

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK-----X  
BML PROPERTIES LTD.,

Plaintiff,

- against-

CHINA CONSTRUCTION AMERICA INC., NOW  
KNOWN AS CCA CONSTRUCTION INC., CSCEC  
BAHAMAS LTD., CCA BAHAMAS LTD., and  
DOES 1-10,Defendants.  
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Index No.

**SUMMONS**Plaintiff designates New York County  
as the place of trial

Venue is based on Defendants' Agreement

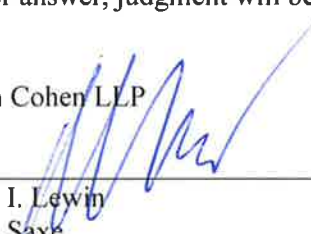
TO: The above named Defendants:

CHINA CONSTRUCTION AMERICA INC.,  
NOW KNOWN AS CCA CONSTRUCTION INC.;  
CSCEC BAHAMAS LTD.;  
CCA BAHAMAS LTD., and DOES 1-10

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York) and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in such complaint.

Dated: New York, N.Y.  
December 26, 2017

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Bahamas, Ltd., CCA Bahamas Ltd.; and	.
DOES 1 through 10,	.
:	.
Defendants.	.
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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. SHORT STATEMENT OF THE CASE.....	1
II. THE PARTIES.....	8
III. JURISDICTION AND VENUE .....	9
IV. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION REGARDING DEFENDANTS' BREACHES OF THE INVESTORS AGREEMENT AND SEPARATE FRAUDULENT CONDUCT .....	22
A. The Investors Agreement As Well As the MCC Identify the Critical Duties CCA Breached and In So Doing Caused BML Properties' Loss. ....	25
B. Despite Repeated False Assurances, CCA Failed To Timely Deliver The Convention Center — The Project's Most Important Building And Key Litmus Test. ....	38
C. Notwithstanding Its Status As A Subsidiary Of The Number One Ranked Global Contractor And Its Representations Regarding Its Vast Available Workforces, In Early 2012 CCA Surreptitiously Started Understaffing Both Laborers And Experienced CMs And Supervisors On The Project And Intentionally Misleading BML Properties About Those Facts .....	50
i. CCA Lied Repeatedly About its Total Workforce and Sabotaged Efforts to Reliably Count its Workforce in an Effort to Cover-Up its Lies .....	50
ii. CCA Lied Repeatedly About its Intent to Supply Experienced CMs and Senior Supervisors to the Project.....	53
iii. CCA Failed To Report Other Of Its Workforce Failures That Combined Made Critical Delay On The Project Inevitable But Which CCA Kept Hidden From BML Properties As Long As It Could. ....	56
iv. CCA's Undisclosed and Misrepresented Workforce Deficits Were Never Remedied by CCA and Prevented Completion of the Project On Time or at Any Time Prior to the Severe Liquidity Crunch of 2015 .....	57
D. In Late 2014 CCA Diverted The Time And Energy Of Its Top Executives To Different Projects, And Failed To Keep Up With The Required Immigration Work Permits, Revealing that CCA Did Not Intend To Complete The Project On-Time or in the Coming Months Thereafter .....	58
E. CCA Failed To Report Accurately Or At All Regarding Important Elements Of The Project.....	61

- F. At Numerous Board and Other Meetings, CCA Assured All Present That It Had On-Site and Arriving the Resources to Meet All Deadlines And Milestones Ahead Without Any Factual Basis for So Stating ..... 65
- G. Through The May 17, 2013 Memorandum Of Understanding (“MOU”), BML Properties Obtained CCA’s Commitments To Meet All Key Interim Milestone and Completion Dates And To Dramatically Increase Its Workforce, Which CCA Had No Intent To Fulfill and Which CCA Promptly Breached..... 68
- H. In the Latter Half Of 2013, CCA Continued To Make Promises It Did Not Intend To Keep, And Reported Falsely To BML Properties About The Status Of The Project..... 69
- I. At The December 2013 And January 2014 Podium Crunch Summits, CCA Committed To (And Lied About Its Ability and Intent To Achieve) New And Accelerated Work On The Podium, Misrepresented That It Had the Ability to and Would Substantially Increase Its Workforce, And Restated A Known Falsehood -- That It Would Achieve Substantial Completion Of The Entire Project By December 31, 2014..... 76
- J. CCA Did Not Abide By Its Podium Crunch Representations, And Similarly Never Fulfilled Its Podium Crunch Workforce Numbers Representations..... 80
- K. In April 2014 CCA Was Put On Notice Of Its General Lack Of Progress On Site ..... 82
- L. In An Effort To Save Its Investment, Protect Its Planned Profits, And Mitigate Any Further Harm, BML Properties Made One Final Effort In November 2014 To Compel CCA To Finish The Project ..... 90
- M. CCA Never Intended To Comply With Its Promises Found In The November 2014 Meeting Minutes And Exacerbated The Damage Resulting from Those Lies With New Ones At A Board Meeting In Early December 2014 ..... 93
- N. During The Week Of January 5, 2015 CCA Misrepresented To Mr. Izmirlian, China Eximbank, Government Officials And Others That The Project Would Be Completed On Time, While Concurrently Advising China State Construction In A Secret Letter That It Could Not Be So Completed Without Help That Never Arrived..... 98
- O. In Early 2015, CCA Committed Further Acts Of Fraud Through Its Reports, Workforce Misrepresentations, False Invoices, Misstatements About Finances, And Unfounded Requests For Payment ..... 102

P.	CCA Sabotaged The Project By Decreasing its Workforce And Causing Delay After Promising to Eradicate any Delay and Achieve Opening By March 27, 2015.....	108
Q.	On March 25, 2015, The GOB Ministry Of Works Inspector Confirmed Non-Completion And Declined To Issue Certificates Of Occupancy.....	109
R.	On March 26, 2015, One Day Before Promised (Delayed) Completion, CCA Withheld Critical Information from BML Properties About When The Project Would Be Done And Otherwise Held The Project Hostage In An Attempt To Extort Payments On Fraudulent Claims And Demands .....	109
S.	After So Obviously Missing The March 27, 2015 Deadline CCA Continued To Produce Misleading And Inaccurate Reports And Schedules, Including Revised TCO Completion Schedules Which Had No Basis In Fact.....	112
T.	CCA Ignored Its Day-to-Day Reporting Duties And Related Quality Management Plan, Resulting In A Lack Of Information To BML Properties And Substandard Work, Among Other Things .....	114
U.	CCA Mislead BML Properties About Sequencing And Key Building Completions, Leading To Profound And Unpredictable Delays .....	115
V.	CCA MALICIOUSLY INTERFERED WITH KEY CONTRACTUAL RELATIONSHIPS TO TRY TO GAIN LEVERAGE OVER BML PROPERTIES AND BAHAMAR LTD. AND REGULARLY SABOTAGED THE PROJECT TO ACCOMPLISH ITS OWN IMPROPER ENDS.....	117
A.	CCA Lied to the Bank About BML Properties' Watchdogs In Order to Get the Watchdogs Fired.....	117
B.	CCA Made False Statements To China Eximbank About RLB, The Bank's Project Monitor, After RLB Blamed CCA For Project Delays. ....	123
C.	CCA Made False Statements To China Eximbank About CCA's Own False and Inflated "Commercial Claims" Against Bahamars Ltd. ....	124
D.	CCA Encouraged Its Employees To Use Fake Materials Not Specified And Then Hide Such And Lie About It To BML Properties And Bahamars Ltd. ....	125
E.	In Bad Faith, CCA Interfered With And Delayed The Delivery And Installation Of Furniture, Fixtures, And Equipment.....	125
F.	In April 2015, CCA Admitted It Had Deliberately Slowed Construction Efforts, And An Investigation Determined That CCA Had Sabotaged Surveillance Systems.....	126

G.	CCA Sabotaged The Project Again On June 30, 2015, This Time Cutting Off Power And In So Doing Imperiling The Lives Of Everyone Still Working In And Around The Project..	127
H.	CCA Stole Documents From The Secured And Locked-Down Project Offices.....	129
VI.	CCA DID NOT FULFILL ITS DUTIES AS A CONSTRUCTION MANAGER FOR THE PROJECT AND IN TURN DID NOT FULFILL ITS REPORTING OBLIGATIONS TO BML PROPERTIES .....	131
A.	CCA Failed to Report Under the Investors Agreement on Critical Aspects of the Project.....	132
B.	CCA Did Not Report Accurately or Truthfully Regarding Its Claims of Delay and Did Not Provide the Required Proof of Such Claimed Delay .....	134
C.	CCA Failed To Report on or Analyze Claims, Its “Control” of the Bidding Process, Or Its Performance of its Procurement Obligations .....	135
D.	CCA Failed To Properly Sequence And Control The Project’s Work and Failed to Report on This Conduct and its Consequences .....	141
E.	CCA Abdicated Its Commissioning And Concomitant Reporting Duties And Thereby Contributed Further To Its Failure To Complete The Project On Time .....	144
F.	CCA Did Not Report That It Would Be Delayed In Achieving “Power On” As It Represented Continuously It Timely Would, And Delay Of “Power On” Profoundly Harmed Progress And Created Other Problems Around The Project .....	145
G.	CCA Falsely Claimed Delays From “Design Changes” And Otherwise Misused The RFI Process To Attempt To Excuse Its Own Untimeliness And Delay.....	151
VII.	CCA DID NOT ACCURATELY REPORT ON THE STATUS OF, AND DID NOT SUPPLY THE CONTRACTUALLY REQUIRED, GENERAL CONDITIONS .....	154
VIII.	CCA DID NOT ACCURATELY REPORT ON THE STATUS OF, AND DID NOT TIMELY REPAIR AS CONTRACTUALLY REQUIRED, DEFECTS AND ERRORS IN ITS WORK CAUSING SUBSTANTIAL HARM TO BML PROPERTIES.....	161

IX.	DEFENDANTS' BREACHES OF CONTRACT AND MALICIOUS AND INTENTIONAL ACTS OF DECEIT IN UTTER DISREGARD FOR THE INTERESTS OF BML PROPERTIES RESULTED IN THE SEVERE LIQUIDITY CRUNCH OF MARCH THROUGH JUNE 2015, THE BANKRUPTCY FILING OF BAHAMAR LTD., AND THE LOSS OF BML PROPERTIES' ENTIRE EQUITY STAKE IN BAHAMAR LTD. AND ITS VALUABLE INTEREST IN THE FUTURE OF THE RESORT.....	174
X.	CAUSES OF ACTION.....	182
	FIRST CAUSE OF ACTION	
	Fraud Against Defendants CCA and CCA Bahamas In Connection With the Convention Center .....	182
	SECOND CAUSE OF ACTION	
	Fraud Against Defendants CCA and CCA Bahamas In Connection With On-Site Workforce and Workforce Purportedly Scheduled to Arrive .....	190
	THIRD CAUSE OF ACTION	
	Fraud Against Defendants CCA and CCA Bahamas In Connection With Diversion of Efforts of Senior Management and Equipment to Other Projects .....	194
	FOURTH CAUSE OF ACTION	
	Fraud Against Defendants CCA and CCA Bahamas In Connection With Misrepresentations in November 2013 that CCA Had On-Site All the Construction Workers CCA Needed to Finish On Time and On Budget.....	198
	FIFTH CAUSE OF ACTION	
	Fraud Against Defendants CCA and CCA Bahamas In Connection With Misrepresentations regarding "Experienced" and "Senior" CMs and Superintendents Present On the Project and In Transit to the Project .....	200
	SIXTH CAUSE OF ACTION	
	Fraud Against Defendants CCA and CCA Bahamas In Connection with Misrepresentations in Construction Schedules and Regarding Claimed "Acceleration" Efforts to Meet CCA's Schedules.....	202
	SEVENTH CAUSE OF ACTION	
	Fraud Against Defendants CCA and CCA Bahamas In Connection With Misrepresentations Regarding Claimed "Acceleration" Efforts to Meet the December 31, 2014 Completion Deadline.....	209
	EIGHTH CAUSE OF ACTION	
	Fraud Against Defendants CCA and CCA Bahamas In Connection with Misrepresentations Regarding Defects and Failure to Disclose the Consequences of those Defects .....	216

## NINTH CAUSE OF ACTION

Fraud Against Defendants CCA and CCA Bahamas In Connection with Failures to Disclose Based on Duties to Disclose Arising Under the MCC ..... 222

## TENTH CAUSE OF ACTION

Fraud Against Defendants CCA and CCA Bahamas In Connection with the November 2014 Meeting Minutes, the November 27, 2014 follow-up meeting, the December 5, 2015 Board meeting, and the January 5-6, 2015, Meetings in Beijing ..... 228

## ELEVENTH CAUSE OF ACTION

Fraud Against Defendants CCA and CCA Bahamas For All Misrepresentations and Non-Disclosures Otherwise Alleged Herein as Breaches of the Investors Agreement ..... 244

## TWELFTH CAUSE OF ACTION

Fraud Against Defendants CCA and CCA Bahamas In Connection with Inducing BML Properties to Direct Baha Mar Ltd. to Enter into the May 2013 MOU and the November 2014 Meeting Minutes ..... 245

## THIRTEENTH CAUSE OF ACTION

Breach of Contract Against All Defendants ..... 246

## FOURTEENTH CAUSE OF ACTION

Breach of Contract Asserted by Plaintiff as an Intended Third-Party Beneficiary Against Defendants CCA and CCA Bahamas In Connection with the May 2013 MOU and the November 2014 Meeting Minutes ..... 248

## FIFTEENTH CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants ..... 252

PRAYER FOR RELIEF ..... 253



Plaintiff, by its undersigned attorneys, for its Complaint against Defendants, alleges as follows:

### **I. SHORT STATEMENT OF THE CASE**

1. This case is based on a massive fraudulent scheme devised in 2012 primarily by Defendant China Construction America, Inc. (“CCA”) to enrich itself at the expense and to the harm of Plaintiff BML Properties, Ltd. (“BML Properties”). BML Properties was the 100 percent owner of the voting shares of the development entity Baha Mar Ltd., which was developing the multi-billion dollar Baha Mar resort complex in Nassau Bahamas (the “Project”) until 2015, when CCA’s scheme set in motion three years earlier led to the collapse of the Project and the loss of BML Properties’ enormous investment while CCA and its Chinese affiliates profited.

2. Defendants’ massive fraud is one of the largest construction-based frauds in this hemisphere. The scheme was based on CCA’s efforts to falsely create the appearance that it was working toward an on-time and on-budget opening in December 2014 while knowingly and fraudulently concealing its real intent not to construct the Project on time and on budget and in the process extort more money than it earned and was due. Starting in 2012, as significant “out of the ground” construction began and the first floors above the foundations were being constructed, CCA knew that it would be unable to build the Project on time, on budget and in accordance with the plans and specs because, among other things, it did not have and would not commit to the Project the qualified workforce or sufficiently senior managers needed to meet its representations and obligations. CCA carried out its scheme by a series of knowingly and intentionally false representations, acts of extortion, material failures to disclose, fraudulent acts

of concealment, outright sabotage, and lies to the Government of the Bahamas and the Project lender. CCA also knowingly and fraudulently intended, again undisclosed to BML Properties, to use the Project as a massive training exercise for its young and inexperienced cadre of workers, which doomed the Project to failure, and without regard to its agreements and representations, but all at BML Properties' expense. CCA even lost a limited arbitration in August 2014 that exposed its understaffing of the Project and yet CCA continued to fraudulently misrepresent its existing workforce and its available resources and therefore its ability to achieve completion of the Project during that proceeding and thereafter. CCA intended BML Properties to rely on CCA's misrepresentations that were made in furtherance of this scheme, and CCA intended that BML Properties rely on its mistaken belief regarding those facts CCA intended to and did conceal or otherwise did not disclose.

3. As a result of Defendants' acts and omissions, BML Properties lost its entire \$845 million equity investment in the Project, incurred additional hundreds of millions in losses, and lost its right to all the future benefits of running a world-class multi-billion dollar resort with unparalleled amenities, including luxury hotel rooms and suites, golf, a massive pool and beach area, and the Caribbean's largest luxury casino, on property that the Government of the Bahamas had originally suggested to Sarkis Izmirlian (an experienced real estate developer and the Chairman of Baha Mar Ltd.) that Baha Mar Ltd. acquire and redevelop.

4. New York jurisdiction, venue and choice of law was agreed to by Defendants in the relevant agreement and in their assumption of the obligations under that agreement.

5. CCA's fraudulent scheme started in 2012 when CCA began slipping behind its schedule and it knew it was not "manning up" the Project. At that time, CCA began knowingly and intentionally misrepresenting its present workforce as well as its ability to increase its workforce

in the future and knew without disclosing that it would not meet even its own schedules. CCA controlled and directed the conduct of the other Defendants over a three-year-long effort to extort more and more money from Baha Mar Ltd., and commit numerous acts of fraud to compel BML Properties to not exercise available remedies until it was too late to do anything meaningful to prevent the scheme from being completed.

6. CCA's extortion manifested itself as follows: CCA did not want the Project to open before it had in hand 100% or as near to 100% as possible of its expected (even if unearned) payment for construction of the Project, regardless of what it or the other Defendants had agreed. CCA had to be in a position to force payment even on its fraudulent claims for additional costs or alleged delay given that (among other reasons):

- a. CCA knew that there is no mechanics or materialman's lien law in the Bahamas and, thus, no way for CCA to force Baha Mar Ltd. to pay after completion by foreclosing (or threatening to foreclose) on such liens;
- b. CCA knew and had not disclosed that it would be using the Project (once it started substantially "coming out of the ground" in 2012) as a vast training facility contrary to its obligations and representations to supply skilled management and labor, inflicting on Baha Mar Ltd. and BML Properties the dire consequences of trial-and-error instruction for its managers and workers, indeed managers and workers CCA intended to use elsewhere in its expanding empire in North America and around the Caribbean and South America as a key second-tier subsidiary of the world's largest publicly traded [SHA:601668] global contractor;
- c. CCA knew that upon opening, BML Properties and Baha Mar Ltd. would have in hand cash from hotel guests which after opening they could use to pursue CCA

for the myriad problems it had created and thus CCA had to force some resolution of its disputes with BML Properties and Baha Mar Ltd. before that opening, even if it required extortion to do so;

- d. CCA knew that its appointees to the Board of Baha Mar Ltd. necessarily from 2012 onwards had to cover-up the truth about the status of every key element of the Project and its work on the Project in order to hide the consequences of its conduct, namely, that the Project would be undermanned, behind schedule and would miss opening into the Winter 2014 to Summer 2015 travel season without substantial acceleration at its own expense, something CCA was not willing to do;
- e. CCA knew later, reinforcing its decision to engage in this scheme, that it had incorporated so many material errors and defects into the Project (one of the many consequences of using untrained workers on a complex mega-project), that Baha Mar Ltd. would have tens if not hundreds of millions of dollars of defect remedy and related costs that it could back-charge to CCA diminishing what CCA might reap;
- f. CCA knew that it had to use work-stoppages and work-slowdowns (in cooperation with its subcontractors, the bulk of which were also affiliates of CCA's ultimate parent) to extort commercial settlements before Substantial Completion;
- g. CCA knew later in the Project that it had caused and/or would cause well in excess of 242 days of delay, thereby exposing CCA to the contractual maximum amount of \$50 million in liquidated damages ("LDs") due Baha Mar Ltd. for such delay, and thus the only way to avoid imposition of those damages was to compel

BML Properties (through fraudulent and extortionate means) to negotiate before any back-charge for the LDs would be taken (at the earliest in January 2015);

- h. After CCA lost an important dispute in 2014 before the Project Dispute Resolution Board (“DRB”) that found CCA in breach of its agreement to, among other things, adequately man-up the Project, CCA knew it could not afford to go back before that body and suffer yet another humiliating loss, faced with evidence of its own wrongdoing. Accordingly, CCA would make whatever agreement was necessary to avoid going back to the DRB including committing in the November 2014 Meeting Minutes, (described below) to a massive influx of workers to finish the resort by March 27, 2015, secretly knowing but not disclosing to BML Properties that it could not achieve that date. CCA’s admission of that “big lie” is found in a January 20, 2015, letter to CCA’s ultimate parent company, in which CCA confirmed its prior lies -- that it had not had enough workforce on site for many months, and that it would not meet its March 27, 2015, promised (albeit late) delivery of the Project without a massive influx of workers, who never arrived.
- i. After it knew in 2012 that it could not complete the Project by December 31, 2014, CCA’s undisclosed intent was to squeeze every dime out of the loan (that it had helped “arrange” in 2010), and cast aside the interests of BML Properties, even though it had agreed to put the interests of BML Properties as an Investor before its own as a contractor.

7. Accordingly, CCA's entirely undisclosed and fraudulent intent in 2012 and thereafter included a plan to delay "opening" of the Project until it could negotiate its way out of the disputes it knew would arise and concerning which it believed it had material exposure.

8. CCA never intended to achieve the interim milestones and overall completion date(s) it represented after 2012 that it would achieve, over and over again as set forth below, and intended to hide for as long as it could its inability to achieve those milestones and its disregard for whether it could or could not achieve those milestones.

9. CCA's fraudulent and malicious conduct misled BML Properties into actions BML Properties thought were needed to move toward real progress on the Project, and misled BML Properties into inaction as well, later forcing BML Properties to attempt to mitigate its damage after it was, at that juncture, too late to seek other remedies such as stop work orders, the "replacement" of CCA (with the Project lender's consent), or other extreme remedies that would have at that point delayed opening well past December 2014 and March 2015, causing the resort to miss the entire 2014-2015 travel season and incur enormous losses. BML Properties relied on CCA to be truthful regarding its last hope to open in the 2014-2015 season, namely an agreement reached in November 2014 to accelerate CCA's work in return for an additional \$54 million, which unbeknownst to BML Properties CCA never intended to perform and knew when it signed that it could not and would not perform.

10. As the Project moved into late 2014 and early 2015, CCA as well undertook to sabotage forward progress of the work, intentionally damage and disable life-safety, security and electrical supply systems to try to compel BML Properties and Baha Mar Ltd. to accede to its demands on sham payment applications and on fraudulent "commercial claims," stage labor walk-offs when it was already critically delayed in delivering the Project, intentionally slow-down work at the

Project (a fact admitted by CCA's executive at a meeting with the then Prime Minister of The Bahamas in April 2015), and divert equipment and executive and labor effort to its newly purchased competing project just a few miles from the front door of Baha Mar. Indeed, just 11 days before Baha Mar Ltd. was forced to file for bankruptcy protection due to CCA's fraud and malicious conduct, CCA and the then-Government of the Bahamas signed an agreement (undisclosed until early 2017), based on what later press accounts deemed collusion between CCA and the Government, that ratified CCA's movement of heavy equipment and Chinese laborers from the Project and to CCA's newly acquired competing Hilton project while CCA was still under contract to finish Baha Mar.

11. Manifesting its complete disregard for the rule of law and its requirements under its contracts, CCA also bought gifts, the reimbursement for which it hid from BML Properties and Baha Mar Ltd. in CCA's expenses as part of its "payment applications" sent to the Bank on the Project. CCA even resorted to stealing documents from the Project to accomplish its illicit goals and cover-up its previous reprehensible conduct.

12. Due to CCA's conduct, BML Properties has incurred in excess of \$2.25 billion in damages, and BML Properties sues herein for Defendants' breaches of contract and frauds that caused that loss.

13. While CCA itself also had an investment in the Project, namely certain preferred shares in Baha Mar Ltd., those shares were not purchased with cash but via an accounting book entry that "credited" CCA with certain to-be-performed "General Conditions" obligations most of which CCA never performed. Consequently, CCA's preferred share holdings could not have been actually harmed by CCA's scheme, and in any event it was CCA's larger intent and in its financial interest to establish this Project as a beachhead in the Caribbean, use its workers and

more senior staff to obtain and then construct other projects throughout the Americas and Caribbean and to be paid hundreds of millions of dollars for its purported work as the contractor and construction manager of the Project.

14. After China Construction America caused BML Properties' profound loss, the Project is now operated by Chow Tai Fook Enterprises (CTFE), a Chinese company acquiring (via a secretive and suspect process) the Project from the Chinese lender, China Eximbank. China Eximbank requested that all files regarding this "merger" transaction be sealed from public access by the Court with jurisdiction over the transaction. As a part of this transaction, BML Properties is informed and believes that CCA received an enormous \$145 million bailout characterized as a "remobilization fee" from China Eximbank even though the bulk of CCA's equipment, materials, and workers remained in the Bahamas after 2015 for use on other projects. On December 7, 2017, CTFE publicly issued a press release in The Bahamas (apparently still in redline draft), which stated in a section intended to be deleted from the release that "all construction [by CCA] at Baha Mar has been performed above and beyond satisfactory levels," revealing that CTFE is obviously uncomfortable with CCA's level of performance. Suffice it to say, the only "winner" regarding the development of Baha Mar has been CCA, and CCA inflicted horrendous losses on BML Properties in its fraudulent scheme to become that winner.

## II. THE PARTIES

15. Plaintiff BML Properties Ltd. ("BML Properties") is a company organized under the laws of the Commonwealth of the Bahamas ("The Bahamas"). BML Properties was at all relevant times the direct parent company of Baha Mar Ltd. and held 100 percent of the common voting



shares of Baha Mar Ltd. Sarkis Izmirlian, Thomas Dunlap, and others mentioned herein were officers of both BML Properties and Baha Mar Ltd. and as further alleged herein, when CCA's and CCA Bahamas' officers, directors and employees were communicating with Messrs. Izmirlian, Dunlap and others they knew, expected and contemplated they were communicating with officers of both entities. Mr. Izmirlian has been in the real estate development business for 22 years, with notable and successful developments located around the globe.

16. Defendant China Construction America, Inc. ("CCA"), now known as CCA Construction, Inc., is a company incorporated in Delaware with its principal place of business in New York County.

17. Defendant CSCEC Bahamas, Ltd. ("CSCEC Bahamas") is a company organized under the laws of The Bahamas.

18. Defendant CCA Bahamas Ltd. ("CCA Bahamas") is a company organized under the laws of The Bahamas.

### **III. JURISDICTION AND VENUE**

19. This Court has subject matter jurisdiction over this dispute pursuant to the Amended and Restated Investors Agreement entered into by Plaintiff and CSCEC Bahamas on or about January 13, 2011 (the "Investors Agreement"). Section 11.3 of the Investors Agreement provides that but for those provisions of the Investors Agreement "which are governed by the laws of the Commonwealth of The Bahamas pursuant to the Memorandum and Articles of Association of [Baha Mar Ltd.]," none of which are relevant to the claims set forth herein, the Investors Agreement and all claims brought in relation to it "shall be governed by and construed

in accordance with” the laws of New York, “without regard” to the New York “choice of law rules” that might require another jurisdiction’s laws to apply. Section 11.3 also provides that the parties and their successors and assigns submit to the “exclusive jurisdiction” of the federal courts in New York for all of their contract and tort claims (all claims “arising out of or related to” the agreement), or if federal jurisdiction is lacking (which is the case here, where foreign residents are on both sides of the dispute) they agree to submit to the jurisdiction of the state courts in New York, and waive any right to sue elsewhere. In section 11.3 as well, the parties agree to accept “service of process” of Summons and Complaint in the manner set forth in the Investors Agreement and the parties (and their successors and assigns) waive “all defenses” based on lack of jurisdiction or inconvenient forum if the action is commenced in New York.

20. This Court has jurisdiction over CSCEC Bahamas because CSCEC Bahamas has consented to jurisdiction pursuant to Section 11.3 of the Investors Agreement.

21. This Court has jurisdiction over CCA, jurisdiction over BML Properties’ disputes with CCA, and CCA is liable for breaches of the Investors Agreement alleged herein, for the following reasons, among others:

- a. CCA has consented to jurisdiction in this Court by registering to do business in and designating a local agent for service of process in New York.
- b. This Court has jurisdiction over CCA because its business affiliations and otherwise its contacts with New York are so continuous and systematic as to render it at home in the state. CCA’s principal place of business and key operations are in New York County. CCA has been the prime contractor on massive building projects in New York funded by private entities and by the state government and municipalities in New York (CCA’s contracts for such, as BML

Properties is informed and alleges, include stipulations to jurisdiction and venue in New York). CCA touts as its “project highlights” seven projects, six of which are in New York (*e.g.*, New York City Hall, the Alexander Hamilton Bridge, the Staten Island Expressway, the Astoria Energy Power Plant, the 11 Times Square Office Building, the Brookfield Place Winter Garden Glass Pavilion, Brooklyn Navy Yard — Buildings 92 & 77, and the Morgan Stanley Office Building in Harrison, New York). Indeed, in the Annual Report for FY 2015 of CSCECL, that entity touted its award from a China-based association for CCA’s work on the “New York Hamilton Bridge” as the first foreign construction project ever to be awarded that association’s award. CCA’s acquisition of Plaza Construction (through a stock purchase by and then merger into CCA in December 2013 through March 2014), and Plaza’s status now as a division (or wholly owned subsidiary) of CCA, places the largest portion of CCA’s operations in the heart of Manhattan. Plaza is headquartered at 5 Bryant Park, New York, New York 10018. It claims that it has 700 employees with 2016 project revenues of \$1.3 billion, or roughly 80% of CCA’s reported total revenue (as of May 2016 as reported in the Engineering News Record) of \$1.6 billion. CCA has offices in Albany, New York, a mere three blocks from the state capital, and is located there, Plaintiff is informed and believes, in order to carry out CCA’s government relations and lobbying conduct that is essential to securing municipal and state contracts on public works projects in the State of New York. CCA wholly owns and controls an “investment” subsidiary known as “Strategic Capital,” which invests in New York real estate and as recently as May 2017 announced that it is

investing in a 170-unit residential tower (including 280,000 square feet of residential and retail development) planned for a lot spanning 110 Charlton St. and 537 Greenwich St, near the Manhattan entrance to the Holland Tunnel. CCA anticipated enforcement against it in this action, or any similar action, of the choice of law and forum selection clause in the Investors Agreement (section 11.3). CSCEC Bahamas had no actual employees or officers and no operations for assembling or providing the information it was required to provide, to allow CSCEC Bahamas to undertake performance of its obligations under the Investors Agreement. Therefore, CCA knew that it would have to supply all or substantially all the informational, documentary and personnel resources to allow CSCEC Bahamas to perform and, conversely, to prevent CSCEC Bahamas from being in default under that agreement.

- c. CCA expected a direct benefit flowing to it from the formation and performance of the Investors Agreement and certainly expected, therefore, that it too might be haled into Court in New York. CCA directly benefited from the Investors Agreement because the formation of the Investors Agreement was a precondition to CCA Bahamas' performance under the Main Construction Contract ("MCC" – described more fully below) and therefore its concomitant right to payment of (approximately) \$1.9 billion under the MCC and payment to it of its claimed "commissions" for facilitating the arrangements that lead to the financing provided under the Credit Facility Agreement (defined below).
- d. BML Properties is informed and believes and based thereupon alleges that CCA wholly owns CSCEC Bahamas, and through its executives (Ning Yuan, President,

and Meisheng “Mason” Gao, CFO) controlled and directed CSCEC Bahamas in its only function, namely, the holding of Preferred Shares for CCA’s benefit issued to CSCEC Bahamas under the Investors Agreement (and apparently later transferred to CCA). As well, the as-yet unnamed CSCEC Bahamas made commitments (through CCA) to BML Properties as a part of the negotiations of the Investors Agreement (and the related other financing documents) that appertained prior to CSCEC Bahamas even being created under the laws of The Bahamas. While CCA was negotiating the Investors Agreement it did not declare until the last draft that a new entity not yet identified in the prior drafts, namely CSCEC Bahamas Ltd., would be the CCA party to the Investors Agreement, yet CCA knew and expected that CSCEC Bahamas would not be capable of performing any of its obligations under the Investors Agreement and thus CCA (and to a certain extent CCA Bahamas) would have to necessarily perform those obligations.

- e. CCA is an assignee and successor of the obligations of CSCEC Bahamas, which is a signatory to the Investors Agreement, as evidenced by the acts and conduct described further in this Complaint. By way of example only, (i) CCA’s President and Vice President were placed on the Board of Baha Mar Ltd. pursuant to CSCEC Bahamas’s Board membership rights under the Investors Agreement, (ii) while CCA was negotiating the Investors Agreement it did not declare until the last draft that a new entity not yet identified in the prior drafts, CSCEC Bahamas Ltd., would be the CCA party to the Investors Agreement, yet (iii) CCA knew and expected that CSCEC Bahamas would not be capable of performing

any of its obligations under the Investors Agreement and thus CCA (and to a certain extent CCA Bahamas) would have to necessarily perform those obligations and in so doing succeed to and be assigned and assume the duties of CSCEC Bahamas under the Investors Agreement.

- f. CCA's officers assumed the reporting responsibilities under the Investors Agreement that CSCEC Bahamas was ostensibly obligated to perform, and in so doing harmed BML Properties by "reporting" misrepresentations and not disclosing critical information when under a duty to disclose such information, as alleged further herein. In particular, Ning Yuan was at all relevant times the President of CCA and the person who as a member of the Board of Baha Mar Ltd. and otherwise as a regular contact at CCA and on behalf of CCA Bahamas regularly communicated with BML Properties and Baha Mar Ltd. Ning Yuan is also the person to whom all of the executives of CCA Bahamas looked for any substantive decision making by CCA Bahamas and CCA. Further, both Taizhong ("Tiger") Wu and Dawei ("David") Wang, who were both at all relevant times executives of both CCA and CCA Bahamas, regularly communicated with Baha Mar Ltd. and BML Properties.
- g. CCA controlled and dominated the entity (CCA Bahamas) responsible for performing duties as Construction Manager and Work Package Contractor under the MCC as further alleged herein and, therefore, responsible for generating the income for CCA as its direct subsidiary.
- h. CCA in its correspondence regarding the Project referred to itself as the Construction Manager and Work Package Contractor on numerous occasions,

evidencing its own belief in its complete control over its subsidiary, CCA Bahamas, the party that signed the MCC at CCA's direction.

- i. CCA on its website refers to itself (not CSCEC Bahamas) as an "equity partner" on the Baha Mar Project, and as well refers to itself (rather than CCA Bahamas) as the General Contractor on that same Project, revealing that CCA all along intended to be and was the true party under the Investors Agreement as well as the MCC, and revealing that CCA considered that CCA, rather than some other entity, had built the Baha Mar Project. Accordingly, under section 11.6 of the Investors Agreement, entitled "Binding Effect," because CCA at some point was transferred the shares originally issued under the Investors Agreement to CSCEC Bahamas and became the "Equity Partner" it claimed in its website that it was, CCA as well is "conclusively ... deemed to have agreed to be bound by" the Investors Agreement under that same section 11.6.
- j. CCA controlled and dominated the negotiations for the Investors Agreement, and then appointed a mere shell holding company -- CSCEC Bahamas -- to perform obligations thereunder (and hold preferred shares in Baha Mar Ltd.) knowing that CSCEC Bahamas could not perform its obligations under the Investors Agreement and that only CCA could so perform. In so doing, CSCEC Bahamas was acting as a mere agent for CCA as principal.
- k. CCA claimed in emails and otherwise that it was the payee on monies advanced by China Eximbank under the Credit Facility Agreement (described below) for the work of CCA Bahamas, however, CCA was not designated as such a payee in any of the key financing documents executed in 2010 and 2011.

1. Moreover, there is evidence that a \$54 million advance paid in November 2014 to CCA Bahamas was actually diverted by CCA to its own coffers to fund the purchase of the neighboring Hilton Hotel in Nassau Bahamas. The chronology is telling: (i) CCA's intended purchase of the Hilton was announced in October 2014; (ii) CCA Bahamas forced Baha Mar Ltd. to pay an advance of \$54 million for disputed change orders (believed to be worth significantly less and to be used, CCA said, to pay for subcontractors and labor that allegedly had not been paid) by way of a special payment request submitted in November 2014 to China Eximbank, which payment CCA fraudulently extorted because CCA knew that the amounts being paid to it were unearned and undeserved and which completion date was fraudulent since CCA knew the date was unachievable because it did not have the resources to complete by that date; (iii) CCA closed on the Hilton acquisition for the reported sum of \$60 million; (iv) also proving that CCA never intended to pay the \$54 million to "subcontractors and labor that had not been paid" and thus committing yet another act of fraud, in March 2015 CCA's Chief Executive admitted that CCA had not used the \$54 million advance to pay back-owed subcontractors and labor but rather - he said - CCA had paid it out for "overtime." However, that in turn was a false (and concealing) statement because CCA did not employ "overtime" on the Project after the advance was paid and missed the March 27, 2015, promised (but late) delivery of the Project (that such "overtime" would have helped achieve).



