following information regarding necessary updates to our Rules, Processes, & Regulations.

- Check-In
    - For Units enrolled in the Hotel Rental Program, we will continue to check in all arrivals at our Front Desk and Owner Services, where guest identification(s) will continue to be verified to ensure safety and continue to follow other existing procedures. For Unit Owners enrolled in the Hotel Rental Program, this service will be charged against the 55% revenue share, attached in Appendix A.
    - For Units not enrolled in the Hotel Rental Program:
        - The Unit Owner, or the Unit Owner's designated agent, must be present during guest check in.
        - Check-in will proceed as follows:
            - First, the Unit Owner, or its designated agent, will first accompany the guest to the Tresor Front Desk to provide guest photo identification.
            - Second, the Unit Owner, or its designated agent, and the guest will proceed to the relevant Owner Services Desk, located on Tresor Floor 7 and Sorrento Floor 5, where the remainder of the check-in process will be completed (*e.g.*, completion of required paperwork and waivers, payment verification, and processing (if necessary), etc.) and where Condo staff trained on appropriate reservation software will be available to assist. The Owners Services Desks are staffed between 7AM-7PM. At any point after this, the guest may obtain wristbands to access Hotel amenities from the Tresor Front Desk.
            - A Unit Owner must provide the Hotel with a valid and executed power of attorney that identifies its designated agent and authorizes such agent to act on behalf of the Unit Owner. Unit Owners must notify the Hotel of their designated agent's identity and provide copies of a valid and executed power

of attorney at least 24 hours before any check-in that will be attended by such designated agent. Unit Owners must notify the Hotel, in writing, of their designated agent's identity no later than April 1, 2026, after which they may change the designated agent pursuant to the above-referenced process. To notify the Hotel, please contact miacondoteam@fontainebleau.com.

- Should a Unit Owner prefer, they may arrange for a Hotel employee to manage the check-in process for their guests at the Tresor front desk. Effective **April 15, 2026**, the fee per check-in will be $75. A Unit Owner who desires for the Hotel to provide check-in services must make such arrangements at least ten (10) days prior to guest check-in. To notify the Hotel, please contact miacondoteam@fontainebleau.com.

- If the Unit Owner does not opt-in to the check-in procedure above, and the guest arrives after the hours of operation for the Owner Services Desks, the Tresor Front Desk will conduct an after-hours guest check-in for a fee to be determined by the Hotel in its reasonable business judgment. Effective **April 15, 2026,** the fee will be $75. To notify the Hotel, please contact miacondoteam@fontainebleau.com.

▪ Unit Owners who purchase a Unit on or after April 15, 2026 will be required as part of Owner onboarding to go to the Sorrento Lobby Condo Office to verify photo identification(s), obtain waivers, etc.

- Housekeeping

  - We will continue to make housekeeping services available for a fee to be determined by the Hotel in its reasonable business judgment. The housekeeping services will be provided to all Unit Owners and guests alike to the same extent as provided to Hotel Guests—regardless of whether the Unit Owners are or are not enrolled in the Hotel Rental Program. As part of the daily housekeeping service fee, the Hotel provides services and supplies, which may include (but are not limited to) the following: clean the units, purchase and distribute linens, provide labor, management, towels, cleaning supplies, paper goods, coffee, and soap.

  - Appendix A reflects updates to the rates to bring them in line with market pricing, ensure compliance with the Hotel's regulatory and contractual obligations to service providers, and to ensure equitable pricing for all Unit Owners irrespective of whether they are or are not enrolled in the Hotel Rental Program.

    ▪ Unit Owners who are not enrolled in the Hotel Rental Program are not required to request or obtain housekeeping services from the Hotel. Should you wish to no longer receive services from the Hotel's housekeeping team for any reason, please notify miacondoteam@fontainebleau.com prior to **April 1, 2026**, with your updated housekeeping preferences. Changes will take effect **April 15, 2026**.

      - For Unit Owner(s) who elect to engage third-party service providers, a list of Vendor Requirements is provided below (Appendix B).

- Occupancy Limits for Pool and Amenity Access

- All Hotel guest amenities will continue to be restricted by the maximum occupancy of the guest room (property wide) as set forth below. Additional persons in excess of the respective Unit's occupancy threshold will not be provided access to Hotel guest amenities.
    - Junior Suites have a max occupancy of 4 persons.
    - One Bedroom Suites have a max occupancy of 5 persons.

- Parking
    - All previous Rules and Regulations with respect to Parking remain in effect.
    - Only Unit Owners and their immediate family members will be permitted to valet park via the Hotel's South Drive entrance. All Unit Owner guests are directed to valet park via the Hotel's Arrivals and Departures driveways.

- Renting Laws, Trademarks and Intellectual Property
    - As a reminder, all Unit Owners must ensure compliance with Municipal, County, State, and Federal laws. This includes, but is not limited to, obtaining a Transient Public Lodging Establishment license from the State's Department of Business & Professional Regulation, registering for a Tourist Tax Account with Miami-Dade County, satisfying the City of Miami Beach's requirements for short term rentals, noise ordinances, and applicable fire and life safety regulations, among other potentially applicable laws. The Hotel reserves all rights with respect to Unit Owners' compliance with all applicable laws and regulations. This includes, but is not limited to, the Hotel's right to verify compliance, request reasonable cooperation, and to seek judicial relief if a Unit Owner fails to cooperate with the Hotel.
    - In addition to and without waiver of any preexisting restrictions, to avoid any confusion and minimize the risk of intellectual property infringement of the "Fontainebleau" Trade Name, Unit Owners may not advertise, in any medium, any express or implied affiliation with the "Fontainebleau" Trade Name, the Hotel, or its related entities, in connection with offering a Unit for rental or lease. Use of the "Fontainebleau" Trade Name is not permitted without prior written approval of the Hotel. All requests concerning use of the "Fontainebleau" Trade Name must be sent in writing to miacondoteam@fontainebleau.com.
        - For Unit Owners who are not enrolled in the Hotel Rental Program, all rental listings, advertisements, and marketing materials for Units must include substantially the following disclaimer: "This is a privately-owned condominium unit located in the [Tresor/Sorrento] Condominium. This unit is NOT operated or managed by the Fontainebleau Miami Beach hotel. Guests of this unit are subject to all Fontainebleau Miami Beach hotel rules and regulations and [Tresor/Sorrento] Condominium rules and regulations, as applicable and as amended from time to time."
            - Listings must not reference the "Fontainebleau" Trade Name, including in Wi-Fi network information or any other public-facing or accessible medium.
            - Tresor Condominium rental listings may state "at Tresor Condominium" with the property address as 4401 Collins Ave, Miami Beach, FL 33140.

- Sorrento Condominium rental listings may state “at Sorrento Condominium” with the property address as 4391 Collins Ave, Miami Beach, FL 33140.

- The Hotel reserves its right to verify a Unit Owner’s compliance with the Hotel’s trademark and intellectual property rights, including, but not limited to, monitoring rental listings on VRBO, AirBnb, Expedia, and any other rental website or platform for use of “Fontainebleau” without written approval, notifying Unit Owners of non-compliant listings requiring immediate correction, and reporting trademark violations to the applicable rental platform for removal.

Appendix A: Updated Housekeeping Rates for Rental and Non-Rental Unit Owners + Guests

The below services and rates are mandatory for Units enrolled in the Hotel Rental Program.

For Units not enrolled in the Hotel Rental Program, the below services and corresponding rates are optional. If they wish to obtain housekeeping services from the Hotel for a fee, the below rates will apply. Alternatively, Non-Rental Unit Owners may obtain their own housekeeping services independent of the Hotel at no charge from the Hotel, subject to the terms of Appendix B.

Room Category	**New Rates Effective 4/15/26 (14% tax not included in pricing below) for Units enrolled in the Hotel Rental Program**	**New Rates Effective 4/15/26 (14% tax not included in pricing below) for Units not enrolled in the Hotel Rental Program**
Daily (Jr. Suite)	55% of Gross Rentals + $70.00/day	$500.00 flat rate
Daily (1BR Suite)	55% of Gross Rentals + $80.00/day	$750.00 flat rate
Departure (Jr. Suite)	55% of Gross Rentals + $130.00/day	$750.00 flat rate
Departure (1BR Suite)	55% of Gross Rentals + $180.00/day	$1,000.00 flat rate

Appendix B: Vendor Requirements for Sorrento and Tresor Towers

Should a Unit Owner prefer to select and pay its own vendor for any services, those vendors must comply with all of the instructions below in order to gain access to the property.

1. Please send a copy of (i) a valid Driver's License/Passport, (ii) a Certificate of Insurance evidencing the vendor's Worker's Compensation insurance, (iii) a Certificate of Insurance evidencing the vendor's Commercial General Liability insurance, and (iv) a Certificate of Insurance evidencing the vendor's Commercial Auto Liability insurance for all on-site service providers (individuals and their companies) at least two business days in advance of an appointment on property. This will ensure the Hotel has sufficient time to confirm each individual and company on-site is properly covered with adequate insurance. This is done to ensure safety, qualified individuals, and mitigate legal risk in the event of a lawsuit/claim. This needs to be scheduled directly with the Condo-Hotel Operations Department.

2. In addition to the above, all vendors must provide a copy of their business license and complete contact information for the business and all individuals who will be on-site.

3. All Unit Owners or their Designated Agents must execute the Oath of Affirmation attached hereto as **Appendix C** and submit it to our Condo-Hotel Department (miacondoteam@fontainebleau.com) and Hotel Management (miafrontofficemanagers@fontainebleau.com).

4. Insurance limits will be reviewed by the Hotel. Commercial General Liability insurance policies must reflect the following information:

    a) The certificate holder should read Fontainebleau Florida Hotel, LLC, as well as Fontainebleau Florida Tower 2, LLC and/or Fontainebleau Florida Tower 3, LLC as applicable, and the specific building's address.

    b) Fontainebleau Florida Hotel, LLC, as well as Fontainebleau Florida Tower 2, LLC and/or Fontainebleau Florida Tower 3, LLC as applicable, must be listed as additional insureds on the vendor's Commercial General Liability policy on the Certificate of Insurance.

5. Work schedules, delivery / service windows, etc., must be provided to Condominium Operations, the Security Department, and/or the Housekeeping Departments (and any other applicable department) at least 24 hours in advance to make arrangements to provide access to the unit, service elevators, loading dock, garbage disposal areas within the loading dock, etc., as needed on the dates and times specified by the Unit Owner.

6. Reasonable times for access and entry to specified areas are determined by the Hotel so as not to disturb Hotel Operations, Hotel Guests, and Unit Owners. Currently, the times for vendor access are Monday through Friday from 10:00 A.M. to 4:00 P.M. NO WORK OR USAGE OF LOADING DOCK/ELEVATORS IS ALLOWED ON WEEKENDS OR HOLIDAYS. Exceptions are made for third-party housekeeping providers, who may access units to provide housekeeping services Monday through Sunday. Additional exceptions may be made with the Hotel's written approval.

7. Use of the loading dock is limited to loading and unloading only—parking is not allowed there. All visitors/workers must obtain a visitor's badge from the Security Desk at the loading dock, and such badges must be visible at all times.

Hotel staff/team members are not authorized to accept deliveries on behalf of Unit Owners, and we cannot be held responsible for damaged items, incomplete deliveries, etc. The Unit Owner/tenant is allowed to have its designated agent present to accept the delivery so long as the Hotel has a valid and executed copy of the designated agent's power of attorney on file as described in the updated Rules, Regulations, and Procedures above.

For emergency or after-hours access, including for emergency vendor needs, you may contact Hotel Management at miafrontofficemanagers@fontainebleau.com or by phone at (786) 378-4867 for assistance.

For all other inquiries, please contact our Condo-Hotel Department (miacondoteam@fontainebleau.com) should you have any questions.

Thank you for your patience and understanding as we work towards continued improvements this year.

Appendix C: Oath of Affirmation

OATH OF AFFIRMATION OF
VENDOR AUTHORIZATION AND COMPLIANCE

I, _____ ("Unit Owner" or "Designated Agent") hereby affirm and attest to the following:

1. I am either the Owner or the Designated Agent of the property unit(s) with the following address(es):

_____ ("Unit(s)").

2. This Oath of Affirmation is made with respect to the following third-party vendor(s) ("Third-Party Vendors"):

Vendor Company	**Representative's Name**	**Description of Services**

To the extent more space is needed, please submit a standalone form contemporaneously with this Oath that includes the above information for all Third-Party Vendors.

3. I authorize the Third-Party Vendors to perform services in connection with the Unit(s).

4. I understand that I am responsible for the Third-Party Vendors, including their representatives and employees, while they are performing the services in connection with the Unit(s).

5. I attest that the Third-Party Vendors and their personnel who will perform work on the Unit(s) are in compliance with all work and immigration laws that may apply, and will cooperate and provide documentation reflecting compliance upon request.

6. I attest that the Third-Party Vendors and their personnel have been provided with the applicable Vendor Requirements, that I will provide any future applicable rules, and that I will ensure these Third-Party Vendors comply with such requirements.

7. I agree to indemnify, defend, and hold harmless FONTAINEBLEAU FLORIDA HOTEL, LLC, FONTAINELBAU FLORIDA TOWER [2][3], LLC, and their respective owners,

subsidiaries, parent companies, management, officers, directors, employees, and agents from and against any and all claims, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or related to: (a) any act and/or omission of any Third-Party Vendors; (b) any failure of such vendor or personnel to comply with applicable laws or rules; and/or (c) any property damage or personal injury caused by such Third-Party Vendors.

8. This Oath of Affirmation will be submitted via email to the Fontainebleau Condo-Hotel Department (miacondoteam@fontainebleau.com) and Hotel Management (miafrontofficemanagers@fontainebleau.com). Submission of this form does not constitute automatic approval of Third-Party Vendors.

Under penalties of perjury, I declare that I have read the foregoing Oath of Affirmation and that the facts stated in it are true.

_____

Signature of Unit Owner or Designated Agent

Print Name:

Date:

EXHIBIT B

SETTLEMENT AGREEMENT

This Settlement Agreement, dated and effective as of NOVEMBER 7, 2012 is by and between the following Parties, FONTAINEBLEAU II CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation, with its principal address at 4401 Collins Ave., Miami Beach Fl. 33140, (hereinafter referred to as the "ASSOCIATION" or "Plaintiff") and JS COLLINS, LLC, a Florida limited liability company with its principal mailing address at 19950 W. Country Club Drive, 10th Floor, Aventura, Florida, 33180, general partner of TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, a Florida limited liability company with its principal mailing address at 19950 W. Country Club Drive, 10th Floor, Aventura, Florida, 33180 (hereinafter collectively referred to as "DEVELOPER"); FONTAINEBLEAU FLA TOWER 2, LLC, a Florida limited liability company with its principal mailing address at 4441 Collins Ave., Miami Beach Fl. 33140, (hereinafter referred to as the "HOTEL UNIT OWNER"), and TURNBERRY CONSTRUCTION, INC., a Florida corporation with its principal place of business at 19950 W. Country Club Drive, 10thFloor, Aventura, Florida 33180 (hereinafter referred to as "TURNBERRY") (DEVELOPER, HOTEL UNIT OWNER and TURNBERRY will be collectively referred to as "DEFENDANTS"). ASSOCIATION, DEVELOPER, HOTEL UNIT OWNER and TURNBERRY are also referred to collectively herein as the "PARTIES", who do hereby execute and enter into this Settlement Agreement, the terms and conditions of which are memorialized below.