- m. CCA acted at all relevant times as an agent and co-conspirator of CSCEC Bahamas and had direct involvement in the commission of the tortious conduct alleged in this Complaint, as alleged further herein.

22. This Court has jurisdiction over CCA Bahamas and BML Properties' disputes with CCA Bahamas and CCA Bahamas is liable for breaches of the Investors Agreement alleged herein, for the following reasons, among others:

- a. CCA Bahamas is wholly owned, dominated, and controlled by CCA as described further herein, and at all times material hereto its executives and key employees all shared dual positions at both CCA and CCA Bahamas, and thus should not be treated as separate entities for purposes of establishing jurisdiction but as a singular entity which, as described above, has extensive, continuous and systematic contacts with New York and has consented to jurisdiction in this State.
- b. CCA Bahamas anticipated enforcement against it in this dispute of the choice of law and forum selection clause in the Investors Agreement (section 11.3) due to its closeness to and expected and received direct benefit from the formation and performance of the Investors Agreement and the formation of the MCC, both of which contain stipulations for jurisdiction and venue in New York. The Investors Agreement created a lucrative financing structure by which CCA Bahamas has claimed that it earned nearly \$2 billion as a contractor and Construction Manager on the Project.
- c. CCA Bahamas incorporated into its subcontracts for the Project a New York choice of law and New York jurisdictional stipulation substantially identical to the provision in the MCC and in the Investors Agreement; indeed, CCA Bahamas

was sued by one of its subcontractors (Controlled Demolition, Inc.) in the United States District Court for the Southern District of New York on or about September 17, 2015 (Case No. 15 civ 7405 (JGK)), and CCA Bahamas attached a copy of its subcontract at issue which contains such a provision (A201, section 4.7.2).

- d. CCA Bahamas is an assignee and successor of the obligations of CSCEC Bahamas, which is a signatory to the Investors Agreement, by reason of its performance (and obligation to perform) certain of the reporting obligations of CSCEC Bahamas that CSCEC Bahamas could not perform (as described above) and which were not otherwise separately performed by CCA (which entity in turn looked to CCA Bahamas to perform such reporting obligations in certain respects, as alleged further herein).
- e. CCA Bahamas directly benefited from the Investors Agreement (e.g., its formation was a precondition to performance under the MCC) and should be estopped from contending that it is not subject to the choice-of-law provision in the Investors Agreement.
- f. CCA claimed in emails and otherwise that it was the payee on monies advanced by China Eximbank under the Credit Facility Agreement (described below) for the work of CCA Bahamas, however, CCA was not designated as such a payee in any of the key financing documents executed in 2010 and 2011. Thus, CCA Bahamas's finances were entirely dominated and controlled by CCA since CCA Bahamas relied entirely on CCA to pay the continuing obligations CCA Bahamas

was assuming as the Work Package Contractor and “Construction Manager” of the Project.

- g. Moreover, there is evidence that a \$54 million advance paid in November 2014 to CCA Bahamas was actually diverted by CCA to its own coffers to fund the purchase of the neighboring Hilton Hotel in Nassau Bahamas. The chronology is telling: (i) CCA’s intended purchase of the Hilton was announced in October 2014; (ii) CCA Bahamas forced Baha Mar Ltd. to pay an advance of \$54 million for disputed change orders (believed to be worth significantly less and to be used, CCA said, to pay for subcontractors and labor that allegedly had not been paid) by way of a special payment request submitted in November 2014 to China Eximbank, which payment CCA fraudulently extorted because CCA knew that the amounts being paid to it were unearned and undeserved and which completion date was fraudulent since CCA knew the date was unachievable because it did not have the resources to complete by that date; (iii) CCA closed on the Hilton acquisition for the reported sum of \$60 million; (iv) also proving that CCA never intended to pay the \$54 million to “subcontractors and labor that had not been paid” and thus committing yet another act of fraud, in March 2015 CCA’s Chief Executive admitted that CCA had not used the \$54 million advance to pay back-owed subcontractors and labor but rather - he said - CCA had paid it out for “overtime.” However, that in turn was a false (and concealing) statement because CCA did not employ “overtime” on the Project after the advance was paid and missed the March 27, 2015, promised (but late) delivery of the Project (that such “overtime” would have helped achieve).

- h. CCA Bahamas is also wholly owned by CCA, which has consented to jurisdiction as described above, and CCA Bahamas has assumed multiple contractual obligations (e.g., New York forum- and venue-selection clauses in the MCC) that reflect CCA Bahamas' express expectation of being hailed into court in New York should any dispute with it arise.
- i. CCA Bahamas acted at all relevant times as an agent and co-conspirator of CSCEC Bahamas and CCA and had direct involvement in the commission of the tortious conduct alleged in this Complaint.

23. This Court as well has specific jurisdiction over CCA and CCA Bahamas for the conduct and acts relevant to this action. By way of example only, in an unusual change from the norm for large construction contracts, CCA claimed in emails and otherwise that it received money directly into its New York State bank accounts with Citibank — as the facility agent in New York State for China Eximbank — in response to approved Utilisation Requests submitted by Baha Mar Ltd. which in turn included payment applications submitted by CCA Bahamas for its work on the Baha Mar Project. CCA thus directly benefited from a direct deposit into its account of monies owed, ostensibly, to CCA Bahamas, and CCA Bahamas then either received payment of monies from CCA to pay CCA Bahamas's creditors, or CCA Bahamas's creditors were paid directly by CCA. At the very least, CCA's and CCA Bahamas's misconduct, as alleged in this Complaint, led to an improper increase of these entities' funds held in New York State. Moreover, CCA claimed in February 2015 that it had “run out of money” to pay laborers and subcontractors, when in fact CCA Bahamas was, ostensibly, the employer of such laborers and of the subcontractors.

24. No defendant has a majority of its ownership held by a foreign state, nor is any defendant an agent or instrumentality of a foreign state. CCA Bahamas is wholly owned by CCA, and CCA Bahamas, CCA and CSCEC Bahamas are wholly owned by private entities and their subsidiaries.

25. At all relevant times, CCA and CCA Bahamas during construction and otherwise were indistinguishable from one another, and were a singular business entity under the complete domination and control of CCA notwithstanding their maintenance of ostensibly separate corporate existences for all the reasons set forth herein. By way of example only, (i) executives and employees of both interchangeably sent and received important correspondence and emails to and from their CCA addresses and accounts, (ii) the executives of CCA Bahamas demonstrated through years of conduct that they would not make any important or even modestly important decisions without consulting CCA and its President Ning Yuan, (iii) both entities regularly tout each other's corporate accomplishments as proof of their own accomplishments, (iv) at many important meetings regarding the Project, Ning Yuan would attend even though he was not an officer of CCA Bahamas (the ostensible "party" to the MCC) and Tiger Wu and David Wang would appear, who were both executives of CCA and CCA Bahamas. This control and domination by CCA of CCA Bahamas caused a contemporaneous wrong or injustice to BML Properties. CCA used its own executives and officers and those of its subsidiary CCA Bahamas to intentionally misrepresent and/or not disclose critical facts to BML Properties' great harm, as alleged in detail herein. CCA Bahamas required the input and guidance of CCA on every decision, in the field on even a day-to-day basis, before it would commit to any course of action, thus delaying key decisions that normally would have been made by mid-level supervisors and less senior contractor executives and in turn delaying the Project. CCA required

CCA Bahamas to limit far more than on a normal large-scale project the decision-making authority of the few senior Construction Managers (“CMs”) and supervisors that CCA hired who had formerly worked on the City Center project and thus drove those senior CMs off the Project, causing a significant experience gap to exist which, as described below, caused delays to the Project and extended the Project well past its contractual completion date. CCA Bahamas in the first half of 2015 complained about its own cash-flow to such an extent that, as BML Properties is informed and believes and based thereupon alleges, it appears CCA was diverting such payments from those contractors and subcontractors and laborers to which and whom CCA Bahamas owed money to its own benefit and use, including in the development of other projects (like the Hilton Nassau described below). CCA purchased the Hilton Nassau in late October 2014 and immediately instructed CCA Bahamas to divert manpower, executive time and efforts, and even materials needed for continuing construction at the Project (like construction fencing and large site equipment) to the Hilton project, which CCA Bahamas did, causing even greater delays at the Project in the absence of these key elements needed for any on-time and on-budget Project.

26. Accordingly, hereinafter when there is a reference in the Complaint to CCA in connection with some act or omission to act, that reference shall include and be deemed to include (i) CCA Bahamas, unless there is a separate reference to CCA Bahamas, and (ii) CSCEC Bahamas, both of which were entirely controlled and dominated by CCA as alleged herein.

27. Venue is proper in this Court because (i) CCA has its principal place of business in New York County and CCA has registered to do business in, and consented to jurisdiction in, New York County, and (ii) pursuant to Section 11.3 of the Investors Agreement, the courts of the State of New York or the United States District Court located in New York County are the

proper venues for suits, actions, or proceedings relating to the Investors Agreement or matters between the parties arising under or in connection with the Investors Agreement, any of which are to be governed by, and construed in accordance with, the laws of the State of New York.

**IV. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION REGARDING  
DEFENDANTS' BREACHES OF THE INVESTORS AGREEMENT AND SEPARATE  
FRAUDULENT CONDUCT**

28. Defendants and BML Properties memorialized their contractual obligations to one another in several agreements, notably including the Amended and Restated Investors Agreement, dated January 13, 2011 (the "Investors Agreement"), pursuant to which BML Properties made its \$830 million equity investment in the Project; Baha Mar Ltd. and CCA Bahamas memorialized their agreements as well in the Main Construction Contract ("MCC").

29. The scope of "Work" under the MCC was vast, and thus imposed on CCA a broad duty to both keep informed of the status of the Project and keep BML Properties and Baha Mar Ltd. fully informed of that status. That scope included the following:

- a. Baha Mar Casino & Hotel: A 100,000 square foot Las Vegas-style casino and premiere hotel with 1,068 rooms and suites, designed to appeal to the international casino clientele.
- b. The Grand Hyatt Hotel and Convention Center at Baha Mar: A premiere hotel with 733 rooms and suites designed to cater to business guests. The connected Convention Center contains 84,000 square feet of facility space capable of accommodating large-scale performances, events and conferences, including three

ballrooms of 33,000, 18,000, and 15,000 square feet, and 18,000 square feet of additional meeting and board rooms (the “Convention Center”).

- c. The Rosewood at Baha Mar: A luxury hotel with 232 rooms and suites designed to appeal to upscale guests, featuring its own ballroom, meeting facilities, private spa and salon.
- d. The SLS Lux at Baha Mar: A “lifestyle” hotel with 299 rooms and suites designed to appeal to younger guests.
- e. Associated infrastructure, including site buildings, roads, bridges, paths and surface parking, and all hard and soft landscaping.

30. Among other things, the Investors Agreement required “The China State Board Member [to] report to the Board from time to time in order to advise the Company [Baha Mar Ltd.] of China State’s findings and any concerns it may have with respect to the proper and efficient prosecution of the design and construction work expenditures and any other recommendations China State may have to benefit the investment of China State and any other investors [meaning BML Properties] of the Company.” (Investors Agreement, § 4.7).

31. “China State” is defined in the Investors Agreement as CSCEC Bahamas and all its “successors and permitted assigns.” As alleged herein, CCA and CCA Bahamas were assigned and succeeded to the obligations of CSCEC Bahamas under the Investors Agreement, and otherwise CCA so controlled and dominated CSCEC Bahamas and CCA Bahamas, and acted as the principal to those entities as its agent, that CCA is “China State” under the Investors Agreement.

32. The Investors Agreement further provided that “China State understands that, although the China State Board Member and the China State Representative shall be appointed by China



State, such individuals shall be appointed to assist the Company in furtherance of the Project and shall at all times act in the best interest of the Company . . . .” (*Id.*).

33. Despite these express obligations and expectations, however, CCA acting as China State made material misrepresentations regarding and otherwise failed to advise the Board of its findings and concerns with respect to the proper and efficient prosecution of the construction, and ignored its obligation to act at all times in the best interest of Baha Mar Ltd. Instead China State’s acts, omissions – and outright fraud – in violation of the Investors Agreement and separately in violation of New York law led inexorably to the catastrophic loss of BML Properties’ entire equity investment.

34. China State failed to advise the Board of its vital concerns regarding the construction and instead deliberately misled the Board of Baha Mar Ltd. and BML Properties regarding staffing and scheduling, milestone completion, and the critically important completion dates for the Convention Center and the Project as a whole, among other things. As set forth in further detail below, CCA breached its obligations under the Investors Agreement by making false and inaccurate representations and by failing to disclose material facts it was obligated to disclose. By making misrepresentations to Baha Mar Ltd. and its agents and employees, and by withholding and failing to disclose material information that CCA alone knew or otherwise had a duty to disclose, CCA would have had in its contemplation that such would be communicated and/or relied on by BML Properties for the reasons set forth below. CCA’s acts and omissions in violation of the Investors Agreement entitle BML Properties to recover its damages (along with any other remedies available) from CCA.

35. Moreover, CCA in its staffing of this Project contradicted every promise and representation made about its ability to “man-up” the Project. CCA understaffing the Project

was unimaginable to BML Properties. CCA is wholly owned by CSCEC Holding Company, Inc., and CSCEC Holding Company, Inc. is in turn owned directly, or indirectly (through one or more intermediate subsidiaries), by China State Construction Engineering Co., Ltd. (“China State Construction”). China State Construction is a public company listed on the Shanghai Stock Exchange. Ranked 24th among Fortune Global 500 companies in 2017 and No. 1 on Engineering News-Record’s (ENR) Global Contractors list in 2016, China State Construction is one of the largest investment and construction groups in the world. China State Construction operates in more than 50 countries with 241,000 employees and annual revenues of around \$140 billion.

**A. The Investors Agreement As Well As the MCC Identify the Critical Duties CCA Breached and In So Doing Caused BML Properties’ Loss.**

36. The agreement that was to protect BML Properties’ \$830 million equity investment was the Investors Agreement (as amended and restated). Under that same agreement, CSCEC Bahamas invested \$150 million in 150,000 Series A Preferred Stock issued by Baha Mar Ltd.

37. Beyond BML Properties’ initial \$830 million equity contribution to the financing structure for this Project, on March 31, 2010, Baha Mar Ltd. entered into an Agreement (“the Credit Facility Agreement” or “CFA”) with the Export-Import Bank of China (“China Eximbank”), under which China Eximbank was to provide a credit facility of up to \$2.45 billion to finance the build-out and opening of the Project. Although not a party to this litigation, China Eximbank was (as further described below) manipulated and lied to by Defendants and in so doing CCA and CCA Bahamas caused harm to BML Properties as described below.

38. Under section 4.2 of the Investors Agreement, the Board of Baha Mar Ltd. was to have five members – one appointed by CCA, and four by BML Properties one of whom would be the Chairman.

39. CSCEC Bahamas assigned its duties under the Investors Agreement to CCA, and CCA succeeded to and assumed those duties as described herein, as CCA expected while negotiating the Investors Agreement. CCA was the driving and dominating force directing and engaging in (i) every aspect of the “reporting” CSCEC Bahamas was obligated to undertake under the Investors Agreement and (ii) the work of CCA Bahamas and governing CCA Bahamas even to the point of negotiating on its behalf regarding the delivery dates of Temporary Certificates of Occupancy (TCOs) and similar discrete and material obligations of CCA Bahamas under the MCC.

40. Section 4.10(a)(v) of the Investors Agreement states that “[e]ach of the following events or circumstances shall be an Event of Default by **China State** [defined to mean CSCEC Bahamas “together with its successors and permitted assigns] hereunder: . . . There is fraud on the part of China State or its Affiliates.” Affiliates is a defined term in the Investors Agreement, and means (in accord with United States securities laws) “any Person [an individual or entity] which, directly or indirectly through one (1) or more intermediaries, Controls [meaning the “possession, directly or indirectly, or the power to direct or cause the direction of the management”] or is Controlled by or is under common Control with another Person.” CSCEC Bahamas, CCA and CCA Bahamas share common control and oversight/management as more completely described herein, and thus the fraudulent acts of those affiliates affecting the performance and/or breaching the duties of CSCEC Bahamas and/or its assignees and successors under the Investors Agreement, or engaging in conduct separate from or collateral to those duties but constituting fraud nonetheless, trigger the remedies of section 4.10(b), which includes in favor of BML Properties “[a]ny . . . remedies available to [BML Properties] and/or [Baha Mar Ltd.] under law or equity.”

41. Section 4.10(a)(vi) of the Investors Agreement states that “[e]ach of the following events or circumstances shall be an Event of Default by China State hereunder: . . . China State fails to comply with any other express covenant or obligation under this Agreement which results in a material adverse effect on [BML Properties] or [Baha Mar Ltd.]” Consequently, because CCA breached obligations to report findings or concerns to Baha Mar Ltd. or to the Board of Baha Mar Ltd., or both, and breached other obligations as more fully described below, and its failure to do so had a direct “material adverse effect on [BML Properties],...” BML Properties is entitled to sue for damages (under section 4.10(b)) resulting from such events of default as defined in section 4.10(a)(vi).

42. Section 4.1 of the Investors Agreement states that BML Properties shall “be responsible for day to day management of” Baha Mar Ltd. subject to direction of the Board. Several of BML Properties’ officers were involved daily in such management, including Sarkis Izmirlian and Thomas Dunlap, among others, to whom numerous Baha Mar Ltd. employees and consultants reported regularly, and with whom officers of CCA regularly met, in a manner and under circumstances that CCA expected and contemplated such reporting and information to be provided to BML Properties in the normal course. In its management role under section 4.1, BML Properties faithfully reported to the Board of Baha Mar Ltd. and otherwise fulfilled its duties to the Board under the Investors Agreement.

43. Under section 4.7 of the Investors Agreement, entitled “China State Oversight”, CSCEC Bahamas and its successors and assigns assume several material obligations:

- a. Section 4.7 states that “[t]he China State Board Member shall report to the Board from time to time in order to advise [Baha Mar Ltd.] of China State’s findings and any concerns it may have with respect to the proper and efficient prosecution of

the design and construction work expenditures, and any other recommendations China State may have to benefit the investment of China State and any other investors [including BML Properties] of the Company.” In light of this provision and the confluence of it with other provisions in the Investors Agreement and MCC, among others:

- i. China State was duty bound to provide accurate findings/facts and recommendations/opinions that were in turn based on accurate fact. Reporting accurately and truthfully was required, as well as full disclosure to Baha Mar Ltd. and BML Properties as an investor in and day-to-day manager of Baha Mar Ltd.
- ii. No omissions of material or contradictory facts would be allowed under such a duty – silence in any relevant context in the face of a duty to speak and accurately report would constitute a breach of this duty.
- iii. The requirements to report from “[t]ime to time” could be at any time, but it would necessarily require reporting to the “Board” or the Board’s agents including those assigned by BML Properties (as the day-to-day manager of Baha Mar Ltd.) to be the “eyes and ears” of those charged with the management of Baha Mar Ltd., namely the Board and BML Properties.
- iv. “Findings” can only mean accurate facts, supported by some analysis, not mere supposition or guess work.
- v. CCA bears the concomitant duty to report regarding “any concerns it may have with respect to the proper and efficient prosecution of the design and construction work expenditures,” which duty encompasses a duty to report

on every aspect of the Project, especially the critical issues of procurement, workforce numbers, and productivity, and consequent progress of the work against a contract-compliant schedule, in exchange for Baha Mar Ltd.'s performance under the MCC.

- vi. Simply put, and by way of example only, knowing that there are not enough workers on the site to meet milestone and completion dates qualify as both "findings" and "concerns" requiring reporting and certainly requiring recommendations in light of the dire consequences of such.
- vii. These terms and other in section 4.7 also require CCA to inquire into the relevant facts and not engage in deliberate ignorance.
- b. Also in section 4.7 is a broad duty to report – "The China State Board Member and the China State Representatives [to be seconded to the Project] shall be given reasonable access to the books, records, communications and other documents of the Project and the Company's staff for the purpose of monitoring the Project Works schedule, Project Works budget and similar matters in the interest of the Company."
- i. The Project Works schedule, budget and "similar matters" are at the very heart of any construction project, especially one where all the parties agreed to a 44-month schedule to substantially complete and then achieve opening to paying customers at all four planned hotels, the Convention Center, and the whole of the core and non-core works. Along with those duties of CCA came the concurrent duty to "monitor" these tasks and performance of them overall and, of course, in good faith report to BML

Properties about them and provide truthful and accurate reports regarding the monitoring of such tasks.

- ii. The China State board member and five additional representatives were to be “seconded” to the Project. Such were to be given positions with the Project with duties to be mutually determined between Baha Mar Ltd. and CSCEC Bahamas, including one person from/designated by China State to be elected a vice president of Baha Mar Ltd. BML Properties is informed and believes that CSCEC Bahamas did not then have any employees it could “second” to the Project. CCA did not identify all five of the personnel to be “seconded”; however, CCA did identify Yuling Liu as seconded to the accounting department of Baha Mar Ltd. CCA and CCA Bahamas did attach to the Project (by reason of their executive rank and scope of responsibilities) Tiger Wu (an executive at both CCA and CCA Bahamas), David Wang (an executive at both CCA and CCA Bahamas), and Daniel Liu (an executive at both CCA and CCA Bahamas). Consequently, through these persons CCA and CCA Bahamas purported to fulfill the responsibility (as assignees and successors of CSCEC Bahamas as CCA expected) under the Investors Agreement to provide persons devoted to the betterment of the Project and attached to the Project itself, to concurrently report accurately on all aspects of the Project (as set forth below), but to be employed by CCA and/or CCA Bahamas (as the case may be).

- iii. At all times material hereto, CCA and its “representatives” were given reasonable access to the records of Project, as section 4.7 requires. Moreover, CCA sought from Baha Mar Ltd. and BML Properties information beyond what was provided to the “China State” board member and accessible to Ms. Liu, and Baha Mar Ltd. responded and provided to CCA’s employee(s) those financial documents CCA sought. Indeed, BML Properties is informed and believes and based thereupon alleges that CCA also obtained financial information regarding Baha Mar Ltd. and BML Properties from China Eximbank throughout the time period relevant to this Complaint.
- c. Section 4.7 sets forth additional duties as well: “China State understands that, although the China State Board Member and the China State Representatives shall be appointed by China State, such individuals shall be appointed to assist [Baha Mar Ltd.] in furtherance of the Project and shall at all times act in the best interests of [Baha Mar Ltd.] (and shall have no authority to bind [Baha Mar Ltd.] or any of its Affiliates).” BML Properties was contractually appointed as the party to manage the day-to-day operations of Baha Mar Ltd., and, accordingly, this duty like others directly owed to Baha Mar Ltd. are likewise owed to BML Properties.
44. Consequently, based on (i) the reporting required of CCA and CCA Bahamas as successors and assigns of CSCEC Bahamas under the Investors Agreement (for the performance of which CCA fully expected to be responsible), and otherwise as the parties liable on that contract, (ii) the reporting required of CCA Bahamas under the MCC (and as assumed by CCA



as well), including its and their dual role as both General Contractor of all Work Package Contracts awarded to CCA Bahamas as Construction Manager over the whole of the Project, CCA and CCA Bahamas (among many other things) were required to inquire and be entirely informed of and be responsible to accurately report to BML Properties its findings, concerns, and recommendations regarding schedules, budgets, procurement, manpower, expenditures, design coordination, and similar aspects of this enormous Project, and to do so truthfully and accurately in order for BML Properties to know with precision the status of the work and the contractors' expectations regarding the forward progress of the work, deadline compliance, and other detailed aspects of the Project.

45. At all times relevant hereto, and based on the extensive and continuous interactions described below, when CCA and CCA Bahamas made representations to officers or employees of Baha Mar Ltd. or BML Properties, CCA and CCA Bahamas knew and expected and had within their contemplation that such would be passed on to the Board and relied on by the members of the Board and by the officers of Baha Mar Ltd. and BML Properties; as well, when CCA and CCA Bahamas did not disclose material information that should have been communicated to or for the benefit of Baha Mar Ltd. or BML Properties, CCA and CCA Bahamas knew and expected that the lack of such information would induce the Board, Baha Mar Ltd. and BML Properties to take some action or forbear from taking some action and thus be misled in the absence of complete information.

46. Given the lack of accurate reporting by CCA and CCA Bahamas to BML Properties and/or the Baha Mar Ltd. Board or the agents and employees of either (as described below), BML Properties was forced over time (as further alleged herein) to direct Baha Mar Ltd. to retain more additional staff, and redirect their work from normal "owner's representative" field and

office work to, essentially, investigative (and in many ways forensic investigative) work to try to understand the real status of the Project, as complicated and vast as it was. Such was no substitute for accurate and complete reporting by CCA as the party in charge of constructing the Work in the first instance and in possession of the vastly greater amount of knowledge and information concerning the Project and, more particularly, its efforts to move the Project toward completion.

47. As well, the separately executed MCC, entered into between (as assigned) Baha Mar Ltd. and CCA Bahamas based on revisions to the standard form AIA A131 and A201 contracts, imposed substantial duties on CCA to, *inter alia*, report accurately on the status of the Project and supply sufficient workforce to complete on time and on budget as “Construction Manager” for a fee (totaling nearly \$100 million) and to provide contractor services as a “Work Package Contractor” for and on the Project as defined therein (the “Work”). Attached and made a part of the MCC were the General Conditions as well as hundreds of pages of Contract Documents, Specifications, and Amendments, totaling some 1163 pages of contract terms and conditions (all of which were initialed by the parties in December 2012), plus subsequent amendments. Given the size and scope of the Project, it was of critical importance that CCA, as the Construction Manager for the Project and as the Work Package Contractor, not only provide sufficient workforce and management resources to progress the work (subject to its control of its means and methods) but also report truthfully on the status of the workforce, workforce deficits, lack of skilled management resources, and other matters that might affect the progress of the work generally or otherwise imperil the investment of BML Properties.

48. Many of CCA’s key reporting failures here, failures to report accurately or at all regarding the true state of its scheduling, fulfillment of deadlines, setting and achievement of

milestones, the amount, required experience and quality of its workforce, and status of its procurement, among others, arise from a duty to report on such under the Investors Agreement, and/or a duty to do so under the MCC, and/or a duty to do so separately under New York law in light of other, previous misstatements or material failures to disclose and/or superior knowledge possessed by CCA, all as alleged more particularly herein.

49. The Investors and MCC agreements each compelled CCA to make transparent to Baha Mar Ltd. and BML Properties the Project status and hoped-for forward progress of such (or reasons for the lack thereof) . By way of example only, under the MCC, A201, section 3.10, CCA must provide an initial and a monthly-revised Construction Schedule, meeting all the usual requirements of “critical path” schedules. Similarly, under the Investors Agreement CCA was required to report on anything that might be for the benefit of Baha Mar Ltd and any “findings and any concerns [CCA] may have with respect to the proper and efficient prosecution of the design and construction work expenditures, and any other recommendations China State may have to benefit the investment of China State and any other investors [including BML Properties] of the Company.”

50. Also as part of the MCC, CCA was contractually required as Construction Manager to “proceed expeditiously with adequate forces” – as well, “should it reasonably appear that Substantial Completion shall not be achieved as a consequence of the Construction Manager’s failure to perform the Construction Manager shall, in good faith, as permitted by law and at its own expense, accelerate its efforts, including through increased manpower, added shifts, overtime or extra work days, including weekend work.” MCC, A201 § 8.2.3. MCC, A201 sections 8.3.1 and 8.3.2 require CCA to demonstrate an impact to the critical path in order to be entitled to any extension of the Contract Time. The “Critical Path” is the longest unbroken chain

of sequential activities or dependent tasks such that delays along the path affect the completion date of the project leading to deadline violations. In other words, a task in the Critical Path cannot be started until the task just before it has been concluded to satisfaction. The way a Critical Path works, a delay of two days in any activity delays the completion of the project by 48 hours, unless the duration of a task necessarily preceding or succeeding it (not including concurrent work that can proceed notwithstanding) has been cut short by the same amount of time. When there was expected delay of the critical path arising from any cause, CCA was required to give notice of such (and recommend remedies) to BML under the MCC and to report such delay and the consequences thereof to BML Properties under section 4.7 of the Investors Agreement.

51. Under the MCC, the duties of CCA as “Construction Manager” included, but were not limited to, the following: (i) expediting development of the drawings and specifications (review is limited to thoroughness, clarity and constructability) and reporting any scope gaps or other issues with the drawings, (ii) coordinating the phased issuance of drawings and reporting any difficulties in that regard, (iii) efficiently constructing the works (adopting a proper sequence for the work and overseeing compliance with that sequence) or reporting on the consequences of a lack of efficiency and remedies for such, (iv) ensuring sufficient manpower (including dealing with immigration issues beyond Government of The Bahamas [“GOB”] issuance of work permits) and overseeing that manpower to productively work and meet an on-time delivery and reporting accurately on all aspects of that manpower and workforce, (v) overseeing timely and efficient procurement of materials for the work and reporting on that procurement, (vi) preparing accurate cost estimates, target project schedule, the tender event schedule, and a final, accurate schedule with updates as required, (vii) appointing a sufficiently staffed team of persons with

“extensive and acceptable internationally project management experience” similar to this Project and reporting to BML Properties when and if such persons, once and if assigned to the Project, depart, (ix) reporting on and consulting with Baha Mar Ltd. on all manner of subjects, and in particular advising on “construction feasibility,” time-saving measures, and cost estimating for alternative designs, (x) defining the precise scope for the “Work Package Subcontracts” and governing the pre-qualification and bidding process for such packages and accurately reporting on those qualifications and bids, (xi) compiling and preparing, as needed, an “As-Built” set of plans and specs, (xii) managing and administering the Prolog document system, (xiii) establishing and maintaining the local contractor participation program and reporting on its success or failure, (xiv) providing written reports and scheduling meetings, (xv) keeping and requiring subcontractors to keep “accounts of all time and material costs for the Work performed, and exercise such controls as may be necessary for proper financial management,” (xvi) submitting and overseeing the submission of accurate pay applications, (xvii) securing performance and payment bonds from the subcontractors or reporting on (and obtaining consent for) the absence of such bonds, (xviii) complying with all reasonable requirements of the lender, (xix) enforcing “strict discipline and good order” among its and its subcontractors’ workers and reporting on deviations from that, (xx) protecting materials from damage and reporting on any damage that might require increased costs, cause delay, or both, (xxi) collecting and furnishing Baha Mar Ltd. with all product and sub warranties, and (xxii) reviewing for compliance with the Contract Documents all shop drawings, product data, samples and submittals and accurately reporting on the status of such. Many critical duties owed by CCA are set forth in the MCC at Attachment 1 to the A131, “Key Deliverables” and concerning which CCA had a concurrent duty to report under the Investors Agreement.

52. The MCC also contains a significant list of other duties owed by CCA, and CCA acknowledged certain other critical facts in the MCC, including the following: that the Drawings and Specifications “may not be finished at the time of the Control Estimate” (MCC, A131, section 2.2); that CCA was to seek out conflicts in the Contract Documents and notify Baha Mar Ltd. of such (MCC, A201, section 1.2.1); regarding work permits, CCA was required to familiarize itself and comply with all local law, organize the work permit process, prepare all documents needed for that process, and recognize that delays can occur in that process and therefore structure the process to allow for issuance of permits in a timely manner (MCC, A201, section 3.7.5); CCA as CM was required to consult with Baha Mar Ltd. on “actions designed to minimize the adverse effects of labor or material shortages” (MCC, A131, section 2.1).

53. The MCC had been negotiated by CCA to accommodate a “design as you go” schedule inclusive of several “design/build” work packages, given that design releases were also negotiated into the MCC well into the future.

54. Pursuant to the MCC, on February 14, 2011, Baha Mar Ltd. issued a Notice to Proceed to CCA Bahamas, effective May 1, 2011, with a contractual construction completion schedule of 44 months. The February 14, 2011 “Notice to Proceed” letter established the “Commencement Date” of the work, for purposes of the schedule, as May 1, 2011. (MCC, A201, § 8.1.2.) That schedule assumed that CCA had six months from that “Commencement Date” to start performance on the Superstructure Frame Work Package (“SFWP”), namely November 1, 2011. (A131, § 2.1.5.2.) CCA started performance on the SFWP earlier than November 1, 2011, namely no later than September 19, 2011, 42 days earlier than scheduled. Thus, the 44 months allowed to achieve substantial completion expired under the MCC on November 20, 2014.

55. There was certainly much to be gained, or lost, depending on the accuracy of the reporting by CCA under the Investors Agreement on the key elements of the Project and, thus, the ability of BML Properties to predict and protect against risks to its equity investment. For example, under certain agreements with hotel management companies (Hyatt, Rosewood, and SLS), such management companies were to pay “key money” totaling \$59 million to be used to fund, during the end of construction, the beginning of operations of the resort and related expenses. Such “key money” was to be paid on dates preceding and on the “Formal Opening” of the project. But for CCA’s failure to deliver the completed Project open for business on or before December 31, 2014, the \$59 million in “key money” would have been paid.

56. Progress on the Project toward completion and opening, and accurate reporting on such to BML Properties, were duties imposed on CCA as Construction Manager, as Work package Contractor, and separately as a successor and assignee to CSCEC Bahamas under the Investors Agreement. To BML Properties’ great and lasting damage, CCA did not progress the Project to completion, and separately did not accurately and truthfully report that such failure was inevitable, notwithstanding the continuous knowingly false and misleading reassurances and representations by CCA that it had the present resources to and would in fact complete the Project to open for guests by December 31, 2014.

**B. Despite Repeated False Assurances, CCA Failed To Timely Deliver The Convention Center — The Project’s Most Important Building And Key Litmus Test.**

57. Pursuant to the Target Project Schedule it prepared, CCA promised that the Convention Center portion of the Project (including three ballrooms of 33,000, 18,000, and 15,000 square feet respectively) would be the first building substantially completed. Because the Convention Center would be used for, among other things, employee training in the run-up to the opening of the resort, the Convention Center was the Project’s most important building, and its timely

completion provided a Litmus Test for CCA's ability to meet its contractual schedule and quality obligations. CCA failed this critical litmus test by missing every key milestone toward completion of the Convention Center, despite repeated assurances that it would complete the Convention Center on time.

58. Defendants' misrepresentations regarding the Convention Center proved to be the tip of the iceberg that ultimately sank Plaintiff's entire equity investment. Defendants' failure to adequately staff, failure to report regarding the same and repeated failures to disclose the fact that it would neither meet its contractual deadlines nor honor its promises inevitably resulted in foreseeable harm, including the fact that the lack of a Convention Center left BML with nowhere to train resort staff.

59. On September 28, 2012, BML Properties management attended a Baha Mar Ltd. Board meeting at the Project. All five directors also attended (including CCA's director, Ning Yuan), as did Tiger Wu and Thomas Dunlap. At the meeting, Mr. Dunlap raised several concerns regarding the sufficiency of CCA's workforce on the Convention Center. In response, Mr. Wu falsely represented to BML Properties management and the Board that CCA had on site the resources (workers, senior staff, materials) such that the Convention Center would be completed by March of 2014, and that CCA would meet its milestones regarding several of the other buildings. In actuality, (i) Mr. Wu had no information in his possession on which he could reasonably or subjectively rely for stating the Convention Center would be completed by that date, (ii) Mr. Wu knew but did not disclose that CCA was at that time understaffing the entire Project and would continue to do so even as to the critically needed and first-to-be-delivered Convention Center, and (iii) Mr. Wu knew but did not disclose that CCA had virtually no internal controls or information processing systems, or even experienced staff (CMs, supervisors,



and the like), that could be used to gauge proper and timely procurement, workforce assignment, follow-on trades coordination, design coordination, or the like, or even to predict or project workforce arrival in the Bahamas or proper immigration processing for workforce arrival in The Bahamas. In the absence of full and proper disclosure at the meeting and otherwise, BML Properties and the Baha Mar Ltd. Board had no complete information from CCA (the CM and Work Package Contractor for the Project) on which to accurately gauge the expected Convention Center completion date other than the false assurances stated by Mr. Wu. The Convention Center was not fully ready for use even by July 2015.

60. To resolve the crisis created by CCA, and to resolve other disputes and mitigate its harm from a lack of forward progress on the Project as a whole (described further herein), on May 17, 2013, Baha Mar Ltd. and CCA entered into a Memorandum of Understanding (“MOU”), witnessed by the Bahamian Ambassador for the People’s Republic of China. In the MOU, CCA represented that it would provide Baha Mar Ltd. with access on or before March 31, 2014 to, at a minimum, the key ballrooms and meeting rooms of the Convention Center. The MOU required (at ¶ 1) CCA to expedite “labor mobilization” (with set milestones for increased manpower over a series of months) in exchange for BML agreeing to award the Convention Center MEPF (mechanical, electrical, plumbing and fire protection) package to CCA. Specifically, paragraph 15 of the MOU sets forth CCA’s “Guarantee to achieve the Substantial Completion Date per the Contract by December 31st 2014” and includes a “Target schedule [] attached for reference and summarized as: Convention Center: Target Date 03/31, 2014, Access for operational staff 3/31, 2014.” CCA knew these representations were false at the time they were made. CCA had no factual basis for making these representations – it lacked the information systems, senior CMs and supervisors, controls, accurate and properly loaded schedules, and otherwise the data that it

(as one of the world's largest contractors) should have possessed. As well, CCA knew it did not then have and would not in the future have sufficient experienced workers to complete the Convention Center as promised.

61. Within a short period after the MOU was signed, CCA breached it by, among other things, failing to provide the promised manpower to the Project.

62. CCA repeatedly thereafter reassured BML that it would meet the March 31, 2014 delivery date, including on October 26, 2013 and December 19, 2013. During an October 26, 2013, site walk, Tiger Wu and Mark Vice of CCA falsely stated to Baha Mar Ltd. agents and employees that the Convention Center would be completed on time for a charity event on March 29, 2014, lacking the same facts described above and knowing on that date as well that CCA did not have on site the workforce it claimed was present, the workforce required even by its own otherwise inaccurate schedules, and more importantly the workforce necessary to meet its key milestone representations like the Convention Center.

63. At the December 2013 Baha Mar Ltd. Board meeting, knowing such was false, CCA again represented to BML Properties and the Board that "Ballrooms A, B & C [would be] Ready for Owner's Access" on March 31, 2014.

64. CCA's false assurances continued into 2014. On January 17, 2014, during a presentation to Baha Mar Ltd. and BML Properties executives by CCA's Tiger Wu and others, CCA again falsely reconfirmed the March 31, 2014 completion date, knowing that it did not have the resources (*e.g.*, workforce, procured materials, experienced senior staff, completed planning to achieve the commissioning for and obtain a Temporary Certificate of Occupancy) necessary to so complete.

65. CCA maintained its false claims regarding the delivery date for the Convention Center for as long as possible, never admitting that it would breach its repeated and explicit guarantees regarding the March 31, 2014 deadline until February 11, 2014, a mere six weeks before delivery was due.

66. After CCA failed to meet that March deadline, Baha Mar Ltd, at BML Properties' request, demanded in May 2014 that the Dispute Resolution Board ("DRB") convene in accord with the MCC to address the Convention Center delays and, among other things, establish that CCA had breached the MCC and not adequately staffed the Convention Center or the entire Project more generally.

67. In bad faith and acting maliciously to attempt to hurt Baha Mar Ltd. and BML Properties for seeking relief from the DRB, on May 16, 2014, five hours after Baha Mar Ltd. filed its claim with the DRB regarding the Convention Center, CCA walked off the very work it had insisted on performing at the Convention Center. In addition to exacerbating the delay, CCA's walk off violated DRB procedures and materially breached the MCC. (See MCC, A201 § 4.3.3, performance to continue while claim is pending before the DRB, subject only to the payment provisions of Article 9 and the termination provisions of Article 14).

68. Prior to the commencement of the DRB proceedings in July 2014, BML Properties received an opportunity to record CCA's actual on-site workforce, not relying on manual building-by-building counts or CCA's inflated estimates, when the local fire department conducted an all-site fire drill. On June 18, 2014, during that full-site evacuation drill, BML Properties for the first time was able to conduct a complete, simultaneous count of all CCA and subcontractor workers on-site. CCA's on-site staff totaled 2,402 personnel, of whom 330 were identified as management or support staff, leaving a manual workforce of only 2,072 workers,

26.7% below CCA's own projected/schedule required workforce of 2,827 for June. Notably, the CCA manpower report for the week ending June 20, 2014 claimed 3,036 workers on site, or 31.76% above the number observed by Baha Mar Properties during the evacuation drill. Simply put, the fire drill proved that CCA failed to hire and maintain the necessary amount of manpower, then lied to falsely inflate the manpower numbers in its reports to BML Properties.

69. The DRB convened in July 2014 and considered evidence that CCA had breached its obligations to deliver the Convention Center, primarily by failing to adequately staff the project.

70. After reviewing the detailed written submissions by the parties and hearing two days of testimony (on July 16-17, 2014), the DRB ruled in August 2014 in favor of BML, squarely confirming that CCA had breached its contractual obligations to timely deliver the Convention Center, primarily through its failure to adequately staff the work at the Convention Center and the Project more generally.

71. The DRB's findings were detailed, comprehensive and starkly critical of CCA's numerous breaches. The DRB noted that CCA (acting as Construction Manager and Work Package Contractor) represented repeatedly that it would and could deliver the Convention Center to BML on or before March 31, 2014 and that CCA knew while making those representations that BML required and counted on full access by that date, *inter alia*, to provide a space for the training of staff, and in order to be able to show the Convention Center to pre-sale group representatives, who customarily book meeting space a year in advance.

72. The DRB also found that the MCC established certain completion guarantees for the entire Project. During the DRB proceeding, Baha Mar Ltd.'s and BML Properties' President Thomas Dunlap testified that BML relied on receiving 100% access to the key ballrooms and meeting rooms of the Baha Mar Convention Center on or before March 31, 2014 (as per the

MOU); that CCA did not deliver the Convention Center — or any part of it — on that date (and had still not delivered any part of the Convention Center as of the July 2014 DRB proceeding); that under typical industry practice, Convention Center space is normally booked 12-18 months in advance; and that, as of the date of the DRB proceeding, Baha Mar Ltd. had been unable to book or confirm any conventions, all resulting in pecuniary losses and other harm.

73. Baha Mar Ltd. presented evidence to the DRB that CCA's monthly schedules and other representations (*e.g.*, CCA's January 17, 2014 statements to Baha Mar Ltd., the false representations regarding completion of the Convention Center as identified above) repeatedly represented that CCA would complete the entire Convention Center by March 31, 2014. Mr. Dunlap noted that even when in February of 2014 CCA stated that the completion date for the entire Convention Center would not be met notwithstanding CCA's repeated representations that it would, CCA nevertheless continued to represent that it would complete key areas by March 31, 2014 (in accord with Version 3.2 of CCA's schedule identifying March 31, 2014, as the delivery date of "Ballrooms Ready for Training"), so as to at least allow Baha Mar Ltd.'s training process to begin. Of course, Mr. Dunlap testified at the DRB hearing that CCA did not come close to finishing any space within the Convention Center by March 31, 2014.

74. The DRB considered substantial evidence identifying the cause of the Convention Center delays. For example, Baha Mar Ltd. Project Controls Director, Terry Pickerill, and Owner's Representative, Pat Murray, testified that CCA entirely failed to meet its own projected staffing levels, having fallen short by 2,115 workers by March 31, 2014 resulting in a cumulative deficit of 18,029 worker months as compared to CCA's own to schedule 2.3. Mr. Pickerill noted that the manual building-to-building counts of CCA's workers tended to be approximately 50% below those "counts" provided by CCA. This testimony confirmed that CCA substantially and

deliberately misrepresented project staffing levels in written and oral reports to BML Properties and Baha Mar Ltd. and its Board.

75. China Eximbank's Project Monitor (assigned to advise the Bank regarding status and risks as the project proceeded), Rider Levett Bucknall ("RLB"), provided concurrent third-party confirmation that in its view CCA had failed to supply sufficient labor to the Project.

76. Regarding the Convention Center specifically, Mr. Pickerill testified that, in late 2013, CCA sometimes had only a handful of workers per day deployed at the Convention Center. During the week prior to the DRB Proceeding (beginning on or about July 12, 2014), however, CCA redeployed workers from other areas of the Project into the Convention Center, a "surge" that increased the Convention Center manpower to approximately 200 workers.

77. For his part, Mr. Wu of CCA testified before the DRB that, by employing approximately 237 workers — "surge-level" staffing seven days per week, ten hours per day — CCA could complete work at the Convention Center as necessary to obtain a Temporary Certificate of Occupancy by approximately January 15, 2015, some seven and one-half months after the March 31, 2014 deadline. Baha Mar Ltd. requested, in accord with the mandates of sections 3.4.1 and 8.2.3 of the MCC, that the DRB order CCA to maintain its "surge" level workforce until the Convention Center was finally issued a TCO.

78. In addition to the effectively undisputed evidence that CCA had failed to supply enough workers to the Convention Center and then lied about it repeatedly, Baha Mar Ltd. offered evidence that many of even the limited number of workers who were assigned were inexperienced or under-qualified. Mr. Pickerill testified that CCA deployed too many general laborers and too few skilled tradesmen or supervisors, and that there was "no" real effort by CCA as CM to report accurately (or at all) about the progress of the Convention Center.

Similarly, Baha Mar Ltd. presented evidence that CCA failed to employ enough supervisory staff and schedulers; that CCA's construction management team has been subject to high turnover exacerbating delays; and that CCA failed to hit even a single scheduled milestone for the Convention Center (all in violation, *inter alia*, of the MCC requirement that CCA provide sufficient labor, including skilled persons with "international project management experience," to the Project. See, *e.g.*, MCC / A201 §§ 3.4.1, 8.2.3; A131 § 1.5).

79. Evidence put before the DRB also demonstrated that CCA's reporting on the Convention Center's progress was also inadequate, and in many ways intentionally false and misleading. For example, BML presented evidence to the DRB showing that CCA commonly issued contractually-required reports one month (or more) late, such that they would have been unusable (in violation, *inter alia*, of AIA A201 §§ 3.10 *et seq.*) even if they had not been riddled with false assurances of expected achievement of milestones. For example, CCA's Target Project Schedule (promising delivery of the Convention Center on March 31, 2014) was initialed by both CCA and Baha Mar Ltd. and enforced by the DRB as a schedule.

80. During its presentation at the DRB proceeding, Defendants attempted to shift blame for their failure to meet the Convention Center schedule by claiming that the delays resulted in part from purported shortcomings in certain design information they had been supplied. Baha Mar Ltd. presented evidence, however, that CCA's relevant "Bid Report" admitted, without ambiguity or reservation, that "[t]here is no [such] outstanding design work to be completed." In any event, design information that CCA claimed was "overdue" or late had, in fact, been delivered ahead of or on schedule under the May 2013 MOU.

81. The DRB's August 13, 2014 ruling specifically identified inadequate manpower as the cause of CCA's failure to timely complete the Project. After considering the evidence, the DRB

issued its detailed ruling on or about August 13, 2014. Among other findings, the DRB's Order provided that:

- a. "The actual Construction Schedules issued by CCA were often tardy and have not consistently and accurately reflected the state of construction for the Convention Center; nor did these Construction Schedules comply with all of the requirements of the AIA-201 General Conditions, §§ 3.10.1 – 3.10.5. . . . Accordingly, CCA has been proceeding in breach of the Contract with respect to the timing and content of the Construction Schedules." (8/13/14 DRB Ruling at p. 21, 28).
- b. "Manpower[.] BML's evidence regarding the levels of labor on the Project was essentially unchallenged by CCA. . . . The AIA-201 General Conditions, § 8.2.3 provide as follows: 'The Construction Manager shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time as adjusted by Change Orders and Construction Change Directives.'" (8/13/14 DRB Ruling at p. 21).
- c. "[I]t is evident to the DRB that the levels of labor and manpower have not even achieved the levels projected by CCA; nor have these levels been adequate to achieve the interim completion dates for the Convention Center as reflected in the Construction Schedule. The clearest expression of this are the facts that during the week prior to the DRB proceeding, from on or about July 12, until approximately July 17, 2014, CCA moved workers from other areas of the Project into the Convention Center area, thereby increasing the Convention Center manpower by nearly 50% to approximately 200 . . . Also, the Project Monitor for



the Bank, RLB, agreed that there were insufficient labor resources supplied to the project by CCA.” (8/13/14 DRB Ruling at p. 21 – emphasis added).

82. Based upon these findings, the DRB held that “the weight of the evidence shows that CCA has proceeded in breach of the Contract by failing to proceed expeditiously with adequate forces sufficient to comply with the Contract.” The DRB accordingly ordered CCA, *inter alia*, “to continue to maintain at least that level of labor and resources on the Convention Center, in good faith, as permitted by law, until further order of the DRB, at CCA’s own expense, sufficient to maintain maximum progress on the Convention Center, while not adversely impacting the Substantial Completion date for the Project as a whole” and to “provide to BML . . . an accurate, complete and realistic Construction Schedule that strictly meets all requirements of the Contract.” In bad faith and contrary to its own “surge” designed to create the appearance of adequate staffing at the Convention Center, CCA pulled workers from the Convention Center and otherwise ignored the DRB’s Order.

83. Despite the DRB’s ruling and the “surge” in Convention Center staffing (that the DRB correctly identified as a shell game), in the wake of the DRB, CCA continued to understaff the Project as a whole and the Convention Center in particular. In fact, in the several months following the DRB decision CCA reduced the staff at the Convention Center to well below the levels that CCA itself had asserted during the DRB proceeding were necessary to complete the Convention Center, indeed below the levels even its “schedules” had stated were needed.

84. CCA’s failure to comply with the DRB’s ruling, or to otherwise complete the Convention Center, contributed to the loss suffered by BML Properties.

85. Because Baha Mar Ltd. required the Convention Center for multiple purposes pre-opening, CCA’s failure to timely complete the Convention Center (or to complete it at all prior

to effectively forcing the liquidation of Baha Mar Ltd.) contributed ineluctably to the severe liquidity crunch experienced by BML in 2015 and hence the damages at issue in this action. For example, as a result of CCA's failure to timely complete the Convention Center, and rejection of the DRB's findings and Order:

- a. Baha Mar Ltd. could not use the Convention Center, as contemplated by the Contract Documents, CCA's own schedules and the MOU, to train its staff and the staff of the Hotel Operators;
- b. Baha Mar Ltd. could not commence sales of group meeting space, normally the key driver of sales of rooms, food, beverage, and gaming revenue for a newly constructed resort;
- c. Baha Mar Ltd. lost the opportunity to use the Convention Center as a test space to gauge CCA's planning for and execution of the timing and process required to meet the Bahamian Government's Ministry of Works (such as commissioning) inspection requirements that were a prerequisite to the issuance of TCOs and thus the right to occupy and use spaces throughout the Project (a major contributor to the delays plaguing the Project in early 2015);
- d. Baha Mar Ltd. was required to divert its own consultants from other areas of the Project, and to retain additional construction professionals to make up for CCA's construction management shortfalls at the Convention Center; and
- e. CCA's diversion of its own already inadequate workforce from other structures to the Convention Center resulted in delays to the other structures.

86. In sum, Defendants' failures and misrepresentations in connection with the Convention Center constitute a representative subset of Defendants' acts, omissions and misrepresentations

project-wide: among other things, failing to adequately staff the Project in violation of its obligations under the MCC and subsequent promises, compounded by misrepresentations regarding the shortfalls calculated to cover up CCA's wrongdoing.

**C. Notwithstanding Its Status As A Subsidiary Of The Number One Ranked Global Contractor And Its Representations Regarding Its Vast Available Workforces, In Early 2012 CCA Surreptitiously Started Understaffing Both Laborers And Experienced CMs And Supervisors On The Project And Intentionally Misleading BML Properties About Those Facts**

- (i) CCA Lied Repeatedly About its Total Workforce and Sabotaged Efforts to Reliably Count its Workforce in an Effort to Cover-Up its Lies

87. In 2012, as significant "out of the ground" construction began CCA knew that it did not then have and would not in the future have sufficient manpower to fully staff the Project, nor did it have access to the other resources necessary, to achieve the December 31, 2014 Project completion date, and instead decided, as a first step, to do the following: First, CCA would not supply the labor it knew it should but had decided not to supply and instead would simply supply less and "move workers around" from task to task without actually and sufficiently increasing the total labor (which hampers finishing any one task, as BML Properties witnessed over time). Second, CCA did not consider the 44 month commencement to completion date critical for its own work, but rather important only for Baha Mar Ltd., since on numerous occasions (as more fully described below) CCA intentionally misrepresented when it would achieve certain outcomes, while simultaneously proclaiming that it was a highly-skilled international behemoth in construction with massive resources and a bottomless labor pool found among devoted (and in many instances affiliated) subcontractors.

88. While on-site work was underway on the Superstructure Frame Work Package (SFWP), CCA as CM was to maintain a workforce count system reliant on a set of turnstiles with hand

imprint identification technology located at a gate that lead from CCA's staging and man-camp area (and parking for local contractors) to the construction site itself. The CCA workforce on site for this phase of the Project was minimal compared to, among other phases, the MEP and fit-out work scheduled for 2013 and 2014 when there would be thousands of workers on site (if CCA had acted as it represented it would).

89. Baha Mar Ltd. insisted that CCA implement the turnstile counting approach; CCA was reluctant to implement any method that would render a precise count and allowed the system to be circumvented and fall into disrepair. In August 2012, during a meeting with the DRB to facilitate resolution of disputes, CCA agreed to install the required hand imprint readers and turnstiles. However, and contrary to CCA's promises, only limited numbers of turnstiles were implemented which required a handprint to enter / exit the Project site.

90. The turnstiles CCA installed were not maintained by CCA and lasted until they "broke down," thus allowing CCA to continue avoiding precise manpower counts. Given CCA's later acts of sabotage, among other things, BML Properties is informed and believes and based thereupon alleges that CCA sabotaged these turnstiles as well in an effort to hide its intentionally deficient workforce from BML Properties.

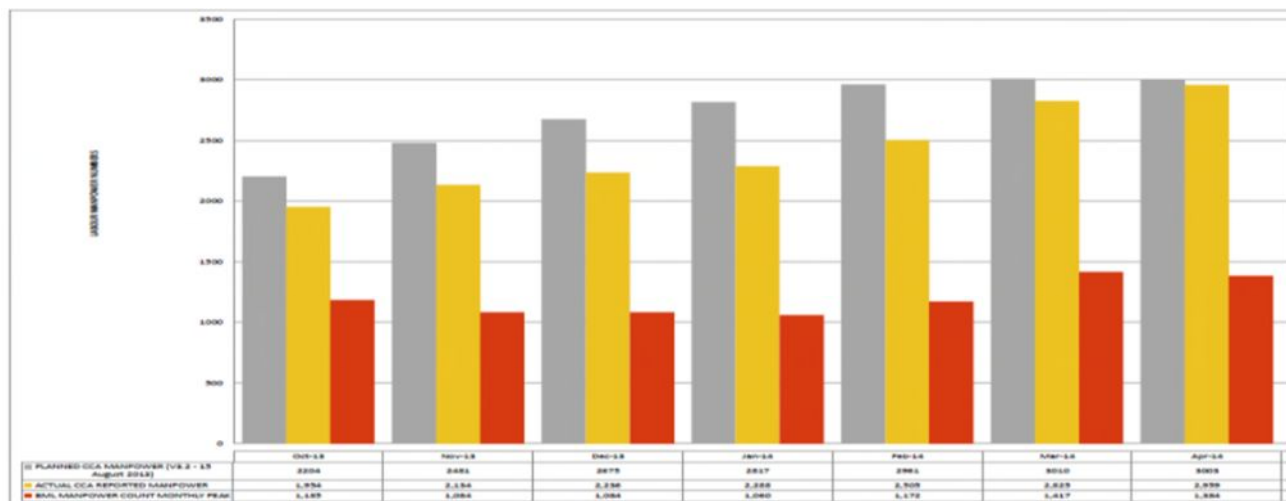
91. As a result, no daily labor reports (recognized as an industry-wide standard report) were ever issued by CCA linked to this system. On a project of this scale, it is atypical to not have precise daily counts in order to gauge the actual workforce against the scheduled workforce.

92. CCA was paid under the General Conditions Work Package ("GCWP") to install and maintain this system. BML Properties directed Baha Mar Ltd. to attempt to mitigate this lack of accurate reporting by CCA, but when it tried (in 2012 and thereafter) to obtain direct manpower count information from CCA's subcontractors, the subcontractor (under direction from CCA)

stated that all such information must go through or come from CCA. Indeed, on occasions when Baha Mar Ltd. conducted a manual building-by-building manpower count using its own resources, CCA threatened to walk-off the job, and otherwise engaged in conduct contrary to its duties as CM in an effort to hide the facts that it never intended to staff, and was not staffing, the Project with adequate manpower to achieve key milestones or complete the Project as it had represented to BML Properties it would.

93. Actual manpower reported by CCA was consistently lower than CCA's own manpower plan from at least December 2012 to March 2015. In its August 2014 Decision, the DRB affirmed that Baha Mar Ltd. had proven this fact as applied to Project-wide labor and in particular regarding the Convention Center.

94. CCA did not establish a protocol for counting the labor forces on-site. This forced Baha Mar Ltd. to use manual counts. The counts of workers conducted by Baha Mar Ltd. revealed that the actual number of workers on site for the same period was much lower than both CCA's plan and its reported manpower figure. Indeed, Baha Mar Ltd.'s manpower counts tended to be 50 percent below CCA's claimed and reported workforce. The following exhibit to the July 2014 DRB hearings (Exh. 25) demonstrates in part the enormous gap between CCA's scheduled labor (grey), its claimed labor (yellow), and the numbers actually on-site as manually counted by Owners' Representatives (red):



95. The DRB entered findings (relying in no small part on the numbers set forth in the chart above) that CCA had understaffed the Project as a whole and the Convention Center in particular. As soon as the DRB hearing concluded, CCA moved its “surge” crew on the Convention Center (installed there just as the DRB came to town) back to other buildings, putting the Convention Center once again in deficit and demonstrating that CCA needed those workers elsewhere because CCA did not have enough workers present to do the work that was available.

96. In this and other ways, CCA furthered its intent to conceal its misrepresentations about its actual and intended total workforce from exposure for as long as it could. In fact, it took until well in to 2014, during a fire drill called by the local authorities, for BML Properties to discover the truth about (and be able to evidence) how many workers were actually on site.

(ii) CCA Lied Repeatedly About its Intent to Supply Experienced CMs and Senior Supervisors to the Project

97. In 2012 and thereafter, CCA represented that it was in the process of bringing on to the Project numerous “Senior Executives.” BML Properties is informed and believes and based thereupon alleges that CCA had no intent of performing in compliance with its representations in

this regard. CCA intended all along to proceed without some or all of these “experienced” persons, for the reasons stated herein, namely CCA knew that such experienced personnel would not tolerate working for (rather than supervising the work of) CCA’s inexperienced and far more junior “trainee” level personnel, and that CCA did not intend to deliver the Project on time or on budget, but rather intended to deliver on its own schedule and subject only to its own control, and thus it did not need to incur the costs of these senior and experienced persons, nor to suffer from the scrutiny these experienced persons might bring to bear on the conduct of CCA.

98. CCA represented as well that it was hiring an unspecified number of “experienced” supervisors and/or construction managers (CMs) from the recently completed City Center development in Las Vegas, Nevada. Only a handful of those persons ever showed up at the Project (again, CCA and CCA Bahamas were entirely silent as to why they could not employ the number promised), and even when they did show up, they departed quickly.

99. As well, CCA misrepresented in numerous meetings in 2012 that the CMs and other experienced persons it brought in or said it would bring in would be suitably empowered by CCA to perform in such roles once they arrived at the Project.

100. By December 2013, the vast majority of the “senior” staff CCA actually brought to the Project had departed (who in any event did not fulfil the role of Construction Manager while there but acted more like a contractor’s superintendent under the “supervision” of inexperienced CCA personnel), and many of the staff positions previously occupied by those who departed were not replaced with anyone at all or anyone of similar or equivalent experience and training. This included unfilled positions for Construction Director, Construction Manager (Superstructure and External Works), Safety Director, Executive Technical Director, MEP Commercial Manager (Procurement), Coordination Engineer, Director of MEP Operations, and Procurement Manager.

101. On more than one occasion while departing these “CMs” informed Baha Mar Ltd. employees that the reason they were departing was because CCA would not let them perform the jobs for which they were trained and instead attempted, unsuccessfully, to micro-manage their time and tasks and deny to them the ability to supervise CCA’s inexperienced staff and workforce. In other instances, experienced and properly qualified managers left the Project and were replaced by people without comparable skills without CCA ever reporting to BML Properties about the dire consequences of such.

102. Again, the foregoing was not reported truthfully or accurately by CCA to BML Properties and was done consistent with CCA’s undisclosed intent to train its own people through “trial and error” to do things the way CCA wanted them done, not the way CCA had agreed to do them or the way that CCA represented to BML Properties it would do them, and not consistent with the requirements of the Investors Agreement and the MCC, in particular CCA’s obligations to act in the best interests of Baha Mar Ltd., to protect the investment of BML Properties, and report any recommendations, findings or concerns to BML Properties. CCA likewise did not accurately (or at all) report on the consequences of not having sufficient or any qualified senior managers and CMs on the Project.

103. The results of these misrepresentations were, among other impacts, that as the Project went forward and increased in complexity and thus the need for highly experienced personnel increased, CCA was delivering less and less experienced personnel and driving off the Project those “experienced” personnel it had promised BML Properties to deliver. Moreover, as a result of CCA not accurately reporting about the foregoing, BML Properties then did not have in its possession sufficient and timely information to gauge when (and if) CCA might actually complete the Project and what measures BML Properties and/or Baha Mar Ltd. could take to



force CCA to achieve timely completion and/or mitigate the harm to Baha Mar Ltd. and BML Properties.

104. These lies, deceptions, and misstatements of its intent contributed to a mismanaged, delayed, over-budget Project that lacked any serious or experienced “Construction Management.” For example, tasks were hastily reallocated between managers, leading to improvised *ad hoc* discussions and a corresponding lack of progress reports and formal meetings. CCA’s understaffed, under-qualified cost-management team was frequently unable to provide Baha Mar Ltd. with timely cost information. Because the Construction Manager for Superstructure and External Works had departed, CCA had no manager for a large and complex design-and-build package. Despite this failure to provide experienced personnel as promised, CCA continued to charge the same amount for staffing costs as was set forth in the original contract.

- (iii) CCA Failed To Report Other Of Its Workforce Failures That Combined Made Critical Delay On The Project Inevitable But Which CCA Kept Hidden From BML Properties As Long As It Could.

105. At all relevant times after larger crews were working on the job (in late 2012 and later), there was a lack of skilled craftsmen in the specialty trades, and an insufficient number of qualified supervisors to govern the work (leaving CCA’s subs to make their own sequencing decisions and move workers from one area to another with no control or tracking).

106. In that same time period, BML Properties observed that the CCA workers were unproductive, lacked bull crews (to move large quantities of materials to the workers) and instead workers tended to move their own materials to their worksite in small batches. In that same vein, regarding governance of its workforce CCA lacked a coherent, suitably managed

logistics plan and system as required on a project of this scale. Materials were stored haphazardly causing CCA's labor to work in and around the site inefficiently.

107. Adding to the inefficiency of its work, and undisclosed by CCA, CCA intended to and worked via a "silo" method regarding information, placing subcontractors in separate silos without coordinating and allowing for the usual and needed cross-flow of information, thereby (at the very least) attempting to protect from BML Properties' inquiry what individual subcontractor supervisors might know about what other subcontractor supervisors were doing to coordinate their separate but related work. When, as on this Project, major subcontractors take over elements of the Work, the CM as a necessity must closely coordinate their work and the flow of information between them; CCA did not fulfill this obligation, and did not disclose its failure to do so, and thus accurate or any information regarding relative manpower supply, manpower needs and coordinated material deliveries (where CCA sometimes supplied materials to their subcontractors) was not effectively communicated to coordinate the Work as CCA as CM was required to do, and CCA failed to report on this phenomenon to BML Properties as well.

- (iv) CCA's Undisclosed and Misrepresented Workforce Deficits Were Never Remedied by CCA and Prevented Completion of the Project On Time or at Any Time Prior to the Severe Liquidity Crunch of 2015

108. Between October 2013 and April 2014, CCA's workforce deficit (its "planned" workforce versus Baha Mar Ltd.'s workforce count monthly peak number) ranged from 1100 to 1600 laborers per month. CCA attempted to manipulate the accumulating workforce deficit as compared to its own scheduled manpower by decreasing peak manpower from earlier to later versions of the Construction Schedule and pushing the peak manpower later and later in the

Project, without any reasoning and in an effort to deceive BML Properties and Baha Mar Ltd. as to the required workforce.

109. CCA manipulated the data for its workforce by regularly over-reporting its on-site workforce, and precluded the creation of real-time data regarding its workforce by breaching the GCWP in not providing and requiring use of palm-print readers on entry to and departure from the Project site.

110. On-site events at the Project in 2014 confirmed the greater accuracy of Baha Mar Ltd.'s workforce counts, and confirmed that CCA grossly overstated its workforce counts throughout the Project and particularly in 2014. In one week in May 2014, by way of example, Baha Mar Ltd.'s on-site manpower counts revealed that CCA overstated on-site workers at over double the actual count.

**D. In Late 2014 CCA Diverted The Time And Energy Of Its Top Executives To Different Projects, And Failed To Keep Up With The Required Immigration Work Permits, Revealing that CCA Did Not Intend To Complete The Project On-Time or in the Coming Months Thereafter**

111. In the latter half of 2014, CCA diverted the efforts of its top "managers" (Tiger Wu, David Wang, and Daniel Liu) to other projects, including the Hilton in Nassau that CCA acquired in 2014 and a CCA project in Panama, in violation of the requirements of the MCC and at a time when the ranks of CCA-claimed "senior managers" were already thin to non-existent.

112. CCA did not provide sufficient staff necessary to, among other things, process all the work permits for incoming Chinese workers, and Baha Mar Ltd. was forced to assist CCA to a large extent in obtaining those work permits at its own extra expense. In this vein in late 2014 it came to light that CCA had over 1800 workers it claimed were on site but for whom CCA did not renew work permits and thus could not legally be working on the Project at that time.

113. At the December 5, 2014, Baha Mar Ltd. Board meeting, upon questioning by members of the Board as to whether both were fully dedicated to the Project, whether they were onsite full time, and whether Mr. Wu was involved in the Hilton project, both Mr. Wu and Mr. Wang denied that their time or efforts would be diverted to, or that they were involved in, or that they would in any way would be responsible for, the redevelopment work CCA planned at the Hilton in Nassau that CCA had just purchased at the end of October 2014, and that they were fully committed to the Project and achieving the opening date. This was critical, as well, under the November 2014 Meeting Minutes, under which CCA received a \$54 million advance on disputed “change orders” and in exchange promised an increased workforce, refocused and increased efforts of senior management, and accelerated work to reach a March 27, 2015 opening.

114. Both Mr. Wu and Mr. Wang knew that those statements were false and misleading, but fully intended the Board and BML Properties to rely on them. Contrary to their statements, but unknown to BML Properties at that time, Mr. Wang was already heavily involved in the Hilton project and the Panama project, Mr. Wu was involved in the Panama project as well, and not only did they and CCA fail to disclose such, they also knew that a substantial amount of their time would be required on those projects while Baha Mar was still underway but failed to disclose that fact as well.

115. Shortly after the conclusion of the December 5, 2014 Board meeting, BML Properties and Baha Mar Ltd. directed consultants to look into the possible diversion of CCA’s energies away from the Project and toward CCA’s newly acquired Hilton Hotel in Nassau.

116. In December 2014, unknown to BML Properties until August 2015, CCA closed on the purchase of the Hilton for \$60 million cash, a mere \$6 million more than the \$54 million advance that CCA had demanded and received just a few weeks earlier. In March 2015 CCA’s Ning

Yuan admitted that CCA had not used the \$54 million advance for its intended purpose but rather claimed that CCA had used it to “pay overtime,” yet another misrepresentation because, among other things, CCA’s workforce on site worked no “overtime” of any moment (and certainly not \$54 million worth) after December 2014 and before March 27, 2015, indeed that workforce engaged in walkoffs and staged work slowdowns, as described elsewhere herein. Accordingly, the evidence indicates that CCA diverted that \$54 million received in November 2014, and a cash need for CCA arose that straddled the payment of that advance -- signing the documents for the Hilton purchase in October 2014 (thus requiring CCA to have in hand \$60 million in cash) and closing on (and thus paying on) that purchase in December 2014, after receiving the \$54 million in November.

117. BML Properties learned in January and February 2015 that because of the needs of the Hilton development, CCA was in fact not only diverting much needed manpower and executive attention but was also diverting physical assets that were bought and paid for under the MCC General Conditions Work Package. In particular, as to furnishings in use on the Project site for staff and consultants, many of these items were removed by CCA from the Project before substantial completion and sent to CCA’s Hilton project in Nassau. The same is true regarding computer work stations, including software -- many of these items were removed by CCA from the Project before substantial completion, and to Baha Mar Ltd.’s information and belief were delivered by CCA to CCA’s Hilton project in Nassau. CCA diverted heavy equipment as well.

118. By March 2015, long before CCA expected (undisclosed to BML Properties) to be finished at the Project, CCA had ordered its subcontractor responsible for construction fencing to move all eight foot (8’) high fencing (hundreds of yards of it) to the Hilton development.

119. Indeed, in April or May 2015, while CCA was purporting to discuss resolution of its disputes with BML Properties, and thus the need for the presence of CCA's on-site personnel was obvious, CCA dispatched one of its two executives with the most experience and knowledge of the Project (David Wang) to Panama, to announce the establishment of that office and the new projects these executives and CCA would be working on, all while falsely representing that Mr. Wang was leaving to attend to a family matter. Following on a plan formulated by CCA well before the December 5, 2014, Baha Mar Ltd. Board meeting, CCA opened its Panama office, announced its new affiliate "CCA Panama" and concurrently announced its new Chairman and CEO Tiger Wu, and its new president, David Wang, the same persons in the Board meeting on December 5 omitting any reference to the diversion of his or their time to any other project, and indeed denying any such diversion as to the Hilton in Nassau.

120. In these and numerous other ways, CCA improperly diverted the time and resources of its senior staff and diverted equipment and "general conditions" still needed for the Project away from the Project and to CCA's competitive project at the Hilton, and misrepresented its present plans to do so to BML Properties and Baha Mar Ltd.

**E. CCA Failed To Report Accurately Or At All Regarding Important Elements Of The Project.**

121. While Defendants were obligated to report truthfully, accurately and completely about the status of the Project (among many other things) to BML Properties under the Investors Agreement, CCA was as well duty-bound to report anything material regarding the state of the Project (workforce, work quality, defects, and the like) that a reasonable reporter would have reported under the circumstances. Unfortunately, CCA utterly failed in this regard as well, and as to defects which plagued the Project and were in thousands of respects not remedied as of July 1, 2015, CCA did not accurately or completely report those to BML Properties, nor did CCA

advise BML Properties of the consequences of such nor seek out advice from BML Properties as an Investor, under the Investor Agreement, concerning the best way to remedy or mitigate the effect of such defects. CCA communicated, if at all, with BML Properties regarding such defects only when BML Properties raised concerns initially and pursued CCA for remedies, mitigation, and answers.