RECITALS

WHEREAS, FONTAINEBLEAU II, A CONDOMINIUM HOTEL (hereinafter sometimes referred to as "FONTAINEBLEAU") is the Condominium whose principal address is 4401 Collins Avenue, Miami Beach , Fla. , 33140, and commonly known as TRESOR;

WHEREAS, the ASSOCIATION is a not-for profit Florida Corporation and is a Condominium Association organized pursuant to the provisions of Chapter 718, Florida Statutes and comprised of the condominium unit owners in the condominium property located at 4391 Collins Avenue, Miami Beach, Fla., 33140;

WHEREAS, FONTAINEBLEAU FLA TOWER 2, LLC is the HOTEL UNIT OWNER as defined in the Declaration of Fontainebleau II, A Condominium, and the owner of the Hotel Unit;

WHEREAS, JS COLLINS, LLC, is the general partner of TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, which was the developer of the Condominium;

WHEREAS, TURNBERRY is the general contractor contracted by the DEVELOPER to construct the Condominium;

WHEREAS, on November 6, 2009, the ASSOCIATION filed on behalf of itself and the Residential Unit Owners who are members of the ASSOCIATION and pursuant to Section 718.111(2) of the Florida Statutes and Rule 1.221 of the Florida Rules of Civil Procedure, a civil complaint in Miami Dade Circuit Court against the DEFENDANTS and other defendants, including contractors and sub-contractors, styled as *Fontainebleau II Condominium Association Inc., versus JS Collins, LLC, et al., Case Number 09-81609-CA05, Miami-Dade County Circuit Court,* (hereinafter referred to as the "Legal Action");

WHEREAS, the Parties have conflicting views on whether and to what extent the Declaration of Fontainebleau II, A Condominium, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement, and the operation of the Condominium Property comply or have complied with the Florida "Condominium Act", Florida Statutes, Chapter 718.101, et seq., and other applicable statutes; and,

WHEREAS, the Parties are willing to end the Legal Action without resolving their conflicting views of such compliance, without obtaining a judicial determination of these views, without relinquishing their rights to reassert, and to make legal claims based upon, these views in the future, and without excusing, forgiving or releasing any party or the Declaration of Fontainebleau II, A Condominium, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement, or the bylaws from any past non-compliance or from any continuing non-compliance with the Florida "Condominium Act", Florida Statutes, Chapter 718.101, et seq., or other applicable statutes and with the HOTEL UNIT OWNER preserving all defenses;

WHEREAS, the Parties do not intend by this Settlement Agreement to modify, amend, or in any way change the Declaration of Fontainebleau II, A Condominium, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement, or the bylaws but rather to create rights, obligations, and benefits which are in addition to and independent of those found in such documents and which, in the view of the ASSOCIATION, will assure Residential Unit Owners of monthly costs and other conditions more consistent with other condominium properties along Miami Beach;

WHEREAS, the ASSOCIATION intends to forgive, discharge, and release the HOTEL UNIT OWNER and DEVELOPER for and from any and all past damages to the ASSOCIATION and/or to the Residential Unit Owners arising out of the operation of the Condominium Property as discussed in paragraphs 13 and 14 below,and intends to forgive, discharge and release the DEVELOPER and TURNBERRY from all claims and damages based on construction defects known or which should have been determined by M2E, LLC to exist as discussed in Paragraph 11 below, if same were able to be determined to exist as of the effective date of this Settlement Agreement;

WHEREAS, the ASSOCIATION and the DEFENDANTS have resolved and reached agreement to end the Legal Action styled as *Fontainebleau II Condominium Association Inc., versus JS Collins, LLC, et al., Case Number 09-81609-CA05, Miami-Dade County Circuit Court,* which is pending at this time in accordance with the provisions of paragraph 14 of this Settlement Agreement and none of the Parties make

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any admission as to its respective claims or defenses or to the claims or defenses of any of the other parties to the Legal Action;

WHEREAS, the ASSOCIATION and the DEFENDANTS unequivocally affirm and confirm the legality, validity and enforceability of this Settlement Agreement, and the sufficiency, adequacy, and exchange and receipt by the Parties thereto of valuable consideration, as well as the specific promises and covenants contained herein;

AGREEMENT

NOW, THEREFORE in reliance upon the recitals stated above, and in consideration of the mutual conditions, promises and covenants contained herein, the exhibits attached hereto, and the other conditions contained herein each Party hereto, intending to be legally bound, stipulates and agrees as follows:

1. **Recitals; Settlement Agreement Enforceable.** The foregoing recitals are true and correct, and incorporated herein by reference and no Party shall raise, and each Party expressly waives, any defense to the enforcement of this Settlement Agreement based upon any assertion that it is unenforceable for any reason whatsoever, including without limitation, public policy considerations.

2. **Definitions.**

(a) The parties utilize the following definitions only to aid in the construction of the accurate intent of the parties to this Settlement Agreement, provided, however, that the use of any definition herein or adoption of a definition from the Declaration of Condominium or the Florida Statutes shall not be construed or interpreted as an affirmation or acceptance of the legality of such definition, or the manner in which any such term is applied within the Declaration of Fontainebleau II, A Condominium, or as a waiver of any future rights of the Parties or the Residential Unit Owners to contest the legality or application of such definition(s).

(b) The terms "Condominium" and "Condominium Property" are used herein interchangeably and together are defined as the real property, lands, leaseholds, and personal property subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto located at 4401 Collins Avenue, Miami Beach, Fla., 33140.

(c) A "Residential Unit Owner" is the record owner of legal title to a condominium parcel, otherwise known as a Residential Unit located within the Condominium property.

(d) The "Hotel Unit Owner" referred to within this Settlement Agreement means and refers to the owner(s) from time to time of the Hotel Unit as well as its related operating entities including but not limited to the Entry Garage Owner and Operator.

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(e) The term "Shared Components" when used within this Settlement Agreement has the same meaning as that same term which is defined in paragraph 2.32 of the Declaration of Fontainebleau II, A Condominium but for purposes only of defining the term when used herein.

(f) The term "Hotel Shared Costs" when used within this Settlement Agreement has the same meaning as that same term which is defined in paragraph 2.24 and in paragraphs 12.1, 12.2, 12.3, 12.4 and 12.5 of the Declaration of Fontainebleau II, A Condominium, but for purposes only of defining the term when used herein.

(g) The term "Entry/Garage Space Owner" is the owner, whether or not the HOTEL UNIT OWNER, or its successors or assigns, of the "Entry/Garage Space" as that term is defined and referred to within the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement, and is adopted herein for purposes only of defining the term when stated herein.

(h) The term "Entry/Garage Space Costs" refers to and is defined as each and every cost, expense, and any "Access Fee", "Operating Expense", "Easement Expense", and Taxes also identified or referred to in paragraphs 6 and 7, and elsewhere, of the Amended and Restated Declaration of Restriction and Reciprocal Easement Agreement, and generally known as the taxes, fees for access to and from, and costs associated with the operation, maintenance, repair, insuring, and replacing of the Entry Garage Space made available for parking to the ASSOCIATION and Residential Unit Owners, which the HOTEL and/or the Entry/Garage Space Owner and/or any other entity, government or authority seek to obligate, impose upon or transfer to the ASSOCIATION and/or any Residential Unit Owner.

(i) The term "Amenity Fee" refers to charges imposed by the HOTEL to the ASSOCIATION and which have been included up to this date within budgets charged to the ASSOCIATION by the HOTEL.

(j) The term "All-In Monthly Rate" as used in this Settlement Agreement is the total dollar amount per square foot, per month that a Residential Unit Owner must pay in the aggregate with respect to each of the square feet contained in the Residential Unit, to the Hotel Unit Owner and the Entry/Garage Space Owner for any cost, expense, tax, and fee, which will be or can be imposed within any calendar year against Residential Unit Owners and the ASSOCIATION under the Declaration of Fontainebleau II, A Condominium the Articles of Incorporation, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement, the Bylaws of the Association and/or any other agreement, for any cost, expense, tax, and/or fee, including but not limited to Hotel Shared Costs, cost of Shared Components, monies for the funding and maintenance of Reserve Accounts, Amenity Fees, Entry/Garage Space Costs, Access Fees, and other expenses but excluding from the foregoing only any cost, expense, tax, and/or fee that the ASSOCIATION has voted or will vote to include in its budget, regular assessments (if any), and/or special assessments (if any).

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3. **Total Costs and Expenses to Unit Owners, Including but not Limited to Hotel Shared Costs, Entry/Garage Space Costs, Access Fees, Taxes, Amenity Fees, etc.** It is the intent of the Parties to this Settlement Agreement to establish a maximum, fixed, measurable amount per month which the HOTEL UNIT OWNER and the Entry/Garage Space Owner may charge to the ASSOCIATION, and/or any Residential Unit Owner, based upon the square footage of each Residential Unit, with such amount limited to, and not exceeding, the "All-In Monthly Rate" defined herein in paragraphs 2(j) and 4. For purposes of calculating the All-In Monthly Rate, the ASSOCIATION's budget, its regular assessments (if any) and its special assessments (if any) shall always be excluded from the All-In Monthly Rate.

Therefore, if and to the extent that the total of amount that is or can be charged to any Residential Unit Owner under the Declaration, the Amended and Restated Declaration of Restriction and Reciprocal Easement Agreement, the Articles of Incorporation the Bylaws and or any other agreement, excluding only the ASSOCIATION's budget, its regular assessments, and special assessments, divided by twelve (12), and then divided by the square footage of the Residential Unit, exceeds the "All-In Monthly Rate," as defined in this Settlement Agreement, then the HOTEL UNIT OWNER, and not the ASSOCIATION nor any Residential Unit Owner, is responsible for paying the entire portion of any amount that exceeds the All-In Monthly Rate, and may not recover such excess amount from the ASSOCIATION or Residential Unit Owners.

4. **The "All-In Monthly Rate".** Effective January 1, 2013 and continuing up to and including December 31, 2014, the All-In-Monthly Rate, for Residential Units in Fontainebleau II Condominium Association, Inc. ("TRESOR"), shall be ninety-two and one half cents (92.5¢). Starting with the calendar year 2015 and for each year thereafter, the All-In-Monthly Rate for any year will be the LESSER of:

(A) the All-In-Monthly Rate charged during the prior year, increased or decreased by the percentage increase or decrease in the Consumer Price Index for All Urban Consumers for Miami-Fort Lauderdale ("CPI-U"), as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the twelve- month period ending October 31st of the prior year compared with the corresponding period in the next preceding year, ("CPI-U Percentage Change"),

OR

(B) the total (per square foot, per month) of theamounts that may be charged to Residential Unit Owners or to the ASSOCIATION under the Declaration of Fontainebleau II, A Condominium the Articles of Incorporation, the Amended and Restated Declaration of Restriction and Reciprocal Easement Agreement, the Bylaws of the Association and/or any other agreement, for any cost, expense, tax, and/or fee, including but not limited to Hotel Shared Costs, cost of Shared Components, monies for the funding and maintenance of Reserve Accounts, Amenity Fees, Entry/Garage Space Costs, Access Fees, and other expenses but excluding from the foregoing only any cost,

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expense, tax, and/or fee that the ASSOCIATION has voted or will vote to include in its budget, regular assessments (if any), and/or special assessments (if any).

5. **Access to HOTEL UNIT OWNER'S Calculations of Expenses, Fees and Costs Charged to the ASSOCIATION and Residential Unit Owners.** The ASSOCIATION shall possess the right to inspect and review all documents (other than those revealing the compensations of particular employees or the details of contracts for valet services) which evidence the expenses and costs, or any method of calculating the expenses and costs, that can be or are to be charged to the ASSOCIATION and/or a Residential Unit Owner under this Settlement Agreement or under the Declaration of Fontainebleau II, A Condominium, the Articles of Incorporation, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement, the Bylaws of the Association, the Association budget, or otherwise. Within five (5) days after the ASSOCIATION requests any such document or documents, the HOTEL UNIT OWNER shall make such document(s) available to the ASSOCIATION for inspection and review. Notwithstanding the foregoing, if the HOTEL UNIT OWNER has reason to believe that any requested document contains confidential information, it may choose to provide such document or documents pursuant to execution of a reasonable confidentiality agreement to be executed by the ASSOCIATION and its attorneys for the purpose of allowing such access. Any information provided under such a confidentiality agreement, if used in a court proceeding, must first be preceded by a Motion to Seal with notice to the HOTEL UNIT OWNER.

6. **Future Goods, Services, and Privileges.**

(a) The "All-In Monthly Rate" having been established as set forth in paragraphs 2(j) and 4 of this Settlement Agreement, the HOTEL UNIT OWNER further expressly agrees to assure that the ASSOCIATION and Residential Unit Owners will receive (and will receive as part of the All-In-Rate) all of the goods, services and privileges that have been provided, must be provided, and/or are reasonably foreseeable to be provided during the period in question (as in the case of the use of reserve funds) under the Declaration and the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement, the Florida Condominium Act and other statutes, and/or as a courtesy and/or privilege in addition thereto. In the event that the HOTEL UNIT OWNER desires to increase or add any other goods, services, courtesies, or privileges to those set forth in the next preceding sentence, it may do so provided that the change does not increase any cost or expense to any Residential Unit Owner or the ASSOCIATION, except as provided in (b) below.

(b) In the event the HOTEL UNIT OWNER desires or intends to change or add any good, service, or privilege for Residential Unit Owners, and desires to increase any monthly assessment or cost to Residential Unit Owners on the basis thereof, the HOTEL UNIT OWNER may do so only: (a.) having given detailed written notice to the ASSOCIATION's board of such intention; (b.) having obtained the express documented approval of the ASSOCIATION's Board; and, (c.) then, following such Board approval, having obtained by a majority affirmative vote of a quorum of Residential Unit Owners

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at a legally scheduled and noticed meeting which vote will be conducted by the ASSOCIATION, in accordance with Florida Statutes. Any such approval and vote may be reversed by the Board and Unit Owners by corresponding votes at any time, provided that the HOTEL UNIT OWNER will be provided ninety (90) days from any reversal by the Board and Residential Unit Owners to discontinue any good, service, or privilege.

7. **Residential Unit Owners' Right to Trade without Restraint.** The HOTEL UNIT OWNER will assure (and do nothing to impede) the right of any Residential Unit Owner to lawfully contract, purchase, receive and use any good or service from anyone at any price as part of his or her use and enjoyment of the Residential Unit, provided, however, that for the protection and safety of the Condominium, Hotel and all Residential Unit Owners, any and all vendors or service providers for such goods or services shall (i) be licensed, if licensure is legally required by the City of Miami Beach, Metropolitan Dade County, State of Florida or United States government and to comply with other regulations by said government agencies in order to perform or provide the service or product for which they are retained; (ii) wear an ID badge on the condominium property, to be issued without unreasonable delay by the HOTEL UNIT OWNER upon the arrival of the vendor or provider at the Security or Reception Desk; (iii) obtain any and all legally required governmental permit(s) for the work or service they are providing the Residential Unit Owner; and (iv) check in at the security/ front desk upon their arrival at the Condominium property. All vendors and service providers shall have the same access to the condominium property and shall use the service elevators and loading docks under the same privileges and rules that HOTEL UNIT OWNER allows vendors and service providers that it retains for the same services. In the event that the particular service or good being purchased by the Residential Unit Owner is one which (a) may impact or adversely affect the integrity and structure of the Condominium property, such as services involving electrical and plumbing repairs; and (b) does not require the provider to maintain a valid license in order to provide the good or perform the service, then the Residential Unit Owner must require that such vendor or service provider be bonded and insured. Personal services such as housekeeping, cooking, massage therapy, legal services, etc. are among the type of services for which any bonding requirement would not apply. The ASSOCIATION agrees that the HOTEL UNIT OWNER shall not be responsible or liable to the ASSOCIATION or to Residential Unit Owners for any goods or services that independent (from the HOTEL UNIT OWNER) vendors and service providers may, in accordance with this paragraph, provide under contract with or engagement by Residential Unit Owners.

Notwithstanding the foregoing, the HOTEL UNIT OWNER may also provide Residential Unit Owners a preferred vendors list for any service category, which the Residential Unit Owners may choose from if they so desire, but no Residential Unit Owner is obligated to use nor shall be in any way penalized or discriminated against for not using any of the HOTEL UNIT OWNER'S preferred vendors.

A Residential Unit Owner who is not a participant in the FONTAINEBLEAU HOTEL Rental Program will enjoy the right to rent or lease his or her Unit as a hotel room or accommodation or otherwise without interference, restriction, limitation, fee or

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cost imposed by the HOTEL UNIT OWNER as a result or consequence of doing so, except that any Residential Unit Owner who is not a participant in the HOTEL UNIT OWNER's rental program and who rents his or her Unit two (2) or more times in any calendar month, may be required by the HOTEL UNIT OWNER to pay on such occasions, a hotel guest check-in fee of Fifteen and 00/100 Dollars ($15.00) per rental and to provide the Hotel Unit with five (5) days prior notice of such guest(s)' arrival. Additionally starting in January 1, 2023, any Residential Unit Owner who is not a participant in the HOTEL UNIT OWNER's rental program and who rents his or her Unit more than four (4) times in any calendar month, may be required by the HOTEL UNIT OWNER to pay on such occasions, in lieu of the aforesaid fifteen dollars ($15.00), a hotel guest check-in fee of Fifteen and 00/100 Dollars ($15.00) per rental, increased or decreased by the aggregate percentage increase or decrease in the Consumer Price Index for All Urban Consumers for Miami-Fort Lauderdale ("CPI-U"), as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the twelve- month period ending October 31st of the prior year compared with the corresponding period ending in 2022 and to provide the Hotel Unit with five (5) days prior notice of such guest(s)' arrival. Anyone to whom a Residential Unit Owner leases or rents his Residential Unit on an overnight basis, whether as a hotel room or otherwise, will receive without discrimination or restriction all of the guest services that the HOTEL UNIT OWNER provides to any Residential Unit Owner.