122. Reporting by CCA was, starting initially in 2012, either non-existent or when it was provided failed to convey what a professional CM would normally communicate, and certainly not what was required under the Investors Agreement. By way of example, CCA was responsible for providing monthly progress reports that contained updated and accurate progress information (and not merely the same information repeated over and over again from month to month, as it more often than not did), which included all of the data and statuses required in the Key Deliverables portion of the MCC (and that were, therefore, part of the expected reporting required under the Investors Agreement). Baha Mar Ltd. identified CCA's failures in this regard in its numerous letters sent from 2012 onward in response to CCA's "monthly reports." As well, CCA was required to but did not provide special reports as Baha Mar Ltd. "reasonably request[ed]."

123. Moreover, in an effort to hide from BML Properties and from the Baha Mar Ltd. Board its failures as CM and its failures as Work Package Contractor, starting in certain respects as early as January 2012, CCA failed to adequately generate and provide to Baha Mar Ltd. and BML Properties, among other things, the numerous reports required under the MCC. Those reports included, among other things, required monthly project reports providing a "summary status of the work packages (progress and quality) as well as CM services," as part of the CCA's required review of designs, a report on any potential problems in the design production process

and an action plan to resolve those problems, monthly reports addressing actual versus planned schedule, percent resources (man-hours and expense) expended to date, proposed bid and construction schedule, program changes, status of proposed design change orders and their impact on schedule and cost, problems and issues, and government authorities approval status, detailed reports regarding CCA's monitoring of the construction schedule and progress to allow for adjustments and changes to meet the completion date, reports regarding any "errors, inconsistencies or omissions discovered by" CCA regarding the Contract Documents in the form of a Request for Information ("RFI") or otherwise, daily labor reports, including all those submitted by work package subcontractors, including the number and description of craftsman, laborers and others employed, and commissioning reports.

124. By way of example only, on January 3, 2013, in a letter that BML Properties directed Mike Barford, Project Director of Baha Mar Ltd., to write to Tiger Wu, Barford pointed out a number of CCA's demonstrated failures to provide much-needed and contractually required reports. Among other CCA reporting failures, Barford documented the following:

- (a) No progress reports on Vertical Transportation, no reporting of who the responsible executive at CCA might be for this work, and no CCA response to Thyssen Krupp (as subcontractor) reporting about its exasperation regarding CCA's failures in these respects;
- (b) No progress reports, or fabrication schedules, or other key information regarding bathroom "pods" which were to have been installed starting in December 2012, but which had not as of that date arrived on the site;



- (c) No reports regarding the departure from CCA's employ of the Work Package Manager for the Facades Work Package, nor of when an experienced replacement would arrive;
- (d) No reports as to who the Project Manager for the Water Wall might be (a key element of the main porte cochere for the Hyatt and Casino Hotels), nor any information about procurement for the Water Wall, especially important given the long-lead-time for this element;
- (e) Documented lack of staffing on CCA's critical Procurement and Scheduling Teams, notwithstanding the mounting scope of works CCA was taking on as Work Package Contractor and the key reporting requirements for both Procurement and Scheduling from which BML Properties could learn (if CCA performed as required) of any risks of delay in a timely enough manner to work with CCA to avoid or mitigate delay or command CCA to accelerate its efforts (e.g., the Scheduling Team had only four dedicated schedulers when there should have been at least nine in view of the magnitude of the Project); and
- (f) CCA's failure to provide an updated Management Plan (organization chart) from which BML Properties could learn (if CCA performed as required) about any critical gaps in experience, staffing numbers, and the like to avoid or mitigate delays or direct CCA to accelerate its efforts.

125. Continuing from 2012 and into 2013 and beyond, CCA failed to deliver in any meaningful respect the documentation required by the MCC and otherwise required by the Investors Agreement (including delivering a version 3.2 of its construction schedule that was not contractually compliant because of its inherent deficiencies and which actually decreased the

planned on-site workforce without explanation). In so doing CCA denied to BML Properties the ability to effectively monitor the progress of the Work and govern its finances accordingly, and in turn denied to BML Properties the truth that CCA was duty bound to deliver but did not – namely, that the Project was increasingly behind schedule, that it was due to CCA’s failings described herein and in particular due to CCA’s failure to provide sufficient workforce and trained and experienced Construction Managers, and moreover that CCA intended to not make up the deficit or accelerate to be able to deliver the Project on time and on budget. In this same vein, in late 2013 CCA in its “reports” failed to truthfully admit its own safety breaches (reporting “no accidents” when in fact three serious injury accidents had occurred) and exaggerated the percentage of completion of core and non-core work. Indeed, throughout the life of the Project (and more particularly in their May and November 2014 reports) CCA continually was cited by the Project insurers (through the third-party safety inspector) for engaging in risky and ill-considered practices that risked more injury and fire-related hazards on and off the site.

**F. At Numerous Board and Other Meetings, CCA Assured All Present That It Had On-Site and Arriving the Resources to Meet All Deadlines And Milestones Ahead Without Any Factual Basis for So Stating**

126. On September 28, 2012, Baha Mar Ltd. held a Board meeting at the Project. All five directors, including Ning Yuan of CCA, attended, as did Tiger Wu and Thomas Dunlap. Mr. Dunlap first raised several concerns regarding CCA’s performance including, by way of example only, insufficient workforce, recovery plan delays by CCA that put the Project’s timeline at risk, and CCA’s failures to act as a professional CM (with all that entailed for reporting and the like). When asked to respond, Mr. Wu, at the request of Ning Yuan, gave CCA’s presentation. Mr. Wu did not disagree with the points raised by Mr. Dunlap. Mr. Wu represented to Baha Mar Ltd.’s board and thus BML Properties, without any factual basis therefor (as described above)

and thus with reckless disregard for whether what he said was true or false, that CCA had on site the resources to complete the Convention Center by March 2014 (as discussed more fully above), and that it had the resources to meet other milestones regarding several of the other Project elements. Not only did CCA not deliver the Convention Center in March 2014, it still was not ready for full use as of July 1, 2015. Moreover, CCA did not meet the other milestones it said it would meet in that meeting.

127. At a DRB meeting on December 7, 2012, BML Properties' Tom Dunlap commented to CCA (Tiger Wu and Daniel Liu) that "the Project looked like it had stalled," and Mr. Dunlap added (without objection or contradiction by Messrs. Wu or Liu) that Ning Yuan had said that CCA's "logic to completion" was different than most western firms, and that CCA had the resources and "intended to blitz the Project with workers to finish the curtain wall, MEP and finishes." In addition, at that same meeting and after Mr. Dunlap and others there on behalf of BML Properties and Baha Mar Ltd. had finished listing over 23 "scheduling concerns," Messrs. Wu and Liu stated their "strong opinion that they had the Project Schedules and procurement planning under control and CCA was committed to bringing the Project in according to the updated Schedule and Contract requirements."

128. By February 2013, CCA had fallen behind even its own scheduled workforce numbers, accumulating manpower deficits between the size of the workforce it stated in its schedules (such as version 2.3) it needed to do the work and what it claimed the workforce on site was in its own reports (which CCA had knowingly and fraudulently inflated). By as early as February 2013, that workforce deficit was over 1370 man-months, and by March 2014 that deficit had swollen to 18,029 man-months (or stated another way 3,000 additional workers working full-time over six months). CCA had many unfilled positions without any named employees, permit numbers, or

even applicants. This accumulating workforce deficit drew the attention of RLB starting in 2012, and RLB (along with Baha Mar Ltd.) continually urged CCA to rectify the growing workforce deficit, noting, among other things, that there was an abundance of available work for a far greater workforce.

129. On February 20 to 28, 2013, Ms. Chang Yu of China Eximbank visited the Project. During a conversation regarding the construction schedule, with Doug Ludwig (CFO of Baha Mar Ltd. and BML Properties) and Tiger Wu (Executive Vice President of CCA) present, Ms. Chang asked Tiger Wu if the original construction completion schedule of December 2014 would be achieved and Mr. Wu assured her that CCA had the resources available to it and would be able to achieve that original completion date. That statement was intentionally false and misleading when made – CCA uniquely and solely (at that time) knew its own workforce deficit numbers and accumulating deficits, and knew that it did not intend to provide the substantially increased (and more experienced) workforce necessary to avoid the delays that resulted from unremedied workforce deficits and lack of senior and experienced staff that had accumulated to that date.

130. On March 28, 2013, the Board of Baha Mar Ltd. met. Ning Yuan of CCA as well as the other four directors attended. CCA also brought Tiger Wu, CCA's Executive Vice President, to address ongoing construction. In response to questions by those present, Mr. Wu stated, given all the circumstances, that he was "comfortable" that CCA would achieve completion of construction by the December 2014 deadline. Mr. Wu also stated that (i) CCA's construction workers worked seven days per week and 10 hours per day, (ii) CCA was in fact slightly behind on certain key items but that it was going to use its available resources to accelerate to make greater progress, (iii) CCA was presently in the process of hiring more workers that it would

bring to the Project, and (iv) that CCA had developed a “plan” to ensure successful completion by December 2014. BML Properties is informed and believes and based thereupon alleges that these statements by Mr. Wu were false when made and Mr. Wu knew them to be false, since, among other things, CCA had no accurate or reliable method to calculate completion dates, CCA had insufficient workers and experienced CMs and supervisors to accelerate the work and achieve upcoming or any key milestones, CCA was not then in the process of making up for the deficit with increased workforce hires and provision of those workers to the site, and CCA had no “plan” to ensure successful completion by December 31, 2014.

131. CCA failed to report truthfully as well when under a duty to do so. By way of example only, during the Baha Mar Ltd. Board meetings in 2013 and 2014 where, among other duties, CCA’s representatives were bound to be accurate and disclose facts for the benefit of the investors, including BML Properties, neither CCA’s representatives on the Board (Ning Yuan or Tiger Wu) nor its other representatives attending those meetings revealed to BML Properties or the Board (i) that CCA did not have the workforce on site or available to come to the site to complete the Project on or before the contractual completion date, and (ii) that any particular event or events (including changes in design) caused a discrete and identifiable number of days of delay to the critical path of the Project.

**G. Through The May 17, 2013 Memorandum Of Understanding (“MOU”), BML Properties Obtained CCA’s Commitments To Meet All Key Interim Milestone and Completion Dates And To Dramatically Increase Its Workforce, Which CCA Had No Intent To Fulfill and Which CCA Promptly Breached**

132. By early 2013, notwithstanding CCA’s repeated assurances to BML Properties and China Eximbank, it had become increasingly clear that, absent corrective measures and major acceleration efforts by CCA, CCA would not meet the construction completion schedule. As a

result, BML Properties and Baha Mar Ltd. demanded that CCA, among other things, increase its manpower to accelerate the work. In light of this demand, in May 2013 BML Properties sought to progress the Work toward Substantial Completion.

133. BML Properties directed Baha Mar Ltd. to move toward bringing the unremedied delays and workforce deficits to the DRB to compel CCA to provide remedies and make up for its past failures.

134. Squeezed by the cut-off of funding caused by CCA's lies to China Eximbank, and with a choice to pursue mid-project litigation before the DRB (or other remedies) that might result in delay to the Work, or to instead attempt on an interim basis to resolve certain disputes with CCA, on May 17, 2013, Baha Mar Ltd. and CCA entered into a Memorandum of Understanding ("MOU"), witnessed by the Ambassador for the Peoples Republic of China to The Bahamas, setting out agreed items. Those items included CCA representations that it would dramatically increase the workforce on the Project in specific increments by specific dates, the award by Baha Mar Ltd. to CCA of certain work packages, Baha Mar Ltd.'s award to CCA of the Convention Center MEP work package, and completion dates. These completion dates included a commitment by CCA (as described above) that Baha Mar Ltd. would receive 100% access to, at a minimum, the key ballrooms and meeting rooms of the Convention Center on or before March 31, 2014.

135. Within a short period after the MOU was signed, however, CCA breached the MOU by, among other things, failing to provide the promised manpower to the Project and, thereafter, by failing to provide Baha Mar Ltd. with access to any part of the Convention Center on or before March 31, 2014, one of CCA's key commitments in the MOU and in CCA's subsequently delivered schedules.

**H. In the Latter Half Of 2013, CCA Continued To Make Promises It Did Not Intend To Keep, And Reported Falsely To BML Properties About The Status Of The Project.**

136. On October 14, 2013, CCA issued its “Construction Manager’s Monthly Report No. 34” purporting to be a “Status Report as at September 2013.” Among the many false and misleading statements found therein, indeed statements that were intended to mislead China Eximbank, BML Properties, and RLB about the progress of CCA’s work, were the following:

- a. On pages 7 – 8 of that report, CCA claims that it is entitled to extra time or money, or both, because of the “late design” of two large pumps for cooling wells that were, in CCA’s statement, necessary for the provision of “Wild Air.”
- b. “Wild Air” means the distribution of air-conditioned cooler and dry air – “uncontrolled” and therefore both within and outside of duct systems, sometimes using staircases and other means of movement for the air, to allow for the “close-in” of the building and the preservation of materials (such as drywall, finished goods, wood products, and the like) that would be harmed by exposure to humid, warm outside air. This was a critical aspect of the progress of the Project toward completion, given that the lack of Wild Air in a tropical environment can (and did on this Project) result in, among other things, the growth of mold, mildew, fungi, and related health and safety hazards, and damage to drywall and finishes and finish goods, and specialized equipment and machinery. The MCC plainly states (in the GCWP scope of work) the following: “It is the responsibility of the Construction Manager to arrange for commissioning of ‘Wild Air’ as means for a controlled environment for facilitating finish work installation.”

- c. CCA omitted the following information which omission made what was stated by CCA about these pumps and its claim materially misleading: (i) CCA was responsible for testing and issuing the results of the testing of the capacity of the cooling wells, and in that regard CCA began drilling the wells in December 2012, however the results of the testing were not issued by CCA until August 2013 some 10 weeks late; (ii) Baha Mar Ltd.'s consultants promptly issued the pump specifications on October 1, 2013 based on the capacity reported, however CCA inexplicably delayed for four weeks before ordering the pumps; (iii) CCA's own "commissioning schedule" for the Central Utility Plant ("CUP") states that the chillers (needed for the supply of Wild Air) would not be operational before mid-February 2014 and CCA had previously stated that Wild Air was not required prior to March 4, 2014; and (iv) therefore, any delay CCA might claim in this process of procuring and installing the appropriate pumps necessary for the supply of Wild Air was due entirely to their own failure to timely investigate, issue the results of the investigation, and order the pumps.
- d. CCA reported "zero accidents" for September, yet two workers had been seriously injured in September 2013 (one fell from a moving car and another fell from considerable height).
- e. Numerous (well over 50) claims of design delay made by CCA were false on their face, with documented delivery of the allegedly delayed designs existing in correspondence and other documents in the possession of CCA even before CCA made the statement in its September 2013 report.



- f. CCA could not even keep straight the extent to which MEP work had been completed month to month. By way of example only, CCA reported in the September 2013 report that its MEP work was 44.2 percent complete, but then a mere 30 days later claimed that the same MEP work was only 39 percent complete, a retrograde movement of 5.2 percent, without explanation.
- g. CCA even changed its reporting in subsequent months without explanation. By way of example only, while comparing CCA's schedule v3.2 to the present status of the work, CCA "identified" delays increasing and decreasing with no explanation (such as marking "bathroom pods" as six days behind schedule when in the previous report CCA reported that such work was ahead of schedule).

137. In this same vein, in a meeting of the Baha Mar Ltd. Board on October 22, 2013, CCA's Ning Yuan and Tiger Wu made a series of intentionally false and misleading statements to BML Properties and the Baha Mar Ltd. Board designed to deceive BML Properties and the Baha Mar Ltd.'s Board about CCA's intentions and about the then-present status of its workforce, among other things. By way of example only, although he knew such to be false, Mr. Wu stated that there were adequate labor and supervisory resources at the Project to meet the contractual deadline for the entire Project. Mr. Wu also stated, without any basis in fact therefor, that CCA would meet at least eight (8) different milestones in the coming two months, none of which CCA met. Moreover, Mr. Yuan and Mr. Wu stated at that meeting that CCA would provide "additional detail" with regard to labor and other resources which, as was repeated often, was not provided and which CCA never intended to provide in furtherance of its plan to hide as much information about its work and labor resources on the Project as possible.

138. On December 10, 2013, CCA delivered its Monthly Report No. 36 for November 2013. In that report, CCA made the following (among other) false and misleading statements (namely, material misstatements of fact or omissions of fact that CCA was under a duty to disclose to make its reports accurate and complete):

- a. CCA stated that all buildings were, as of the end of November 2013, ahead of schedule when in fact each and every building was behind schedule.
- b. CCA's statement that the completion percentage as of the end of November 2013 was 42.3 percent is contradicted by CCA's October 2013 report, in which CCA claimed that such was 55 percent complete (never explaining how "completion" could move 12.7 percentage points retrograde).
- c. CCA did not advise of the status of procurement at all, a particularly glaring omission in light of, among other things, CCA's prior advice to BML Properties that the Rosewood Villas and Waterfall procurement/materials packages were "critical."
- d. CCA stated that its "planned" submittals for work permit applications for Chinese workers for October 2013 to February 2014 were 120 per month and its "actual" submittals for October and November 2013 were 130 per month, which at best are misleading statistics, since under the May 2013 MOU CCA had committed to submit each and every month a minimum of 250 work permit applications.
- e. CCA claimed certain concrete slabs (*e.g.*, the "801 slab" in the Pool Bar area) had been poured when in actuality they had not been poured.

- f. CCA stated that Baha Mar Ltd. was still re-designing certain aspects of the roof in November 2013, when in fact those designs had been released long before November 2013.
- g. CCA stated that as of the end of November 2013 that the MEP work was 48.5 percent complete, which level of completion was contradicted in the agreed CCA payment application for that same time period as 41 percent complete.
- h. By way of example as to the specious basis for CCA's claimed "design delays," CCA claimed 28 days of delay in the Podium due to "additional roof drains" and blamed Baha Mar Ltd. for adding numerous drains to the plans. Oddly, this same event was reported as two days ahead of schedule in the immediately preceding monthly report authored by CCA, and thus in a month with only 30 calendar days CCA claimed it incurred that entire 30-day period in delays. Regardless of these obviously improperly prepared aspects of the reports (and thus inherently inaccurate reporting by CCA), CCA blamed Baha Mar Ltd. for the delays, however, the number of roof drains had increased by only four (4) (out of 300 total locations) since Construction Change Directive ("CCD") 233 had been issued ten months earlier on February 27, 2013. As of the end of November, CCA had only installed two (2) such roof drains (out of the 300).
- i. CCA claimed delays in the Convention Center "due to 39 CCDs issued in September and October" 2013, yet the reports for those months make no mention of this and, in any event, elsewhere in the November 2013 report CCA advises that the Convention Center would be completed on schedule by March 31, 2014.

139. By plan, CCA's reports were designed to mislead and otherwise prevent any full and complete record of the true status of the Project from being communicated to BML Properties, and to prevent any accurate assessment by BML Properties of the risks inherent in the actual lack of progress by CCA.

140. At the December 13, 2013 Board meeting, CCA mislead BML Properties regarding deadlines, completion dates, and workforce numbers. In particular, at the December 13, 2013 Board meeting for Baha Mar Ltd., CCA told the Board and BML Properties that, among many other promises, commitments, and representations, CCA had internally committed to construction milestones, and such were presented to the Baha Mar Ltd. Board and BML Properties with CCA's full knowledge of what it claimed previously were design delay and related issues. Despite the alleged design issues, CCA's Tiger Wu assured Baha Mar Ltd.'s Board and BML Properties at that meeting that CCA had the resources on hand to meet the deadline of December 31, 2014, which statement Mr. Wu knew at that time to be false, since CCA did not intend to so deliver the Project and CCA did not intend to accelerate its work to meet that date, and in any event Mr. Wu lacked any basis in fact for what he said since he knew he had no reliable basis to predict that CCA would deliver the Project on-time and he knew that CCA did not have the resources available to it to finish on time.

141. None of the milestones which CCA stated that day they were "committed" to or that CCA would achieve were in fact achieved – CCA did not achieve its completion dates for power and air, elevators, structural steel roofs, the CUP, the date the buildings would be "watertight," the Convention Center (which CCA again, without any reasonable basis in fact, represented would be complete as required by the MCC on March 31, 2014 as to Ballrooms A, B & C

constituting over 90% of the total usable square footage of the Convention Center), and completion dates for each of the hotels.

142. Indeed, CCA never intended to meet those deadlines – it intended to finish as and when it chose and certainly not complete until it had collected (via extortion if need be) every penny available under the Loan from China Eximbank, all while maintaining as best it could the appearance that it would complete these elements and the whole of the resort on time and on budget.

143. At that same December 13, 2013 meeting, CCA's Tiger Wu made a series of statements that were knowingly false when stated and were not otherwise supported by any facts in the possession of CCA or Mr. Wu, including but not limited to that (i) "labor was not a problem and that CCA [was] able to access all of the construction workers they think they need," (ii) in response to Mr. Izmirlian's stated concerns that labor was not increasing fast enough, Mr. Wu stated that "CCA [was] committed to increasing the number of construction workers and will do it without problem," (iii) CCA did not need more supervision of labor on the Project, (iv) CCA was "more concerned" with design issues than the number of construction workers, however, the "design issues" CCA cited to were those that were referenced in the May 2013 MOU and had all been addressed and resolved well before this Board meeting.

144. Consequently, as of the end of 2013, CCA was continuing to conceal its true intent from BML Properties, namely to finish the Project as and when it chose, with an insufficient and inexperienced workforce, using the Project as an undisclosed training exercise for its inexperienced works, affirmatively misrepresenting its on-site and due-to-arrive workforce and its belief that it did not need additional workers, and otherwise misrepresenting its ability to finish the Project on time.

**I. At The December 2013 And January 2014 Podium Crunch Summits, CCA Committed To (And Lied About Its Ability and Intent To Achieve) New And Accelerated Work On The Podium, Misrepresented That It Had the Ability to and Would Substantially Increase Its Workforce, And Restated A Known Falsehood -- That It Would Achieve Substantial Completion Of The Entire Project By December 31, 2014**

145. Baha Mar Ltd. and BML Properties had in their possession manual building-by-building counts by December 2013 and therefore believed that CCA was not providing the workforce that its own schedules said was required. As described above, to the best of BML Properties' information, CCA's actual workforce was only 41 percent of CCA's "scheduled" workforce. BML Properties also suspected (based on its own manual building-by-building counts) that the workforce CCA claimed in its reports to be present was not in fact present. Indeed, by using these manual counts it appeared that only 48 percent of the amount that CCA claimed its workforce numbered were on-site. The difference between CCA's "scheduled" workforce and the numbers counted by BML Properties was dramatic. In December 2013, the scheduled workforce was 2,675 workers, but CCA's actual workforce was only 1,084 workers. This lack of total workforce, and lack of experienced CMs (described elsewhere herein), were substantial factors in CCA's continued failure to miss milestones and fall steadily and further behind schedule overall and in the Podium in particular.

146. In December 2013, CCA finally agreed ostensibly to address the reasons behind, and the corrections needed to mitigate, its continued missed milestones in the "Podium" (the area beneath the public spaces and rooms that includes the operating back of house and MEP "guts" of a building) at one or more "Summits" in December 2013 and January 2014. At that juncture in the Project, and for many months to come, the Podium MEP was the "critical path" for the Project as a whole.

147. At these Summits, CCA claimed that it was missing milestones in the Podium MEP and related deadlines not because of a lack of workforce or inadequate productivity but because of “design delay,” and other causes it knew were in fact not the casue at all. CCA’s statements were false when made and CCA knew them to be false. By way of example only, as to the “Podium MEP,” the key subject addressed during the two Podium Crunch summits, prior to the January 2014 Summit CCD’s 724 and 756 (including the bulk of the remaining Podium MEP design work) had been issued to CCA.

148. Notwithstanding CCA’s false statements in this regard, and in order to be able to move forward in some spirit of cooperation and (as well) preclude CCA from continuing to make specious claims of delay based on “late designs,” Baha Mar Ltd. and BML Properties agreed both before and at the Summits in December and January to release certain designs CCA claimed were “late” (they were not since any construction in the areas encompassed by those designs, and material procurement for such construction, were many months away), and otherwise make sure CCA took into account all the design work it needed to be able to issue revised and accurate schedules.

149. During the Podium Crunch summit on January 28-29, 2014, CCA outlined outstanding MEP design information that it claimed it was still owed from Baha Mar Ltd.’s designers and consultants. A design delivery schedule was agreed to during the summit and CCA relied on and took into account that design delivery schedule in generating the construction schedules referenced below. All design deliverables agreed to in that summit were met by Baha Mar Ltd.

150. The Summits on January 28 and 29, 2014, produced a series of promises by CCA designed to mitigate some of its delays and accelerate completion of the already-behind-schedule Podium, which was then and would be for some time the critical path of the Project (since,

among other things, the Podium contained all the operational, Back of House, and MEPFP facilities for all four of the hotels, among hundreds of other functions/spaces). The resulting plan, which included a series of CCA representations as to milestones to be achieved as well as workforce and staffing commitments, became known as the “Podium Crunch.”

151. The Podium Crunch plan included a key representation by CCA – that it would expediently complete the MEP work necessary to begin supplying Wild Air.

152. CCA likewise stated in materials provided by CCA and at meetings during the Podium Crunch that an additional 1,000 workers would arrive in the following several months, knowing that such was not true – CCA had no plans to bring in that many workers in that period of time. CCA represented to BML Properties and Baha Mar Ltd. that it would not divert resources from other parts of the Project and delay them merely to attempt to make up for delays on the Podium, yet as BML Properties thereafter observed that is exactly what CCA did.

153. In the January 2014 “Summit” CCA made the following promises to BML Properties and Baha Mar Ltd. in exchange for Baha Mar Ltd.’s forbearance on its pursuit of DRB proceedings at that time to force CCA to accelerate its work to achieve milestone and final completion deadlines – notwithstanding prior delays and claims of late design release, CCA represented that it had the resources present on the site and available to it to achieve (i) substantial completion of the entire Project no later than December 31, 2014, (ii) substantial completion of the Casino Hotel no later than September 30, 2014, and (iii) the substantial completion of the Convention Center no later than March 31, 2014. Moreover, CCA (through Tiger Wu and David Wang) represented during that January summit, after questioning by agents and employees of Baha Mar Ltd. as to the apparent lack of available workforce on site to stay on schedule, that CCA had the resources presently available to achieve those dates and provide the workforce necessary. The



CCA persons making those representations and commitments at the Podium Crunch summits knew those representations to be false and knew that CCA had no intent to accelerate its work or achieve the milestones set by the Podium Crunch summits, and moreover intended for as long as it could to fraudulently conceal its intent not to achieve these milestones.

154. On January 30, 2014, CCA issued a new “schedule” to complete the Podium. CCA then had a series of what it referred to as internal discussions to review more detailed trade coordination. Following these discussions, CCA issued a revised “Podium Crunch” schedule to Baha Mar Ltd. on March 14, 2014. This document demonstrated CCA’s purported plan to complete the Podium on time, and included a statement that “[a]ny CCD’s or Change Orders issued after March 2014 are not taken into consideration in this call out”, therefore clearly reporting that all CCD’s (including all the design related CCDs) prior to that date had been taken into account by CCA in formulating that and the prior January 30, 2014, schedules. On March 26 and 27, 2014, during two days of meetings, CCA presented a revised “Key Milestone” schedule. Although lacking details, this schedule demonstrated CCA’s ostensible plan to complete the Podium work on time, apart from the Vertical Transportation scope which needed more review. All the “designs” CCA later complained were “late” were issued to CCA many weeks prior to issuance of this schedule by CCA.

155. CCA knew that it would not and could not achieve those represented milestones, that it lacked the on-site and available resources to do so, and made these false and misleading representations nonetheless intending BML Properties and Baha Mar Ltd. to rely on them, and BML Properties did rely on them, to its detriment, as set forth herein.

**J. CCA Did Not Abide By Its Podium Crunch Representations, And Similarly Never Fulfilled Its Podium Crunch Workforce Numbers Representations**

156. Soon after the Podium Crunch meetings on January 28 and 29, 2014, where CCA had stated its obligations to act as set forth above, CCA as CM started to renege on those commitments, evidencing, among other things, (i) CCA's bad faith in that it never intended to fulfil those obligations in the first instance, despite CCA's statements at the summits, and (ii) CCA's inability to manage, direct and coordinate the contractors and accurately report (or report at all) about its inability to do so. By way of example only, in late February CCA reported from January 18, 2014 to February 21, 2014 an increase of only 219 workers as compared to its Podium Crunch commitment of supplying 1000 additional workers (even assuming the CCA report was not as significantly overstated as its other workforce reports). By way of further example only, CCA allowed hundreds of workers needed to achieve the progress contemplated by the Podium Crunch to leave the Bahamas and travel home for Chinese New Year in late January 2014 without informing BML Properties or Baha Mar Ltd. that it was doing so.

157. Moreover, when pressed in late March 2014 as to why the milestones for completion of the Podium were not being achieved, CCA blamed "design delays," however, CCA had previously agreed and acknowledged that they had already received all the designs needed and that the schedules that they issued in conjunction with the "Podium Crunch" took into account the fact that the designs that CCA had received were what CCA needed to meet the Podium Crunch schedules described above. In this same vein, on April 1, 2014, once again casting about to lay blame for its own failings elsewhere, CCA orally raised "concerns" over the MEP Work design content of a series of CCDs (Nos. 724, 756, 785, 797, 816, 844, 859) all of which had been in CCA's possession for many months and well before the schedules that CCA generated on January 30, March 14, and March 27, which schedules (as CCA knew) represented to Baha Mar Ltd. and BML Properties that CCA would meet the milestones set forth in those schedules.

158. By September 2014, CCA had ceased even including a reference in any of its reports to its Podium Crunch commitments or the completion dates set thereby.

159. CCA missed every milestone and reneged on every promise made during the Podium Crunch Summits, proving further that CCA never intended to perform any of those material promises and that CCA intended when making them to, among other things, “buy time” and push the disputes with Baha Mar Ltd. regarding these key items of CCA non-performance and lies further into 2014.

160. For the four-month period beginning January 2014 and ending April 2014, the Project manpower figures contained in CCA reports and Baha Mar Ltd. manual counts consistently lagged behind CCA’s own projected workforce. CCA reports on average recorded 11.20% fewer workers than the projected workforce, yet they recorded 52.49% more workers than counted during Baha Mar Ltd.’s manual counts. For example, during the last week in May, CCA reports recorded 2,901 workers as compared to a Baha Mar Ltd. manual count of 1,631 workers. These counts constituted even more evidence of not only CCA’s failure to supply an adequate workforce, but also evidence of CCA’s failure to report to BML Properties accurately or truthfully about its workforce and CCA’s concurrent undisclosed intent to not abide by any workforce or deadline representations or assurances.

**K. In April 2014 CCA Was Put On Notice Of Its General Lack Of Progress On Site**

161. On April 13, 2014, Mr. Izmirlian on behalf of BML Properties and Baha Mar Ltd. sent an email to Ning Yuan, President of CCA, reporting to him that “[h]ere on site we see little progress and even less [of the] changes we requested. We would request you come to [the Project] ...Specifically we request an urgent update on more supervision and more labor.”

162. Ning Yuan did not travel to Nassau at any time shortly after this email, however, he did respond. In his response, Ning stated that he would move certain supervisors from the MEP/Fit-Out teams to the CM team, but doing so did not add any net increase to the long-understaffed and under-qualified CM team, except possibly to the detriment of the MEP/Fit-Out teams. Ning referenced two new “Senior Engineers” coming to the site, but did not identify them by name only saying that they “arrived last week.” Ning did discuss work permits sought and issued for additional labor, while admitting, however, that CCA was not coming close to the additional “400 per month” new workers (not replacements) he had committed to add to the Project.

163. Mr. Izmirlian responded on April 18, informed Ning he was (apparently) not being told the truth by his executives, and invited him again to see firsthand how little progress there was on the Project. Mr. Izmirlian also forward to Ning a seven (7) page summary status report, prepared by Baha Mar Ltd. at BML Properties’ request, that set forth the following facts:

- a. CCA missed three recent key milestones (Convention Center completion, Power On, and CUP completion).
- b. Any late completion of the resort would have real impacts on, among other things, the plans to hire Bahamian workers before the operational opening of the resort, the GOB, the lender and the start of repayment on the loan, and the “project ownership” for “possible irreparable harm to the reputation and image of the resort....”
- c. That in early March Baha Mar Ltd., after repeated and unanswered requests made to CCA, undertook to itself create a six-point plan to guide CCA to accelerate and complete by December 2014, including requiring CCA to add 1,295 workers by the end of March, 1150 more before the completion of the Project, institute

double shifts, add 25 appropriately experienced Supervisors, prepare and use Coordinated Schedules, and give up scope to other contractors to allow CCA to focus on “critical areas [like Podium MEP – see above re “Podium Crunch”] and lessen further slippage.”

- d. CCA’s claimed labor ramp-up in March and by mid-April was going to be well-below the numbers promised by CCA at the beginning of March.
- e. CCA had not instituted a second shift, and instead had extended the day of a small percentage of its onsite workforce in a minimal second shift of a few hours.
- f. What little in the way of “procurement logs” CCA provided were “significantly lacking and not in compliance with the contract obligations,” and CCA entirely omitted to provide any logs for the key “critical path” elements of the MEP, and building envelope.
- g. CCA had not added the promised 25 additional site supervisors claiming, incorrectly, that there were “adequate resources on site.”
- h. The GOB had recently issued two stop-work orders due to “questionable workmanship” and the Project was otherwise plagued by defects that were languishing, unrepaired by CCA.
- i. CCA had not ever provided a “complete, integrated update to the master schedule to manage and plan works.”

164. On April 14, 2014, Mr. Izmirlian sent (via email) a letter to Jun Yi, Chairman of China State Construction. In that letter, Mr. Izmirlian referenced “our grave concern on the pace of construction at Baha Mar ... We have tried to work with Ning Yuan and the site team but without success... From our point of view, the critical issues remain the same: lack of adequate labor;

lack of experienced senior supervisors; the need for a completely staffed second shift [to accelerate the work around the clock]; and detailed schedules and procurement logs to track daily progress. We are quickly running out of time and urgent decisions are needed.”

165. Mr. Izmirlian’s letter did not spur CCA into action – in fact, among other things and one month after the letter, CCA engaged in a work slow-down and walk off in protest of Baha Mar Ltd. filing a dispute with the DRB (see paras 69-82 herein). The slow-down and walk-off directly violated the MCC (which requires the contractor to continue working, and the owner to continue paying, while the DRB hears and resolves a dispute). Of course, during the slow-down, CCA did not employ a second shift, did not increase its workforce in any reasonable amount, did not provide contract compliant schedules or procurement logs, and did not increase the number of experienced senior supervisors.

166. In the latter half of 2014, CCA issued (more) false and misleading reports. In September 19, 2014, CCA submitted its Monthly Report 45 as of the end of August 2014. The materially misleading and false statements (and material omissions) in that report are too numerous to list here. Suffice it to say, some of the more egregious examples of such false statements are as follows:

- a. Schedules set forth and discussed in that report contain dates shifting both forward in time and back in time for no apparent or factually supportable reason and are not consistent with Version 5 which came out in late October 2014 (just a few weeks later);
- b. While CCA claimed that it was then handing over spaces to Baha Mar Ltd., such was not true -- no spaces had been completed to the point of such handover to Baha Mar Ltd. by the end of August 2014;

- c. Although CCA claimed 3,000 Chinese workers on site plus 800 additional local workers, the actual number was much closer to the “evacuation drill” number of 1600.
- d. While (as described above) CCA and Baha Mar Ltd. had committed to a “Podium Crunch” strategy to progress these key elements in the critical path of the Project, Report 45 entirely omits any reference to CCA’s commitments at the Podium Crunch Summits or any compliance (or lack of compliance) by CCA with its commitments.
- e. The references to Superstructure Non-Compliance Reports (“NCRs”) as noted in previous reports were omitted by CCA in Report No. 45, however, 325 NCRs remained as of the end of August 2014, each one awaiting CCA action to remedy the defects and deficiencies identified, some of which dated back to July 13, 2012.
- f. Regarding the Casino Hotel, the April 2014 CCA report advised that Superstructure for that hotel had been completed on November 29, 2013, which was 4 days ahead of schedule. The June 2014 CCA report revised this to a completion date of April 1, 2014 with a delay of 120 days. Having previously reported this as complete on two separate dates, the July 2014 and August 2014 reports contradicted the earlier reports and stated that this completion would be September 28, 2014 with a delay of 300 days, without CCA providing any explanation for these contradictory statements and without providing any evidence or reasoning for any claimed delay regardless of the contradictions.
- g. CCA reported without explanation or evidence that Substantial Completion of the Hyatt Hotel was delayed 203 days, however the July report stated such was

delayed 96 days, equating to a slippage of 107 days in the 31-day period of August 2014. In that same vein, substantial completion of the SLS was stated by CCA in August 2014 report to be 141 days delayed, however (as with the Hyatt) there was a slippage of 53 days during the single intervening one month/30-day period, without any explanation or evidence from CCA.

- h. Regarding the total Project claimed delays in the August 2014 CCA report, a comparison with previous reports reveals the total Project on schedule in October 2013, 45 days delayed in November 2013 (delay of 45 days in a 30 day period), 33 days delayed in December 2013 (a gain of 12 days in period), 54 days delayed in January 2014 (delay of 21 days in period), 56 days delayed in February 2014 (delay of 2 days in period), 90 days delayed in March 2014 (loss of 49 days in a 31 day period), 90 days delayed in April (no change in period), 117 days delayed in May (loss of 27 days in period), and 152 days delayed in June (loss of 35 days in period), 155 days delayed in July, and 155 days delayed in August.
- i. No explanation or evidence was provided by CCA for the extensive gains and losses in consecutive months, indicating that CCA, presumably a skilled and sophisticated international contractor perfectly capable of calculating a “critical path” delay, simply decided to fabricate these dates month to month and overall to suit whatever it chose to contend or claim that month, period, or overall.

167. In October 2014 CCA did not meet the first milestone dates for hotel room turnover, and issued a critically false and misleading status report regarding the progress of its work. As of the end of October 2014, a mere two months before the entire resort was scheduled to be opened to guests, CCA had only progressed a mere 10 hotel rooms within the entire project to the point



where CCA as CM considered those rooms ready for “punch listing” (namely, correction of usually minor errors, scratches, paint touch up and the like). As of that late date, CCA had not reported to BML Properties or the board any accurate and complete schedule of turn-over of rooms to meet the initial deadline, or any deadline.

168. On October 27, 2014, CCA submitted a revised completion schedule Version 5 covering only the hotels and the Podium. Rather than accurately reporting the present status and expected future status of the progress of the work toward completion, Version 5 contained numerous inaccurate statements and statements of future progress that were neither reasonably supported by fact nor attainable by any reasonably informed contractor or construction manager. Thus, as late as October 27, 2014, 65 days from the initial “open for guests” date agreed between the parties and a date on which continued funding from China Eximbank and new “key money” from the hotel companies relied, CCA continued to make false and misleading statements in critically important documents such as this Version 5 of the completion schedule. Among the many inaccurate and misleading statements in that Version 5, CCA included the following, by which CCA intended to mislead the reader as to what had been accomplished by that date and what it reasonably believed could be accomplished by certain future dates:

- a. CCA did not acknowledge or take into account the work necessary to make up for (accelerate in response to) its prior enormous and even as late as October 2014 undisclosed and unacknowledged labor deficits;
- b. CCA did not acknowledge or take into account its past record of missing key milestones in prior versions of the same schedule nor did it acknowledge the reasons for missing such milestones or set forth a plan to mitigate the lingering effects of missing such milestones;

- c. CCA's commitments to future Hotel TCO dates set forth in the Version 5 schedule were by November 14, 2014 reneged by CCA and no new revised and accurate commitments were forthcoming;
- d. CCA inserted government inspections into the schedule without adapting the schedule to include a minimum of 48 hours prior notice to the GOB to arrange for the inspection;
- e. CCA omitted any reference to a procedure regarding how CCA would monitor and report on (and compare the Version 5 schedule to) the rapid progress of the work assumed by that schedule;
- f. CCA omitted to issue (along with the schedule) any revised cash flow estimates that aligned with the Version 5 schedule (a common occurrence on projects, large and small);
- g. CCA failed to issue schedules that were "labor/resource loaded," an especially glaring omission given the need for greater labor resources to be devoted to completion of the Work as assumed by CCA's issuance of the version 5 schedule;
- h. CCA stated that during the week commencing December 15, 2014, CCA would turn over 18 floors across four (4) different hotels for Baha Mar Ltd. for its consultants to "punch" (or inspect for minor repairs or painting needed), totaling approximately 350 rooms. CCA did not come anywhere close to that - - indeed, by December 15 only 10 rooms in one hotel had been turned over in that condition;

- i. CCA stated in the Version 5 schedule that CCA had already handed over for “punch” 61 separate rooms in the Podium. CCA knew when it created that this claim was not true – CCA had only handed over five (5) rooms, nine (9) were close to being handed over, and the balance of 49 rooms were not complete, creating further delays in the schedule for the Podium and requiring diversion of resources from elsewhere to address the key “Critical Path” components found in the Podium.
- j. The Version 5 schedule was already “in delay” when issued with respect to the guestroom floors, because the dates for completion of those portions of the Work had already passed and the Work had not been completed.
- k. Version 5 also indicated a TCO completion date of the end of March 2015, which was directly contradicted by other CCA generated documents concurrently proffered by CCA as “accurate,” such as its own concurrent monthly report no. 47 which in one portion of the report identified June 30, 2015 as the substantial completion date.

**L. In An Effort To Save Its Investment, Protect Its Planned Profits, And Mitigate Any Further Harm, BML Properties Made One Final Effort In November 2014 To Compel CCA To Finish The Project**

169. As described above, CCA had missed one milestone after another. It had not complied with the August DRB decision by increasing its workforce to even the levels it had projected it would need, let alone that would deliver the Project on time and on-budget. While well behind schedule and a few months after CCA startled BML Properties by saying it would not complete its work on the Project until July 2015, CCA surprisingly began a work slowdown (measured in hours per day, productivity observable to consultants, total numbers on the site) in September

and October 2014. This work slow-down accompanied a concurrent failure to increase the workforce present (by bringing in additional Chinese workers) to achieve even the levels of work contemplated by CCA's own schedules, let alone any reasonable number of workers required to make up for the enormous (and growing) workforce deficit or complete the tasks remaining by the relevant deadlines.

170. As the contract date for Substantial Completion approached, the parties exchanged a series of communications whereby Baha Mar Ltd. sought to pursue resolution of new and continuing disputes before the DRB. In response, even while CCA continued to understaff the Project and fall further behind (including engaging in obvious and admitted work slowdowns) CCA had the mendacity to demand payment in full on disputed and highly suspect commercial "claims." In this context, BML Properties proposed that the parties once again meet and attempt to work through their differences. The meetings, held in Beijing in mid-November 2014, concluded with a new agreement, the November 19, 2014 "Meeting Minutes."

171. The November 2014 Meeting Minutes reflected the agreement of Baha Mar Ltd. (as directed by BML Properties) to essentially "buy" dates certain for the construction completion of the Project in an effort to mitigate the impact of CCA's breaches of its commitments to achieve such completion. These Minutes required Baha Mar Ltd. to advance \$54 million against unresolved and disputed commercial disputes (which Baha Mar Ltd. immediately did) and required CCA to increase trained supervision and its overall workforce (which CCA did not do) and meet milestone and completion dates, in particular a January 19, 2015 Substantial Completion date for the Convention Center and a March 27, 2015 "operational start for paying guests in hotels including amenities." BML Properties had no option at this point other than to rely on CCA to perform as promised and deliver completion of the Convention Center and the

resort as a whole since, among other things, no replacement contractor could complete by March 2015 or open in time for Baha Mar Ltd. and BML Properties to benefit from incoming revenues from opening during the 2014-2015 season.

172. Baha Mar Ltd. and BML Properties left that meeting with the expectation that CCA would supply all the newly promised and represented incoming workforce and increased effort (that had been withheld, intentionally, by CCA to extract the “commercial” concessions in the November 2014 Meeting Minutes).

173. Based entirely on CCA’s repeated assurances that it would complete the resort by March 27, 2015, and to attempt to avoid the disastrous consequences of not proceeding towards completion, BML Properties directed Baha Mar Ltd. to draw down the credit facility by an additional \$20 million to pay for pre-operational expenses associated with operating the resort, training the staff, and the like. This pre-operational phase was, as promised by CCA, to coincide with declining construction expenses as CCA drew the construction phase to a close on or before March 27, 2015. By way of example only, and in reliance on these promised milestone and completion dates, including CCA’s repetition of its promises to so achieve opening of the resort for guests on or before March 27, 2015, Baha Mar Ltd. commenced accepting reservations which, when CCA did not live up to its promises, Baha Mar Ltd. had to cancel and otherwise cover to its great financial and reputational harm.

174. Also by way of example only and in reliance on CCA’s promises and representations, Baha Mar Ltd. began to prepare for the new targeted opening dates. Between January 1, 2015 and March 27, 2015, Baha Mar Ltd. at BML Properties’ direction hired an additional 2,070 employees and staff needed to operate the Project at an aggregate additional cost of more than \$4 million per month. These new hires included over 1,700 employees for whom Baha Mar Ltd.

spent significant time and money training for positions in the Project's new hotels and casino. In addition, Baha Mar Ltd. spent substantial funds on its pre-opening marketing and advertising campaigns, fully stocking its facilities with food and beverage supplies and other inventories, and stocking its vault with the \$4.5 million in cash necessary to open the casino.

**M. CCA Never Intended To Comply With Its Promises Found In The November 2014 Meeting Minutes And Exacerbated The Damage Resulting from Those Lies With New Ones At A Board Meeting In Early December 2014**

175. Sadly, and to BML Properties' great damage as alleged herein, CCA entered into the November 2014 Meeting Minutes contract never intending to perform. Baha Mar Ltd. promptly met all of its November 2014 Meeting Minutes commitments including immediately paying the \$54 million advance against disputed CCA claims. Yet, CCA breached every one of its promises found therein, consistent with its intent not to perform any of them, obtain over \$50 million in funding (drawn under the China Eximbank loan), and go back to business as usual, namely lying about completion and workforce numbers, promising more and delivering less, and completing only if and when it chose. It did not supply the 200 workers within the 30-day period as required under the Meeting Minutes – rather, there were only 62 additional workers that arrived in December 2014 and, indeed, five (5) managers departed.

176. Moreover, and following the November 19, 2014 Meeting Minutes, in a November 27, 2014 meeting at the Resort, with Tiger Wu and David Wang in attendance for CCA, Mr. Wu made the following statements to BML Properties and Baha Mar Ltd. that were untrue when stated and/or were not based on any reasonable belief that such were true:

- a. CCA stated that notwithstanding the circumstances leading up to the Meeting Minutes, it had the resources on hand to and would deliver a completed project on or before March 27, 2015.
- b. CCA stated that to meet the workforce requirements of the Project no workers were leaving, whether hired by CCA or its subcontractors. That was false when stated -- CCA had previously planned (without disclosing its plan to BML Properties) to allow 800 workers to leave the Project in December 2014 and January 2015, and such number of workers did in fact leave.
- c. CCA promised to report on the daily and weekly tracking of workers against the version of the construction schedule then used to monitor workforce commitments (version 2.3); CCA never provided those reports.
- d. CCA stated that all senior managers would remain on the Project and that CCA was bringing in 15 additional people at the level of manager. Not only did the 15 additional people not arrive, scores of managers departed in December 2014 and January 2015, and as set forth elsewhere herein ("Diversion of Senior Executives"), CCA knew it would be diverting more of the time and effort of its senior-most executives to a competing development owned by China State Construction and to a project in Panama without ever disclosing such intent to divert the time and effort of these executives to BML Properties.
- e. CCA stated that at least 200 additional workers would be arriving immediately and that CCA would add more as needed. While certain new workers did arrive in December, they did not add to the number of workers on the Project, since 800 (or more) were in the process of leaving over that same period of time.

- f. CCA stated that it was setting up bonus programs for workers to make deadlines. This did not happen, since (as BML Properties is informed and believes) CCA refused to provide such bonuses and instead -- even while BML Properties directed Baha Mar Ltd. to continue paying CCA Bahamas through those amounts in CCA Bahamas's payment requests that were appropriate -- CCA continued to suffer from labor strife and unrest due to its failures to pay its own subcontractors and employees. After receiving \$54 million in November, CCA had more than enough money to pay (unless it was diverting that money to a different project or endeavor or merely siphoning the money from the project).
- g. CCA promised to attend standing Tuesday meetings with the GOB's inspectors (Reiss Engineering) in order to ensure that government inspections would track with the completion schedule. CCA did not attend those meetings consistently, and when it did occasionally attend the CCA attendees could not or would not answer fully the questions of Reiss Engineering. Indeed, Reiss on behalf of the GOB reported in March 2015 that CCA and its subcontractors had not come anywhere near far enough along in the prep work to be granted TCOs.

177. On December 5, 2014, the Board of Directors of Baha Mar Ltd. met, where four of the five members of the Board were appointed to those positions by BML Properties and the fifth was appointed by CCA -- at that time, CCA's director was Tiger Wu. Also present at that meeting was David Wang, another executive of CCA. At that meeting, CCA re-assured the Board that the Project would open on March 27, 2015 and that CCA had brought in and was bringing in enough labor and supervisors to accelerate the Work and complete, as promised, by March 27, 2015. In reliance on this reassurance, the Board including all four of BML Properties'



appointees to that Board and BML Properties' Mr. Izmirlian – including as well CCA's appointee Tiger Wu (who did not disclose what he knew at that time -- that it was not possible for CCA to finish the resort by March 27, 2015 due to the workforce then present and anticipated to arrive) – voted unanimously to commence taking reservations for the new hotels and Convention Center from the public starting March 27, 2015, in reliance on CCA's representations that it would complete the Project by that date. At that meeting, Messrs. Wu and Wang presented the following (among other) knowingly false and otherwise inaccurate statements to BML Properties and Baha Mar Ltd. in their oral presentation and/or in the materials that they handed out at that meeting and presented in a power-point designed to mislead BML Properties and Baha Mar Ltd.:

- a. Wild Air would be available for all buildings 10 days later – CCA made that statement without any reasonable basis in fact for making it.
- b. Upon questioning, both Mr. Wu and Mr. Wang denied that their time or efforts would be diverted to, or that they were involved in, or that they would in any way be responsible for, the redevelopment work CCA planned at the Hilton in Nassau that CCA had just purchased at the end of October 2014. In truth, both Mr. Wu and Mr. Wang were already heavily involved in that project but failed to disclose such, and knew that a substantial amount of their time would be required on that project while Baha Mar was still underway and failed to disclose that as well. Moreover, in the same vein, both Mr. Wu and Mr. Wang knew that they would both be spending a substantial amount of time away from the Project because of another project that CCA had only recently become involved in -- the expansion of the Panama Canal. Indeed, in April 2015, following a plan formulated by CCA

well before the December 5, 2014, Baha Mar Ltd. Board meeting, CCA opened its Panama office, announced its new affiliate “CCA Panama” and concurrently announced its new president, David Wang and its Chairman, Tiger Wu, the same persons in the Board meeting on December 5 omitting any reference to the diversion of his or their time to any other project, and indeed denying any such diversion as to the Hilton in Nassau.

- c. Both David Wang and Tiger Wu similarly omitted to mention that their colleague and Senior CCA Executive Daniel Liu, as BML Properties is informed and believes, was not focusing his efforts even in substantial part on the Project, because he had since at least August 2014 traveled extensively outside of the Bahamas (and had not been in China “attending” to materials procurement, as CCA had informed BML Properties months before), to locations around the Caribbean (Panama, Bermuda, Jamaica, etc.), and in the South Pacific in search of business opportunities.
- d. All scaffolding was planned to be removed by March 15, 2015 – significant amounts of scaffolding remained as of July 1, 2015.

178. By December 15, 2014, with many years of opportunity to accurately report to BML Properties about the state of the Work but having failed to do so, CCA continued to fall behind any applicable schedule (and continued to fail to accurately report regarding such), due to, among other things, the following: Failure to follow planned sequence; Incorrect sequencing of activities resulting in the need to dismantle installed work to allow incomplete works above or behind to be finished, inspected and signed off; Insufficient protection resulting in damage to new permanent work and/or equipment and resulting replacement or rectification; Inefficient

logistics planning resulting in congestion, multiple handling and inefficient movement of materials around the site, plus delays while the location of materials and equipment was established; The movement of resources between different work areas before fully completing works in any one area; Breakdown of plant and machinery; Unfinished rectification of previously incorrectly installed works creating piecemeal work to areas; New Non-Compliance Reports (NCRs) identifying new defective Work and slow to non-existent rectification of existing NCRs, which, if CCA was to devote the resources to rectify, would divert CCA's limited workforce from completion of spaces/buildings to repairing the thousands of defective conditions identified in the NCRs;.

179. In its Progress Report No. 45, dated December 15, 2014, RLB reported as of that date and with respect to the "Core Works" of the Project (the vast bulk of the construction Work and expenditures), that (among other things) CCA's "recent" schedules were not accurate as to progress thus far achieved and expected progress in the future.

180. As set forth above, CCA failed to complete the Convention Center by the agreed upon opening date of January 19, 2015. In numerous subsequent meetings, however, CCA continued to give Baha Mar Ltd. and BML Properties detailed assurances that the entire Project (including the convention center) would be completed and ready for opening by March 27, 2015. Moreover, as was typical throughout the life of the Project, Baha Mar Ltd. executive Thomas Dunlap met in person with the President of CCA Bahamas and Executive Vice President of CCA Tiger Wu on multiple occasions each week. At none of these meetings did Mr. Wu inform Mr. Dunlap that CCA would not complete the Project by March 27, 2015.

**N. During The Week Of January 5, 2015 CCA Misrepresented To Mr. Izmirlan,  
China Eximbank, Government Officials And Others That The Project Would Be**

**Completed On Time, While Concurrently Advising China State Construction In A Secret Letter That It Could Not Be So Completed Without Help That Never Arrived**

181. During the week of January 5, 2015, Mr. Izmirlian and the Prime Minister of The Bahamas traveled to Beijing to meet with representatives of China Eximbank and CCA and to obtain assurances that the Project would be open to guests starting on March 27, 2015. Once again CCA's President Ning Yuan and its Executive Vice President Tiger Wu stated unconditionally that they would progress CCA's work so that the Project would open to guests on March 27, 2015. Based on these continued reassurances, Baha Mar Ltd., at the direction of BML Properties, continued accepting reservations and continued planning on some form of opening for March 27, 2015.

182. What the representatives of CCA did not tell anyone at the January meeting in Beijing, and never told any representative of BML Properties or Baha Mar Ltd. at any time previously or thereafter, is that they had known for some time, indeed it appears months before CCA signed the November 2014 Meeting Minutes, that CCA and CCA Bahamas did not have on hand the resources to and could not finish the Project even by the late opening date of March 27, 2015, even to make some but not all of the hotel rooms available to guests.

183. Caught at a point now where it had been unable to finish even late, or receive TCOs necessary to start opening spaces to guest use, and having come close to its goal of extracting as much of the available loan funds as it could, CCA began to consider the dire consequences of their scheme conceived almost three years before.

184. Within 15 days after the meeting in Beijing described above in paragraph 181, CCA sent an urgent letter to the Chairman of China State Construction, Mr. Yi. That letter contains a

signature block identifying the sender as China Construction America, Inc. CCA stated in that letter (translated into English – emphasis added), as follows:

***"Report regarding request for extra workforce for the Baha Mar Project***

Dear Mr. Yi, director of CSCEC,

The Baha Mar Project has been progressed under the care and support of CSCEC.

Currently, the Project is at a crucial dash to meet the final deadline. However,

because the professional subcontractors failed to provide sufficient workforce in time, several deadlines for sub-projects were missed and the target completion for several sections got delayed. This will directly impact the target of opening on 27 March 2015.

The situation now is very difficult which, if cannot be turned around, will soon cause irreversible and catastrophic loss. Not only will there be a daily delay penalty of US\$250,000, unmeasurable damages to the brand and reputation of CSCEC will also be caused. CCA gratefully request CSCEC to coordinate and order the subcontractors to take emergency measures, organize labor force in a timely manner and provide extra technical workers and experienced managers to the project by the end of January in order to meet the target of opening by 27 March 2015. According to the current status of the unfinished work, we request as follows: CSCEC Decoration to provide not less than 200 workers; Bureau One Decoration to provide not less than 100 workers; CSCEC Industrial Equipment Installation to provide not less than 100 workers; and CSCEC Electronic to provide not less than 50 workers.

Hereby report for approval.

**China Construction America Inc.**

**20 January 2015"**

185. There can be no question as to the meaning of this letter. CCA admits that it did not have the workforce to meet deadlines that it missed prior to January 20, 2015. CCA admits that it would miss the deadline of March 27, 2015 as well because of these previously missed deadlines and for the same reasons. CCA admits that any delay in opening the resort by March 27, 2015 will result in “unmeasurable damages to the brand and reputation” of CSCEC, admitting as well under the same missed opening concept that BML Properties’ investment in Baha Mar Ltd. will suffer “unmeasurable” damages to brand and reputation which, in the hospitality industry, is an even greater loss than to a construction company. CCA admits that if the “situation” of its own making and design “cannot be turned around” it will soon cause “irreversible and catastrophic loss” to Baha Mar Ltd. and BML Properties, as the parties that had relied on CCA’s prior misrepresentations. CCA admits that it has not been able to “order” or even persuade its subcontractors (which are also affiliates and subsidiaries of CSCEC) to send more workers, and thus admits that it knew many months before writing this letter (due to the long lead time to obtain work permits, a process CCA was responsible for under the MCC) that its subcontractors would not be able to send the needed workers to meet a March 27 opening date or any date even proximate to that opening. CCA admits it was required to seek “emergency measures” reflecting a complete and entirely undisclosed failure of its management of the Project and revealing that it never disclosed to BML Properties the emergency CCA admittedly faced but had not remedied. CCA admits that CCA, and not CCA Bahamas, was in charge of this Project and ran the subcontractors and answered to Baha Mar Ltd. and in turn BML Properties. CCA admits it has

no defense to the assessment of liquidated damages of “US\$250,000” per day. CCA admits that at a minimum it was 450 workers and many untold number of “extra technical workers and experienced managers” short of what it needed to simply maintain the pace of work to the end of January 2015 (since CCA admits it needs those workers “by the end of January...”). CCA omits any reference to design delays, or any cause for the prior missed deadlines other than lack of sufficient workforce. And, in the end, this letter confirms that CCA was defrauding BML Properties and Baha Mar Ltd. all along regarding workforce numbers and the reasons for missing prior deadlines, including but not limited to at the meetings in Beijing in November 2014, in the subsequent meetings in the Bahamas, in the weekly senior executive meetings that took place at the Project in January, February, and March 2015, and at every other opportunity where CCA should have been acting and reporting accurately for the benefit of the investors, in particular BML Properties.

**O. In Early 2015, CCA Committed Further Acts Of Fraud Through Its Reports, Workforce Misrepresentations, False Invoices, Misstatements About Finances, And Unfounded Requests For Payment**

186. As the secret letter of January 20, 2015 illustrates, CCA and its executives, simply put, are defrauders of the first order and responsible for the financial destruction of the Project as a result of their lies, their delays all due to their own misconduct, and their unreported and improper management of the Project.

187. Compounding these fraudulent acts, CCA’s subcontractors listed in the January 20, 2015 letter did not send the requested workers by the end of January. While only CCA possesses precise worker arrival information, BML Properties does know that approximately 800 hundred workers left for the Chinese New Year prior to February 19, 2015, that only a few hundred, at most, workers arrived at the site that CCA claimed were “new” workers in that same time period,

and that observations by Baha Mar Ltd. consultants revealed not a net increase in the number of workers on site but a significant net decrease in those numbers after January 20, 2015, and before March 27, 2015.

188. Notwithstanding that at all times in 2011-2014 and on 47 different occasions into the beginning of 2015 Baha Mar Ltd. paid every undisputed request for payment, and while CCA continued to provide the knowingly false and misleading assurances described above, during the first four months of 2015 CCA submitted what it knew to be sham and fraudulent payment applications. Such included inflated invoices for, among other things, work not yet completed or plagued with unremedied defects, work undertaken correcting its own prior defective work, amounts for CCDs and related commercial claims that were already resolved under the November 2014 Meeting minutes or concerning which CCA had already received advanced monies (as part of the \$54 million BML Properties direct Baha Mar Ltd. to draw down from the loan and pay to CCA), and the like. CCA delivered monthly pay applications to Baha Mar Ltd. for the period February through May 2015 in an aggregate amount of \$343.8 million for work in respect of which China Eximbank's own independent project monitor (RLB) approved at a value stated to be worth only \$76.1 million for those four months. Moreover, a similar in-depth review of these pay invoices by Baha Mar Ltd.'s consultant AECOM COST (Davis Langdon) revealed the following: (a) CCA requested release of half of the retainage on all their Self-Performed Work packages even though Substantial Completion had not been achieved; (b) CCA requested payment for work not yet complete, including but not limited to asking for 100% payment for their Rooms and Corridor fit-out and Podium Fit-Out packages in their May application, even though both packages were not complete; (c) CCA requested payment for defective work in contravention of the MCC, section 3.5.1, A201.; (d) CCA sought payment for CCDs that were



in dispute. The table below provides a summary of the difference between CCA's Payment Applications between February and May 2015, and what AECOM COST (Davis Langdon) certified as the payment due:

	CCA Payment Request	AECOM Certified Payment	Difference
<b>Feb-15</b>	97,870,199.00	28,446,733.00	<b>69,423,466.00</b>
<b>Mar-15</b>	100,136,248.00	24,041,605.00	<b>76,094,643.00</b>
<b>Apr-15</b>	80,856,612.00	12,726,594.00	<b>68,130,018.00</b>
<b>May-15</b>	64,899,205.00	3,426,020.00	<b>61,473,185.00</b>

189. The beginning of January 2015 and through March of 2015 also constituted a period of great activity, with numerous meetings between CCA and Baha Mar Ltd. staff and executives and BML Properties officers, culminating in a meeting on March 26, 2015 between Messrs. Sarkis Izmirlian and Thomas Dunlap for BML Properties and Baha Mar Ltd., on the one hand, and Messrs. Ning Yuan and Tiger Wu for CCA and CCA Bahamas, on the other hand (discussed more fully below in paragraphs 194-195). During the three months prior to the March 26, 2015 meeting, BML Properties received assurances from CCA that the Project would be completed as set forth in the November 2014 Meeting Minutes as well as reports from consultants and owners' representatives that CCA was creating more problems than they were solving. The following are but a few examples of these occurrences:

- a. On January 13, 2015, Baha Mar Ltd.'s mold consultant AMRC, which had been issuing reports to Baha Mar Ltd. since early 2014 (which had in turn shared them immediately with CCA) delivered a report on the further spread of mold at the resort and the failure of CCA's efforts to remedy the existing mold and contain

and stop the creation of new mold growth. Without question, CCA should have reported that they had not gotten in hand and under control the spread of mold at the resort and sought BML Properties' guidance on this issue.

- b. On January 29, 2015 CCA prepared a Project update review and presented it in a meeting with Baha Mar Ltd. and BML Properties executives. In that report and in that meeting, Tiger Wu of CCA stated that TCO-1 would be issued in 11 days, a statement for which Mr. Wu had no basis in fact or reasonable belief, given the status of CCA's work up to that point to obtain TCOs. Moreover, CCA (Tiger Wu and David Wang) intentionally misrepresented to BML Properties and Baha Mar Ltd. that it "had a plan" to achieve the March 27 completion and partial opening when in fact no such plan existed.
- c. On February 9, 2015, before CCA began submitting its sham payment applications and after CCA had received 47 consecutive payments by Baha Mar Ltd. as well as the special \$54 million payment under the November 2014 Meeting Minutes, 200 workers went on strike at the site as part of a "work stoppage," and such strikers asserted that they had not been paid by CCA Bahamas or CCA. When pressed for a response, in an email that same day David Wang as an executive of both CCA and CCA Bahamas responded by admitting (i) that the strikers were part of one of the key "teams" CCA purported to have assembled on site to work on Interior Fit Out (tasks necessary to turn over completed hotel rooms to Baha Mar Ltd. for the loading of furniture and other items), and (ii) that "it [was] a payment issue" which caused the strike, and that, notwithstanding all the billions of dollars already paid to "CCA" (meaning, CCA

had been paid by China Eximbank instead of CCA Bahamas, and/or that Wang treated CCA and CCA-Bahamas as one and the same entity), CCA “might need some immediate cash” meaning, of course, that CCA had not paid these workers.

- d. Sometime in February 2015, CCA’s David Wang spoke to the representative of China Eximbank without asking for Baha Mar Ltd. (as the borrower) to be present and without notice to Baha Mar Ltd. in advance. During that discussion, BML Properties is informed and believes and based thereupon alleges that Mr. Wang stated to the Bank that the entirety of CCA’s disputed CCDs and claims (totaling in excess of \$100 million) were proper and were currently due and payable by Baha Mar Ltd. to CCA. This was a misrepresentation on many levels, most particularly that no such amount was owed, that the bulk of CCA’s claims tied to the CCDs were either shams in themselves or had no supporting documentation to provide a factual basis for the claim, and that Wang knew that Baha Mar Ltd. had already contested, on numerous prior occasions, the lack of factual support for the claims and the dollar amounts of the claims themselves. As a result of these lies to China Eximbank, China Eximbank considered that these contested CCD claims might become due and payable and otherwise took those claims into consideration as it made its decisions in February through June 2015.
- e. Also in February 2015, BML Properties is informed and believes and based thereupon alleges that China Eximbank sent an audit team to CCA’s offices (on the Project site and elsewhere) and that such team had requested that CCA generate, weekly, a delivery date schedule for key milestones and room

completions. To BML Properties' knowledge, CCA never delivered such schedule(s).

- f. In March 2015 CCA lied to its subcontractors, falsely stating to those subcontractors that Baha Mar Ltd. was running out of money to fund continuing construction (which was not true, since there remained substantial monies under the CFA available to fund construction, and CCA did not attribute to its own actions that CCA had in fact directed the non-payment of its subcontractors), and that Baha Mar Ltd. had "refused to pay" CCA. CCA made these false statements to accomplish a general work slow-down in an effort to extort settlements on commercial disputes (i) concerning which it had already received advanced monies (to pay its subs) under the November 2014 Meeting Minutes (a document which, to BML Properties' knowledge, CCA never shared with its subcontractors), and (ii) it had already agreed to submit to the DRB for resolution if the parties could not otherwise agree.
- g. On March 11, 2015, RLB issued another in its series of reports, and stated that the "earliest realistic date for partial opening would be June 1 and substantial completion around August 2015." RLB did not spare other criticisms of CCA's lack of proper reporting of scheduling information, procurement information, and the like. Notwithstanding this report, CCA immediately (albeit falsely) confirmed its ability to finish by March 27, 2015.
- h. In a letter dated March 14, 2015, and notwithstanding its admissions (hidden from BML Properties) regarding its chronic lack of manpower, and prior admissions (in Wang's February 9 email) that CCA was behind in its payments to subcontractors,

David Wang claimed, among many other false statements, that CCA was at that time increasing its workforce, accelerating its efforts to achieve a March 27, 2015 opening, and claimed that a lack of payment on the entirety of CCA's sham payment applications made it difficult to "motivate [CCA's] subcontractors." He did not mention any inability to finish the Project by March 27, 2015, indeed he affirmed that date by claiming that CCA was accelerating its efforts "to allow CCA to achieve Substantial Completion...by March 27, 2015, such that [Baha Mar Ltd.] could achieve operational start for paying guests by that date."

- i. On March 16, 2015, Baha Mar Ltd. issued requests to BML Properties and China State Construction that, pursuant to the Sponsor Support Agreement (dated January 28, 2011), BML Properties and China State Construction each contribute \$15 million to cover an "Equity Shortfall." BML Properties remitted that amount to Baha Mar Ltd. on March 20, 2015; China State Construction did not remit that amount in March 2015 or at any time thereafter asserting, incorrectly, that it could refuse to do so until it received more monies for its hotly disputed and entirely unsupported commercial claims.
- j. In a letter dated March 18, 2015, among other things, Baha Mar Ltd. exercised its rights under the MCC to examine CCA's books and records (as part of the "Project Documents" which, under the MCC, were owned by Baha Mar Ltd.), a demand to which CCA did not respond and with which it never complied.

**P. CCA Sabotaged The Project By Decreasing its Workforce And Causing Delay After Promising to Eradicate any Delay and Achieve Opening By March 27, 2015**

190. By November of 2014, CCA had over one thousand expired work permits for allegedly experienced workers who were at that time not legally allowed to be working on the Project and thus not properly part of the legally cognizable “workforce” under the MCC, a fact that CCA never itself disclosed to BML Properties and that BML Properties had to direct others to determine. CCA manipulated its immigration records, and failed to provide any data regarding departing workers, to preclude Baha Mar Ltd. from using the immigration data to audit the actual numbers of permitted and on-island laborers brought in from China. CCA’s failure to comply with the MCC in this regard compounded the other acts by CCA in failing to track its workforce, not the least of which was CCA’s refusal to employ the biometric workforce tracking requirements of the MCC (the palm print readers, as described above).

191. CCA failed to provide the manpower required to meet the operational opening date of March 27, 2015 pursuant to the November Meeting Minutes.

192. CCA in March 2015 and thereafter committed acts of sabotage and other acts incident to withdrawing its workforce from the Project. As of May 2015, CCA was down to 325 to 450 Chinese workers on site per day, and of those BML Properties observed that less than one third were effectively doing any work on a daily basis at the Project.

**Q. On March 25, 2015, The GOB Ministry Of Works Inspector Confirmed Non-Completion And Declined To Issue Certificates Of Occupancy**

193. On March 25, 2015, Reiss Engineering (the Deputy Inspector for the Ministry of Works, GOB), issued a letter to Baha Mar Ltd. The letter was issued to advise as to the status of the work relative to the sequence of completion, inspection, and TCO approval. In this letter, Reiss confirmed what BML Properties and Baha Mar Ltd. had recently suspected – CCA had not brought the Project to the point of completion to even commence realistic broad inspections, let

alone to issue Temporary Certificates of Occupancy (TCOs), which are required by the GOB before any hotel room or rooms can be occupied by guests.