8. **Shared Components.**

(a) The HOTEL UNIT OWNER agrees that it will not exercise any right or discretion provided under paragraph 2.32 of the Declaration of Fontainebleau II, A Condominium to diminish, eliminate or remove any portion of the condominium property defined within such paragraph as a "Shared Component." The HOTEL UNIT OWNER, however, maintains the right to improve or update the design, colors, fabrics and overall appearance of the Shared Components.

(b) Further, the HOTEL UNIT OWNER agrees to retain and maintain, under all circumstances unless prohibited by law, the Owners' Lounge, Swimming Pool, Condominium offices, and Board Rooms as functioning facilities in the Condominium Property.

(c) The HOTEL UNIT OWNER will not change the use of the Owners' Lounge without the approval of the ASSOCIATION and will not allow the Owners' lounge to be closed to Residential Unit Owners more than twelve days each calendar year. Notwithstanding the foregoing, ASSOCIATION shall have the right, at Association's own expense, to change the furnishings and facilities of the Owners' Lounges and regulate the private use of the Owners' Lounge by Residential Unit Owners.

9. **Termination of Litigation.** All parties hereto agree that immediately upon the receipt and acknowledgement of the mutual signing and execution of this Settlement Agreement, they shall terminate the hereinabove referenced litigation and

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dismiss the Legal Action in accordance with the provisions of paragraph 14 of this Settlement Agreement.

10. **Residential Unit Owner Discounts.** The HOTEL UNIT OWNER will provide to each Residential Unit Owner discounts in the cost of goods and services charged to any HOTEL UNIT OWNER guest in the amounts and for the goods and services identified on Exhibit A attached hereto and incorporated herein.

11. **Repair and Remediation of Construction Defects.**

(a) The HOTEL UNIT OWNER agrees that the defects and deficiencies identified in the Turnover Evaluation Report prepared by M2E, LLC, dated November 5, 2009, and referred to and made a part of the ASSOCIATION'S pleadings filed within the Legal Action, and in the Supplemental Report concerning defects located at the condominium property, prepared by M2E, LLC, on or about February 21 2012, which have yet to be repaired or remedied, are to be repaired by the HOTEL UNIT OWNER at no expense or cost to the ASSOCIATION, or any Residential Unit Owner, and all repair work is to begin by December 31, 2012 and to conclude by no later than one-hundred and eighty (180) days after the effective date of this Settlement Agreement, unless an extension of time for such is granted to the HOTEL UNIT OWNER in writing by the ASSOCIATION.

(b) Without limiting the foregoing, the ASSOCIATION's and HOTEL UNIT OWNER's construction consultants are scheduled to meet at the condominium property on October 19, 2012, to inspect open items contained within M2E, LLC's Supplemental Report and to determine whether any new items need to be repaired or remediated and should be added to the Report's list of items to be repaired or remediated. The ASSOCIATON and HOTEL UNIT OWNER agree to cause their respective construction consultants, within ten (10) days from the conclusion of the October 19, 2012 inspection, to make a Report to both parties of (a.) items the construction consultants agree should be removed from those in M2E, LLC's Supplemental Report, as having been repaired or remediated prior thereto and (b.) items they agree should be added to the Report as new items in need of repair or remediation. If there are new items about which the construction consultants disagree as to whether to add them or not to the Report as new items to be repaired or remediated, the ASSOCIATION or the HOTEL UNIT OWNER shall, within five (5) days from the receipt of the consultants' reports of the October 19, 2012 inspection, submit such items to John S. Freud, Esq. (or, if unavailable, his designee) who, as a final arbiter, will as expeditiously as possible, determine which, if any, of those items should be added to the Report as new items in need of repair or remediation. In all events, the HOTEL UNIT OWNER shall commence to repair or remediate prior to December 31, 2012 and at no expense or cost to the ASSOCIATION or any Residential Unit Owner, (i) all items on the Report that the construction consultants have not agreed to remove from the Report and (ii) all items that the construction consultant, by agreement, or John Freud (or, if unavailable, his designee), as final arbiter, shall have added to the Report as new items in need of repair or remediation. The HOTEL UNIT OWNER shall conclude all such repairs or remediation no later than

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one-hundred and eighty days (180) after the effective date of this Settlement Agreement, unless an extension of time for such is granted to the HOTEL UNIT OWNER in writing by the ASSOCIATION.

(c) Upon the HOTEL UNIT OWNER's conclusion of such repair work, the ASSOCIATION's engineer shall re-inspect the condominium property and the ASSOCIATION maintains the right to re-open this litigation for the purpose of resolving any dispute concerning any repair or lack thereof by the DEFENDANTS of the defects currently in existence. The ASSOCIATION also maintains the right to initiate and file new litigation to resolve any dispute concerning any new defects other than those which were known or which should have been determined to exist by M2E, LLC if same were able to be determined to exist, as of the effective date of this Settlement Agreement, and which are discovered subsequent to the effective date of this Settlement Agreement.

12. **Default, Right to Cure.** In addition to the notice required to be provided by the ASSOCIATION in Paragraph 13(c) of this Settlement Agreement, neither Party shall be deemed to be in default under this Settlement Agreement unless and until the other party gives written notice of any default under this Settlement Agreement, and the party receiving such notice fails to cure such default within fifteen (15) days after delivery of such notice. If the Party giving such notice is required to perform any obligations, give any notices or make any elections prior to or during the pendency of such fifteen (15) day cure period, then the time to perform such obligations, give such notices or make such elections shall be tolled until the default is cured within such fifteen (15) day cure period.

An action to enforce the terms and conditions of this Settlement Agreement may be brought by any Party, or its respective successors or assigns and any Residential Unit Owner, who may bring an action at law or in equity against any Party violating or attempting to violate any term of this Settlement Agreement. In addition to all other remedies available, either Party may seek specific performance and/or injunctive relief, without posting bond, against the other party as long as the Party seeking specific performance is not in breach of this Settlement Agreement. This enforcement provision shall be in addition to any other remedies available under the law or in equity; provided, however that in no case shall either Party be liable for any punitive, exemplary, or consequential damages which may be alleged as a result of the agreements contained within this Settlement Agreement, including any breach or other default by any Party hereto.

13. **Releases and Restriction on Future Litigation.**

(a) **Plaintiff's Release.** By execution of this Settlement Agreement, the Plaintiff, on behalf of itself and its predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby agrees to dismiss the pending Legal Action in accordance with the provisions contained within paragraph 14 of this Settlement Agreement and release and discharge

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the DEFENDANTS and their officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, from liability for past damages arising from its operation of the Condominium Property under the Declaration of Fontainebleau II, A Condominium, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement or otherwise but subject to the rights, restrictions and procedures detailed in paragraph 13(c) below, as well as to release DEFENDANTS and their officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, from all claims and causes of action for breaches of all statutory and common law construction defect or deficiency related warranties; all claims for failure to perform any obligations to repair, replace and maintain the Shared Components of the Hotel Unit; and all violations of all applicable building codes with respect to any and all defects known or which should have been determined to exist by M2E, LLC if same were able to be determined to exist, as of the effective date of this Settlement Agreement.

(b) **Plaintiff's Assignment.** By execution of this Settlement Agreement, Plaintiff, on behalf of itself and its predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) shall assign any and all rights and causes of action it may have to the DEFENDANTS for any construction defect or deficiency related claim against all named and unnamed defendants to the Legal Action who are not a party to this Agreement.

(c) **Restriction on Future Litigation.** The ASSOCIATION agrees that it will refrain from re-initiating or being a party to the Legal Action or from otherwise initiating or being a party to another subsequent legal action against the HOTEL UNIT OWNER arising out of the ownership, management or operation of the Condominium Property unless and until (a) the ASSOCIATION believes in good faith that there has occurred a material adverse change in the condition(s) or circumstance(s) of said ownership, management or operation of the Condominium Property which materially and adversely impacts the ASSOCIATION and Residential Unit Owners from those in existence as of the date of this Settlement Agreement warranting the initiating of said legal action (the "Material Adverse Change") and (b) the ASSOCIATION has provided written detailed notice to the HOTEL UNIT OWNER of said Material Adverse Change and (c) the ASSOCIATION has provided the HOTEL UNIT OWNER with a reasonable opportunity to remedy or resolve said Material Adverse Change (which shall be a short time period where the Material Adverse Change warrants prompt attention or a commercially reasonable longer period of time as may be necessary to fully resolve said Material Adverse Change provided the HOTEL UNIT OWNER is diligently attempting to do so) and duly authorized representatives of the ASSOCIATION have met in person at least twice with representatives of the HOTEL UNIT OWNER for meaningful good faith efforts to achieve a mutually acceptable resolution of the Material Adverse Change (the "Cure Period") and (d) the Material Adverse Change remains unresolved for more than thirty (30) days (or such shorter period where the Material Adverse Change warrants prompt attention) after the expiration of said Cure Period, and (e) the ASSOCIATION, thereafter, notifies the HOTEL UNIT OWNER in writing that the Material Adverse

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Change remains unremedied or unresolved, and (f) the HOTEL UNIT OWNER and the ASSOCIATION have submitted (and hereby agree to submit) the dispute regarding the Material Adverse Change to a mediation to be conducted within thirty (30) days of the ASSOCIATION's delivery of a written Demand for Mediation to the HOTEL UNIT OWNER (or as soon as the selected mediator is able to conduct the mediation thereafter) which mediation shall be conducted in accordance with Rule 1.720 (a)-(e), of the Florida Rules of Civil Procedure, and all costs of such, including any fee charged by the mediator, will be borne equally by the ASSOCIATION (50%) and the HOTEL UNIT OWNER (together 50%). With the Demand for Mediation, the ASSOCIATION will also deliver to the HOTEL UNIT OWNER a list of five (5) Florida certified mediators (one of which shall be John Freud and another Mark Buxton, if both are still practicing as Mediators) from which the HOTEL UNIT OWNER may select one (1) mediator who will mediate the dispute between the Parties regarding the Material Adverse Change. If the HOTEL UNIT OWNER fails to notify the ASSOCIATION of their mediator selection within five (5) business days after the ASSOCIATION's delivery of its Demand for Mediation to the HOTEL UNIT OWNER, the ASSOCIATION may unilaterally chose the mediator from the list previously provided to the HOTEL UNIT OWNER, who shall then mediate the dispute between the Parties regarding the Material Adverse Change. In the event the Parties are unable to resolve said dispute through mediation, the ASSOCIATION may then initiate a legal action seeking all relief and redress in law or equity which the ASSOCIATION is authorized to pursue on behalf of all or a majority of the Residential Unit Owners regarding the Material Adverse Change.

Further, the Parties agree that no party may introduce this Settlement Agreement as evidence in any future legal action, except and unless such action arises out of this Settlement Agreement.

(d) **Defendants' Release.** By execution of this Settlement Agreement and in accordance with the provisions contained within paragraph 14 of this Settlement Agreement, each Defendant, on behalf of itself and its predecessors, successors, assigns, and affiliates, hereby releases and forever discharges the Plaintiff and it's officers, directors, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, from all past damages in connection with the operation of the Condominium Property as well as to resolve all claims for breaches of construction warranties known to exist as of the effective date of this Settlement Agreement.

14. **Dismissal of Action and Proceedings.**

(a) **Proceedings.** Upon the approval and execution by the parties and upon the delivery by the DEFENDANTS to the ASSOCIATION of this Settlement Agreement executed by the DEFENDANTS, the ASSOCIATION shall deliver to the HOTEL UNIT OWNER a Joint Motion to Adopt Settlement Agreement and Dismiss Action (hereinafter "JOINT MOTION"), which will move the Court in which this action is pending, on behalf of the ASSOCIATION, the Residential Unit Owners and members of the ASSOCIATION and the DEFENDANTS, to adopt this Settlement Agreement,

including the Releases provided to the Parties and Plaintiff's Assignment as stated in paragraphs 13(a), (b), (c) & (d) herein. The DEFENDANTS shall execute the JOINT MOTION, and deliver the fully executed JOINT MOTION to the ASSOCIATION. The ASSOCIATION shall then execute and file the JOINT MOTION with the Court and schedule a hearing as expeditiously as possible to obtain the Court's approval. Upon approval by the Court of the JOINT MOTION, the ASSOCIATION and the HOTEL UNIT OWNER will file a Joint Stipulation for Dismissal, which will include the Releases provided to the parties and Plaintiff's Assignment to DEFENDANTS as stated in paragraphs 13(a), (b), (c) & (d) herein, and a proposed Final Order of Dismissal adopting and approving the Joint Motion entered by the Court. This Settlement Agreement, including the Releases and Plaintiff's Assignment to DEFENDANTS identified in paragraphs 13(a), (b), (c) & (d) herein, will not become binding and enforceable until the date in which the Court renders an Order adopting or approving the JOINT MOTION. A copy of the Plaintiff's Assignment to DEFENDANTS described in paragraph 13(b), JOINT MOTION, Joint Stipulation for Dismissal, and Final Order of Dismissal is attached hereto as Composite Exhibit "B".

(b) **Dismissal of construction defects claims.** Upon approval by the Court of the JOINT MOTION, the ASSOCIATION and DEFENDANTS will file a Joint Stipulation for Dismissal with prejudice of Counts I, II, III, IV, V, VII & VIII of Plaintiff's Third Amended Complaint, which will include the Releases provided to the parties as stated in paragraphs 13(a), (b), (c) & (d) herein. This Settlement Agreement, including the Releases identified in paragraphs 13(a), (b), (c) & (d) herein, will not become binding and enforceable until the date in which the Court renders an Order adopting or approving the JOINT MOTION. Counts IX through XXX of Plaintiff's Third Amended Complaint will remain in full force and effect against the applicable defendants named therein, and Plaintiff shall assign all rights it may have to maintain these causes of action to DEFENDANTS in accordance with Paragraph 13(b) of this Settlement Agreement.

(c) **Dismissal of all other claims.** Upon approval by the Court of the JOINT MOTION, the ASSOCIATION, and the HOTEL UNIT OWNER will file a Joint Stipulation for Dismissal without prejudice of Count VI of Plaintiff's, Third Amended Complaint, which will include the Releases provided to the parties as stated in paragraphs 13(a), (b), (c) & (d) herein, This Settlement Agreement, including the Releases identified in paragraphs 13(a), (b), (c), & (d) herein, will not become binding and enforceable until the date in which the Court renders an Order adopting or approving the JOINT MOTION.

15. **Attorneys Fees and Costs.** The Parties hereby acknowledge and agree that each Party shall bear their own attorney's fees and costs. The Parties agree that if any action or proceeding be brought by either Party related to this Settlement Agreement or to enforce this Settlement Agreement or any provision hereof, the prevailing party in any such action or proceeding shall be entitled to recover, in addition to any other relief, reasonable attorneys fees, costs, expert witness fees, consulting fees, and expenses incurred in such action or proceeding, which amount shall be determined by a court and not a jury.

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16. **Assignment.** Except as specified in the Settlement Agreement, including paragraphs 13(b) and 14, each Party hereby represents and warrants that they have not assigned, conveyed, transferred or granted to any person or entity not a party hereto any right, option, interest in, or otherwise transferred in any manner whatsoever to any person or entity, any right, claim, or cause of action that is the subject of this Settlement Agreement.

17. **Entire Agreement.** This is the sole agreement of the Parties on the matters set forth herein and this Settlement Agreement shall supersede all prior agreements and representations, whether oral or written, exclusive of the Declaration of Fontainebleau II, A Condominium, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement, and related condominium documents. This Settlement Agreement is binding upon all Parties and his or its respective officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, and all other persons, firms, corporations, associations and estates. The Parties further agree that no modifications of this Settlement Agreement may be made except by means of a written agreement signed by each of the Parties. Notwithstanding anything else in this Settlement Agreement, the Parties acknowledge and agree that nothing in this Settlement Agreement is intended or meant to modify, supersede or amend in any way any existing or future agreements by and between any individual Residential Unit Owner and the HOTEL or HOTEL UNIT OWNER which are part of a unit management agreement or other agreement whereby a Residential Unit Owner participates in the HOTEL rental program.

18. **Governing Law, Interpretation and Venue.** The Parties agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, neither strictly for nor against any of the Parties hereto because this Settlement Agreement has been negotiated and drafted at arm's length. This Settlement Agreement will be construed and interpreted in accordance with the laws of the State of Florida, without reference to conflicts of laws principles. The Parties expressly agree that any action to enforce the terms of this Settlement Agreement shall be brought in the state or federal courts of Florida and the Parties irrevocably consent to said jurisdiction. Venue for any action under this Settlement Agreement will be exclusively in Miami-Dade County, Florida. **The Parties hereto hereby irrevocably waive all rights to trial by jury in any action, proceeding, or counterclaim brought by either party arising out of or relating to this Settlement Agreement, any course of conduct, course of dealing, statements (whether verbal or written) or action of any of the Parties.** The Parties acknowledge that such waiver is a material inducement to entering into this Settlement Agreement and has been freely and voluntarily entered into.