**R. On March 26, 2015, One Day Before Promised (Delayed) Completion, CCA Withheld Critical Information from BML Properties About When The Project Would Be Done And Otherwise Held The Project Hostage In An Attempt To Extort Payments On Fraudulent Claims And Demands**

194. On March 26, 2015, one day before CCA's promised delivery of the resort, ready for "heads in beds," Tiger Wu and Ning Yuan on behalf of CCA and CCA Bahamas met with Sarkis Izmirlian and Thomas Dunlap on behalf of BML Properties and Baha Mar Ltd. CCA's utter disregard for its prior representations and assurances, string of broken promises, and general failures as Work Package Contractor and CM percolated to the surface during this meeting. The meeting lasted approximately 90 minutes. Among other topics of discussion, Messrs. Izmirlian and Dunlap asked on numerous occasions during the meeting "when will we be done – when will the TCOs be issued" and similar inquiries. Each time, CCA (Ning Yuan and/or Tiger Wu) said CCA did not know the answer, that it would have to discuss with its subcontractors and respond at a later date. Such a response is (i) unheard of in an industry where professional CMs always know, using properly prepared schedules, when completion will occur barring unforeseen circumstances or other *force majeure* interruptions, and (ii) in direct contradiction to all the representations and statements by CCA in November, December (including at the December 5 board meeting), January (including in the meeting with the Prime Minister of the Bahamas), and in every other setting – CCA had consistently said it knew the answer and the answer was March 27, 2015. CCA then affirmatively commenced a new phase of its fraudulent activity. CCA engaged in unlawful extortion. CCA claimed it had asked its subcontractors what the completion date might be, as CCA asserted, and that the subcontractors were not giving CCA information about delivery and completion dates until they were paid, therefore Baha Mar Ltd. and BML

Properties needed to arrange to pay these subcontractors in order for CCA to obtain a completion date from them. CCA consequently by this statement compounded its seriatim lies and acts of deception, since, among other things, (i) the vast majority (over 70 percent) of the “subcontractors” CCA claimed it had to extract this information from “after” they were paid were, in fact, affiliates of CCA as wholly owned subsidiaries of China State Construction and thus duty bound and able to supply the information to CCA, and (ii) this too was a lie, since BML Properties learned, based on the secret letter from CCA to China State Construction on January 20, 2015, that the subcontractors were not withholding information, rather the subcontractors had not been asked about the completion date since CCA admitted in that letter that it did not have the requisite workforce, including the subcontractors, to complete the job on time. What this meeting also revealed was that completing the job on time was not important to CCA. CCA’s singular focus was collecting the money CCA (falsely) claimed was due it (notwithstanding that those claims were unsupported by evidence and such documentation as CCA did submit did not comply with the contract requirements), to the detriment of the investors. Plainly, no duty to provide truthful reporting or accurate statements mattered to CCA. As well, during the meeting on March 26, 2015, Ning Yuan admitted that instead of using the \$54 million advance under the November 2014 Meeting Minutes as payment for commercial disputes as CCA had promised to do (and thus as substantial payment to subcontractors which were performing the work on the project from November 2014 until March 27, 2015), CCA stated that it had used the \$54 million on “overtime” labor at the site (that assertion could not be true, given how little after-hours work was actually done anywhere on the Project from November 2014 through and including March 2015) and other unspecified “resources” (that were obviously not enough, since the March 27 deadline was missed). Essentially, CCA



admitted that it had not spent the \$54 million advanced for the purposes intended, and it caused, in CCA's own words, its subcontractors to walk off, otherwise slow-down, and (as CCA claimed) not provide completion dates. Essentially, CCA had converted this \$54 million to a purpose unhinged from its promises in the November 2014 Meeting Minutes and otherwise wholly improper, which CCA knew would and did imperil the March 27, 2015 opening.

195. As soon after the March 26 meeting as CCA could organize it, CCA concurrently walked-off numerous elements of the Project and on other of its self-perform and the subcontractor works progress noticeably slowed down. CCA kept men inside the man camp (paid for by Baha Mar Ltd. under the General Conditions Work Package) eating the food paid for by Baha Mar Ltd. under that same package. CCA knew that the Hotel "key money," the reputation of the Resort once completed, and the financial health of Baha Mar Ltd. and BML Properties hung in the balance, however, and without factual support for its reasons for the walk-off (allegedly unresolved commercial matters, needs for further advanced monies, and retainage monies not yet due that even RLB stated were not due), CCA acted in bad faith in this manner in an attempt to further its extortion efforts. CCA's demands for advanced monies and retainage payouts and its walk-off and slow-down described above were in breach of the Investors Agreement, given that CCA was not acting in the best interests of all the investors, and was not otherwise reporting to BML Properties about the consequences of its actions. Indeed, by way of example, CCA's directors on the Board of Baha Mar Ltd. (Ning Yuan and Tiger Wu) never disclosed to BML Properties or the Board (of which they were members) any of CCA's and their intent to proceed with an inadequate workforce even after assuring BML Properties that CCA would achieve the delayed opening of March 27, 2015.

196. Rubbing salt into the wounds it had created, CCA's Ning Yuan and Tiger Wu, apparently needing some rest and relaxation after engaging in their acts of extortion during the March 26 meeting and staging the improper labor slow-down and walk-off, played a round of golf at the newly completed Baha Mar course.

**S. After So Obviously Missing The March 27, 2015 Deadline CCA Continued To Produce Misleading And Inaccurate Reports And Schedules, Including Revised TCO Completion Schedules Which Had No Basis In Fact**

197. On April 24, 2015, at a meeting between Governor Yuan of China Eximbank and Mr. Izmirlian on behalf of BML Properties, Mr. Yuan stated that without a completed Project there would be no money with which to repay the loan.

198. Also on April 24, 2015, CCA presented to BML Properties and Baha Mar Ltd. a TCO Completion Schedule, which within days when CCA did not meet any of the referenced deadlines became simply more evidence not only that CCA could not meet its own schedules but that CCA was affirmatively trying to mislead BML Properties and Baha Mar Ltd. by refusing to provide any firm or reasoned dates until CCA was paid its extortion money.

199. On May 15, and then again on May 23, 2015, CCA prepared so-called Revised TCO Completion Schedules, which were rejected by Baha Mar Ltd. (at BML Properties' direction) because, among other things, they did not include an explanation of the status of the testing required to support the dates, there was no meaningful reference to critical activities or overall strategy to engage the Ministry of Works of the GOB to accomplish all that was promised in these schedules, and there was an assumption by CCA that there would be a significant reduction in the number of fire alarm tests even though (i) CCA had failed nearly every key previous test of the fire alarm system and (ii) passing the tests was necessary to obtain any TCOs.

200. From May 25 to June 11, 2015, BML Properties and Baha Mar Ltd. executives held a series of meetings in Nassau, The Bahamas and in Beijing, P.R.C. During those meetings, CCA's executives present (Tiger Wu, and others) admitted the following:

- a. That CCA had in fact instigated China Eximbank's inquiries into Mace, Baha Mar Ltd.'s "soft-cost" spending, and the like in 2012 and forward) that lead nowhere when PWC exonerated Baha Mar Ltd. and BML Properties from any wrongdoing.
- b. CCA even by the beginning of June 2015 could not provide any firm dates by which it would achieve substantial completion of TCOs for the critical spaces necessary to open the hotels and casino and allow for the hotel "key money" to flow into the Project finances and concurrently add to the equity.
- c. CCA had misrepresented to China Eximbank in February 2015 that the entirety of CCA's hotly-contested and fraudulently inflated over \$110 million in CCDs and commercial claims were fully due and payable (and not already paid under the November 2014 Meeting Minutes) and should be considered as entirely due and payable by China Eximbank in an effort to exert leverage against Baha Mar Ltd. and BML Properties in any effort by Baha Mar Ltd. to draw down on the loan without budgeting for the payment of such fraudulent claims.
- d. CCA acknowledged, again, that it knew of and took into account all of the design delay and error issues and concerns it alleged existed when it agreed to the March 27, 2015 opening date in the November 2014 Meeting Minutes and thereafter re-affirmed that date before the Prime Minister of the Bahamas and the Chinese Ambassador to the Bahamas in mid-January 2015.

201. At one of those meetings, in June 2015, a representative of China Eximbank (Ms. Mo) stated that if the Project had been completed by CCA in time for the March 27, 2015 completion date under the November 2014 Meeting Minutes, the Project would have been on-budget with no cost overruns. CCA's CEO Ning Yuan was present when Ms. Mo made that statement, involved in the meeting and attentive, and heard the comments of Ms. Mo but made no effort to rebut or deny the truth of what Ms. Mo stated.

**T. CCA Ignored Its Day-to-Day Reporting Duties And Related Quality Management Plan, Resulting In A Lack Of Information To BML Properties And Substandard Work, Among Other Things**

202. CCA was duty bound to perform the role of CM and create and provide to BML Properties (as the "day to day" manager of the affairs of Baha Mar Ltd.) accurate and complete schedules, budgets, procurement logs, and the like, and provide as well accurate monthly reporting. Examples of CCA's failures as CM, and its concurrent failures to report to BML Properties about such failures, and the consequences of such failures are legion. By way of example only, CCA represented in 2012 as work progressed its ability to comply with its own QA/QC plan (a key plan CMs prepare for large projects) and then never complied, or even tried. CCA in numerous different ways ignored the requirements of its own Quality Management Plan (QMP). The QMP required that robust testing and inspection plans (T&IP) were to be in place prior to the commencement of the Work. CCA continued to progress the Work, as the Work critically "came out of the ground" in 2012, even though it knew that the T&IP was not in place, which resulted in substandard, hazardous and defective Work. An example of this is the installation of the under-slab drainage, where CCA installed the works, confirmed that the installation was successfully tested (by CCA), only to have the independent testing authority fail the installation due to splits and cracks in the pipe work.

**U. CCA Mislead BML Properties About Sequencing And Key Building Completions, Leading To Profound And Unpredictable Delays**

203. One of the earliest (2012 through 2013) and more serious failures of CCA resulted in significant delays to the Project. CCA failed to disclose in advance its intent to do the superstructure steel and concrete work on the two hotel towers but not, concurrently but a few floors below, add in the Mechanical, Electrical, Plumbing, and Fire protection (“MEPFP”) and the Exterior Insulation and Finish System (“EIFS”) work.

204. CCA told BML Properties in early in 2012, as significant “out of the ground” construction began and the first floors above the foundations were being constructed, that it was going to sequence the construction of the two hotel towers in the usual and expected manner on a project like this – namely, constructing the towers by following the steel and concrete work (six to eight floors below the leading edge of the floor-by-floor steel and concrete work) with the MEPFP and EIFS (Exterior Insulation and Finsish System) work.

205. Instead, and without disclosure to BML Properties that it would deviate from V1.6 or its representations in this respect, CCA chose without explanation or advance notice to build the towers “to the top” with just the steel and the concrete work before starting any meaningful work on MEPFP or EIFS. Although BML Properties noticed that such was occurring by approximately July and August 2012 at a point where the floors constructed within the towers had reached an elevation such that the follow-on trades should have arrived and started their work, the accurate and truthful Construction Schedules CCA was obligated to deliver and the procurement and other “reports” that would have revealed that CCA intended not to sequence in the way represented within V1.6 were hidden by CCA from BML Properties and Baha Mar Ltd. These construction schedules and reports were not provided in time to allow BML Properties or

Baha Mar Ltd. to compel CCA to alter its plan or compel CCA to adopt acceleration efforts to make up for the lost time resulting from this sequencing, wholly at odds with both the CCA-issued schedule and with industry norms.

206. This dramatic departure from the schedule and the normal sequencing of these tasks (steel and concrete, followed by MEP, followed by EIFS) delayed the commencement of other tasks in the critical path for the Project, delay that CCA never accelerated its other work to remedy. As well, undisclosed in advance to Baha Mar Ltd. or BML Properties, CCA constructed the towers in this unusual and non-compliant manner to attempt to (i) shift workers around instead of providing the needed and experienced workforce for concurrent work on the towers, and (ii) provide its subcontractors, in violation of its own schedule, with “clear” work areas to install the MEPFP and EIFS without CCA needing (or attempting) to coordinate their work so as to drive down the price of the subcontractors’ work.

**V. CCA MALICIOUSLY INTERFERED WITH KEY CONTRACTUAL  
RELATIONSHIPS TO TRY TO GAIN LEVERAGE OVER BML PROPERTIES AND  
BAHA MAR LTD. AND REGULARLY SABOTAGED THE PROJECT TO  
ACCOMPLISH ITS OWN IMPROPER ENDS**

**A. CCA Lied to the Bank About BML Properties’ Watchdogs In Order to Get  
the Watchdogs Fired.**

207. By the middle of 2012, Baha Mar Ltd. and BML Properties executive Thomas Dunlap began to believe that CCA and CCA Bahamas and their executives were in over their collective

heads, incapable of correcting their pattern of poor work and poor to non-existent reporting. Mr. Dunlap and other executives and officers of Baha Mar Ltd. and BML Properties then undertook a series of steps to investigate their suspicions.

- a. By way of example, in 2012, when Mr. Dunlap sat in a meeting with Tiger Wu and David Wang, executives with both CCA and CCA Bahamas, Mr. Dunlap stated to both, among other things, that he believed CCA and its subsidiary CCA Bahamas were not properly reporting on the status of nor properly managing the Project, that certain key duties as CM and as the General Conditions Work Package contractor were unmet and not well performed, and that the workforce appeared to be not as promised in terms of numbers or experience. Mr. Dunlap also confronted CCA and CCA Bahamas about the departure of the vast bulk of the “experienced” CMs from Las Vegas, and a host of other problems. As became all too routine on the Project, Messrs. Wu and Wang became defensive, and stated unequivocally (and as later came to be known, falsely) that the promised workforce was present and that the workers, supervisors and CMs were of high quality, and that the Project was well managed.
- b. By way of further example only, on June 12, 2012, at the direction of BML Properties, Mike Barford, Project Director for Baha Mar Ltd., wrote to Tiger Wu, an executive of both CCA Bahamas and CCA. In that letter, Mr. Barford stated his impressions regarding the following: (i) CCA Bahamas’ lack of resources at the Project was the “root cause” of CCA’s claimed delays in progress, (ii) CCA’s contentions that its work was delayed and that CCA deserved an extension on time (for reasons out of CCA’s control) were not supported by a critical path

analysis and no “logic-linked” schedule analysis had been supplied as well, and (iii) any delay in procurement CCA claimed was tied to delays in design or additional procurement costs, were, if such occurred, due to CCA’s own breach of its duties to “manage, assist, review and disseminate design information” into work packages.

- c. By way of further example, BML Properties directed Baha Mar Ltd. and its consultants, particularly Mace, to start taking informal measures to count the CCA workforce, and more directly scrutinize the productivity and completeness of the work against any usable schedule that CCA and CCA Bahamas had provided.

208. A few months before, an extended period of “Value Engineering” had come to a close, a process where the value of a service or to-be-constructed element within a project can be improved by retaining the same or equivalent quality or look for a lesser price, or by deleting an element of the Project while simultaneously improving (or maintaining) the value of the remaining Project. As part of this process, there were certain “hard” costs proposed to be removed from the budget for buildings or other elements that would not be constructed or would be constructed but in a different way than originally budgeted. Certain cost savings from this process were to be shifted in the budget to “soft” costs, including providing sufficient funds for Mace to continue to be BML Properties’ and Baha Mar Ltd.’s watchdog on the Project.

209. CCA had resisted Value Engineering efforts in this regard. CCA had resisted the effort in order to keep its overall contract amount (as part of the “hard costs”) as high as possible to retain its profit as a Work Package Contractor and maximize its fee as a CM. CCA also resisted this effort to prevent an increase in the “soft costs” budget and a concurrent increase in the funds



available for Mace's work. CCA even came to a meeting and directly told BML Properties and Baha Mar Ltd. to "get rid" of Mace. CCA was fully informed of this Value Engineering process, knew from numerous Board and other meetings that it was underway, but never once objected formally before the Board of Baha Mar Ltd. (on which it held one seat) regarding the changes to the budget that would result from this process.

210. In light of the increased "watchdog" efforts over CCA's work, and after CCA had resisted the Value Engineering efforts described above, BML Properties is informed and believes and based thereupon alleges that at or near the end of the Value Engineering process in the first half of 2012, CCA communicated to China Eximbank and intended to and did in fact mislead the Bank by falsely stating to China Eximbank that loan proceeds paid out by China Eximbank (as a result of the Value Engineering process) would be going to pay for a less valuable project, whereas in fact the Project would be greatly improved and of greater overall value to the bank. CCA's motive in so doing was to try and recapture this money for "hard costs" from which it would earn its CM fee and profits on the increased amounts of the work packages for such "hard costs."

211. Moreover, and concurrently therewith, BML Properties directed Baha Mar Ltd. to more fully utilize its consultant Mace International, Ltd. ("Mace") as owners' representatives to gather additional information for BML Properties and Baha Mar Ltd. about the status of the entire Work and CCA and CCA Bahamas's workforce, among numerous other tasks. Mace's role as an owner's representative included inspection of the Work of CCA, evaluation of CCA's performance, timeliness of CCA's Work, comparison of contractually-compliant critical path labor-and-procurement-loaded schedules (something CCA never provided) to the progress of the

Work, review of CCA's payment applications, and review of CCA's claimed "delays," among other tasks.

212. CCA executives did not react well to this heightened scrutiny from Mace and did not like the outcome of the Value Engineering process. BML Properties is informed and believes and thereupon alleges that CCA concurrently began misrepresenting the role of Mace to China Eximbank, an entity with which CCA had no contractual relationship regarding this Project, and set about intending to and actually interfering with the relationship between BML Properties and Baha Mar Ltd., on the one hand, and China Eximbank, on the other. In particular, Mace placed CCA under considerable pressure to fulfill its contractual commitments as CM under the MCC and the commitments and representations made by CCA subsequent to formation of the MCC, and otherwise perform as it had represented it would in the Investors Agreement, by among other things reporting regularly and accurately on the status of the Project and monitoring and controlling the schedule, budget, and design review and coordination process, among other things. Numerous conflicts arose between Mace and CCA due to the poor performance of CCA as CM. Those conflicts regarding CCA's poor management of the Project came to a head in June 2012.

213. In June 2012, CCA (through its President Ning Yuan) admitted to Sarkis Izmirlian that it had spoken to the China Eximbank about Mace. As BML Properties is informed and believes, in those communications CCA intentionally and knowingly misrepresented the following to China Eximbank: CCA falsely stated to China Eximbank that Baha Mar Ltd. was using loan proceeds intended to pay Mace to instead make payments to Mr. Izmirlian or to other entities controlled by Mr. Izmirlian. In response to that false accusation by CCA, China Eximbank (i) demanded that Baha Mar Ltd. sever its ties with Mace in its then role, (ii) held up payment on Utilisation

Requests (the formal document by which Baha Mar Ltd. as the borrower requested that funds be advanced under the credit facility to pay CCA, Baha Mar Ltd.'s direct contractors, Baha Mar Ltd.'s consultants and engineers, and Baha Mar Ltd.'s internal and administrative costs), resulting in a lack of funds to pay consultants and subcontractors other than CCA Bahamas, and (iii) hired PriceWaterhouseCoopers to do a special forensic audit of all payments to Mace, an audit that, notwithstanding CCA's false accusations to China Eximbank, after three months (August through October 2012), and intense work by a six-member audit team, discovered nothing to support CCA's misrepresentations regarding these payments.

214. In order to divert attention away from its own failures, CCA unreasonably interfered with Baha Mar Ltd.'s contract with Mace, as well as with Baha Mar Ltd.'s business relationship with China Eximbank, and induced a third party (China Eximbank) to act contrary to the interests of Baha Mar Ltd. and BML Properties, in other respects as well.

215. By way of further example only, upon learning that CCA was not the successful bidder for a Work Package regarding the Convention Center, CCA – without notice to or approval by Baha Mar Ltd. or BML Properties – communicated alleged “concerns” about Mace to China Eximbank, directing and encouraging EXIM to force Baha Mar Ltd. to terminate MACE as an Owner's Representative. Specifically, CCA intentionally and fraudulently told China Eximbank that Baha Mar Ltd. was in breach of the CFA by employing Mace as a “Construction Manager” (part of CCA's role as Main Construction Contractor under the MCC) rather than, as was the case, an Owner's Representative. CCA encouraged China Eximbank to demand that Baha Mar Ltd. terminate MACE despite the fact that China Eximbank had previously been aware of Mace's RLB-approved role on the Project prior to entering into the CFA. (For example, Mace's consultancy costs had been classified as an area of the Development Budget.)

216. Other acts of interference by CCA occurred when CCA, which had no contractual relationship with China Eximbank, communicated directly with China Eximbank regarding concerns expressed by Baha Mar Ltd. to CCA about CCA's work, or lack thereof, and in so doing created a wedge between Baha Mar Ltd., the borrower, and China Eximbank, the lender, which parties on a normal construction project are aligned to push the contractor to perform as required. By way of example only, during a call on November 11, 2013, Ning Yuan on behalf of CCA stated to Messrs. Izmirlian and Dunlap that (i) he was going to call the Bank and complain about Mace and its criticism of CCA, and (ii) CCA had on site at that time enough laborers to finish the Project on time and on budget. As set forth above, Ning Yuan knew at the time he made that latter statement that it was false.

217. As a result of CCA's deliberate interference with the contracts and relationships between and among Baha Mar Ltd., BML Properties, Mace, and China Eximbank, Baha Mar Ltd. and BML Properties incurred significant financial and other injury, generally and in its relationships with individual contractors and subcontractors, as an unreliable payor of monies due for work accomplished (because of the funding delays), resulting in increased costs from fewer future bidders for work on the Project, among other harms.

218. CCA's interference caused China Eximbank to withhold vital funding between May 2012 and early 2013, including more than twenty Utilization Request funding delays (some lasting up to 55 days and implicating \$83.8 million). CCA's role in these developments was especially noticeable, since throughout 2011 and early 2012, any funding delays had been few in number and short in duration. As Baha Mar Ltd. and Mace began notifying CCA of its early and repeated failures in 2012 and after, the funding delays became more disruptive and prolonged.

219. Faced with this financial pressure in 2012, Baha Mar Ltd. had no choice but to (i) suspend certain needed Mace personnel (needed because Baha Mar Ltd. required as many “eyes” on the site as possible to observe and direct remedies for CCA’s failures as a CM and otherwise), and (ii) second certain Mace personnel to Baha Mar Ltd. as owner’s representatives or Baha Mar Ltd.’s consultants (such as Davis Langdon, AECOM, etc.).

220. Once Baha Mar Ltd. notified CCA that it would terminate Mace in large part, CCA immediately persuaded China Eximbank to resume funding the Project, and thus the Bank recommenced funding after lengthy delays brought about by CCA’s lies to China Eximbank.

**B. CCA Made False Statements To China Eximbank About RLB, The Bank’s Project Monitor, After RLB Blamed CCA For Project Delays**

221. Throughout the last half of 2013, and in to 2014, RLB became increasingly critical of CCA. RLB was critical of CCA’s failures to accurately report about the status of the workforce, and RLB was critical of CCA’s failures to create logic-linked, labor and material loaded, reliable schedules against which the progress of the work could be measured by RLB, BML Properties and Baha Mar Ltd. RLB was critical of CCA’s failures to provide contractually required “General Conditions” and even CCA’s failures to provide its monthly reports timely or at all.

222. CCA in its following monthly reports rebutted (or attempted to rebut) RLB’s conclusions about CCA’s failures, and repeatedly claimed, expressly or by implication, that RLB was not reporting accurately about CCA’s performance, its workforce, its productivity, its failures to accurately or timely report, and, among many other things, CCA’s failures to provide a logic-linked, labor and procurement loaded, accurate schedule against which to gauge progress and project completion.

223. BML Properties is informed and believes, and thereupon alleges, that after RLB began in earnest reporting on CCA’s failures, that CCA (without notice to or permission from Baha Mar

Ltd. as the borrower) spoke directly with China Eximbank as lender and misrepresented to China Eximbank that CCA's reports were accurate and RLB's and Baha Mar Ltd.'s reports were not accurate, something it appears that China Eximbank believed (to the detriment of BML Properties) until no such belief reasonably could be held, namely, on March 27, 2015 when CCA yet again failed to deliver the Project completed and ready for paying guests.

**C. CCA Made False Statements To China Eximbank About CCA's Own False and Inflated "Commercial Claims" Against Baha Mar Ltd.**

224. In or about February 2015, CCA's David Wang spoke to a representative of China Eximbank, without asking Baha Mar Ltd. to be present or even notifying Baha Mar Ltd. in advance. BML Properties is informed and believes and based thereon alleges that, during the discussion, Wang falsely represented to China Eximbank that the entirety of CCA's disputed CCDs and claims were both proper and then due and payable by Baha Mar Ltd. to CCA. Mr. Wang's claim was false in several key respects. In actuality, no portion of the disputed CCDs and claims were due, and the bulk of CCA's claims tied to the CCDs were either outright shams or lacked requisite supporting documentation and hence would never be due.

225. Mr. Wang's false representation to China Eximbank was no accident. Plaintiff is informed and believes and on that basis alleges that Wang knew that Baha Mar Ltd. had already contested, on numerous prior occasions, both the amounts of and the lack of factual support for CCA's claims. As a result of Mr. Wang's misrepresentations to China Eximbank, however, China Eximbank considered that these contested CCD claims might become due and payable and otherwise took those claims into consideration as it made its decisions in February through June 2015 to fund or not fund (in whole or in part) certain Utilisation Requests submitted by Baha Mar Ltd.

**D. CCA Encouraged Its Employees To Use Fake Materials Not Specified And Then Hide Such And Lie About It To BML Properties And Baha Mar Ltd.**

226. CCA told its workers to cut corners to save costs, to hide the fact that they were doing it, and CCA chose to not report to BML Properties that it was in fact cutting those corners and telling its employees and workers to lie.

227. By way of example only, on or around October 18, 2014, a CCA manager wrote to CCA construction staff regarding their use of counterfeit materials: “what going on with you guys? How could you fake the material in broad day light? You are only giving yourselves problems and obstacles. If you really want to do it, you have to be careful.”

228. That email speaks volumes about CCA’s intended course of conduct to conceal from BML Properties the fact that it is cutting corners by using fake materials (rather than those required by the specs), telling its workers to “be more careful” when using the fake materials in order to hide them from observation by the employees of Baha Mar Ltd. and BML Properties, and encouraging CCA’s employees and those of its subcontractors to be dishonest to the point of not only condoning but directly encouraging fraud.

**E. In Bad Faith, CCA Interfered With And Delayed The Delivery And Installation Of Furniture, Fixtures, And Equipment**

229. During late 2014 and early 2015, CCA held space within the hotels hostage, denying to BML Properties the opportunity to manage Baha Mar Ltd.’s “move in” of key materials necessary for opening. By way of example, CCA held space ready for the move-in of Furniture, Fixture and Equipment (“FF&E”) “hostage” and attempted to improperly exclude Baha Mar Ltd. from such spaces. CCA demanded that retention be released on a room by room basis (contrary

to the Main Construction Contract) or CCA would stop Baha Mar Ltd. from having any partial occupancy of the Project and would undertake efforts to affirmatively block FF&E move-in.

230. Before that bad faith position adopted by CCA, CCA and BML Properties engaged in extensive discussions over the Partial Occupancy of the Project, to allow for, *inter alia*, the progressive load in of FF&E and other items procured by Baha Mar Ltd. in preparation for Project opening.

231. CCA's position directly conflicted with the long-standing arrangements between Baha Mar Ltd. and CCA (consistent with the Agreement of the parties) that allowed Baha Mar Ltd. partial occupancy of the Work to enable operational organization and preparation required for opening the Project. That arrangement had been in place, prior to CCA's efforts to hold space hostage, for well over a year and was based, in part, on Baha Mar Ltd.'s need to take over responsibility for FF&E installation, concerning which CCA refused to move forward as Work Package Contractor. Baha Mar Ltd. relied on that arrangement in moving forward with the FF&E installation including, among other things, loading the FF&E into the building, and CCA's interference unreasonably delayed FF&E move-in such that move-in was not complete as of the December 31, 2014 original completion date or the March 27, 2015 date under the November 2014 Meeting Minutes.

**F. In April 2015, CCA Admitted It Had Deliberately Slowed Construction Efforts, And An Investigation Determined That CCA Had Sabotaged Surveillance Systems**

232. On April 7, 2015, Tiger Wu made an admission shocking even coming from someone of his ilk. In a meeting attended by BML Properties and Baha Mar Ltd. executives, the Prime Minister of The Bahamas and several of the members of his Government, the Ambassador to The Bahamas of the People's Republic of China, and others, Mr. Wu stated that prior to March 27,



2015 (the promised and delayed delivery date of the Project open for guests) CCA had been deliberately slowing down construction at the Project. When asked by the Prime Minister, Mr. Wu unabashedly confirmed that statement yet again.

233. In furtherance of its efforts to sabotage even the delayed opening of the Project, on April 15, 2015, CCA announced that it would stop all testing and other work in relation to its long overdue job of obtaining TCOs that were to have been issued up to 14 months prior.

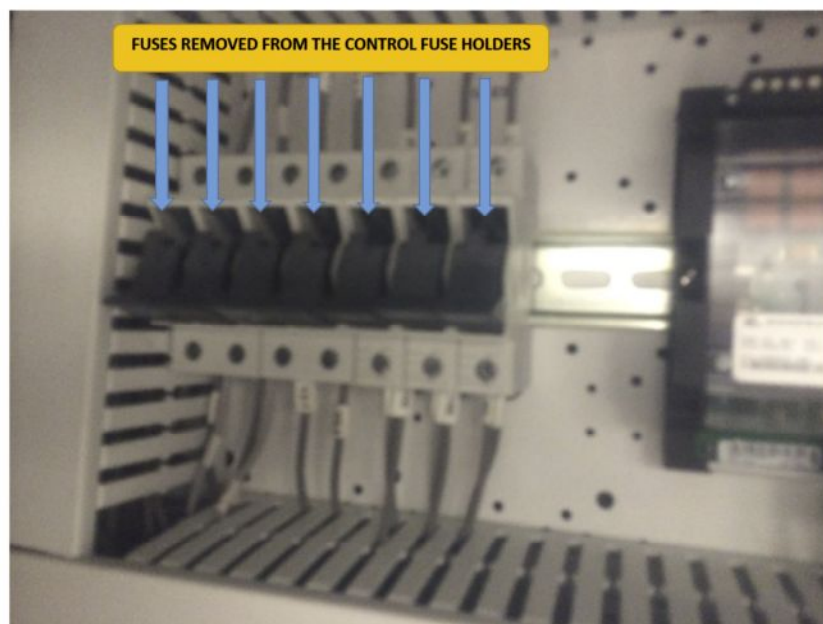
234. On April 14 and 15, 2015, CCA engaged in the active sabotage of the surveillance system for the Project, in an effort to punish Baha Mar Ltd. and BML Properties for refusing to pay CCA on its sham claims and demands. CCA disconnected patch-leads, ordered its relevant subcontractor to leave the Project, and cleared configurations on the server that allowed the system to operate, all of which resulted in the shutdown of the security network and recording equipment. CCA then attempted to cover up its own involvement when it misrepresented to BML Properties that CCA “did not know” who had done these acts.

**G. CCA Sabotaged The Project Again On June 30, 2015, This Time Cutting Off Power And In So Doing Imperiling The Lives Of Everyone Still Working In And Around The Project**

235. On June 30, 2015, CCA committed another act of sabotage, and thereby harmed the Project, intentionally inflicted upon BML Properties and Baha Mar Ltd. the costs of immediately addressing a dangerous situation, and otherwise acted to harm rather than help push the Project toward completion. CCA did these things in an effort to punish Baha Mar Ltd. for filing for bankruptcy protection on the previous day and concurrently locking up and securing the Project offices, including those which housed the offices of CCA’s executives (Tiger Wu, David Wang, etc.).

236. Around 8:30 am on June 30, 2015, the Bahamas Electric Company (“BEC”) supplied power went off to the Project for then unknown reasons and the stand-by generators (installed and governed by CCA) failed to activate. BML Properties’ and Baha Mar Ltd.’s team with their consultants (Dome and DTEC) headed to the generator farm to investigate. On arrival, the BML Properties team found the building to be locked improperly and inaccessible, secured as it was with CCA locks while CCA had no emergency access plan in place, nor was reasonable access available as would be expected.

237. Once the BML Properties team gained access to the generator farm, it was established that other CCA personnel had been in the building earlier that morning and had unlawfully tampered with the equipment and removed certain critical components. The following is a photograph of the location of certain critical fuses that had been removed:



238. Once the BML Properties team communicated its findings to CCA, certain CCA staff returned to the generator farm facility about 10:45am and started to reinstall the removed

components and return the generator back up system to “automatic” to allow for the Project to be fully reenergized later that morning (the BML Properties team had managed to get the BEC power back on to the development [but not on Automatic Generator back up] by the time CCA arrived).

239. When CCA staff departed, there remained un-remedied faults on the systems, including (but not limited to) one failed Automatic Transfer Switch (which turns the generator(s) on when the BEC electric supply is cutoff) and one generator not working.

240. The conclusive evidence of CCA’s tampering with this critical life-safety related element of the Project is found in, among other things, (a) a photograph of seven different purloined and removed fuses from one panel (three separate panels were “hit” by CCA that morning for a total of 21 different removed fuses), (b) CCA’s conduct once it was pointed out to CCA that its tampering had caused the failure of the BEC and stand-by electrical supply for the project, (c) Dome and DTEC’s observations that numerous fuses had been removed from key operating equipment rendering it inoperable, and (d) BEC’s confirmation that same morning that electrical supply from the Skyline substation was connected and operating, and that the fault lay within the generator farm and switching found therein. CCA’s tampering led to power to the entire Project being turned off and the generators switched out of “automatic mode.” This adversely impacted, *inter alia*, all Project life safety systems, such systems being essential for insurance coverage, as CCA was fully aware.

#### **H. CCA Stole Documents From The Secured And Locked-Down Project Offices**

241. Under the MCC, Baha Mar Ltd. was entitled to possession and control of the “Project Documents,” including those temporarily in the possession of CCA during the duration of the Project.

242. Once the bankruptcy petition was filed on June 29, 2015 (see paragraph 383), Baha Mar Ltd. took measures to secure the Project site and all the offices on the site, including those temporarily occupied by CCA which were on the property and in the buildings owned by Baha Mar Ltd. and where CCA stored “Project Documents.”

243. Baha Mar Ltd.’s on-site staff witnessed and, in many instances, were confronted by, numerous CCA personnel attempting to infiltrate the secured office facilities, evade Baha Mar Ltd.’s security officers, and sneak Project Documents out of the facilities:

- a. On Tuesday, June 30, a female CCA employee was observed by Baha Mar Ltd. security personnel in Tower J9 without authorization trying to remove documents by placing them under her clothing, and others were seen jumping out of the office windows carrying items.
- b. On Wednesday, July 1, two CCA subcontractors were observed by Baha Mar Ltd. security attempting to leave the office loading dock with a large black travel roller bag. Upon inspection, the bag contained a black Dell computer, a printer, and miscellaneous computer accessories.
- c. On Thursday, July 2, four CCA subcontractors were observed trying to leave the offices with four large suitcases. Upon inspection, the suitcases contained binders and documents which BML Properties believes included receipts for expenditures and reimbursements — ostensibly for the Project.
- d. On July 6, 2015, a CCA employee admitted to Baha Mar Ltd.’s executive in charge of security, that he was told by CCA to cut/disable the power to the site on June 30 until Baha Mar Ltd. let CCA back into their offices.

- e. On Tuesday, July 7, a CCA subcontractor was observed trying to leave the office location with a suitcase. Upon inspection, the suitcase was revealed to contain a computer.
- f. Although the offices on the Project premises designated for use by Tiger Wu and David Wang (another CCA executive) include docking stations and/or power cords for laptops in connection with their work on the Project, the actual laptops, which undoubtedly contained Project Documents resident on the hard drives, documents that, in turn, Baha Mar owns under the MCC, had been removed from the Project facilities.

244. These incidents of theft and sabotage illustrate the lengths to which CCA was willing to go to damage BML Properties and Baha Mar Ltd., thwart progress on the Project generally, and attempt to conceal its fraudulent and reprehensible conduct.

**VI. CCA DID NOT FULFILL ITS DUTIES AS A CONSTRUCTION  
MANAGER FOR THE PROJECT AND IN TURN DID NOT FULFILL ITS  
REPORTING OBLIGATIONS TO BML PROPERTIES**

245. As discussed above, CCA was duty-bound to report truthfully to BML Properties regarding those “findings and any concerns [CCA] may have with respect to the proper and efficient prosecution of the design and construction work expenditures, and any other recommendations China State may have to benefit the investment of China State and any other investors [including BML Properties] of the Company.”

246. CCA’s companion role as the Construction Manager (“CM”) for the Project not only created concurrent duties to report accurately regarding every aspect of the Project, but also gave rise to CCA’s duties as an advisor, looking out for, as the Investor Agreement states as well, the

“best interests” of Baha Mar Ltd. as it went about attempting to move the Project forward to on-time and on-budget completion.

247. CCA never issued any “report” that highlighted the risks of existing and future work, workforce deficits, and the like, in a form as was expected or typical and accepted in the industry, or that otherwise completely and accurately informed BML Properties of the harmful consequences of CCA’s failures and misrepresentations over the course of the Project.

248. Notwithstanding CCA’s failure to act as a true Construction Manager described herein, CCA was to perform as a Construction Manager for a substantial fee – six percent (6%) on all work packages awarded to CCA (but for three initial packages) and three-and-one-half percent (3 1/2%) on work performed by separate contractors directly for Baha Mar Ltd. With an expected \$1.9 billion “Contract Sum” under the MCC, CCA expected (and received) in excess of \$100 million in such fees to be paid to it as Construction Manager.