19. **Voluntary Consent and Execution.** The Parties acknowledge that they have carefully read this Settlement Agreement; they have been represented in the preparation, negotiation, and execution of this Settlement Agreement by legal counsel of their own choice, understand the contents, terms and consequences of this Settlement Agreement; they are fully aware of the legal and binding effect of this Settlement

MD

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Agreement; the Parties have the legal capacity to enter into this Settlement Agreement; and that the Parties voluntarily enter into this Settlement Agreement without any duress or undue influence on the part or behalf of the Parties hereto and with the intent to be bound by all the terms contained herein.

20. **Counterparts and Electronic Signatures.** This Settlement Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of its execution and delivery and said counterparts together shall constitute one and the same instrument. It is agreed that the Parties may rely upon telefaxed or electronic copies of any other party's signature and such signature shall have the same force and effect as the original signature. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by telecopy or electronic delivery, the Parties will use best efforts to deliver originals as promptly as possible after execution.

21. **Severability and Statutes of Limitations.** If any term, paragraph, condition or covenant of this Settlement Agreement or the application thereof to any party or circumstance is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision shall not affect the legality or enforceability of any other portion or provision of this Settlement Agreement and this Settlement Agreement shall be interpreted and construed as if such invalid, illegal, or unenforceable provisions were not contained herein. The remainder of this Settlement Agreement or the application of such shall not be affected thereby and each term and paragraph of this Settlement Agreement shall be valid and enforceable to the fullest extent permitted by law, and said invalid or unenforceable term, provision, condition, or covenant shall be substituted by one as near in substance as may be valid and enforceable. The HOTEL UNIT OWNER and ASSOCIATION further agree that any applicable statutory period of limitations is hereby tolled as of the effective date of this Settlement Agreement, and in the event that any term, condition, paragraph or provision of this Settlement Agreement is vacated, revoked, deemed invalid, unlawful or unenforceable for any reason, which restricts, limits or eliminates any right or benefit of the ASSOCIATION or any Residential Unit Owner at any time, then the ASSOCIATION may re-open and/or resume the Legal Action with the right to seek complete judicial enforcement of any and all claims currently plead or available within the Legal Action.

22. **NOTICES.** All notices which are required or permitted in this Settlement Agreement must be in writing and shall be deemed to have been given, delivered, or made, as the case may be when delivered by email to the Party whom notices are intended to be given at the email address indicated below and (notwithstanding lack of actual receipt by the addressee) (i) when delivered by personal delivery or (ii) three (3) business days after being posted in the United States Mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as, by way of example but not limitation, U.S. Express Mail, Federal Express or Airborne), addressed to the party to whom notice is intended to be given at the address set forth below:

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TO ASSOCIATION:

President, The Fontainebleau II
Condominium Association, Inc.
4401 Collins Avenue
Miami BeachFL33140

with copy to:

Ronald S. Lowy, Esquire
Lowy & Cook, P.A.
501 N.E. 1st Avenue, Suite 200
MiamiFL33132
rlowyesq@bellsouth.net; ronlowy@lowypa.com; and
elizabeth@lowypa.com

TO HOTEL UNIT OWNER:

PHIL GOLDFARB
President and Chief Operating Officer
Fontainebleau Miami Beach
4441 Collins Avenue
Miami Beach, FL33140
pgoldfarb@fontainebleau.com

with copy to:

MARIO A. ROMINE
Senior Vice President and General Counsel – Special Projects
19950 West Country Club Drive, 10th Floor
Aventura, FL33180;
mromine@turnberry.com; and,

Becker & Poliakoff, P.A.
Attn: Neil H. Levinson, Esq.
3111 Stirling Road
Ft. Lauderdale, FL33312
nlevinson@becker-poliakoff.com

TO TURNBERRY:

MARIO A. ROMINE
Senior Vice President and General Counsel – Special Projects
19950 West Country Club Drive, 10th Floor
Aventura, FL33180;
mromine@turnberry.com; and,

with a copy to:

Becker & Poliakoff, P.A.
Attn: Neil H. Levinson, Esq.
3111 Stirling Road
Ft. Lauderdale, FL33312
nlevinson@becker-poliakoff.com

TO DEVELOPER:

MARIO A. ROMINE
Senior Vice President and General Counsel – Special Projects
19950 West Country Club Drive, 10th Floor
Aventura, FL33180;
mromine@turnberry.com; and,

with a copy to:

Becker & Poliakoff, P.A.
Attn: Neil H. Levinson, Esq.
3111 Stirling Road
Ft. Lauderdale, FL33312
nlevinson@becker-poliakoff.com

24. **Effective Date.** This Settlement Agreement shall be effective as of the date set forth in the preamble above.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 7th day of November, 2012.

FONTAINEBLEAU II CONDOMINIUM ASSOCIATION, INC.,	J S COLLINS, LLC
Signature: _____	Signature: _____
Print Name: _____	Print Name: MARIO A. ROMINE
Title: _____	Title: Authorized Signer

MR

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TL FONTAINEBLEAU
TOWER LIMITED PARTNERSHIP

Signature: _____
Print Name: MARIO A. ROMINE
Title: Authorized Signer

TURNBERRY CONSTRUCTION, INC.

Signature: _____
Print Name: MARIO A. ROMINE
Title: Authorized Signer

FONTAINEBLEAUFLA
TOWER 2, LLC

Signature: _____
Print Name: Emanuel Pearl
Title: Director / Authorized Signer

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EXHIBIT A

Rooms	25%		
Solo	20%		
BleauBar	20%		
GlowBar	20%		
Pool	20%		
La Cote	20%		
Vida	20%		
Fresh	20%		
Gotham	10%	20%	Sunday – Thursday
Scarpetta	10%	20%	Sunday – Thursday
Hakkasan	10%	20%	Sunday – Thursday
Catering	15%		
Recreation	15%		
Spa	15%		
Salon	15%		
Gym	15%		
Retail 15			

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TO TURNBERRY:

MARIO A. ROMINE
Senior Vice President and General Counsel – Special Projects
19950 West Country Club Drive, 10th Floor
Aventura, FL33180;
mromine@turnberry.com; and,

with a copy to:

Becker & Poliakoff, P.A.
Attn: Neil H. Levinson, Esq.
3111 Stirling Road
Ft. Lauderdale, FL33312
nlevinson@becker-poliakoff.com

TO DEVELOPER:

MARIO A. ROMINE
Senior Vice President and General Counsel – Special Projects
19950 West Country Club Drive, 10th Floor
Aventura, FL33180;
mromine@turnberry.com; and,

with a copy to:

Becker & Poliakoff, P.A.
Attn: Neil H. Levinson, Esq.
3111 Stirling Road
Ft. Lauderdale, FL33312
nlevinson@becker-poliakoff.com

24. **Effective Date.** This Settlement Agreement shall be effective as of the date set forth in the preamble above.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of _____, 2012.

FONTAINEBLEAU II CONDOMINIUM ASSOCIATION, INC.,	J S COLLINS, LLC
Signature: _____	Signature: _____
Print Name: DAVID DRECH	Print Name: _____
Title: PRESIDENT	Title: _____

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FONTAINEBLEAU II CONDOMINIUM ASSOCIATION, INC., a Florida corporation,

Plaintiff,

vs.

JS COLLINS, a Florida limited liability company, as general partner of TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, a Florida limited partnership, TURNBERRY CONSTRUCTION, INC., a Florida corporation, et al.,

Defendants

CASE NO. 09-81609 CA 05

JOINT STIPULATION FOR DISMISSAL OF PORTION OF ACTION, RELEASE OF CLAIMS AND ASSIGNMENT OF CLAIMS

COMES NOW, the Plaintiff, FONTAINEBLEAU II CONDOMINIUM ASSOCIATION INC., and Defendants, JS COLLINS, LLC, FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC, and TURNBERRY CONSTRUCTION, INC., (Plaintiff and the above named Defendants are hereinafter collectively referred to as the "Parties"), by and through their respective undersigned counsel, hereby file and serve this Joint Stipulation for Dismissal of Portion of Action, Release of Claims and Assignment of Claims and state the following in support thereof:

1. The Plaintiff, FONTAINEBLEAU II CONDOMINIUM ASSOCIATION INC., hereby dismisses with prejudice Counts I, II, III, IV, V, VII & VIII of the Third Amended Complaint with each party to bear their own attorneys fees and costs.

2. The Plaintiff, FONTAINEBLEAU II CONDOMINIUM ASSOCIATION INC., hereby dismisses without prejudice Count VI of the Third Amended Complaint with each party to bear their own attorneys fees and costs.

3. The Plaintiff, FONTAINEBLEAU II CONDOMINIUM ASSOCIATION INC., on behalf of itself and its predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Fontainebleau II, A Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby releases and discharges the DEFENDANTS, JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC, and TURNBERRY CONSTRUCTION, INC., and their officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, from: (1) liability for past damages arising from its operation of the Condominium Property under the Declaration of Fontainebleau II, A Condominium, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement or otherwise but subject to the rights, restrictions and procedures detailed in paragraph 13(c) of the Settlement Agreement between the parties, a copy of which is attached hereto as Exhibit A and the terms of which are incorporated herein; and, (2) from all claims and causes of action for breaches of all statutory and common law construction defect or deficiency related warranties; all claims and causes of action for failure to perform any obligations to repair, replace and maintain the Shared Components of the Hotel Unit; and all violations of all applicable building codes

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with respect to any and all defects known or which should have been determined to exist by M2E, LLC if same were able to be determined to exist, as of the effective date of the Settlement Agreement, but subject to the rights, restrictions and procedures detailed in paragraph 11 of the Settlement Agreement between the Parties, a copy of which is attached hereto and incorporated herein as Exhibit A. This Release specifically excludes Plaintiff's release of any Defendants currently named as Defendants in the Case No. 09-81609 other than Defendants JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC and TURNBERRY CONSTRUCTION, INC. released herein, and specifically excludes the Release of any other entities or individuals involved in the design or construction of the Fontainebleau II, A Condominium other than Defendants JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC and TURNBERRY CONSTRUCTION, INC. released herein.

4. The Plaintiff, FONTAINEBLEAU II CONDOMINIUM ASSOCIATION INC., on behalf of itself and its predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Fontainebleau II, A Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby assigns all interest and rights in all claims raised or which can be raised within or in connection with the subject matter of Counts IX through XXX of the Third Amended Complaint against each of the defendants named therein and any potential additional defendants

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involved in the design or construction of the Fontainebleau II, A Condominium to DEFENDANTS, JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC, and TURNBERRY CONSTRUCTION, INC.

Respectfully submitted this 28th day of November, 2012.

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For the Plaintiff, FONTAINEBLEAU II, CONDOMINIUM ASSOCIATION, INC.:

RONALD S. LOWY, ESQUIRE
Florida Bar No. 501069
LOWY AND COOK, P.A.
501 NE 1st Street, Suite 200
Miami, Florida 33132
Phone: 305.371-5585
Fax: 305.371-5563
rlowyesq@bellsouth.net

For the Defendants, JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC, and TURNBERRY CONSTRUCTION, INC.:

NEIL H. LEVINSON, ESQUIRE
Florida Bar No.
BECKER & POLIAKOFF, P.A.
3111 Stirling Road,
Fort Lauderdale, FL 33312
Phone: 954-364-6034
Fax: 954- 985-4176
nlevinson@becker-poliakoff.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via E-mail to counsel on the attached Service List on this 28 day of November, 2012.

BY: _____

RONALD S. LOWY, ESQUIRE
Florida Bar No. 501069
LOWY AND COOK, P.A.
501 NE 1st Street, Suite 200
Miami, Florida 33132
Phone: 305.371-5585
Fax: 305.371-5563
rlowyesq@bellsouth.net

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

2012 DEC 24 AM 10:34

FONTAINEBLEAU II CONDOMINIUM ASSOCIATION, INC., a Florida corporation,

Plaintiff,

vs.

JS COLLINS, a Florida limited liability company, as general partner of TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, a Florida limited partnership, TURNBERRY CONSTRUCTION, INC., a Florida corporation, et al.,

Defendants.

CASE NO. 09-81609 CA 05

ORDER GRANTING JOINT MOTION TO ADOPT SETTLEMENT AGREEMENT AND DISMISS PORTION OF ACTION

THIS MATTER having come before this Honorable Court upon the Joint Motion to Adopt Settlement Agreement and Dismiss Portion of Action ("Joint Motion"), and counsel for each party to the Joint Motion having appeared at hearing, and the Court being otherwise fully advised in the premises, it is hereupon,

ORDERED AND ADJUDGED as follows:

1. The Joint Motion is Granted.

2. The Settlement Agreement executed by and between the Plaintiff FONTAINEBLEAU II CONDOMINIUM ASSOCIATION, INC. and Defendants, JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2 LLC, and TURNBERRY CONSTRUCTION INC., (Plaintiff ASSOCIATION and the above named Defendants are hereinafter collectively referred to as "the Parties"), a copy of

which is attached hereto as Exhibit A, is hereby approved, adopted and incorporated herein as a part of this Order.

3. The Plaintiff, FONTAINEBLEAU II CONDOMINIUM ASSOCIATION INC., on behalf of itself and it's predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Fontainebleau II, A Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby releases and discharges the DEFENDANTS, JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC, and TURNBERRY CONSTRUCTION, INC., and their officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively: (1) from liability for past damages arising from its operation of the Condominium Property under the Declaration of Fontainebleau II, A Condominium, the Amended and Restated Declaration of Restrictions and Reciprocal Easement Agreement or otherwise but subject to the rights, restrictions and procedures detailed in paragraph 13(c) of the Settlement Agreement between the Parties a copy of which is attached hereto as Exhibit A and the terms of which are incorporated herein; and, (2) from all claims and causes of action for breaches of all statutory and common law construction defect or deficiency related warranties; all claims and causes of action for failure to perform any obligations to repair, replace and maintain the Shared Components of the Hotel Unit; and all claims and causes of action for violations of all applicable building codes with respect to any and all defects known or

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which should have been determined to exist by M2E, LLC if same were able to be determined to exist, as of the effective date of the Settlement Agreement, but subject to the rights, restrictions and procedures detailed in paragraph 11 of the Settlement Agreement between the Parties, a copy of which is attached hereto as Exhibit A and the terms of which are incorporated herein. This Release specifically excludes Plaintiff's release of any Defendants currently named as Defendants in the Case No. 09-81609 other than Defendants JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC and TURNBERRY CONSTRUCTION, INC. released herein, and specifically excludes the Release of any other entities or individuals involved in the design or construction of the Fontainebleau II, A Condominium other than Defendants JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC and TURNBERRY CONSTRUCTION, INC. released herein.

4. Counts I,II, III, IV, V, VII and VIII of the Third Amended Complaint are hereby dismissed with prejudice with each party to bear their own attorneys fees and costs.

5. Count VI of the Third Amended Complaint is hereby dismissed without prejudice with each party to bear their own attorneys fees and costs.

6. Count IX through XXX of the Third Amended Complaint remain in full force and effect and are open and active.

7. The Plaintiff, FONTAINEBLEAU II CONDOMINIUM ASSOCIATION INC., on behalf of itself and it's predecessors, successors, assigns, and affiliates,

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and on behalf of all Residential Unit Owners at the Fontainebleau II, A Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby assigns all of it's interest and rights in all claims and causes of action raised or which can be raised within or in connection with the subject matter of Counts IX through XXX of the Third Amended Complaint against each of the defendants named therein and any potential additional defendants involved in the design or construction of the Fontainebleau II, A Condominium to DEFENDANTS, JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC, and TURNBERRY CONSTRUCTION, INC.

8. The parties are directed to comply with each and every provision contained within the Settlement Agreement and to conduct themselves in a manner conducive thereto.

9. This Court reserves jurisdiction to enforce the terms of the Settlement Agreement should enforcement be necessary.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, on this 20 day of Dec., 2012.

Honorable Marc Schumacher
CIRCUIT COURT JUDGE

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EXHIBIT C

SETTLEMENT AGREEMENT

This Settlement Agreement, dated and effective as of 7th NOVEMBER ~~October~~, 2012 is by and between the following Parties, FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation, with its principal address at 4391 Collins Ave., Miami Beach Fl. 33140, (hereinafter referred to as the "ASSOCIATION" or "PLAINTIFF") and FONTAINEBLEAU FLORIDA TOWER 3, LLC, a Florida limited liability company with its principal mailing address at 4441 Collins Ave., Miami Beach Fl. 33140, (hereinafter referred to as "HOTEL UNIT OWNER" or "HOTEL"). ASSOCIATION and HOTEL UNIT OWNER are also referred to collectively herein as the "PARTIES", who do hereby execute and enter into this Settlement Agreement, the terms and conditions of which are memorialized below.

RECITALS

WHEREAS, FONTAINEBLEAU III, A CONDOMINIUM HOTEL (hereinafter sometimes referred to as "FONTAINEBLEAU") is the Condominium located at 4391 Collins Avenue, Miami Beach, Fla., 33140, and commonly known as SORRENTO;

WHEREAS, the ASSOCIATION is a not-for profit Florida Corporation and is a Condominium Association organized pursuant to the provisions of Chapter 718, Florida Statutes and comprised of the condominium unit owners in the condominium property located at 4391 Collins Avenue, Miami Beach, Fla., 33140;

WHEREAS, FONTAINEBLEAU FLA TOWER 3, LLC is the Developer and owner of the Hotel Unit, and therefore is the HOTEL UNIT OWNER as defined in the Declaration of Fontainebleau III, Ocean Club Condominium, recorded in Official Records Book 26167, Page 3643 of the Public Records of Miami-Dade County, Florida and the owner of the Hotel Unit;

WHEREAS, COCSAN CONSTRUCTION, LLC, is the general contractor contracted by the Developer to construct the Condominium (hereinafter referred to as "COSCAN");

WHEREAS, on June 6, 2010, the ASSOCIATION filed on behalf of itself and the Residential Unit Owners who are members of the ASSOCIATION and pursuant to Section 718.111(2), of the Florida Statutes, and Rule 1.221, of the Florida Rules of Civil Procedure, a civil complaint in Miami Dade Circuit Court against the Hotel and other defendants, including contractors and sub-contractors, styled as *Fontainebleau III Ocean Club Condominium Association Inc., versus Fontainebleau Florida Tower 3, LLC, and Coscan Construction, LLC, Case Number 10-00412-CA05, Miami-Dade County Circuit Court*, which remains pending as of this date (hereinafter referred to as the "Legal Action");

WHEREAS, the parties have conflicting views on whether and to what extent the Declaration of Fontainebleau III Ocean Club Condominium, the Declaration of

Restriction and Reciprocal Easement Agreement, and the operation of the Condominium Property comply or have complied with the Florida "Condominium Act", Florida Statutes, Chapter 718.101, et. seq. and other applicable statutes;

WHEREAS, the Parties are willing to end the Legal Action without resolving their conflicting views of such compliance, without obtaining a judicial determination of these views, without relinquishing their rights to reassert, and to make legal claims based upon, these views in the future, and without excusing, forgiving or releasing any party or the Declaration of Fontainebleau III, Ocean Club Condominium, the Declaration of Restriction and Reciprocal Easement Agreement, or the bylaws from any past non-compliance with or from any continuing non-compliance with the Florida "Condominium Act", Florida Statutes, Chapter 718.101, et. seq. or other applicable statutes and with the HOTEL UNIT OWNER preserving all defenses;

WHEREAS, the Parties do not intend by this Settlement Agreement to modify, amend, or in any way change the Declaration of Fontainebleau III, A Condominium, the Declaration of Restriction and Reciprocal Easement Agreement, or the bylaws but rather to create rights, obligations, and benefits which are in addition to and independent of those found in such documents and which, in the view of the ASSOCIATION, will assure Residential Unit Owners of monthly costs and other conditions more consistent with other condominium properties along Miami Beach;

WHEREAS, the ASSOCIATION intends to forgive, discharge and release the HOTEL UNIT OWNER for and from any and all past damages to the ASSOCIATION and/or to the Residential Unit Owners arising out of the operation of the Condominium Property as discussed in Paragraphs 15 and 16 below, as well any and all claims based on construction defects known to exist or which should have been determined by M2E, LLC to exist, as discussed in Paragraph 13 below, if same were able to be determined to exist as of the effective date of this Settlement Agreement;

WHEREAS, the ASSOCIATION and the HOTEL have resolved and reached agreement to end the Legal Action styled as *Fontainebleau III Ocean Club Condominium Association Inc., versus Fontainebleau Florida Tower 3, LLC, and Coscan Construction, LLC, Case Number 10-00412-CA05, Miami-Dade County Circuit Court,* which is pending at this time in accordance with the provisions of paragraph 16 of this Settlement Agreement and none of the Parties make any admission as to its respective claims or defenses or to the claims or defenses of any of the other Parties relating to the Legal Action;

WHEREAS, the ASSOCIATION and the HOTEL unequivocally affirm and confirm the legality, validity and enforceability of this Settlement Agreement, and the sufficiency, adequacy, and exchange and receipt by the Parties thereto of valuable consideration, as well as the specific promises and covenants contained herein.

AGREEMENT

NOW, THEREFORE in reliance upon the recitals stated above, and in consideration of the mutual conditions, promises and covenants contained herein, the exhibits attached hereto, and the other conditions contained herein each Party hereto, intending to be legally bound, stipulates and agrees as follows:

1. **Recitals; Settlement Agreement Enforceable.** The foregoing recitals are true and correct, and incorporated herein by reference and no Party shall raise, and each Party expressly waives, any defense to the enforcement of this Settlement Agreement based upon any assertion that it is unenforceable for any reason whatsoever, including without limitation, public policy considerations.

2. **Definitions.**

(a) The parties utilize the following definitions only to aid in the construction of the accurate intent of the parties to this Settlement Agreement, provided, however, that the use of any definition herein or adoption of a definition from the Declaration of Fontainebleau III, Ocean Club Condominium or the Florida Statutes shall not be construed or interpreted as an affirmation or acceptance of the legality of such definition, or the manner in which any such term is applied within the Declaration of Fontainebleau III, Ocean Club Condominium, or as a waiver of any future rights of the Parties or the Residential Unit Owners to contest the legality or application of such definition(s).

(b) The terms "Condominium" and "Condominium Property" are used herein interchangeably and together are defined as the real property, lands, leaseholds, and personal property subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto located at 4391 Collins Avenue, Miami Beach, Fla., 33140.

(c) A "Residential Unit Owner" is the record owner of legal title to a condominium parcel, otherwise known as a Residential Unit located within the Condominium property.

(d) The "Hotel Unit Owner" referred to within this Settlement Agreement means and refers to the owner(s) from time to time of the Hotel Unit as well as its related operating entities including but not limited to the Entry Garage Owner and Operator.

(e) The term "Shared Components" when used within this Settlement Agreement has the same meaning as that same term which is defined in paragraph 2.38 of the Declaration of Fontainebleau III Ocean Club Condominium but for purposes only of defining the term when used herein.

(f) The term "Hotel Shared Costs" when used within this Settlement Agreement has the same meaning as that same term which is defined in paragraph 2.25

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and in paragraphs 12.1, 12.2, 12.3, 12.4 and 12.5 of the Declaration of Fontainebleau III Ocean Club Condominium, but for purposes only of defining the term when used herein.

(g) The term "Telephone Service" when used within this Settlement Agreement has the same meaning as that same term defined in paragraph 21.3 of the Declaration of Fontainebleau III Ocean Club Condominium but for purposes only of defining the term when used herein.

(h) The term "Entry/Garage Space Owner" is the owner, whether or not the HOTEL UNIT OWNER, or its successors or assigns, of the "Entry/Garage Space" as that term is defined and referred to within the Declaration of Restrictions and Reciprocal Easement Agreement, and is adopted herein for purposes only of defining the term when stated herein.

(i) The term "Entry/Garage Space Costs" refers to and is defined as each and every cost, expense, and any "Access Fee", "Operating Expense", "Easement Expense", and Taxes also identified or referred to in paragraphs 6 and 7, and elsewhere, of the Declaration of Restrictions and Reciprocal Easement Agreement, and generally known as the taxes, fees for access to and from, and costs associated with the operation, maintenance, repair, insuring, and replacing of the Entry Garage Space made available for parking to the ASSOCIATION and Residential Unit Owners, which the HOTEL and/or the Entry/Garage Space Owner and/or any other entity, government or authority seek to obligate, impose upon or transfer to the ASSOCIATION and/or any Residential Unit Owner.

(j) The term "Amenity Fee" refers to charges imposed by the HOTEL to the ASSOCIATION and which have been included up to this date within budgets charged to the ASSOCIATION by the HOTEL.

(k) The term "All-In Monthly Rate" as used in this Settlement Agreement is the total dollar amount per square foot, per month that a Residential Unit Owner must pay in the aggregate with respect to each of the square feet contained in the Residential Unit, to the Hotel Unit Owner and the Entry/Garage Space Owner for any cost, expense, tax, and fee, which will be or can be imposed within any calendar year against Residential Unit Owners and the ASSOCIATION under the Declaration of Fontainebleau II, A Condominium the Articles of Incorporation, the Amended and Restated Declaration of Restriction and Reciprocal Easement Agreement, the Bylaws of the Association and/or any other agreement, for any cost, expense, tax, and/or fee, including but not limited to Hotel Shared Costs, cost of Shared Components, monies for the funding and maintenance of Reserve Accounts, Amenity Fees, Entry/Garage Space Costs, Access Fees, and other expenses but excluding from the foregoing only any cost, expense, tax, and/or fee that the ASSOCIATION has voted or will vote to include in its budget, regular assessments (if any), and/or special assessments (if any).

3. **Total Costs and Expenses to Unit Owners, Including but not Limited to Hotel Shared Costs, Entry/Garage Space Costs, Access Fees, Taxes, Amenity Fees, etc.** It is the intent of the Parties to this Settlement Agreement to establish a maximum, fixed, measurable amount per month which the Hotel Unit Owner and the Entry/Garage Space Owner may charge to the ASSOCIATION, and/or any Residential Unit Owner, based upon the square footage of each Residential Unit, with such amount limited to, and not exceeding, the "All-In Monthly Rate" defined herein in paragraphs 2(k) and 4. For purposes of Calculating the All-In Monthly Rate, only the ASSOCIATION's budget, its regular assessments (if any) and its special assessments (if any) shall always be excluded from the All-In Monthly Rate.

Therefore, if and to the extent that the total of amount that is or can be charged to any Residential Unit Owner under the Declaration of Fontainebleau III Ocean Club Condominium, the Declaration of Restrictions and Reciprocal Easement Agreement, the Articles of Incorporation, the Bylaws and or any other agreement, excluding only the ASSOCIATION's budget, its regular assessments, and its special assessments, divided by twelve (12), and then divided by the square footage of the Residential Unit, exceeds the "All-In Monthly Rate," as defined in this Settlement Agreement, then the HOTEL UNIT OWNER, and not the ASSOCIATION nor any Residential Unit Owner, is responsible for paying whatever amount exceeds the All-In Monthly Rate and may not recover such excess amount from the ASSOCIATION or Residential Unit Owners.

4. **The "All-In Monthly Rate".** Effective January 1, 2013 and continuing up to and including December 31, 2014, the All-In-Monthly Rate, for Residential Units in Fontainebleau III Ocean Club Condominium Association, Inc. ("SORRENTO"), shall be one dollar and eighteen cents ($1.18). Starting with 2015, the All-In-Monthly Rate shall be the LESSER OF

(A) the All-In-Monthly Rate for the immediately preceding calendar year, increased or decreased by exactly the same dollar amount per square foot as the All-In Monthly Rate for the same (concurrent) calendar year increases or decreases for Residential Unit Owners in the FONTAINEBLEAU II, A CONDOMINIUM HOTEL located at 4401 Collins Avenue, Miami Beach, Fla., 33140, and commonly known as TRESOR, who are also members of the FONTAINEBLEAU II CONDOMINIUM ASSOCIATION, INC, as determined in accordance with the terms and conditions of the Settlement Agreement of even date herewith by and between the FONTAINEBLEAU II CONDOMINIUM ASSOCIATION, INC., JS COLLINS, LLC, the general partner of TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, and FONTAINEBLEAU FLA TOWER 2, LLC

OR

(B.) the total (per square foot, per month) of the amounts that may be charged to Residential Unit Owners or to the ASSOCIATION under the Declaration of Fontainebleau III, A Condominium, the Declaration of Restriction and Reciprocal

Easement Agreement, the Bylaws of the Association and/or any other agreement for any cost, expense, tax, and/or fee, including but not limited to Hotel Shared Costs, cost of Shared Components, monies for the funding and maintenance of Reserve Accounts, Amenity Fees, Entry/Garage Space Costs, Access Fees, and other expenses but excluding from the foregoing only any cost, expense, tax, and/or fee that the ASSOCIATION has voted or will vote to include in its budget, its regular assessments (if any), and/or its special assessments (if any).

5. **Access to HOTEL UNIT OWNER'S Calculations of Expenses, Fees and Costs Charged to the ASSOCIATION and Residential Unit Owners.** The ASSOCIATION shall possess the right to inspect and review all documents (other than those revealing the compensations of particular employees or the details of contracts for valet services) which evidence the expenses and costs, or any method of calculating the expenses and costs, that determine any amount that can be or is to be charged to the ASSOCIATION and/or a Residential Unit Owner under this Settlement Agreement or under the Declaration of Fontainebleau III Ocean Club Condominium, the Articles of Incorporation, the Declaration of Restrictions and Reciprocal Easement Agreement, the Bylaws of the Association, the Association budget, or otherwise. Within five (5) days after the ASSOCIATION requests any such document or documents, the HOTEL UNIT OWNER shall make such document(s) available to the ASSOCIATION for inspection and review. Notwithstanding the foregoing, if the HOTEL UNIT OWNER has reason to believe that any requested document contains confidential information, it may choose to provide such document or documents pursuant to execution of a reasonable confidentiality agreement to be executed by the ASSOCIATION and its attorneys for the purpose of allowing such access. Any information provided under such a confidentiality agreement, if used in a court proceeding, must first be preceded by a Motion to Seal with notice to the HOTEL UNIT OWNER.

6. **Future Goods, Services, and Privileges.**

(a) The "All-In Monthly Rate" having been established as set forth in paragraphs 2(k) and 4 of this Settlement Agreement, the HOTEL UNIT OWNER further expressly agrees toassure that the ASSOCIATION and Residential Unit Owners will receive (and have included within the All-In-Rate) all of the goods, services and privileges that have been provided, must be provided, and are reasonably foreseeable to be provided during the period in question (as in the case of the use of reserve funds) under the Declaration of Fontainebleau III Ocean Club Condominium, the Declaration of Restriction and Reciprocal Easement Agreement, the Florida Condominium Act and other statutes, and as a courtesy and privilege in addition thereto. In the event that the HOTEL UNIT OWNER desires to increase or add any other goods, services, courtesies or privileges to those set forth in the next preceding sentence, it may do so provided that the change does not increase any cost or expense to any Residential Unit Owner or the ASSOCIATION, except as provided in (b) below.

(b) In the event the HOTEL UNIT OWNER desires or intends to change or add any good, service, or privilege for Residential Unit Owners, and desires to increase any monthly assessment or cost to Residential Unit Owners on the basis thereof, the HOTEL UNIT OWNER may do so only: (a.) having given detailed notice to the ASSOCIATION's Board of such intention; (b.) having obtained express documented approval by the ASSOCIATION's Board; and, (c.) then, following such Board approval, having obtained a majority affirmative vote of a quorum of Residential Unit Owners at a legally scheduled and noticed meeting which vote will be conducted by the ASSOCIATION, in accordance with Florida Statutes. Any such approval and vote may be reversed by the Board and Unit Owners by corresponding votes at any time, provided that the HOTEL UNIT OWNER will be provided ninety (90) days from any reversal by the Board and Residential Unit Owners to discontinue any good, service, or privilege.

7. **Unit Owners' Trade Without Restraint.** The HOTEL UNIT OWNER will assure (and do nothing to impede) the right of any Residential Unit Owner to contract, purchase, receive and use any good or service from anyone at any price as part of his or her use and enjoyment of the Residential Unit, provided, however, that for the protection and safety of the Condominium, Hotel and all Residential Unit Owners, any and all vendors or service providers for such goods or services shall (i) be licensed, if licensure is legally required by the City of Miami Beach, Metropolitan Dade County, State of Florida or United States government and to comply with other requirements imposed by said government agencies in order to perform or provide the service or product for which they are retained; (ii) wear an ID badge on the condominium property, to be issued without unreasonable delay by the HOTEL UNIT OWNER upon the arrival of the vendor or provider at the Security or Reception Desk; (iii) obtain any and all legally required governmental permit(s) for the work or service they are providing the Residential Unit Owner; and (iv) check in at the security/ front desk upon their arrival at the Condominium property. All vendors and service providers shall have the same access to the condominium property and shall use the service elevators and loading docks under the same privileges and rules that HOTEL UNIT OWNER allows vendors and service providers that it retains for the same services. In the event that the particular service or good being purchased by the Residential Unit Owner is one which (a) may impact or adversely affect the integrity and structure of the Condominium property, such as services involving electrical and plumbing repairs; and (b) does not require the provider to maintain a valid license in order to provide the good or perform the service, then the Residential Unit Owner must require that such vendor or service provider be bonded and adequately insured. Personal services such as housekeeping, cook, massage therapist, legal service etc. are among the type of services for which any bonding requirement would not apply. The ASSOCIATION agrees that the HOTEL UNIT OWNER shall not be responsible or liable to the ASSOCIATION or to Residential Unit Owners for any goods or services that independent (from the HOTEL UNIT OWNER) vendors and service providers may, in accordance with this paragraph, provide under contract with or engagement by Residential Unit Owners.