**A. CCA Failed to Report Under the Investors Agreement on Critical Aspects of the Project**

249. Among other breaches, CCA engaged in the following conduct which was both a failure to act as a CM and a failure to report accurately as to the true status of CCA’s capabilities and as to the true status of the Project: failure to consult with BML Properties and Baha Mar Ltd. in an honest and open manner, regarding, among other things, site use and improvements, building systems, construction feasibility, mitigation of impacts from inadequate or unqualified labor or material shortages, timing of procurement, installation and construction completion; failure to assist Baha Mar Ltd.’s cost manager; refusals to meet and advise on the foregoing subjects; delayed procurement; failure to plan for, project the date of, and otherwise govern the Works to achieve issuance of TCOs; failure to meaningfully participate in creation of the “punch-lists” for the Works; CCA as CM ordering CCA as the self-perform work package contractor and other

subcontractors to improperly stop or slow-down work in an effort to wrest some agreement or concession from Baha Mar Ltd. and BML Properties; failure to achieve milestones or timely substantial completion; failure to comply with the payment application process and failure to submit accurate data along with such applications; failure to achieve bid savings; failure to provide recommendations to decrease the amount of WPC bids; failure to provide any comments and updates on the Target Project Schedule; failure to timely submit claims to the DRB for concurrent review of claimed “delay” or other disputes regarding alleged entitlement to payment; failure to participate in the normal Change valuation and determination process, forcing Baha Mar Ltd. to issue unnecessary CCDs; failure to organize and plan for tests and inspections; delayed and/or no response to safety surveys and audits increasing workforce safety and insurance risks; delayed RFIs and Shop Drawings (“SDs”); issuance of RFIs that were duplicative and unnecessary and not in the best interests of Baha Mar Ltd. or BML Properties to have issued; delayed and inadequate bid reviews; delayed and inadequate design coordination and review; failure to achieve procurement savings (achieved instead only by use of Baha Mar Ltd.’s own staff); failure to govern the continuous provision of General Conditions; failure to report timely and honestly regarding manpower on-site; failure to accurately and honestly report on and provide schedules; failure to provide any, timely, and/or an adequate control estimate; failure to properly sequence the Work; failure to employ and retain in continuous on-site employment numerous senior executives skilled and experienced in large international project construction management and supervision; diversion of CCA senior managers to other projects prior to Substantial Completion of the Project; failure to provide adequate workforce that at all times met or exceeded the needs of the Project and, at the very least, met or exceeded the number of qualified workers determined by CCA to be necessary to carry out the work under its own

schedules; providing inexperienced workers and lower-tier managers in contrast to the need for greater experience when working on a project of this size and under these circumstances; failure to oversee the Work of itself and its subcontractors in such a way as to avoid creation of defective conditions (*e.g.*, sliders, railings, MEP failures, Fire Life Safety failures, etc. and many more listed below); failure to accurately predict and report on Substantial Completion; failure to adequately or promptly repair defective or damaged Works; failure to create and implement any or an adequate Hurricane and Severe Storm Preparedness Plan failure to assist Baha Mar Ltd. with site surveys and other investigations.

**B. CCA Did Not Report Accurately or Truthfully Regarding Its Claims of Delay and Did Not Provide the Required Proof of Such Claimed Delay**

250. At no point during the Project did CCA report to BML Properties or to Baha Mar Ltd. any claimed “delay” that was backed up by and supported by an analysis of the true critical path delay brought about by any singular claimed delay or aggregation of claimed delays.

251. Accordingly, by reason of that lack of reporting, CCA made it impracticable for BML Properties to, among other things, (i) instruct or advise CCA on how to accelerate and make up for any claimed critical path delay or make other decisions by which the project could have circumvented or mitigated the alleged critical path delay and still progressed the bulk of the resort toward timely substantial completion, (ii) issue a specific CCD directing CCA to accelerate in certain particular respects to accomplish mitigation of any delay regardless of cause, (iii) seek the involvement of China Eximbank in the replacement of CCA in whole or in part on certain aspects of the Project where delay to the critical path as set out in CCA’s reports could be inherently traced to CCA’s own activities.



**C. CCA Failed To Report on or Analyze Claims, Its “Control” of the Bidding Process, Or Its Performance of Its Procurement Obligations**

252. CCA did not analyze Subcontractor claims to ensure that they were fair, reasonable and included the necessary substantiation in the critical time period starting in mid-2012. CCA merely passed such claims direct to Baha Mar Ltd. without the required reporting reflecting scrutiny and challenge of the claims, forcing BML Properties to direct Baha Mar Ltd.’s consultants and advisers to expend time and effort reviewing such claims and increasing the costs of the Project to Baha Mar Ltd. and thus to BML Properties and causing delay to the Project as a whole.

253. Regarding the key duty as CM of controlling the bidding process to bring in the highest quality bids for the lowest responsible price, CCA was obligated to create a Tender Event Schedule (“TES”), however CCA’s TES was misused and unmanaged by CCA. CCA did not accurately report to BML Properties on its mismanagement of this process nor did CCA report on the negative consequences of its mismanagement after the Project reached the critical stage when such needed to be done, namely starting in early 2012.

254. The TES is key to the effective and economically efficient bidding, design and procurement of portions or the whole of a work of construction, given that it sets forth, among many other things, dates for initial design release to bidders, final design release dates, bid return, bid compilation and approval dates, contract award dates and mobilization and commencement dates. Either by plan or inadvertence, CCA improperly used the TES to enhance its own interests instead of those of Baha Mar Ltd. and its investors including BML Properties, and CCA entirely failed to report on its conduct regarding the TES and the harmful consequences of its abuse of the TES and bidding process.

- a. CCA failed to provide a detailed strategy or TES to procure the fit out of the guest rooms and corridors and thereby disguised their lack of progress of an external bid process while continuing to submit a series of uncompetitive self-perform offers, presumably with the intent to drag this process out until such time as there was no time available to select anyone but CCA for this Work. Baha Mar Ltd. had prequalified appropriate contractors, issued bid documents and had arranged mid-bid meetings. Only when CCA realized that Baha Mar Ltd. was serious about continuing the bid process and awarding the Work to Baha Mar Ltd. appointed contractors did CCA provide an acceptable submission.
- b. There were several revisions of both CCA's Tender Events Schedule and its "Procurement Strategy" however at no stage were these key documents coordinated or comprehensive reflecting the best and unbiased global procurement opportunities that should have been possible with the economies of scale on such a large project. The procurement strategy was at all times below the standard expected of a CM of CCA's size and claimed experience.
- c. As an example, this lack of focus and action with regard to the TES resulted in CCA producing a bid list for the Vertical Transportation which was simply the same list of companies that Baha Mar Ltd. had previously sought bids from in 2007. The CCA TES was rejected as was its Bid list, as it was clear that no investigation into the market had been undertaken by CCA nor and any prequalification process for the VT Scope. Baha Mar Ltd. then guided CCA to Schindler and BLT (a Chinese VT Contractor who has worked globally for clients such as BAA in London). After the introduction of the new potential bidders CCA

then delayed doing any prequalification analysis that resulted in the bid being released without prequalified bidders.

- d. Evidencing the failures of the bidding system, and as a result of CCA's plan or inadvertence, CCA continuously submitted bids that were far higher than the budgets and the market. Only when challenged by Baha Mar Ltd. with proven market rates or a threat that Baha Mar Ltd. might actually perform the works did CCA reduce its bid. By way of example only: (i) on the Envelope Work Package, CCA communicated a bid at \$143,105,109; when Baha Mar Ltd. went out to tender on the sliding doors and arranged a Value Engineering workshop on EIFS CCA dropped its bid to \$113 million; (ii) on Fit-Out, CCA started at over \$170 million and made a "best and final bid" of \$122 million, Baha Mar Ltd. went out to tender on the rooms and corridors and CCA dropped its bid to \$114 million.

255. CCA utterly failed to perform its procurement obligations and concomitantly failed to report in any meaningful way on the status of procurement (and negative consequences of delayed or mismanaged procurement) to BML Properties at and after early 2012, resulting in profound harm to BML Properties.

- a. CCA failed to create accurate procurement records or to provide such to Baha Mar, resulting in, among other things, scope gaps, late changes, and inefficiencies.
- b. CCA did not create the industry-standard governing document, a procurement registry (log). This standard document contains a listing of all the specified materials to be installed in the Project broken down into each Building/Level/Location. This Procurement Registry allows the Contractor/CM to

manage and plan the work and track on a daily, weekly, monthly basis the flow of information recording the status of the material delivery and handling. Baha Mar Ltd. should have copies to understand the current and projected cost of material, any possible additional storage costs and any potential impacts due to late deliveries. A Procurement Registry would include: Material Requisitions (name of company, dates when issued, dates needed on site); Bids and Quotations (name of company, status, and final cost); Shop drawings/Cut Sheets (required for specific detail); Purchase Orders/Subcontracts (list of equipment/material, name of vendor/order date/expected shipment and arrival on-site); Invoices (a listing of all received invoices of materials received); Shipping and Receiving Documents (all dates of proposed/actual shipments with corresponding documents validating the receipt of the material or the projected date); On-Site Material Inspections (List of equipment received/date of inspection/sign off sheets acceptance sheets by CCA/any material/equipment damaged during shipment/re-order information); On-Site Storage Identification Map (after inspection, all material and equipment should be logged in on a site location register/ bin number/ warehouse identification/off-site storage location).

- c. This information normally would be coordinated with the scheduling department to include/amend or revise the monthly schedule updates with anticipated delivery dates based on when materials are needed for installation. Also, if the delivery dates slip, the schedule should reflect this delay.
- d. There should also have been a Material Handling procedure that ties to the Procurement registry to identify when the material is on-site, when materials need

to be delivered and to what location, and once reported to BML Properties and Baha Mar Ltd. both would have the ability to gauge the compliance with schedule and, if needed, the dates for required acceleration to make up for delays to the schedule.

- e. None of this critical reporting was ever done by CCA or, if it was done, it was never shared with BML Properties and BML Properties never saw the intended results of all these required steps -- seamless, timely procurement.
- f. In light of CCA's failures, Baha Mar Ltd. was forced to seek its own savings in procurement. Baha Mar Ltd. had to intervene on certain packages as CCA's initial recommendations or bids were grossly over-valued or proved to be uncompetitive. If Baha Mar Ltd. had not acted to protect its interests and those of BML Properties, CCA would have placed orders for works approximately \$169 million over the amount it should have paid.
- g. CCA exhibited at all relevant times a lack of willingness to provide non-self-perform procurement strategies or bid processes for the Project. Baha Mar Ltd. was forced to insist that CCA prepare and continue to provide a traditional procurement process in line with any self-perform/commercial offer to ensure market value was proven. For example, in the case of the Building Envelope, Baha Mar Ltd. had to perform a bid process of the windows and sliding doors work package to safeguard the Project schedule which resulted in a saving of approximately \$2 million dollars against the similar scope within the CCA's self-perform offer.

- h. CCA failed to create accurate procurement records or provide such records to BML Properties, resulting in, among other things, scope gaps, late changes, and inefficiencies.
- i. With respect to the bathroom pods package, CCA elected to progress with a sole bidder until BML Properties insisted that Baha Mar Ltd. conduct a further interrogation of the market, which further effort produced the ultimate list of seven (7) bidders. This eventually produced a more successful outcome than the sole bidder proposed by CCA. CCA also presented a plan to Baha Mar Ltd. at the end of 2013 to build the majority of SLS hotel bathroom pods *in situ* – ostensibly because CCA was concerned the pod deliveries would not be complete until January or February 2014. CCA assured Baha Mar Ltd. the *in situ* plan would be quicker. As of July 1, 2015, bathrooms in SLS either remained incomplete, or subject to an excessive number of punch list items, meaning, CCA’s plan utterly failed.
- j. The MCC obligated CCA to provide procurement data to the point of transparency. The data CCA provided was woefully insufficient to use as a basis for proper scheduling of the purchase, transportation, and coordinated and properly timed installation of all the many materials that were part of the procurement process. Accordingly, CCA’s inadequate procurement data has presumptively contributed to chronically late deliverables all over the resort.
- k. The DRB in August 2014 determined that CCA should turn over at the very least the Convention Center specific procurement data that CCA offered to turn over

(see pages 26-27 of the DRB's 8/13/14 Decision and Opinion), yet CCA never turned over that information timely or at all.

1. In April 2015 CCA claimed that it could not proceed with screeding the floors in the SLS corridors (most floors were still incomplete at that time) because CCA did not have enough material at the site to proceed, even though such screeding had been on the schedule for many months before, half-completed screeding on many floors stopped the move-in of FF&E and interfered with Baha Mar Ltd.'s own progress, and CCA even claimed that it needed "two weeks" per floor (or apx. 80 square feet per day, an outrageously low production rate).

**D. CCA Failed To Properly Sequence And Control The Project's Work and Failed to Report on This Conduct and its Consequences**

256. CCA did not comply with its obligations to report accurately regarding the sequencing and logistics necessary to control the work at a huge Project.

257. CCA constructed the towers "to the top" before starting the MEPFP and the EIFS at the lower and following levels (6 to 8 floors below the leading edge), and did not inform BML Properties of its intent to do so before or while doing this element of the Project. CCA allowed these activities to lag behind schedule by many months, which necessarily resulted in, among other things, installation of MEP and fit-out without adequate environmental protection, CCA and its subcontractors working out of sequence, unnecessary overlap of activities, and compressing durations of the Works, all to the detriment of quality.

258. CCA failed to follow the schedule, or any organizational plan, for the development of MEP in the right or any logical sequence, and failed to report to BML Properties on the consequences of that conduct.

259. CCA failed to prioritize the Podium structure to meet the required structural engineer's pour constraints (the 18-month strip), thus requiring BML Properties to direct Baha Mar Ltd.'s consultants and owner's representatives to intervene and allow CCA an early pour of this strip, creating increased risks of cracks to the Project finishes over time as a result of CCA failing to manage this then critical path activity

260. CCA never provided a coherent and coordinated Food & Beverage ("F&B") and kitchen construction schedule, to coordinate the multitude of trades, and the detailed sequencing, testing, commissioning and training required in these complex spaces to allow operation teams to train and operate pre-opening. The result was that no kitchens at the Project were complete and ready for MOW inspection and operational use by July 1, 2015 (other than limited aspects of the kitchen at the Convention Center).

261. CCA failed to plan and implement a Wild Air strategy in a timely manner, or at all, for most areas – creating problems with damage and increased risks with materials installed in advance of suitable air conditioning in a humid and high-risk environment. And moreover, CCA failed to report to BML Properties on the consequences of its failures in this respect.

262. Site logistics were a particular problem for CCA, and its performance in this regard belied CCA's representations that qualified and experienced CMs were assisting CCA.

- a. By way of example only, CCA had to re-sequence the north side civils hand over (where and when the contractor for the landscaping, hardscaping, pools, cabanas, etc. could start its work) schedule three times in three weeks because CCA could not clear the site of materials, delaying the commencement of critical exterior work.



- b. CCA was obligated to plan regarding and to take into consideration access and storage requirements as well as requirements associated with the construction sequence. This included governing the installation and movement of temporary site facility requirements and temporary support for construction inclusive of, but not limited to, site offices, toilets, waste removal, first aid facilities, safety, fire prevention, staff and workers accommodation, messing, security, communications, hoisting, cranes, access roads, site hoarding, management of on-site batch plants, etc. CCA utterly failed to perform these duties, and failed to report to BML Properties and Baha Mar Ltd. about such failures or the consequences of such failures.

263. CCA did not issue a complete logistics strategy for the Project that could be used in the Works Package bids, as it was required to do under the MCC, and thus BML Properties did not have the complete or accurate information it needed to evaluate whether CCA would in fact be able to progress the work enough to make the interim and final deadlines. Baha Mar Ltd. reminded CCA often that this was required in sufficient detail for project planning and bidding purposes, demonstrated with regular time slices. CCA's Logistic plan should have included, among other things, the following: Vertical and Horizontal Transportation; Site Security and access requirements; Site transportation movements and road layouts; Waste Management Plans; Lay down and staging areas; Foot traffic plans and routes; Internal building diagrams and phases of construction to show interfaces and dangers; Scaffolding plans; Site parking and transportation routes to the site; Site Office; Toilets and Water points; Fire safety and fire marshal points, and muster points; First aid; Staff accommodation; Messing; Communications

and site vehicle plans; Hoisting; Access roads to the site and there phases; Site hoarding plans and changes; and Batching plant requirements.

264. Notwithstanding these requirements, CCA only ever delivered a superficial plan for the Project logistics, which on its face was insufficient for a project of this size and complexity. The lack of a detailed plan for the Project resulted in additional costs to Baha Mar Ltd., as bidders had little clarity of fundamental issues like delivery requirements, off-loading plans, storage area provisions, access and egress points, vertical transportation plans and processes, Horizontal transport plans and processes etc.

**E. CCA Abdicated Its Commissioning And Concomitant Reporting Duties And Thereby Contributed Further To Its Failure To Complete The Project On Time**

265. Reports issued in October 2014 by Baha Mar Ltd.'s consultants revealed facts regarding CCA's failures to properly commission the Project that CCA's own reports never revealed prior to that date.

266. Commissioning was a critical part of the job of CCA as Work Package Contractor and as CM. Commissioning includes, but is not limited to, a long series of tests (followed by tasks undertaken to assure 100 percent operation) designed to allow the mechanical, electrical, plumbing, fire protection, vertical transportation, communication, security, and other "infrastructure" systems to be rated by inspectors as "ready" for daily use of those systems and ultimately to activate the systems for continuous use by guests at the resort.

267. In this regard, CCA bore the responsibility to fully perform all the tasks necessary to commission the resort. Without fully reporting on its Commissioning failures in advance so as to

give BML Properties and Baha Mar Ltd. an opportunity to mitigate the damage to the resort caused by CCA's delayed commissioning, (i) as of October 31, 2014 seven (7) months after it was supposed to be finished and occupied, there was zero percent (0%) commissioning completed with respect to the electrical, mechanical, plumbing, and fire protection systems in the Convention Center, and (ii) as of October 10, 2014, as to the resort as a whole, 80 days before the resort was to open to guests, CCA had only completed two percent (2%) of the commissioning tests (not all of the commissioning tasks, just the tests) – 151 tests had been completed out of 6421 required, excluding security, AV, lighting controls, external works, Northside pools, and a host of other exclusions.

268. Despite the requirement that it do so, CCA did not report its lack of performance or the consequences of it; BML Properties had to pursue this information months after the fact from its own consultants in order to understand the then-present status of commissioning, and then at Baha Mar Ltd.'s sole expense to engage its consultants to learn, among other things, just how far behind CCA really was regarding commissioning and how poorly CCA's MEPFP and other systems were performing during commissioning tests.

**F. CCA Did Not Report That It Would Be Delayed In Achieving “Power On” As It Represented Continuously It Timely Would, And Delay Of “Power On” Profoundly Harmed Progress And Created Other Problems Around The Project**

269. CCA at all relevant times continuously reported to BML Properties that it would be on time with “Power On,” yet failed to achieve “Power On” to the Project in April 2013, or at any time thereafter in a timely manner consistent with the MOU and/or any of CCA's many “schedules.” CCA's failure to timely achieve “Power On” was caused by CCA's failings to manage the process (and report accurately on that process) as Construction Manager.

270. Like many key construction milestones, such as “topping out,” “water tight,” and so on, “Power On” is critical because it reflects the date when the electrical transmission infrastructure for the project is sufficiently complete for both construction and pre-operational use of predictable and regular (rather than temporary) electricity throughout the Project.

271. As to this Project, “Power On” required an operating Generator Farm and an automatic switch (called an ATS) so that if and when there was an interruption in the regular electrical supply (of 11 kilovolts) from Bahamas Electricity Corp. (BEC), work could continue unabated around the Project and safety systems would be unimpaired, among many other needs, using generator supplied electrical power.

272. Here, Baha Mar Ltd. incurred the expense of additional work by its representatives and consultants, and BML Properties was deprived of the opportunity to plan for, mitigate, or seek a timely remedy for CCA’s failings regarding “Power On,” because the Generator Farm was not completed on time but, despite its duty to do so, CCA did not timely warn or report that it would not be.

273. Among other damage, Baha Mar Ltd. was forced to purchase and install a back-up generator for the golf clubhouse and then run an alternative power supply feed from the BEC substation to the clubhouse, drawing down on the loan funds to do so.

274. In addition, Baha Mar Ltd. had to pay for decommissioning and removal of the back-up generator for the clubhouse until the main generator farm was commissioned. Despite Baha Mar Ltd.’s expenses pertaining to the back-up generator, and despite CCA’s failure to fulfill its contractual obligation to supply power, CCA attempted, fraudulently, to charge Baha Mar Ltd. for a “Standby Generator” despite never providing this service. Put simply, these defects caused

entirely by CCA resulted in substantial damage. The following chronology is, unfortunately, typical of how CCA addressed similar critical needs on the Project (like “Wild Air”).

275. On May 27, 2011, the plans for the Generator Farm were issued by Baha Mar Ltd. (through JBB, Baha Mar Ltd.’s consultant). CCA bid upon those plans and the scope was included in amendment 3 to the MCC in February 2012.

276. Power on as planned in CCA’s Baseline schedule version 1 revision 6 (V.1.6 -- dated November 28, 2011) represents that the following steps would occur on the following dates: The Central Utility Plant (CUP) would be energized (“Power On”) April 21, 2013, the CUP completed July 15, 2013, the remote generator energized on June 30, 2013, the Casino hotel power on June 27, 2013, the Hyatt hotel power on August 21, 2013, the SLS hotel power on October 30, 2013, and the Rosewood hotel power on September 18, 2013.

277. Notwithstanding CCA’s obligation to assist in Value Engineering efforts regarding electrical supply, generators, the ATS equipment, and the building housing elements of this system, with respect to the generator farm CCA utterly failed to render any such services. Consequently, in April 2012 Baha Mar Ltd., aided by others (not CCA), delivered to CCA plans setting forth a redesign of the Generator Farm, achieved as a result of Value Engineering. Baha Mar Ltd. and its consultants had found a way to reduce the size and scope of the building in which the equipment would be housed, retain the quality of the equipment found within, and still save over \$6 million on an initial budget of over \$25 million.

278. In a two-day Project Construction Management Workshop held on June 23 and 24, 2012, CCA referred to the generator facilities, and all “associated MEP,” as under CCA’s exclusive control and stated that completion of the generators would occur in February 2013.

279. “Power On” as planned in CCA’s subsequently issued Baseline schedule V2.3 – dated October 31, 2012 -- represents that the following steps would occur on the following dates: the CUP would be complete by October 30, 2013, the CUP energized by August 17, 2013, the remote generator energized by September 20, 2013, Podium power on by November 1, 2013, Casino hotel power on by August 7, 2013, Hyatt hotel power on by October 1, 2013, SLS hotel power on by October 1, 2013, and the Rosewood hotel power on by September 8, 2013.

280. Under Version 3.2 of CCA’s schedule (issued in September 2013) the power was to be on from the Generator Farm no later than November 19, 2013, in other words seven (7) months after CCA first represented that its work achieving “Power On” would be done.

281. In CCA’s so-called “10-point plan – Key Objectives” issued to BML Properties and Baha Mar Ltd. on October 7, 2013, CCA stated that “[t]he ten milestones of the year end I have mention before are laid out as followings, and we can simply summarize the overall target as; get building dry in and power on” -- meaning CCA was promising power on before the end of 2013.

282. Based on its work up to November 2013 on the Generator Farm and CUP, and on the unexplained slippage in delivery dates for “Power On” and related milestones, CCA had no basis in fact for stating that it had any set or achievable date for “Power On” anywhere near or proximate to the dates it had originally promised, or even before the resort was scheduled to open for guests in December 2014.

283. In November 2013, CCA installed ATS equipment in an unfinished room that was not waterproof, or even sealed against weather, and wind-driven rain (common for November in The Bahamas) entered the room. That water intruded into the ATS equipment to such an extent that JBB recommended that all six (6) of the water damaged ATSs be returned to the manufacturer for repair. Even after this damage, and as of mid-December 2013, CCA still had not

waterproofed the room in which the ATSS were located, and the structure continued to leak. These highly complex switches (which include advanced microprocessor controllers) are intended for indoor use only, and must be protected from the elements, especially water. Indeed, this event was so troubling that JBB took photographs of the water intrusion and water-soaked conditions of the ATSS and the surrounding area, and included those photos in a November 27, 2013 letter to CCA.

284. At a series of Commissioning meetings in January 2014, at which representatives of CCA, Baha Mar Ltd., Dome and Graphite were in attendance, CCA admitted that its intent to energize the “site via generator farm ATSS [was] no longer an option following [the] water damage” as described above. Throughout those meetings, CCA promised “Power On” status by January 30, 2014; CCA had no basis in fact for so stating. “Power On” was only partially achieved on May 1, 2014, using temporary switches necessary because of the ATS water damage described above. Power on was achieved on May 6, 2014 to Power Distribution Center (PDC) C in the CUP building and on May 7, 2014 to PDCs A & B within the Podium.

285. As of February 20, 2014, CCA had done nothing with the damaged ATSS – CCA had neither sent them out for repair nor arranged for the manufacturers to travel to the project site to repair and restore these complex, microprocessor controlled switches.

286. On May 14, 2014, CCA’s transportation contractor “dropped” a generator set when a leg on a trailer collapsed while the trailer was (inexplicably) sitting on a slight incline (side-to-side), hurtling the generator set to the ground as the trailer flew over onto its side, damaging a piece of equipment worth over \$1 million. Fluids drained from the equipment – the diesel engine was put out of proper alignment. There was no meaningful effort by CCA to report on the actual and understood consequences of this grossly negligent behavior – CCA left it to Baha Mar Ltd.

consultants and owner's representatives to try and determine mitigation plans and timing on a replacement set.

287. As of June 20, 2014, a mere six months before the resort was scheduled to open to paying guests, CCA had still not delivered to Baha Mar Ltd. a number of key items to assure government approved permanent, uninterruptible power to the Project and had not reported to BML Properties sufficient or any information upon which BML Properties could plan regarding the following: (i) CCA had not delivered its Construction Schedule such that Ministry of Works final inspections could take place; (ii) CCA had not delivered its shop drawings for the Motor Control Centers, which typically have a lead time of 12 to 14 weeks; (iii) CCA had not provided complete contingency plans to provide emergency power and thus obtain Ministry of Works inspections and TCOs; (iv) CCA had not provided any information from the manufacturer of the generator building that it had been constructed properly, an especially important document given the prior water leaks into the ATSS because of CCA's errors in November 2013 and because as late as June 2014 there were still leaks in the roof of that building that had not been remediated; (v) CCA had yet to issue a formal report concerning the cause of and the result of the May 14, 2014 damage to the generator set; and (vi) CCA refused to provide a schedule of its own for the opening of the Generator Farm and thus denied to Baha Mar Ltd. the ability to plan the many other events that precede and follow that occurrence.

288. Accordingly, Baha Mar Ltd. undertook to create the "Generator Farm – High Level Schedule – Rev 2" issued by Baha Mar Ltd. on June 19, 2014. That schedule placed the Generator Farm in "service" on March 17, 2015, some 20 months late (in comparison to the V2.3 schedule) or 16 months late (compared to Schedule V3.2).



289. On June 25, 2014, CCA repeated history (having not learned the lessons of May 14, 2014 and in callous disregard for the interests of BML Properties) and “dropped” another generator set. The replacement cost of this damaged generator set was \$1.6 million and required a 23 to 32-week lead time to arrive at the site, plus an additional four weeks to install.

290. CCA eventually achieved permanent “Power On” to the Project on February 18, 2015 as to switch room 2, which provided power to the site, and then also to switch-room 1 on February 27, 2015, which provided redundant feeders to the site.

291. Replacement generators were installed in March 2015 and tested/commissioned during April and May 2015.

292. The fuel system for the stand-by generators was commissioned in early May 2015.

293. On June 30, 2015, CCA compounded the delay and damages from its conduct described above by intentionally removing fuses and locking down the generator farm (and locking out Baha Mar Ltd.’s ability to access this key safety facility) resulting in the Project, and all life safety systems, being shut down for hours (see “Bad Faith” and “Sabotage” sections, herein, for more details).

294. In sum, CCA scuttled, by plan or inadvertence, the electrification steps necessary and preceding (among many other things) issuance of TCOs for the Project, and made it so the resort could not open in December 2014, March 2015, or at any time before Baha Mar Ltd. was forced to file for bankruptcy. Moreover, despite the requirement that it do so, CCA did not report on its failures in this respect, and did not report on the consequences of these failures.

**G. CCA Falsely Claimed Delays From “Design Changes” And Otherwise Misused The RFI Process To Attempt To Excuse Its Own Untimeliness And Delay**

295. In CCA's reporting in early 2013, CCA asserted that design delay was causing Project delay without any substantiation or proof of impact to the critical path (even though such proof was required under the MCC), an omission CCA repeated throughout the Project due to the lack of required evidence to meet its burden of proving its claimed delays.

296. By way of example only, in CCA's monthly report for the period ending December 31, 2012, CCA reported that there were zero (0) days of delay in the Podium and Casino, yet reported for the period ending January 31, 2013 that such was delayed 34 days in a month with only 31 actual calendar days, and failed concurrently to report on how it intended to mitigate the claimed delay or how the critical path had been impacted in such a way as to create that alleged delay.

297. CCA repeated this conduct of asserting-delay-without-proof (sometimes entirely defying logic or rationality) throughout the Project up through June 2015.

298. CCA knew that proof was required regarding any claim of justified delay, since, among other things, in a letter to CCA subcontractor Valley Crest Landscaping dated January 19, 2014, Tiger Wu of CCA stated to Valley Crest that under the subcontract (which incorporated the terms and conditions of the MCC), in order for Valley Crest to make a claim for delay, Valley Crest was required to prove through documentation appended to such a claim that the "critical path" of Valley Crest's work was delayed by reason of the events Valley Crest blamed on CCA, much in the same way CCA was required by the MCC to prove with documentation that Baha Mar Ltd. had caused a critical path delay to the whole of the Project.

299. As well, CCA blamed the changeover of the executive architect on the Project from RMJM Hillier to AECOM in the middle of 2012 for CCA's delay, however that changeover helped rather than hurt the timely delivery of design plans. In or about May through June 2012,

the Project's Executive Architect, RMJM Inc. (previously known as Hiller and then RMJM Hillier), was suffering from a financial crisis that made it unlikely to be able to carry on in its role. Consequently, on July 6, 2012 Baha Mar Ltd. gave notice to RMJM of its termination; on August 22, 2012, Baha Mar Ltd. signed an agreement with AECOM Technical Services, Inc. to become the new Executive Architect for the Project. AECOM thereafter diligently worked to release designs in accord with design release commitments and did in fact comply with those commitments and otherwise timely responded to CCA design inquiries.

300. In 2012 and throughout 2013, in a further effort to train its staff and slow down Project progress, CCA continued to propound hundreds or thousands of Requests for Information (RFIs) not in any way legitimately seeking information in order to construct certain aspects of the Work (ordinarily the actual reason to issue an RFI). Rather, CCA propounded these RFIs (i) in an attempt to overwhelm the designers and engineers that were forced to respond, to enable CCA and CCA Bahamas to fraudulently manufacture an excuse for their own slower than agreed progress on the Work, and (ii) because CCA's staff was young, inexperienced, and needed direct guidance from the design team to interpret and determine how to construct the simplest of elements of the Project.

301. These RFIs were not needed -- CCA could have resolved the issues identified by any reasonably proficient review of the contract documents.

302. In this same vein, throughout the Project, CCA (by plan or inadvertence) submitted hundreds of substandard shop drawing submittals that delayed, among other tasks, the designer and engineer responses to what few appropriate shop drawings were submitted.

303. Linked to unsupported assertions of "design" changes and delay, CCA continued to issue claims and Change Request Forms ("CRFs") (and related correspondence) that had no proof of

contractual entitlement to an increase in the Contract Time attached or referenced and thus were not in accord with the terms of the Contract.

304. As well, few of the claims and/or CRFs had any suitable, attached or referenced proof of an entitlement to changes to the Contract Sum, but when such entitlement was supported by evidence Baha Mar Ltd. approved and paid (indeed paid over \$50 million on over \$120 million in claims submitted in the normal course of the Project).

305. In the Summer and Fall of 2013, and without the required accurate reporting by CCA regarding any claimed “design delays,” CCA engaged in a fraudulent and intentionally misleading effort to divert attention from its own failings and misrepresentations. CCA claimed (in a repeated series of letters and in its monthly reports) that Baha Mar Ltd. was behind on the release of the 84 separate design issues CCA claimed in the May 2013 MOU that it needed resolved in order to progress the work. CCA repeated its “design delay” claims numerous times, notwithstanding that all the evidence was to the contrary – as required under the “Design Information Tracker” (dated May 10, 2013) appended to the MOU, Baha Mar Ltd. had delivered all of such design releases on or before the due dates.

**VII. CCA DID NOT ACCURATELY REPORT ON THE STATUS OF,  
AND DID NOT SUPPLY THE CONTRACTUALLY REQUIRED,  
GENERAL CONDITIONS**

306. CCA was credited substantial up-front money (early in 2011) against the entire amount of the General Conditions Work Package (“GCWP”) – some \$199 million (plus amendments increasing the GCWP to \$210 million). CCA used that credit to “pay” (via an accounting entry) for issuance of the Preferred Shares in Baha Mar Ltd. ostensibly issued to CSCEC Bahamas (which were transferred to CCA thereafter). The GCWP was awarded so that CCA could provide those services necessary for the forward-progress, safety, and ultimate completion of the

Project, such as timely and properly installed roads and flagman for those roads as traffic moved around the site, sanitation services, materials and equipment storage, scaffolding, trash chutes and removal, site security, and the like. Progress on the Project was dependent in substantial part on the proper provision of these General Conditions, since each separately and all collectively allowed the Work to continue in as efficient a manner as possible with a minimum of disruption and a maximum of safety.

307. Moreover, CCA was also required to report to BML Properties regarding the efficient forward progress of the Work, and thus the lack of General Conditions, and the expected results of such, were to be reported to BML Properties under the Investors Agreement. CCA did not issue reports that identified its failures to provide General Conditions, and did not report on the consequences of its failures, some of which are listed below.

308. CCA's Schedule of Values ("SOV") for the GCWP reveals that CCA promised to provide \$83,172,236 worth of construction staff and field labor and related general labor as part of its "General Conditions." CCA failed to provide the labor required by this category.

309. CCA did not provide the other staff necessary to, among other things, process all the work permits, since Baha Mar Ltd. was forced to assist CCA to a large extent in obtaining work permits, and only while Baha Mar Ltd. staff was assisting in this regard in late 2014 did it come to light that CCA had over 1800 workers it claimed were on site but for whom CCA did not renew their work permits.

310. CCA failed to perform regarding scaffolding (first installed and used in or about mid-2013) in nearly every respect, literally miles of which were installed by CCA at the Project in ways that did not comport with the requirements of the MCC or safe practices. Moreover, CCA

never reported to BML Properties regarding its failings to act in accordance with the MCC in this respect nor refunded the loan proceeds drawn to pay for such. By way of example only:

- a. CCA did not provide OSHA-compliant scaffolding for the Project.
- b. CCA did not issue comprehensive scaffolding plans as part of any logistics strategy it developed.
- c. In February, May and October 2014, Mitig8, the inspector for the insurers, found that CCA was using unacceptable and not contractually-compliant scaffolding. In fact, in February Mitig8 noted that it was concerned about a threat of collapse of the scaffolding CCA had installed because (i) the tubes were imported from China, and (ii) the tubes “have been joint welded and have rusted during storage.” As well, the scaffolding had not been erected properly.
- d. CCA did not provide method statements for scaffolding (generally, a specific statement identifying a safe system for performing the relevant work).
- e. While CCA was installing safety netting, CCA (paradoxically) exposed its installers to extreme risk of death and injury by not requiring them to tie off to a secure point, and allowing such workers to walk out on and under cantilevered scaffolding that provided beneath it no safety netting at all.
- f. CCA installed rusted scaffolding tubes and clips.
- g. CCA merely set into place, rather than anchored, scaffolding more than 20 floors up on top of the 30 Tower (Hyatt).
- h. CCA merely friction “leaned” rather than anchored in any way the legs of safety critical components of the scaffolding.