Notwithstanding the foregoing, the HOTEL UNIT OWNER may also provide Residential Unit Owners a preferred vendors list for any service category, which the

Residential Unit Owners may choose from if they so desire, but no Residential Unit Owner is obligated to use nor shall be in any way penalized or discriminated against for not using any of the HOTEL UNIT OWNER'S preferred vendors.

A Residential Unit Owner who is not a participant in the FONTAINEBLEAU HOTEL Rental Program will enjoy the right to rent or lease his or her Unit as a hotel room or accommodation or otherwise without interference, restriction, limitation, fee or cost imposed by the HOTEL UNIT OWNER as a result or consequence of doing so, except that any Residential Unit Owner who is not a participant in the HOTEL UNIT OWNER's rental program and who rents his or her Unit two (2) or more times in any calendar month, may be required by the HOTEL UNIT OWNER to pay on such occasions, a hotel guest check-in fee of Fifteen and 00/100 Dollars ($15.00) per rental and to provide the Hotel Unit with five (5) days prior notice of such guest(s)' arrival. Additionally starting in January 1, 2023, any Residential Unit Owner who is not a participant in the HOTEL UNIT OWNER's rental program and who rents his or her Unit more than four (4) times in any calendar month, may be required by the HOTEL UNIT OWNER to pay on such occasions, in lieu of the aforesaid fifteen dollars ($15.00), a hotel guest check-in fee of Fifteen and 00/100 Dollars ($15.00) per rental, increased or decreased by the aggregate percentage increase or decrease in the Consumer Price Index for All Urban Consumers for Miami-Fort Lauderdale ("CPI-U"), as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the twelve- month period ending October 31st of the prior year compared with the corresponding period ending in 2022 and to provide the Hotel Unit with five (5) days prior notice of such guest(s)' arrival. Anyone to whom a Residential Unit Owner leases or rents his Residential Unit on an overnight basis, whether as a hotel room or otherwise, will receive without discrimination or restriction all of the guest services that the HOTEL UNIT OWNER provides to any Residential Unit Owner.

8. **Parking.** The HOTEL UNIT OWNER agrees to assure that any Residential Unit Owner who is not in the Hotel rental program may, at no cost, charge or expense to himself or to anyone else, use for himself, for any renter or lessee, or for any guest who is visiting the Residential Unit Owner or staying in his Unit the single parking space that is provided in connection with such Residential Unit under the Declaration and Reciprocal Easement Agreement whether or not anyone is actually occupying the Residential Unit during such use of the parking space. Additionally, the HOTEL UNIT OWNER agrees that if a Residential Unit Owner's parking space is occupied pursuant to the preceding sentence, then any non-over night guest of the Unit Owner who is visiting the Unit Owner may park in the garage for $10.00, under a voucher system to be administrated by the HOTEL UNIT OWNER.

9. **Facilitating Permanent Residence and Homesteading** The HOTEL UNIT OWNER will cooperate with the ASSOCIATION to allow any individual Residential Unit Owner, wishing to do so, to attempt to qualify his Residential Unit as a permanent residence and/or to qualify it as a homestead for any purpose, including exemption from taxation or execution of judgments.

10. **Shared Components.**

(a) The HOTEL UNIT OWNER agrees that it will not exercise any right or discretion provided under paragraph 2.38 of the Declaration of Fontainebleau III, Ocean Club Condominium to diminish, eliminate, or remove any portion of the condominium property defined within such paragraph as a "Shared Component." The HOTEL UNIT OWNER, however, maintains the right to improve or update the design, colors, fabrics and overall appearance of the Shared Components.

(b) Furthermore, the HOTEL UNIT OWNER agrees to retain and maintain, under all circumstances unless prohibited by law, the Owners' Lounge, Swimming Pool, Condominium offices, and Board Rooms as functioning facilities in the Condominium Property.

(c) The HOTEL UNIT OWNER will not change the use of the Owners' Lounge without the approval of the ASSOCIATION and will not allow the Owners' lounge to be closed to owners more than twelve days each calendar year. Notwithstanding the foregoing, ASSOCIATION shall have the right, at Association's own expense, to change the furnishings and facilities of the Owners' Lounges and regulate the private use of the Owners' Lounge by Residential Unit Owners.

11. **Termination of Litigation.** All parties hereto agree that immediately upon the receipt and acknowledgement of the mutual signing and execution of this Settlement Agreement, they shall terminate the hereinabove referenced litigation and dismiss the Legal Action in accordance with the provisions of paragraph 16 of this Settlement Agreement.

12. **Residential Unit Owner Discounts.** The HOTEL UNIT OWNER will provide to each Residential Unit Owner discounts in the cost of goods and services charged to any HOTEL UNIT OWNER guest in the amounts and for the goods and services identified on Exhibit A attached hereto and incorporated herein.

13. **Repair and Remediation of Construction Defects.**

(a) The HOTEL UNIT OWNER agrees that the defects and deficiencies identified in the Turnover Evaluation Report prepared by M2E, LLC, dated November 5, 2009, and referred to and made a part of the ASSOCIATION'S pleadings filed within the Legal Action, and in the Supplemental Report concerning defects located at the condominium property, prepared by M2E, LLC, on or about January 16, 2012, which have yet to be repaired or remedied, are to be repaired by the HOTEL UNIT OWNER at no expense or cost to the ASSOCIATION, or any Residential Unit Owner, and all repair work is to begin by December 31, 2012 and to conclude by no later than one-hundred and eighty (180) days after the effective date of this Settlement Agreement, unless an extension of time for such is granted to the HOTEL UNIT OWNER in writing by the ASSOCIATION.

(b) Without limiting the foregoing, the ASSOCIATION's and HOTEL UNIT OWNER's construction consultants are scheduled to meet at the condominium property on October 19, 2012, to inspect open items contained within M2E, LLC's Supplemental Report and to determine whether any new items need to be repaired or remediated and should be added to the Report's list of items to be repaired or remediated. The ASSSOCIATON and HOTEL UNIT OWNER agree to cause their respective construction consultants, within ten (10) days from the conclusion of the October 19, 2012 inspection, to make a Report to both parties of (a.) items the construction consultants agree should be removed from those in M2E, LLC's Supplemental Report, as having been repaired or remediated prior thereto and (b.) items they agree should be added to the Report as new items in need of repair or remediation. If there are new items about which the construction consultants disagree as to whether to add them or not to the Report as new items to be repaired or remediated, the ASSOCIATION or the HOTEL UNIT OWNER shall, within five (5) days from the receipt of the consultants' reports of the October 19, 2012 inspection, submit such items to John S. Freud, Esq. (or, if unavailable, his designee) who, as a final arbiter, will as expeditiously as possible, determine which, if any, of those items should be added to the Report as new items in need of repair or remediation. In all events, the HOTEL UNIT OWNER shall commence to repair or remediate prior to December 31, 2012 and at no expense or cost to the ASSOCIATION or any Residential Unit Owner, (i) all items on the Report that the construction consultants have not agreed to remove from the Report and (ii) all items that the construction consultant, by agreement, or John Freud (or, if unavailable, his designee), as final arbiter, shall have added to the Report as new items in need of repair or remediation. The HOTEL UNIT OWNER shall conclude all such repairs or remediation no later than one-hundred and eighty days (180) after the effective date of this Settlement Agreement, unless an extension of time for such is granted to the HOTEL UNIT OWNER in writing by the ASSOCIATION.

(c) Upon the HOTEL UNIT OWNER's conclusion of such repair work, the ASSOCIATION's engineer shall re-inspect the condominium property and the ASSOCIATION maintains the right to re-open this litigation for the purpose of resolving any dispute concerning any repair or lack thereof by the DEFENDANTS of the defects currently in existence. The ASSOCIATION also maintains the right to initiate and file new litigation to resolve any dispute concerning any new defects other than those which were known or which should have been determined to exist by M2E, LLC if same were able to be determined to exist, as of the effective date of this Settlement Agreement, and which are discovered subsequent to the effective date of this Settlement Agreement.

14. **Default, Right to Cure.** In addition to the notice required to be provided by the Association in Paragraph 15(c) of this Settlement Agreement, neither Party shall be deemed to be in default under this Settlement Agreement unless and until the other party gives written notice of any default under this Settlement Agreement, and the party receiving such notice fails to cure such default within fifteen (15) days after delivery of such notice. If the Party giving such notice is required to perform any obligations, give any notices or make any elections prior to or during the pendency of such fifteen (15) day

cure period, then the time to perform such obligations, give such notices or make such elections shall be tolled until the default is cured within such fifteen (15) day cure period.

An action to enforce the terms and conditions of this Settlement Agreement may be brought by any Party, or its respective successors or assigns and any Residential Unit Owner with regard to rights that Residential Unit Owner are to enjoy under this Settlement Agreement, who may bring an action at law or in equity against any Party violating or attempting to violate any term of this Settlement Agreement. In addition to all other remedies available, either Party may seek specific performance and/or injunctive relief, without posting bond, against the other party as long as the Party seeking specific performance is not in breach of this Settlement Agreement. This enforcement provision shall be in addition to any other remedies available under the law or in equity; provided, however that in no case shall either Party be liable for any punitive, exemplary, or consequential damages which may be alleged as a result of the agreements contained within this Settlement Agreement, including any breach or other default by any Party hereto.

15. **Releases, Assignment and Restriction on Future Litigation.**

(a) **Plaintiff's Release.** By execution of this Settlement Agreement, the PLAINTIFF, on behalf of itself and its predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby agrees to dismiss the pending Legal Action in accordance with the provisions contained within paragraph 16 of this Settlement Agreement and release and discharge the HOTEL UNIT OWNER and their officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, from liability for past damages arising from its operation of the Condominium Property under the Declaration of Fontainebleau III Ocean Club Condominium and Declaration of Restrictions and Reciprocal Easement Agreements or otherwise but subject to the rights, restrictions and procedures detailed in paragraph 15 (c) below, as well as to release HOTEL UNIT OWNER and their officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, from all claims and causes of action for breaches of all statutory and common law construction defect or deficiency related warranties; all claims and causes of action for failure to perform any obligations to repair, replace and maintain the Shared Components of the Hotel Unit; and all violations of all applicable building codes with respect to any and all defects known, or which should have been determined to exist by M2E, LLC if same were able to be determined to exist, as of the effective date of this Settlement Agreement.

(b) **Plaintiff's Assignment.** By execution of this Settlement Agreement, PLAINTIFF, on behalf of itself and its predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) shall assign any and all rights and causes of action it may have to the HOTEL UNIT

OWNER for any construction related claim against all named and unnamed defendants to the Legal Action, including those who are not a party to this Agreement.

(c) **Restriction on Future Litigation.** The ASSOCIATION agrees that it will refrain from re-initiating or being a party to the Legal Action or from otherwise initiating or being a party to another subsequent legal action against the HOTEL UNIT OWNER arising out of the ownership, management or operation of the Condominium Property unless and until (a) the ASSOCIATION believes in good faith that there has occurred a material adverse change in the condition(s) or circumstance(s) of said ownership, management or operation of the Condominium Property which materially and adversely impacts the ASSOCIATION and Residential Unit Owners from those in existence as of the date of this Settlement Agreement warranting the initiating of said legal action (the "Material Adverse Change") and (b) the ASSOCIATION has provided written detailed notice to the HOTEL UNIT OWNER of said Material Adverse Change and (c) the ASSOCIATION has provided the HOTEL UNIT OWNER with a reasonable opportunity to remedy or resolve said Material Adverse Change (which shall be a short time period where the Material Adverse Change warrants prompt attention or a commercially reasonable longer period of time as may be necessary to fully resolve said Material Adverse Change provided the HOTEL UNIT OWNER is diligently attempting to do so) and duly authorized representatives of the ASSOCIATION have met in person at least twice with representatives of the HOTEL UNIT OWNER for meaningful good faith efforts to achieve a mutually acceptable resolution of the Material Adverse Change (the "Cure Period") and (d) the Material Adverse Change remains unresolved for more than thirty (30) days (or such shorter period where the Material Adverse Change warrants prompt attention) after the expiration of said Cure Period, and (e) the ASSOCIATION, thereafter, notifies the HOTEL UNIT OWNER in writing that the Material Adverse Change remains unremedied or unresolved, and (f) the HOTEL UNIT OWNER and the ASSOCIATION have submitted (and hereby agree to submit) the dispute regarding the Material Adverse Change to a mediation to be conducted within thirty (30) days of the ASSOCIATION's delivery of a written Demand for Mediation to the HOTEL UNIT OWNER (or as soon as the selected mediator is able to conduct the mediation thereafter) which mediation shall be conducted in accordance with Rule 1.720 (a)-(e), of the Florida Rules of Civil Procedure, and all costs of such, including any fee charged by the mediator, will be borne equally by the ASSOCIATION (50%) and the HOTEL UNIT OWNER (together 50%). With the Demand for Mediation, the ASSOCIATION will also deliver to the HOTEL UNIT OWNER a list of five (5) Florida certified mediators (one of which shall be John Freud and another Mark Buxton, if both are still practicing as Mediators) from which the HOTEL UNIT OWNER may select one (1) mediator who will mediate the dispute between the Parties regarding the Material Adverse Change. If the HOTEL UNIT OWNER fails to notify the ASSOCIATION of their mediator selection within five (5) business days after the ASSOCIATION's delivery of its Demand for Mediation to the HOTEL UNIT OWNER, the ASSOCIATION may unilaterally chose the mediator from the list previously provided to the HOTEL UNIT OWNER, who shall then mediate the dispute between the Parties regarding the Material Adverse Change. In the event the Parties are unable to resolve said dispute through mediation, the ASSOCIATION may then initiate a legal action seeking all relief and redress in law or

equity which the ASSOCIATION is authorized to pursue on behalf of all or a majority of the Residential Unit Owners regarding the Material Adverse Change.

Further, the Parties agree that no party may introduce this Settlement Agreement as evidence in any future legal action, except and unless such action arises out of this Settlement Agreement.

(d) **Defendants' Release.** By execution of this Settlement Agreement and in accordance with the provisions contained within paragraph 16 of this Settlement Agreement, HOTEL UNIT OWNER, on behalf of itself and its predecessors, successors, assigns, and affiliates, hereby releases and forever discharges the Plaintiff and it's officers, directors, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, from all past damages in connection with the operation of the Condominium Property as well as to resolve all claims for breaches of construction warranties known to exist as of the effective date of this Settlement Agreement.

16. **Dismissal of Action and Proceedings.** Upon the approval and execution by the parties and upon the delivery by the HOTEL UNIT OWNER to the ASSOCIATION of this Settlement Agreement executed by the HOTEL UNIT OWNER, the ASSOCIATION shall deliver to the HOTEL UNIT OWNER a Joint Motion to Adopt Settlement Agreement and Dismiss Action (hereinafter "JOINT MOTION"), which will move the Court in which this action is pending, on behalf of the ASSOCIATION, the Residential Unit Owners and members of the ASSOCIATION and the HOTEL UNIT OWNER, to adopt this Settlement Agreement, including the Releases provided to the parties and Plaintiff's Assignment as stated in paragraphs 15(a), (b),(c) & (d) herein. The HOTEL UNIT OWNER shall execute the JOINT MOTION, and deliver the fully executed JOINT MOTION to the ASSOCIATION. The ASSOCIATION shall then execute and file the JOINT MOTION with the Court and schedule a hearing as expeditiously as possible to obtain the Court's approval. Upon approval by the Court of the JOINT MOTION the ASSOCIATION and the HOTEL UNIT OWNER will file a Joint Stipulation for Dismissal, which will include the Releases and Assignment provided to the parties as stated in paragraphs 15(a), (b), (c) & (d) herein, and a proposed Final Order of Dismissal adopting and approving the Joint Motion entered by the Court. The Joint Stipulation of Dismissal will dismiss Count IV of the Third Amended Complaint without prejudice, and dismiss Counts I, II, III, V and VI of the Third Amended Complaint with prejudice. Counts VII and VIII of Plaintiff's Third Amended Complaint will remain in full force and effect against COSCAN, and Plaintiff shall assign all rights it may have to maintain these causes of action to HOTEL UNIT OWNER in accordance with Paragraph 15(b) of this Settlement Agreement. This Settlement Agreement, including the Releases and Assignment identified in paragraphs 15(a) (b), (c) & (d) herein, will not become binding and enforceable until the date in which the Court renders an Order adopting or approving the JOINT MOTION. A copy of the PLAINTIFF's Assignment to HOTEL UNIT OWNER described in paragraph 15(b), Joint Motion, Joint

Stipulation for Dismissal, and Final Order of Dismissal is attached hereto as Composite Exhibit "B".

17. **Attorneys Fees and Costs.** The Parties hereby acknowledge and agree that each Party shall bear their own attorney's fees and costs. The Parties agree that if any action or proceeding be brought by either Party related to this Settlement Agreement or to enforce this Settlement Agreement or any provision hereof, the prevailing party in any such action or proceeding shall be entitled to recover, in addition to any other relief, reasonable attorneys fees, costs, expert witness fees, consulting fees, and expenses incurred in such action or proceeding, which amount shall be determined by a court and not a jury.

18. **Assignment.** Except as specified in this Settlement Agreement, including paragraphs 15(b) & 16, each Party hereby represents and warrants that they have not assigned, conveyed, transferred or granted to any person or entity not a party hereto any right, option, interest in, or otherwise transferred in any manner whatsoever to any person or entity, any right, claim, or cause of action that is the subject of this Settlement Agreement.

19. **Entire Settlement Agreement.** This is the sole agreement of the Parties on the matters set forth herein and this Settlement Agreement shall supersede all prior agreements and representations, whether oral or written, exclusive of the Declaration of Fontainebleau III Ocean Club Condominium, the Declaration of Restriction and Reciprocal Easement Agreement and related condominium documents. This Settlement Agreement is binding upon all Parties and his or its respective officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, and all other persons, firms, corporations, associations and estates. The Parties further agree that no modifications of this Settlement Agreement may be made except by means of a written agreement signed by each of the Parties. Notwithstanding anything else in this Settlement Agreement, the Parties acknowledge and agree that nothing in this Settlement Agreement is intended or meant to modify, supersede or amend in any way any existing or future agreements by and between any individual Residential Unit Owner and the HOTEL or HOTEL UNIT OWNER which are part of a unit management agreement or other agreement whereby a Residential Unit Owner participates in the HOTEL rental program.

20. **Governing Law, Interpretation and Venue.** The Parties agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, neither strictly for nor against any of the Parties hereto because this Settlement Agreement has been negotiated and drafted at arm's length. This Settlement Agreement will be construed and interpreted in accordance with the laws of the State of Florida, without reference to conflicts of laws principles. The Parties expressly agree that any action to enforce the terms of this Settlement Agreement shall be brought in the state or federal courts of Florida and the Parties irrevocably consent to said jurisdiction. Venue for any action under this Settlement Agreement will be exclusively in Miami-Dade

County, Florida. **The Parties hereto hereby irrevocably waive all rights to trial by jury in any action, proceeding, or counterclaim brought by either party arising out of or relating to this Settlement Agreement, any course of conduct, course of dealing, statements (whether verbal or written) or action of any of the Parties.** The Parties acknowledge that such waiver is a material inducement to entering into this Settlement Agreement and has been freely and voluntarily entered into.

21. **Voluntary Consent and Execution.** The Parties acknowledge that they have carefully read this Settlement Agreement; they have been represented in the preparation, negotiation, and execution of this Settlement Agreement by legal counsel of their own choice, understand the contents, terms and consequences of this Settlement Agreement; they are fully aware of the legal and binding effect of this Settlement Agreement; the Parties have the legal capacity to enter into this Settlement Agreement; and that the Parties voluntarily enter into this Settlement Agreement without any duress or undue influence on the part or behalf of the Parties hereto and with the intent to be bound by all the terms contained herein.

22. **Counterparts and Electronic Signatures.** This Settlement Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of its execution and delivery and said counterparts together shall constitute one and the same instrument. It is agreed that the Parties may rely upon telefaxed or electronic copies of any other party's signature and such signature shall have the same force and effect as the original signature. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by telecopy or electronic delivery, the Parties will use best efforts to deliver originals as promptly as possible after execution.

23. **Severability and Statutes of Limitations.** If any term, paragraph, condition or covenant of this Settlement Agreement or the application thereof to any party or circumstance is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision shall not affect the legality or enforceability of any other portion or provision of this Settlement Agreement and this Settlement Agreement shall be interpreted and construed as if such invalid, illegal, or unenforceable provisions were not contained herein. The remainder of this Settlement Agreement or the application of such shall not be affected thereby and each term and paragraph of this Settlement Agreement shall be valid and enforceable to the fullest extent permitted by law, and said invalid or unenforceable term, provision, condition, or covenant shall be substituted by one as near in substance as may be valid and enforceable. The HOTEL UNIT OWNER and ASSOCIATION further agree that any applicable statutory period of limitations is hereby tolled as of the effective date of this Settlement Agreement, and in the event that any term, condition, paragraph or provision of this Settlement Agreement is vacated, revoked, deemed invalid, unlawful or unenforceable for any reason, which restricts, limits or eliminates any right or benefit of the ASSOCIATION or any Residential Unit Owner at any time, then the ASSOCIATION may re-open and/or resume the Legal Action with the right to seek complete judicial enforcement of any and all claims currently plead or available within the Legal Action.

24. **NOTICES**. All notices which are required or permitted in this Settlement Agreement must be in writing and shall be deemed to have been given, delivered, or made, as the case may be when delivered by email to the Party whom notices are intended to be given at the email address indicated below and (notwithstanding lack of actual receipt by the addressee) (i) when delivered by personal delivery or (ii) three (3) business days after being posted in the United States Mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as, by way of example but not limitation, U.S. Express Mail, Federal Express or Airborne), addressed to the party to whom notice is intended to be given at the address set forth below:

TO ASSOCIATION:

PRESIDENT, The FONTAINEBLEAU III
OCEAN CLUB CONDOMINIUM ASSOCIATION, INC.,
4391 Collins Avenue
Miami Beach, FL 33140

with copy to

RONALD S. LOWY, ESQ.
LOWY & COOK, P.A.
501 N.E. 1st Avenue, Suite 200
Miami, FL 33132
rlowyesq@bellsouth.net; ronlowy@lowypa.com; and
elizabeth@lowypa.com

TO HOTEL UNIT OWNER:

PHIL GOLDFARB
President and Chief Operating Officer
Fontainebleau Miami Beach
4441 Collins Avenue
Miami Beach, FL 33140
pgoldfarb@fontainebleau.com

with copy to

MARIO A. ROMINE
Senior Vice President and General Counsel – Special Projects
19950 West Country Club Drive, 10th Floor
Aventura, FL 33180
mromine@turnberry.com; and,

Becker & Poliakoff, P.A.
Attn: Neil H. Levinson, Esq.
3111 Stirling Road
Ft. Lauderdale, FL 33312
nlevinson@becker-poliakoff.com

25. **Effective Date.** This Settlement Agreement shall be effective as of the date set forth in the preamble above..

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 7th day of NOVEMBER, 2012.

FONTAINEBLEAU III OCEAN
CLUB CONDOMINIUM ASSPOCIATION, INC.

Signature: _____
Print Name: _____
Title: _____

FONTAINEBLEAU FLORIDA
TOWER 3, LLC

Signature: _____
Print Name: Emanuel Feerman
Title: _____

Becker & Poliakoff, P.A.
Attn: Neil H. Levinson, Esq.
3111 Stirling Road
Ft. Lauderdale, FL 33312
nlevinson@becker-poliakoff.com

25. **Effective Date.** This Settlement Agreement shall be effective as of the date set forth in the preamble above..

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of _____, 2012.

FONTAINEBLEAU III OCEAN
CLUB CONDOMINIUM ASSPOCIATION, INC.

Signature: _____
Print Name: H. BRAGINSKY
Title: PRESIDENT

FONTAINEBLEAU FLORIDA
TOWER 3, LLC

Signature: _____
Print Name: _____
Title: _____

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EXHIBIT A

Rooms	25%		
Solo	20%		
BleauBar	20%		
GlowBar	20%		
Pool	20%		
La Cote	20%		
Vida	20%		
Fresh	20%		
Gotham	10%	20%	Sunday – Thursday
Scarpetta	10%	20%	Sunday – Thursday
Hakkasan	10%	20%	Sunday – Thursday
Catering	15%		
Recreation	15%		
Spa	15%		
Salon	15%		
Gym	15%		
Retail	15%		

ACTIVE: F16444/309543:4196608_1

Bk 28420 Pg 1837 CFN 20120938431 12/28/2012 14:27:45 Pg 28 of 28 Mia-Dade Cty, FL

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION, INC., a Florida corporation,

Plaintiff,

vs.

FONTAINEBLEAU FLORIDA TOWER 3, LLC, a Florida limited liability company, and COSCAN CONSTRUCTION, LLC., a Florida limited liability company,

Defendants.
_____/

CASE NO. 10-00412 CA 05

2012 DEC 24 AM 10:33

CLERK, CIRCUIT & COUNTY COURTS, DADE COUNTY, FLA. CIVIL #115

ORDER GRANTING JOINT MOTION TO ADOPT SETTLEMENT AGREEMENT AND DISMISS PORTION OF ACTION

THIS MATTER having come before this Honorable Court upon the Joint Motion to Adopt Settlement Agreement and Dismiss Portion of Action ("Joint Motion"), and counsel for each party to the Joint Motion having appeared at hearing, and the Court being otherwise fully advised in the premises, it is hereupon,

ORDERED AND ADJUDGED as follows:

1. The Joint Motion is Granted.

2. The Settlement Agreement executed by and between the Plaintiff FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION, INC. and Defendant, FONTAINEBLEAU FLORIDA TOWER 3 LLC, a copy of which is attached hereto as Exhibit A, is hereby approved, adopted and incorporated herein as a part of this Order.

3. The Plaintiff, FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION INC., on behalf of itself and it's predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby releases and discharges the DEFENDANT, FONTAINEBLEAU FLORIDA TOWER 3, LLC, and it's officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively: (1) from liability for past damages arising from its operation of the Condominium Property under the Declaration of Fontainebleau III Ocean Club Condominium, the Declaration of Restrictions and Reciprocal Easement Agreement or otherwise but subject to the rights, restrictions and procedures detailed in paragraph 15(c) of the Settlement Agreement between the Parties a copy of which is attached hereto as Exhibit A and the terms of which are incorporated herein; and, (2) from all claims and causes of action for breaches of all statutory and common law construction defect or deficiency related warranties; all claims and causes of action for failure to perform any obligations to repair, replace and maintain the Shared Components of the Hotel Unit; and all claims and causes of action for violations of all applicable building codes with respect to any and all defects known or which should have been determined to exist by M2E, LLC if same were able to be determined to exist, as of the effective date of the Settlement Agreement, but subject to the rights, restrictions and procedures detailed in paragraph 13 of the

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Settlement Agreement between the Parties, a copy of which is attached hereto as Exhibit A and the terms of which are incorporated herein. This Release specifically excludes Plaintiff's release of Defendant COSCAN CONSTRUCTION, LLC, and specifically excludes the Release of any other entities or individuals involved in the design or construction of the Fontainebleau III Ocean Club Condominium other than Defendant, FONTAINEBLEAU FLORIDA TOWER 3, LLC released herein.

4. Counts I, II, III, V and VI of the Third Amended Complaint are hereby dismissed with prejudice with each party to bear their own attorneys fees and costs.

5. Count IV of the Third Amended Complaint is hereby dismissed without prejudice with each party to bear their own attorneys fees and costs.

6. Counts VII and VIII of the Third Amended Complaint remain in full force and effect and are open and active.

7. The Plaintiff, FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION INC., on behalf of itself and it's predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Fontainebleau III Ocean Club Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby assigns all of it's interest and rights in all claims and causes of action raised or which can be raised within or in connection with the subject matter of Counts VII through VIII of the Third Amended Complaint against Defendant COSCAN CONSTRUCTION, LLC, and any potential additional defendants involved

in the design or construction of the Fontainebleau III Ocean Club Condominium to Defendant, FONTAINEBLEAU FLORIDA TOWER 3, LLC.

8. The parties are directed to comply with each and every provision contained within the Settlement Agreement and to conduct themselves in a manner conducive thereto.

9. This Court reserves jurisdiction to enforce the terms of the Settlement Agreement should enforcement be necessary.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, on this 20 day of Dec., 2012.

Honorable Marc Schumacher Schumacher
CIRCUIT COURT JUDGE

Bk 28420 Pg 1813 CFN 20120938431 12/28/2012 14:27:45 Pg 4 of 28 Mia-Dade Cty, FL

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION, INC., a Florida corporation,

CASE NO. 10-00412 CA 05

Plaintiff,

vs.

FONTAINEBLEAU FLORIDA TOWER 3, LLC, a Florida limited liability company, and COSCAN CONSTRUCTION, LLC., a Florida limited liability company,

Defendants.

_____/

JOINT STIPULATION FOR DISMISSAL OF PORTION OF ACTION, RELEASE OF CLAIMS AND ASSIGNMENT OF CLAIMS

COMES NOW, the Plaintiff, FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION INC., and Defendant, FONTAINEBLEAU FLORIDA TOWER 3, LLC, (Plaintiff and the above named Defendant is hereinafter collectively referred to as the "Parties"), by and through their respective undersigned counsel, hereby file and serve this Joint Stipulation for Dismissal of Portion of Action, Release of Claims and Assignment of Claims and state the following in support thereof:

1. The Plaintiff, FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION INC., hereby dismisses with prejudice Counts I, II, III, V, & VI of the Third Amended Complaint against FONTAINEBLEAU FLORIDA TOWER 3, LLC with each party to bear their own attorneys fees and costs.

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2. The Plaintiff, FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION INC., hereby dismisses without prejudice Count IV of the Third Amended Complaint against FONTAINEBLEAU FLORIDA TOWER 3, LLC, with each party to bear their own attorneys fees and costs.

3. The Plaintiff, FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION INC., on behalf of itself and its predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby releases and discharges the DEFENDANT, FONTAINEBLEAU FLORIDA TOWER 3, LLC, and its officers, stockholders, servants, agents, employees, heirs, legal representatives, insurers, successors and assigns, and each of them respectively, from: (1) liability for past damages arising from its operation of the Condominium Property under the Declaration of Fontainebleau III Ocean Club Condominium, the Declaration of Restrictions and Reciprocal Easement Agreement or otherwise but subject to the rights, restrictions and procedures detailed in paragraph 15(c) of the Settlement Agreement between the parties, a copy of which is attached hereto as Exhibit A and the terms of which are incorporated herein; and, (2) from all claims and causes of action for breaches of all statutory and common law construction defect or deficiency related warranties; all claims and causes of action for failure to perform any obligations to repair, replace and maintain the Shared Components of the Hotel Unit; and all claims and causes of action for all violations of all applicable building codes with respect to any and all defects

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known or which should have been determined to exist by M2E, LLC if same were able to be determined to exist, as of the effective date of the Settlement Agreement, but subject to the rights, restrictions and procedures detailed in paragraph 13 of the Settlement Agreement between the Parties, a copy of which is attached hereto and incorporated herein as Exhibit A. This Release specifically excludes the Plaintiff's release of COSCAN CONSTRUCTION, LLC, a Defendant in Case Number 10-00412, and specifically excludes the Release of any other entities or individuals involved in the design or construction of the Fontainebleau III Ocean Club Condominium other than Defendant FONTAINEBLEAU FLORIDA TOWER 3, LLC released herein.

4. The Plaintiff, FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION INC., on behalf of itself and its predecessors, successors, assigns, and affiliates, and on behalf of all Residential Unit Owners at the Fontainebleau III Ocean Club Condominium as class representative of Residential Unit Owners pursuant to Fla. R. Civ. P. 1.221 and Fla. Stat. §718.111(3) hereby assigns all interest and rights in all claims raised or which can be raised within or in connection with the subject matter of Counts VII and VIII of the Third Amended Complaint against Defendant COSCAN CONSTRUCTION, LLC and any potential additional defendants involved in the design or construction of the Fontainebleau III Ocean Club Condominium to DEFENDANT, FONTAINEBLEAU FLORIDA TOWER 3, LLC.

Respectfully submitted this 27th day of November, 2012.

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For the Plaintiff, FONTAINEBLEAU II, CONDOMINIUM ASSOCIATION, INC.:

RONALD S. LOWY, ESQUIRE
Florida Bar No. 501069
LOWY AND COOK, P.A.
501 NE 1st Street, Suite 200
Miami, Florida 33132
Phone: 305.371-5585
Fax: 305.371-5563
rlowyesq@bellsouth.net

For the Defendants, JS COLLINS, LLC, TL FONTAINEBLEAU TOWER LIMITED PARTNERSHIP, FONTAINEBLEAU FLORIDA TOWER 2, LLC, and TURNBERRY CONSTRUCTION, INC.:

NEIL H. LEVINSON, ESQUIRE
Florida Bar No.
BECKER & POLIAKOFF, P.A.
3111 Stirling Road,
Fort Lauderdale, FL 33312
Phone: 954-364-6034
Fax: 954- 985-4176
nlevinson@becker-poliakoff.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via E-mail to counsel on the attached Service List on this 29 day of November, 2012.

BY: _____

RONALD S. LOWY, ESQUIRE
Florida Bar No. 501069
LOWY AND COOK, P.A.
501 NE 1st Street, Suite 200
Miami, Florida 33132
Phone: 305.371-5585
Fax: 305.371-5563
rlowyesq@bellsouth.net

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EXHIBIT D

From: noreply@opera.oraclehospitality.ocs.oraclecloud.com
Date: February 15, 2026 at 5:53:18 PM EST
To: info@surfprop.com
Subject: Your Upcoming Stay at Fontainebleau Miami Beach

Jennifer Howk,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 30605
CONFIRMATION: 592372323
ARRIVAL: 05/21/26
DEPARTURE: 05/25/26
NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $70 Daily (Junior Suite) upon request and a mandatory check out fee of $130
Housekeeping service is $80 Daily (One bedroom suite) upon request and a mandatory check out fee of $180

NON RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $80 Daily (Junior Suite) upon request and a mandatory check out fee of $155
Housekeeping service is $95 Daily(One bedroom suite) upon request and a mandatory check out fee of $205

There is a one-time compulsory fee of $16.52, plus tax that will be applied prior to check out.

Rollaway beds are available at a cost of $60 each per day

HOTEL POLICY: A credit card is required at check in for estimated incidental
charges of $200 per day in addition to any room and tax charges that may apply.

CHECK IN TIME: 4:00 PM
CHECK OUT TIME: 11:00 AM

The Owner Services Team is available to help you prior to and during your stay at Fontainebleau. From booking transportation services to setting restaurant reservations, allow us to assist you. Call 305-535-3299.

Fontainebleau Miami Beach | 4441 Collins Ave | Miami Beach, FL 33140
Reservations: (800) 548 8886 | Telephone: (305) 538 2000
www.fontainebleau.com

Info SurfProp

From: noreply@opera.oraclehospitality.ocs.oraclecloud.com
Sent: Thursday, August 28, 2025 12:10 PM
To: info@surfprop.com
Subject: Your Upcoming Stay at Fontainebleau Miami Beach

External Sender - From: (noreply@opera.oraclehospitality.ocs.oraclecloud.com) Learn More
This message came from outside your organization.

FONTAINEBLEAU
MIAMI BEACH

Lawrence Sullivan,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 30507
CONFIRMATION: 588753713
ARRIVAL: 05/23/26
DEPARTURE: 05/28/26
NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $70 Daily (Junior Suite) and a check out fee of $130
Housekeeping service is $80 Daily (One bedroom suite) and a check out fee of $180

NON RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $80 Daily (Junior Suite) and a check out fee of $155
Housekeeping service is $95 Daily(One bedroom suite) and a check out fee of $205

There is a one-time compulsory fee of $16.52, plus tax that will be applied prior to check out.

Rollaway beds are available at a cost of $60 each per day

HOTEL POLICY: A credit card is required at check in for estimated incidental charges of $250 per day in addition to any room and tax charges that may apply.

CHECK IN TIME: 4:00 PM
CHECK OUT TIME: 11:00 AM

The Owner Services Team is available to help you prior to and during your stay at Fontainebleau. From booking transportation services to setting restaurant reservations, allow us to assist you. Call 305-535-3299.

To make the most of your experience, we would like to make you aware of our newest amenity, our mobile check-out application. Accessible on any smartphone, the application provides you a seamless departure experience. On the morning of your departure, you will receive an additional email allowing you to check-out from the comfort of your room and view and pay your bill directly from your smartphone.

Fontainebleau Miami Beach | 4441 Collins Ave | Miami Beach, FL 33140
Reservations: (800) 548 8886 | Telephone: (305) 538 2000
www.fontainebleau.com

Laura Avellino

From: noreply@opera.oraclehospitality.ocs.oraclecloud.com
Sent: Friday, February 27, 2026 1:18 PM
To: info@surfprop.com
Subject: Your Upcoming Stay at Fontainebleau Miami Beach

FONTAINEBLEAU

MIAMI BEACH

Linda Mastromonaco,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 21201
CONFIRMATION: 593386580
ARRIVAL: 06/01/26
DEPARTURE: 06/05/26
NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $70 Daily (Junior Suite) upon request and a mandatory check out fee of $130
Housekeeping service is $80 Daily (One bedroom suite) upon request and a mandatory check out fee of $180

NON RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $80 Daily (Junior Suite) upon request and a mandatory check out fee of $155
Housekeeping service is $95 Daily(One bedroom suite) upon request and a mandatory check out fee of $205

There is a one-time compulsory fee of $16.52, plus tax that will be applied prior to check out.

Rollaway beds are available at a cost of $60 each per day

HOTEL POLICY: A credit card is required at check in for estimated incidental charges of $200 per day in addition to any room and tax charges that may apply.

CHECK IN TIME: 4:00 PM
CHECK OUT TIME: 11:00 AM

The Owner Services Team is available to help you prior to and during your stay at Fontainebleau. From booking transportation services to setting restaurant reservations, allow us to assist you. Call 305-535-3299.

Fontainebleau Miami Beach | 4441 Collins Ave | Miami Beach, FL 33140
Reservations: (800) 548 8886 | Telephone: (305) 538 2000
www.fontainebleau.com

noreply@opera.oraclehospitality.ocs.oraclecloud.com
Your Upcoming Stay at Fontainebleau Miami Beach
Feb 11, 2026 at 5:07:50 PM
info@surfprop.com

FONTAINEBLEAU
MIAMI BEACH

Brandon Pobiak,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 30605
CONFIRMATION: 592265863
ARRIVAL: 06/21/26
DEPARTURE: 06/25/26
NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $70 Daily (Junior Suite) upon request and a mandatory check out fee of $130
Housekeeping service is $80 Daily (One bedroom suite) upon request and a mandatory check out fee of $180

NON RENTAL PROGRAM PARTICIPANTS:
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Info SurfProp

From: noreply@opera.oraclehospitality.ocs.oraclecloud.com
Sent: Wednesday, January 21, 2026 1:41 PM
To: Info SurfProp
Subject: Your Upcoming Stay at Fontainebleau Miami Beach

FONTAINEBLEAU

MIAMI BEACH

Caroline Haraiech,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 30506
CONFIRMATION: 591644023
ARRIVAL: 06/23/26
DEPARTURE: 06/28/26
NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $70 Daily (Junior Suite) upon request and a mandatory check out fee of $130
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Rollaway beds are available at a cost of $60 each per day

HOTEL POLICY: A credit card is required at check in for estimated incidental charges of $250 per day in addition to any room and tax charges that may apply.

CHECK IN TIME: 4:00 PM
CHECK OUT TIME: 11:00 AM

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Info SurfProp

From: noreply@opera.oraclehospitality.ocs.oraclecloud.com
Sent: Tuesday, December 9, 2025 2:54 PM
To: Info SurfProp
Subject: Your Upcoming Stay at Fontainebleau Miami Beach

External Sender - From: Learn More
(noreply@opera.oraclehospitality.ocs.oraclecloud.com)
This message came from outside your organization.

FONTAINEBLEAU
MIAMI BEACH

Brian Giordano,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 30307
CONFIRMATION: 590685110
ARRIVAL: 06/23/26
DEPARTURE: 06/26/26
NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $70 Daily (Junior Suite) upon request and a mandatory check out fee of $130
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CHECK IN TIME: 4:00 PM
CHECK OUT TIME: 11:00 AM

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noreply@opera.oraclehospitality.ocs.oraclecloud.com
Your Upcoming Stay at Fontainebleau Miami Beach
Feb 9, 2026 at 12:11:14 PM
info@surfprop.com

FONTAINEBLEAU
MIAMI BEACH

Moize Lalani,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 21201
CONFIRMATION: 592191266
ARRIVAL: 06/27/26
DEPARTURE: 07/01/26
NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $70 Daily (Junior Suite) upon request and a mandatory check out fee of $130
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NON RENTAL PROGRAM PARTICIPANTS:
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CHECK IN TIME: 4:00 PM
CHECK OUT TIME: 11:00 AM

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Laura Avellino

From: noreply@opera.oraclehospitality.ocs.oraclecloud.com
Sent: Wednesday, February 25, 2026 2:18 PM
To: info@surfprop.com
Subject: Your Upcoming Stay at Fontainebleau Miami Beach

FONTAINEBLEAU

MIAMI BEACH

Amy Barton,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 21203
CONFIRMATION: 593322233
ARRIVAL: 07/11/26
DEPARTURE: 07/18/26
NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:
Housekeeping service is $70 Daily (Junior Suite) upon request and a mandatory check out fee of $130
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NON RENTAL PROGRAM PARTICIPANTS:
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CHECK IN TIME: 4:00 PM
CHECK OUT TIME: 11:00 AM

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Laura Avellino

From: Info SurfProp <info@surfprop.com>
Sent: Monday, March 16, 2026 2:04 PM
To: Laura Avellino
Cc: SurfProp Users
Subject: Fwd: Your Upcoming Stay at Fontainebleau Miami Beach

Begin forwarded message:

From: noreply@opera.oraclehospitality.ocs.oraclecloud.com
Date: March 8, 2026 at 2:41:29 PM EDT
To: Info SurfProp <info@surfprop.com>
Subject: Your Upcoming Stay at Fontainebleau Miami Beach

[An Image]

Russ D'Allura,

You have successfully booked your visit to Fontainebleau Miami Beach.

ROOM: 21203

CONFIRMATION: 593655458

ARRIVAL: 06/20/26

DEPARTURE: 06/27/26

NUMBER OF GUESTS: 1 / 0

RENTAL PROGRAM PARTICIPANTS:

Housekeeping service is $70 Daily (Junior Suite) upon request and a mandatory check out fee of $130

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Fontainebleau. From booking transportation services to setting restaurant reservations, allow

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Reservations: (800) 548 8886 | Telephone: (305) 538 2000

www.fontainebleau.com

EXHIBIT E

Host Cancellations Policy

Summary

Trust between guests and hosts is essential in our marketplace, so we expect hosts to fulfill every confirmed booking. If a host cancels an accepted reservation, we may charge a cancellation fee, temporarily suspend the listing, or remove Premier Host status. Read on to learn more.

What's not allowed

At Vrbo, we expect hosts to accept bookings and see them through to completion. A cancellation occurs when a host fails to fulfill a confirmed booking. Hosts cannot cancel bookings except in certain limited circumstances, which are outlined in the "Cancellation waivers (worldwide)" section below.

A host may be found responsible for a cancellation if:

- The host initiates a cancellation.
- The host double-books a listing, which leads to a cancellation.
- The host misleads a guest by swapping one property for another.
- The host attempts to go around this policy, such as by asking guests to cancel their booking.
- The host denies entry to a confirmed guest.
- The host doesn't provide the guest with all required critical stay information in violation of our Host Communication Policy, or otherwise prevents the guest from accessing the home . In this case, we will reach out to the host; if they don't respond within a reasonable amount of time and we're unable to find a resolution, we'll categorize this as a cancellation. Find more on our response time expectations in our Host Communication Policy.

If a host incorrectly reports or falsely categorizes a cancellation in an attempt to avoid cancellation fees, they may still be found responsible for the cancellation and face the same penalties. Details of cancellation fees and other consequences are below.

Cancellation enforcement (United States only)

Cancellation fees currently only apply to homes in the United States that use US dollars (USD) as currency. These fees offset the anticipated costs and negative impact of cancellations on our guests, other hosts and Vrbo.

Fee structure:

- We charge 100% of the reservation amount if it's canceled by the host at or after check-in time, or the reservation is not honored because the guest is unable to access the property and the host is unresponsive at or after check-in. For expectations on response timeframes, see our Host Communication Policy.
- We charge 50% of the reservation amount if it's canceled by the host within 48 hours prior to check-in time or where the reservation is not honored because the host is unresponsive within 48 hours of check-in. For our expectations on response timeframes, see our Host Communication Policy.
- We charge 25% of the reservation amount if it's canceled by the host more than 48 hours b days of check-in.

Help

- We charge 10% of the reservation amount if it's canceled by the host more than 30 days before check-in.

The reservation amount is the total reservation amount for all nights, including the base rate, plus any mandatory fees such as cleaning fees.

The minimum cancellation fee is $50 USD, even if the calculated amount is lower. There is no maximum fee. Cancellation fees will be charged to the host or withheld from their next payout.

Cancellation enforcement (worldwide)

Suspensions and terminations: If a host is found responsible for a cancellation, the associated listing may be suspended for seven days. During the suspension, that listing will not be able to accept reservations. Temporary suspension begins 10 days after the cancellation, unless the host requests and receives a waiver in that time (details below). Multiple host cancellations may lead us to suspend or terminate the host's listing or account, which may lead to the cancellation of upcoming bookings.

Payouts: Hosts who cancel (or are found responsible for a cancellation) will not receive the payout for that reservation. If the payout was already completed, future payouts will be reduced until the money is recouped.

Premier Host status: If a host's cancellation rate exceeds 0%, they will lose Premier Host eligibility. See the Premier Host Policy for more details.

Calendar blocks: We may impose calendar blocks if hosts cancel because they double-booked the reservation, have an extenuating circumstance, or the property was recently sold or came under new ownership. The listing's calendar will also be blocked for the days of the original canceled reservation.

Canceled future bookings because of denied entry: If the host does not submit a waiver, or fails to respond to a Customer Support investigation, we may decide to cancel all future bookings for the listing. For more information, read our Host Communication & Property Access Policy.

Lower ranking: Cancellations could negatively impact your market rank.

Cancellation waivers (worldwide)

We understand that not all cancellations are within your control. Hosts may be eligible for a waiver if they can prove that one of the following circumstances applies:

- Large scale travel disruptions that prevent or prohibit guests from completing their stay. See our Extenuating Circumstances Policy for more information on events where hosts may be allowed to cancel reservations without incurring cancellation fees or other adverse consequences.
- The host can demonstratively prove that the guest intends to or broke the listing's House Rules, including by hosting an unauthorized event. See our Community Disturbance Policy for ore information.
- Maintenance emergencies or circumstances that threaten guest health and safety.
- An error in our platform or services led to the cancellation.
- The guest did not complete their payments by the payment due date.
- Suspected or probable risk of fraud.

To avoid temporarily getting suspended (or incurring cancellation fees for US hosts), hosts must submit a waiver and have it approved within the 10 days of the cancellation.

Related

Marketplace Standards

Extenuating Circumstances Policy

Disruptive or Unauthorized Events Policy

Premier Host Policy

Property Sold Notice Policy

Host Communications Policy



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Stayz.com.au

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EXHIBIT F

Premier Host Policy

Premier Host is a free, invite-only program that recognizes owners and managers who consistently deliver great traveler experiences at the **individual listing** level. As soon as a listing meets the eligibility criteria, it's automatically added to the program.

Eligibility

Effective Date: January 1, 2026

To achieve Premier Host status, a listing must meet the following requirements. These are measured over the past 365 days each quarter.

- An average review rating of 4.6 or higher (shown to hosts in the Vrbo dashboard)
- A booking acceptance rate of 99% or higher
- A host-initiated cancellation rate of 0%
- Have 5 or more Vrbo reviews
- Have at least 5 bookings or 60 booked nights

Premier Host benefits

The benefits of being a Premier Host apply to each listing in your account that qualifies for Premier Host status. Premier Host status includes the following benefits:

- Premier Host badge
- Premier Host filter
- Automatic increase in search position
- Priority phone support

Hosts: Track your progress

The Premier Host scorecard, located on the Performance page in your dashboard, tracks your progress toward achieving Premier Host status at the listing level. You can also download a report from the scorecard to learn more about your overall performance. Use the report's filter and sort options to identify areas for improvement.

Quarterly assessments

We review Premier Host listings every quarter. This ensures that we feature listings that continually provide exceptional guest experiences. Quarterly assessments take place on February 1, May 1, August 1, and November 1.

We review performance for the past 365 days and remove listings that no longer qualify. Hosts are automatically added back into the program as soon as the listing meets the eligibility criteria agai

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