- i. CCA allowed large masses of debris to build up on top of and adjacent to high elevation scaffolding, placing its own workers at risk.
- j. CCA allowed low-lying scaffolding to be placed across passageways around the site and inside buildings (where CCA also did not supply sufficient interior lighting) and inspectors and third parties, as well as Baha Mar Ltd., pointed this problem out to CCA to remedy, however CCA did not remedy this problem and these types of obstructions could be found throughout the Project.
- k. CCA did not timely remove scaffolding and thus interfered with exterior works and delayed demobilization efforts.
- l. Due to CCA's poor standards, safety was compromised, along with the efficiencies of the work force; as well, inspectors struggled and sometimes for their own safety refused to access and work in such conditions.
- m. On November 23, 2013, Baha Mar Ltd. and CCA personnel on a site tour witnessed the major collapse of scaffolding erected by CCA and the injury of a CCA worker as CCA was dismantling scaffolding and related falsework to the South of the Rosewood west wing at LO1. CCA did not timely, or as far as Baha Mar Ltd. can ascertain, ever report the causes of the collapse.
- n. CCA used inappropriate cantilevered scaffolding of unapproved design that clearly violated OSHA.
- o. Baha Mar Ltd.'s insurance inspectors frequently pointed to the lack of proper scaffolding supplied by CCA.
- p. CCA was observed on a regular basis using previously damaged scaffolding, in fact using rope and other unauthorized and noncompliant connectors to re-attach

damaged or otherwise unusable scaffolding pieces/components, including incompatible scaffolding systems.

- q. In March 2015, CCA was observed throwing scaffolds off of a bridge, with near misses reported by people walking by below (who were unaware CCA would be employing such an unsafe method of removing scaffolds).
- r. In March 2015 as well, by way of further example only, CCA allowed its workers and subcontractors to place 2x8 boards across 5 gallon pails set on (and not attached to) parapet walls many stories up. Similarly, CCA erected and allowed its workers to use scaffolding at and near the beach access elevators that were haphazardly put together, with narrow planks for footholds and no safe means of access to the working levels.
- s. As late as September 2014, when CCA was erecting new scaffolding, after all of its prior errors in this regard had been pointed out by Baha Mar Ltd. and others, CCA yet again erected non-compliant scaffolding.
- t. Indeed, on numerous occasions CCA was unable to demonstrate that scaffolding it had erected had been designed and checked by a competent person, since, among other things, such scaffolding was regularly observed to be non-compliant with OSHA and otherwise unsafe.
- u. Engineering firm Terracon on several occasions wrote extensive reports regarding CCA's failures regarding scaffolding, fall protection, guardrails, safety nets, personal fall arrest systems (PFAS), impalement hazards, and improper or defective/damaged ladders.



- v. Rather than erect scaffolding or use a man lift, CCA frequently allowed its workers to crawl across already installed and suspended pipes and ducting to repair/work of such pipes or ducting and/or neighboring MEP, in obvious violation of the MCC and OSHA.
- w. In its Schedule of Values and otherwise as valued by BML Properties, CCA failed to provide over \$3 million in scaffolding and related services under the GCWP, yet CCA was paid in full (from loaned monies) for such services, resulting in an unnecessary increase in the loan amounts drawn of (at a minimum) \$3 million.

311. Also under this same category of unreported omissions, CCA did not provide protection for the temporary storage of materials on site, and thus materials were damaged by the elements, leading to delayed installation and completion.

312. CCA failed to provide the report required by section 5.10 of the Key Deliverables: “provide to the owner timely adequate detailed summary reports of each monitoring [in relation to CCA regular monitoring of the Construction Schedule as construction progresses], and document all changes in schedule and take timely action to ensure the Project is begun and completed in accordance with the schedule, and is implemented in good order.” The Investors Agreement obligated CCA to report on the schedule and monitor the progress of the Work.

313. CCA was required to but did not provide special reports as Baha Mar Ltd. “reasonably request[ed],” among them the following:

- a. In response to CCA letters at the end of March 2015 where CCA alleged Baha Mar Ltd.’s culpability in failing to achieve TCO, Baha Mar Ltd. responded with a letter requesting delivery by CCA of “Construction Managers report on all TCO

issues where you (CCA) seek the Owners assistance or action” – Baha Mar Ltd. did not receive a reply and no such report was issued by CCA.

- b. In relation to a series of leaks under the water wall resulting in significant damage to the Casino buffet (and the entire floor finishes being ripped out and extended delays in the completion of this space), Baha Mar Ltd. wrote to CCA requesting reports outlining investigations and planned remediation so that Baha Mar Ltd. could plan resumption of the works with the tenant – no such report or reports were issued by CCA.
- c. Numerous instances of microbial growth and water damage were raised by AMRC during investigations and AMRC’s reports were delivered to CCA with responsive reports requested. There were no meaningful reports issued by CCA to address these serious concerns.

314. CCA failed to provide all of the required photographic documentation for the entire duration of the Project, as follows: Weekly photo submissions from CCA stopped in 2014; Video recordings were not issued by CCA as required and for many months at all; Pre-construction photos were not taken and provided to Baha Mar Ltd. in any useful manner; Time lapse cameras were installed late, or not at all. One camera on the beach side was only put up once the superstructure for the towers was almost complete. Cameras were regularly out of service. Cameras requested in the casino areas were never installed.

315. CCA initially supplied a standby generator as required under the GCWP, but did not maintain it and did not provide it for the full 44 months, leading to numerous site power outages. Indeed, in an August 19, 2014 letter from CCA, CCA admitted it did not have standby generating capabilities. Within the Executed CCA Self-Performed General Conditions package,

Item E.3.3 in the Schedule of Values (on page 0131) refers to charges CCA has caused and will cause Baha Mar Ltd. to pay for “Standby Generator” in the sum of \$380,389. CCA had no such standby-generating capacity, since CCA claimed in that letter that there was “no power” during outages of the BEC supplied regular power. CCA never reported as to why it did not supply the stand-by generator and did not report regarding the consequences to the Project of such.

316. An absence of fire extinguishers on site (required under the GCWP) further amplified the dangers posed by CCA’s failures regarding fireproofing and alarm systems (described herein). According to a Mitig8 report commissioned by Great Lakes Reinsurance in June 2013, CCA failed to provide extinguishers for the crane power location, as well as inside the temporary offices and main structures within the site. Further, the extinguishers that did exist were not tagged with a service record. Consequently, the Mitig8 report listed this defect as a “Critical Priority.” Further compounding the danger of fire was combustible saw dust piled on the floor in close proximity to the structures and tailing cable, as well as a lack of flash arrestors fitted to the oxygen/acetylene gas cylinders. In other instances, these gas cylinders were placed on the floor slabs within the structures. Mitig8 also observed several discarded cigarettes across floor areas and stairwells, partly because designated smoking areas were not provided with sand buckets. Finally, Mitig8 noted there were several sandwich panels stored on site with an inner core of highly combustible foam.

317. These and other General Conditions that CCA did not supply cost Baha Mar Ltd. over \$50 million by March 2015.

318. Moreover, CCA’s failures to report on the lack of such General Conditions and the consequences of failing to provide them left BML Properties without the information it needed, namely from the Work Package Contractor and CM itself, to predict outcomes and plan for

acceleration if needed to achieve TCO issuance and completion of the Project by the contractual deadline.

**VIII. CCA DID NOT ACCURATELY REPORT ON THE STATUS OF, AND DID NOT  
TIMELY REPAIR AS CONTRACTUALLY REQUIRED, DEFECTS AND  
ERRORS IN ITS WORK CAUSING SUBSTANTIAL HARM  
TO BML PROPERTIES.**

319. BML Properties is informed and believe that CCA knew about the defects described below well before Baha Mar Ltd.'s consultants discovered them, but did not report them to BML Properties accurately or at all, did not report to BML Properties regarding the consequences of these defects, and did not report regarding the cost of the defective work for which CCA had already been paid using loan proceeds. This conduct constituted a breach of the Investors Agreement, and in certain other instances constituted fraud, because (among other reasons) (i) CCA never took into account in its schedule or its workforce estimates the increasing number of defects it was creating and would therefore have to fix nor the delays and costs of fixing those defects, (ii) CCA still included in its payment requests monies for defective works, and without disclosure to BML Properties of the level or extent of the defects, BML Properties had no way to measure the amount to direct Baha Mar Ltd. to withhold from payment (or backcharge) for such defects, (iii) CCA sought payment for not only the work and materials that were defective but also for the time spent attempting to fix such defects since it was diverting labor to work on defects from tasks needed for progress of the Work without increasing the workforce to prevent that diversion from happening, and (iv) some of the defects, especially those linked to receiving or being denied TCOs, had a direct impact on the failure to open the resort to paying guests in a timely manner, delaying the payment of the hotel key money, and all the problems the delay of that money created .

320. As of February 2013, Baha Mar Ltd. had brought to CCA's attention hundreds of material defects in its Work as documented in Non-Compliance Reports ("NCRs"), which NCRs identified those material defects for CCA's immediate repair and rework.

321. In March of 2013, CCA requested that Baha Mar Ltd. stop writing NCRs immediately upon detecting non-compliance. Hence, at CCA's request, and in an effort to cooperate on some levels with CCA's requests for changes in procedure and policy, Baha Mar Ltd. instead began to send observation reports (or photos and a letter describing the problem) allowing CCA two weeks to respond. Consequently, the voluminous NCRs issued after that time (numbering in the hundreds) were generated only *after* CCA failed to address identified problems in the added time period it had requested and to which Baha Mar Ltd. had agreed.

322. On March 26, 2014, the Ministry of Works of the GOB sent a letter to the Project Architect of Record (Brent Creary), conveying from its Deputy Inspectors at Reiss Engineering, something that CCA had entirely failed to report to BML Properties -- that there was "an alarming level of Mechanical, Electrical and Plumbing (MEP) deficiencies onsite. [These] are being repeated at other locations onsite, despite having been previously identified as code violations." CCA had once again failed to remedy its own prior MEP issues, and had been replicating its previously noticed violations elsewhere. CCA never reported to BML Properties about the repetition of practices that had resulted in previous code violations by its workers, although any reasonably honest CM in CCA's position would have so reported.

323. CCA did not report to BML Properties or Baha Mar Ltd. about the full scope and consequences to the Project of the following defects CCA created (among others).

324. **Life Safety Defects** – As of July 1, 2015 the Project's life safety systems were still defective. In late March 2015, JBB and Reiss Engineering issued several letter reports outlining

numerous defects in and untested/incomplete elements of the Project's life-safety system. These defects included a fire control system that was noncompliant with Bahamian regulations. Among other things, the fire protection equipment on the Project was not installed pursuant to the approved plans. In addition, the fire protection equipment in the Project had not been properly tested pursuant to code. In response to these defects, CCA made several proposals. But, as the Reiss report makes clear, those proposals were unacceptable to supplement the various life-safety system shortfalls. By way of example only, Graphite's protocol for testing the fire alarm system for the project, based on prior CCA errors and defects, was 25% actual testing – 1 out of 4 of all the heads, pull switches, and the like would be tested, with a person at the control panel affirming that the alarm was triggered and in the confirmed location. CCA never achieved that level of success, and sought instead to convince the MOW that far less actual testing should be done. These defects and CCA's failure to build the fire life-safety system in conformance with Bahamian regulations and the approved plans contributed to the failure of CCA to obtain TCOs for the project but were never reported honestly to BML Properties and the consequences of CCA's failures in this respect were also never accurately reported to BML Properties.

325. **Fire Alarm Cabling Defects** -- With respect to Fire, Building and Safety Codes, the MCC requires CCA to bring any code violations it does or should recognize to Baha Mar Ltd.'s attention (and thus to BML Properties' attention as the day to day manager of Baha Mar Ltd.), and requires CCA to "perform the Work to meet or exceed all standards imposed by . . . local building codes and fire codes, . . ." (MCC, A201, §10.2.2 and 3.2.2.) Both the Construction Set of Specifications (dated May 27, 2011) and the Construction Set submitted for Ministry of Works permitting (December 19, 2011) require compliance with the Bahamian Fire Department

and Bahamian Building Code. The Bahamian Building Code had not changed its requirements at any time material to this issue (in 2010, 2011 or 2012). The provisions of the Bahamian Building Code clearly state (under “Fire Protections and Hazards” – Ch. 7 at 709.5) that “Electrical installations” are governed by Chapter 44, and in turn Chapter 44 requires application of the Canadian Electrical Code. The applicable section of the Canadian Electrical Code (which CCA presumably knows well from, among other things, its many global projects) states that “[a]ll conductors of a fire alarm system shall be” shielded by conduit or enclosed raceway, or within armored (MI or similar) cabling. In CCA’s own “General Fire Alarm –Note 1” dated May 15, 2013, CCA states that its “installation” of the Fire Alarm System shall “be in accordance with NFPA & All Local and FBC Building [Codes] Existing.” The reference to “all local” plainly reflects CCA’s intent to conform to the Bahamian Building Code, as it is without question required to do. Multiple warnings were issued to CCA to comply with the Bahamian Building Code and the referenced and incorporated provisions of the Canadian Electrical Code. Notwithstanding the plain duty to act to protect the lives of guests at the resort, and the multiple notices to repair, CCA improperly installed miles of fire alarm cabling throughout the Project’s hotels without placing it inside of fire resistant conduit, knowing, or having reason to know, that its installation of such was not compliant with the MCC. Although CCA billed Baha Mar Ltd. for the performance of fire alarm cabling work consistent with Bahamian Building Code, the fire alarm cabling installed in the Project’s hotels did not comply with Bahamian Code *because it was not in conduit*. CCA pursued this incorrect installation despite having properly installed fire alarm cabling in both the Podium and in the CUP. CCA purported to overbill Baha Mar Ltd. for this work by approximately \$475,000. Baha Mar Ltd. incurred the expense of hundreds of man

hours of its representatives and consultants in compelling CCA to remedy this defect, in an amount in excess of \$130,000.

326. **Fireproofing Defects** -- In addition to the foregoing defects in the Project's fire alarm cabling, the Project's fireproofing was also deficient, and constituted yet another critical life safety element of the Project about which CCA never reported, adequately or (in certain respects) at all, to BML Properties. CCA's fireproofing work generally was of poor quality, and in many instances it was contrary to the applicable drawings, specifications, and building codes, and therefore not only not worth what had been paid for it but of negative value since its defective condition endangered the remainder of the Project. In the absence of any or complete reporting on this defect by CCA, by way of example, a series of letters in October 2013, February 2014, and April 2014, as well as Graphite reports in September 2014, put CCA on notice that it had failed to resolve defects in the Sprayed Fire Resistant Material (SFRM) in the Convention Center. By way of further example, in an extensive letter in February 2014, at the direction of BML Properties the General Counsel of Baha Mar Ltd. demanded that CCA remedy extensive defects in fireproofing throughout the resort, which letter was accompanied by photographs of improper fire-blocking (juxtaposing those with the occasional correctly applied fire-blocking), both as applied and using unapproved materials (including contaminated materials), and in uninspected conditions as well as employing unapproved details throughout the Project. That same letter pointed out incomplete/unfinished fire-blocking/fireproofing work, and cited to CCA's abysmal QA/QC record in this regard, and CCA's lack of a present and involved fire consultant (other than brief and short-lived visits by consultant Sharron Halpert) and lack of, among other things, (i) quality audits, (ii) "hold point" regimens to stop work until inspections could take place, (iii) issuance of certificates of assurance to Baha Mar Ltd., (iv)



approved fireproofing details for each project specific location. The Graphite April 2014 report highlighted the potential for SFRM overspray in plenum spaces becoming airborne and the public health risk of this being circulated by the air conditioning system. CCA's material supplier (Cafco) inspected the installation and provided a solution to rectify the overspray. No report of this inspection was ever issued by CCA (as it was required to do under the MCC and under the Investors Agreement), however, on November 6 and 13, 2014, and in the MEP meetings of October 28 and November 4, 2014, CCA advised that the overspray would be sealed and this proposal was further confirmed by CCA in item 2.1.4 of CCA's October 2014 Monthly Report. As of June 28, 2015, there remained a substantial number of these and related errors and defects unremedied by CCA, and more difficult to remedy later in the Project development due to the "build-out" over and the fireproofing errors, burying the errors behind MEP, wallboard, ceilings, and the like, and hiding the presence of such defects from BML Properties and Baha Mar Ltd., making CCA's failure to initially and subsequently report on the existence of these errors and the "remedy" even more egregious.

327. **Defective Fire Alarm Systems And Testing For The Elevators** -- As to the Fire Alarm System ("FAS") for the elevators, CCA never reported to BML Properties accurately regarding the systems installed, or their performance as installed. CCA changed its sequencing of testing several times (leading to confusion among all the interested parties as to what the actual sequence was). When CCA finally got around to testing the FAS for the elevators, such testing was done at a time when CCA knew that it would be able to say to Baha Mar Ltd. that what CCA alleged was Baha Mar Ltd.'s "work" on the elevators (regarding phone sets and IT interface/data-points) would not be done, thus concocting a way to try and show Baha Mar Ltd. as tardy and causing delay. The "work" Baha Mar Ltd. was having to do on the elevators in this

regard was not work it was supposed to do, however; the requirement that Baha Mar Ltd. work on the phone sets (for instance) was caused by CCA's failures to coordinate with its subcontractor and Thyssen Krupp and thus the work necessary to connect the phone sets fell to Baha Mar Ltd. As well, certain testing that CCA called off (sequence testing) was cancelled to allow CCA to finish the elevator recall testing (smoke on heads in lobby and shaft), and these two tests cannot take place at the same time. CCA's errors in this respect caused Baha Mar Ltd. to incur substantial costs and expenses, prevented compliance with safety and security standards, and delayed issuance of TCOs.

328. **Water Damage and Microbial Growth** -- CCA caused, neglected, and/or failed to remediate water damage and microbial growth throughout the Project and then failed to adequately report to BML Properties about these conditions and advise BML Properties about the consequences of this serious health and human safety concern. This damage to the Project occurred even as BML Properties directed Baha Mar Ltd. to transmit numerous exhaustive reports from American Management Resources Corporation (AMRC) to CCA and endeavored many times to develop some sort of effective monitoring and remediation program. Beyond pervasive microbial growth and water-impacted materials, including in guest rooms and kitchen areas, AMRC observed major health hazards, including rodent infestations, mosquito larvae, and urine and human feces that was then in many instances built over/closed in with finished work. The AMRC reports completed between March 21, 2014 and May 21, 2015 – all of which were distributed to CCA in an effort to compel CCA to develop an effective monitoring and remediation program — revealed site-wide failures unreported by CCA and concerning which Baha Mar Ltd. was forced to incur enormous investigation and remediation burdens, incur extensive costs to simply investigate what CCA was not to have created in the first instance, and

which all could have been avoided or mitigated if CCA had simply reported on its own failures to keep water and other contaminants out of the to-be-occupied spaces in the Project and given Baha Mar Ltd. and BML Properties an opportunity to direct CCA to re-sequence work to prevent intrusion and other water entering the buildings and otherwise act to remedy the problem at a much earlier stage.

329. **Defective Tower Railings** -- Another defect on the Project that CCA did not report to BML Properties and that Baha Mar Ltd.'s consultants had to "ferret out" concerned the structural integrity of the balcony railings installed on the four hotels, namely towers 20, 30, 40 and 50. Although Baha Mar Ltd. first notified CCA in July 2014 that the Towers' railings were not being installed properly (rather than, as should have been the case, CCA reporting on these errors), CCA failed to address this critical safety issue, and forced Baha Mar Ltd. to incur substantial costs identifying potential remedies to correct these defects. As a result of these defects, the base and railings were prone to snap under minimal pressure, such as a human leaning on the rail 25 floors up. CCA even acknowledged that the railings were defective and not constructed as the designs required, and promised Baha Mar Ltd. that it would pro-actively enforce its QA/QC protocol, yet more railings were installed thereafter in a defective and life-threatening manner. Troublingly, CCA's sole recommendation for correcting this defect -- which involved, among other things, adding a new bar between the existing railing posts to bolster the railings' structural integrity -- conflicted with the Project's design and thus was no remedy at all, notwithstanding that as of March 27, 2015, CCA had been paid in whole for the installation of these railings. Although Baha Mar Ltd. raised this issue with CCA early on, CCA refused to and/or failed to correct the problem initially, and while some corrective work had been done by July 1, 2015 it was not complete.

330. **Defective Guestroom Sliding Glass Doors** -- The Project's sliding glass doors were installed in a defective manner by CCA and CCA never reported that to BML Properties at any time before Baha Mar Ltd.'s consultants and owners' representatives discovered the defect. CCA installed faulty rollers, did not properly seal the sliders, and installed unspecified anchoring hardware attaching the sliders to the structure (and even tried to rig the testing of its "remedy" before Baha Mar Ltd. and its consultants caught them at it). That these defects posed serious health and safety risks cannot be overemphasized. By way of example only, if any of the anchors failed, the sliding glass doors could be ripped from their frames and hurled onto the resort below. In addition to showering the property with glass, the flying doors could cause substantial injuries to guests and workers at the Project, and damage surrounding property. Accordingly, all of these anchors, over 3 million, needed to be replaced and such was not complete as of July 1, 2015, even though CCA had already been paid for this installation, unsafe and defective as it was, many months before.

331. **Podium And Project Stairway Railing Defects** -- In addition to the unsecure and unstable railings on the towers, there were issues with other railings Project wide. For instance, the railings in certain areas of the Podium and pedestrian bridges to the Convention Center were defective because they were installed with gaps that are greater than the 6" required by the applicable code. In other instances, top railings are not continuous, creating hazardous pinch points for users; overlapping; and/or located several inches behind knee walls, reducing the height of the railings and rendering them effectively useless. As a result, the railings violated Bahamian law and, therefore, were defective. As well, CCA simply failed to install railings, or improperly installed the railings in (by way of example only) the stairs to the SLS pool deck and

the ramp adjacent to the east bridge. All of these defects affected Baha Mar Ltd.'s ability to obtain a TCO.

332. **Guestroom Balcony Delamination** -- On the SLS balconies, a cement layer between tile and the poured concrete of the balconies was incorrectly installed and delaminating and, as was the case with regard to the other defects described above, CCA never reported this defect to BML Properties and BML Properties' representatives discovered it for themselves. The failure is found in the lack of bonding between the concrete placed as part of the structure and the applied material. This delamination caused further damage to the finishes of the SLS tower, and created a serious safety risk to anyone and anything in the vicinity below the balconies. Notwithstanding the safety risk posed by this defect, CCA continued to use the same faulty method and means to install the concrete facing of the SLS hotel's balconies. CCA did not make any changes to its quality control plan and processes, and certainly did not report to BML Properties about any such change, despite the fact that its existing plan and protocol had been a constant cause of defective works throughout the Project's history. In other words, CCA had taken this approach despite the fact that it was CCA's responsibility to not only point out these issues and problems to BML Properties and Baha Mar Ltd. as they arose, but also to formulate remediation plans, advise BML Properties of such plans, and then carry them out. Given CCA's conduct and general approach to this defect, Baha Mar Ltd. was forced to incur the cost of employing Terracon to carry out a full investigation of the scope and extent of these defective works, including forming an opinion on any remedial works proceeding without compliance with the contract. These errors caused Baha Mar Ltd. substantial costs and expenses, and prevented Baha Mar Ltd. from achieving its design intent.

333. **Dowel And Epoxy Deviations and Related Defects** -- CCA was responsible for numerous site-wide structural errors throughout the core works relating to epoxy and dowel installation, including structural steel installation, reinforcing steel installation, earthwork, and concrete, and used deceit to attempt to cover up these errors until Terracon discovered them and brought them to the attention of Baha Mar Ltd. and BML Properties. Baha Mar Ltd. incurred extensive costs and expense in addressing these problems, which CCA eventually resolved

334. **Defective Guestroom Interiors and Guestroom Corridors** -- The following are among the defects found in these locations (other than and among those items found in the “punch-list”) and were not timely or ever reported to BML Properties and no report of the consequences of these defects was made by CCA to BML Properties as well. In the Rosewood CCA created and did not report to BML Properties or to Baha Mar Ltd. that (i) CCA had installed over 200 bathtubs without making the necessary seal around the drain connection, meaning that any water on the bathroom floor drains into the ceiling of the room below, (ii) CCA installed the bamboo strand flooring in all guestrooms and suites without allowing the material to be acclimated, without any environmental control and without any perimeter expansion resulting in warped flooring in 70% of guestrooms and suites, which CCA neither entirely rectified and in doing what little repair it did damaged finishes in the rooms in which it worked. In the Hyatt, CCA installed millwork without making the appropriate provision for environmental control which resulted in the louver detail of bathroom doors splitting in over 80% of the rooms. Similarly, exhibiting CCA’s pattern of compounding errors one upon another, and a lack of reporting on it all, CCA incorrectly screeded the SLS corridor floors such that cracking and debonding was immediately apparent. CCA compounded the problem by spraying water on the screed during curing which was absorbed into the baseboard and sheetrock which gave rise to microbial

growth. CCA broke out areas of cracked screed but repeated its previous errors which has resulted in further cracking. NCR-02262 was issued for CCA to address the defects however as of July 1, 2015 there had been no further action and CCA continued with installation of floor coverings over the improperly screeded floors. As of July 1, 2015 there was no corridor of the SLS hotel which had been presented by CCA as complete for inspection. Beyond the actual defects in screeding at the SLS Tower, CCA also exhibited significant managerial and strategic errors. For example, after taking many weeks to procure all floor-leveling materials for the tower, CCA – against Baha Mar Ltd.’s advice – began to repair nine floors at once, leaving one floor with incorrectly installed Ardex and eight floors with partially installed alternate levelling materials. Thus, not a single floor of SLS was complete as of April 2015, but nine floors had FF&E and OS&E load-in and installation disrupted due to CCA’s mismanagement in both procurement and installation

335. **Water Intrusion** -- Throughout the development of the Project there have been water intrusion issues. Those water intrusion issues continued up to and including July 1, 2015 and included several substantial intrusions during 2015. For instance, on May 1, 2015, the Project suffered water intrusion at the following areas: the Podium, Casino Hotel, and the Rosewood Hotel. There were additional water intrusions on the Project on June 3, 4 and 9 in the following areas: the Podium, SLS Hotel, Casino Hotel, Rosewood Hotel, and the Spa. These intrusions resulted in substantial damage to the Project. In one instance, the water damage was so bad that it caused a ceiling to collapse in the SLS hotel. In another instance, the mechanical rooms in the Rosewood Hotel were completely flooded.

336. **Improper Penetrations To The Finished Exterior Insulation and Finish System (“EIFS”) Created Water Intrusion Pathways** -- CCA’s defective work on the Project also

included penetrations through finished EIFS. Essentially, several contractors working for CCA installed building components through the completed EIFS system. Among other building components, the contractors installed numerous switches, electrical boxes and wires through the finished EIFS and Hardie siding systems. These installations through the finished building envelope were not done in accordance with the standard finish details in the contract documents and Project specifications. As a result, these penetrations through the finish systems create an entry point for water into the building envelope which was installed as a non-drainable system.

337. **Air Conditioning Defects** -- One of CCA's fundamental obligations as Construction Manager was to provide reasonable protections for and prevent damage to the Work and the materials incorporated into the Work. Given that the Project was being built in an area with wet and humid weather a working air conditioning system was an essential form of protection. Nonetheless, consistent with its other failures, CCA did not successfully implemented an air conditioning system at the Project. The air conditioning system was defective in numerous respects, but primarily it was defective (as of July 1, 2015) because it was not controlling the humidity or temperature. By way of example only, due to defects in the air conditioning system, the humidity in various areas—including the SLS Lobby and the Casino—was over 60%. This level of humidity is in excess of the recommended guidelines of the US EPA and the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. In addition to not complying with these guidelines, the high humidity caused the floorboards in the SLS's lobby to warp. Further, the high humidity also caused condensation to form on the Casino's ceiling which resulted in various areas of microbial growth, and regular leaks. In addition to not controlling the humidity, the air conditioning system was not controlling the temperature. For example, the thermostat in room 721 of the SLS was set for 74 degrees Fahrenheit, but the



temperature was actually 80 degrees Fahrenheit. This happened in many rooms throughout the various hotels and reflected that there were inherent defects in CCA's installation of the air conditioning.

338. These and many other defects, when totaled in terms of the value of the original work that was done in a defective manner rather than as required by the contract, resulted in tens of millions (if not hundreds of millions) being paid to CCA over the life of the Project that should not have been paid to CCA. Had those funds not been paid for improper, defective work, they would have been available as part of the loan proceeds in the crucial months of March through June 2015.

339. Indeed, it appears that defects and the cumulative effects of CCA's conduct described herein continue to plague the Project – the GOB announced in August 2016 that work was to recommence on the Project “within two weeks,” but as of August 2017 no hotel had been entirely completed and only one hotel -- the Grand Hyatt – was accepting reservations.

**IX . DEFENDANTS' BREACHES OF CONTRACT AND MALICIOUS AND INTENTIONAL ACTS OF DECEIT IN UTTER DISREGARD FOR THE INTERESTS OF BML PROPERTIES RESULTED IN THE SEVERE LIQUIDITY CRUNCH OF MARCH THROUGH JUNE 2015, THE BANKRUPTCY FILING OF BAHAMA LTD., AND THE LOSS OF BML PROPERTIES' ENTIRE EQUITY STAKE IN BAHAMA LTD. AND ITS VALUABLE INTEREST IN THE FUTURE OF THE RESORT.**

340. CCA had a duty to (among other things) report accurately and completely to BML Properties about the true status of the Project, including the duty to report concerns regarding CCA's own proper and efficient construction, or conversely improper and inefficient construction and the consequences thereof, for the benefit of BML Properties as an investor.

341. CCA consistently breached those duties (as described above) by not only failing to report, but by actually reporting false data regarding, among other things, its “calculated” completion

date, workforce levels, and numerous other elements of its performance that contributed to, if done properly, achieving an on-time and on-budget Project, and if not done properly, an unreasonably delayed, not completed and substantially over-budget Project.

342. CCA's repeated failures to report and misrepresentations as described above each individually and incrementally made it increasingly more difficult for BML Properties to plan for outcomes on completion dates and budget, and combined those acts entirely sabotaged BML Properties' abilities to plan proper outcomes and act accordingly to protect its asset. Even BML Properties' efforts to reach interim agreements with CCA to move the project forward (the May 2013 MOU and the Podium Crunch effort) were to no avail, because CCA never intended to perform as promised, and only intended to delay for as long as possible any day of reckoning for its failures up to that point and that it knew would occur thereafter.

343. Moreover, CCA's acts of fraud and failures to disclose resulted in BML Properties' inability to gauge the full consequences of CCA's conduct and thus resulted in, among other things, BML Properties' inability to recapture lost time and make up for lost time and effort on the Project.

344. Had BML Properties been in possession of the true facts starting in 2012 and not subject to the constant barrage of CCA's lies thereafter, the Project would have completed on time and on budget, without the huge added burden of additional costs borne to "police" CCA before or after the December 31, 2014 opening date, and with operating revenue available to service the loan after opening. CCA's acts and omissions, and deceit, lulled BML Properties into not exercising its own remedies and not directing Baha Mar Ltd. to pursue its full array of remedies under the MCC earlier than May 2014, at which point CCA had just failed to deliver the Convention Center notwithstanding its continuous and repeated representations and promises to

meet the deadline for the first and most important building at the Project, and thus BML Properties directed Baha Mar Ltd. to proceed before the DRB under the MCC to remedy CCA's failure to deliver the Convention Center (the DRB had been used up to that point to try and negotiate resolutions rather than to seek an order remedying a breach, negotiations that did not lead to changes in CCA's conduct).

345. CCA's misrepresentations, and omissions and lies to China Eximbank caused BML Properties to lose its ability to use the bank's involvement and desire to preserve its collateral to influence CCA into achieving timely and on-budget completion of the Project.

346. Once the DRB issued its ruling in August 2014 entirely in favor of Baha Mar Ltd., Baha Mar Ltd. sought CCA's voluntary compliance, but in bad faith CCA refused to comply. Baha Mar Ltd. (at BML Properties' direction) was forced to commence another DRB proceeding to compel CCA to comply with the August 2014 Ruling and assert numerous other claims against CCA. CCA opposed, and asserted intentionally false and fabricated "commercial" disputes, engaged in walk-offs and slow-downs intended to punish Baha Mar Ltd. and BML Properties for seeking these remedies, and otherwise acted to further stall any progress on the Project until after it could extort payment on its demanded but unsubstantiated "commercial claims."

347. BML Properties did everything it could to mitigate its losses. By way of example only, BML Properties acted swiftly to re-set Baha Mar Ltd.'s budget, reduce its non-construction-related spending and otherwise mitigate as best it could the damage it had incurred due to CCA's delays and the increased costs associated with CCA's failures. In this respect, BML Properties directed Baha Mar Ltd. to do the following: (i) reduce staff, (ii) delay certain expenditures, and (iii) make prudent deals with third parties to try and accelerate the work, all of which and more

was done to try to meet the expected cash needs of Baha Mar Ltd. throughout 2014 and into 2015.

348. BML Properties acted to mitigate its losses, bearing in mind that the catastrophic losses that would be caused by missing not just one but possibly two seasons for travelers to The Bahamas. One missed “season” for the resort (January to June) would cause the loss of both 100 percent of the resort’s annual cash flow and 100 percent of the annual profits (Bahamian resorts traditionally incur cash flow losses in the second half of the year).

349. The effort by BML Properties to save its investment and receive, as it had planned, the profits post-opening of (what it had planned to be) a world-class resort during the 2014-2015 season was further undermined by CCA’s bad faith conduct, lies and deceptions in November 2014, and preceding November 2014.

350. In late 2014, seeking progress toward opening, BML Properties and Baha Mar Ltd. attempted to mitigate their damages and negotiate an interim resolution with CCA, which became the November 2014 Meeting Minutes. In an effort to avoid any further adverse DRB decisions and engaging in even more monumental deceit, CCA signed the November 2014 Meeting Minutes with the intention at the time of signing of violating its promises, continuing as before with an inadequate workforce, and not meeting the completion dates set forth in the November 2014 Meeting Minutes, namely a late but at least “in season” opening on March 27, 2015.

351. Had BML Properties known the truth about CCA’s intent (as described above) not to comply with its representations regarding increasing its workforce and hitting milestones and completion deadlines under the May 2013 MOU, the Podium Crunch, and/or the November 2014

Meeting Minutes, among other things, BML Properties would not have agreed to those interim measures as part of its larger effort to keep the Project progressing toward completion to mitigate its potential harm from a stalled Project that would not open on December 31, 2014 or, under the November 2014 Meeting Minutes, March 27, 2015.

352. In particular, the material and aggregated acts of deceit by CCA set forth herein made it (i) impracticable for BML Properties and Baha Mar Ltd. to manage day-to-day operations, (ii) impracticable to take timely corrective action to remedy or mitigate (in whole or in part) the effects of CCA's continued and compounded lies, failures, and efforts through deceit to cover-up its prior lies and errors, and (iii) in the end impossible to avoid, notwithstanding all of BML Properties' efforts to mitigate the impact of CCA's conduct, a substantially delayed opening (past December 31, 2014) and the dire consequences arising therefrom, including loss of its investment, loss of brand reputation as an announced opening was substantially delayed or did not occur at all, loss of investment in an extensive pre-opening marketing campaign, loss of reputation with the Government of the Bahamas, loss of credibility and reputation with the separate hotel companies, among other profound consequences. Such led directly to the failure of the Project to open at all, the bankruptcy filing done in an attempt to mitigate the effects of CCA's conduct and restructure the finances of the Project and complete it before more revenue was lost, and the ultimate liquidation and receivership proceedings in The Bahamas that followed.

353. On June 29, 2015, the Baha Mar Ltd. Board voted to direct Baha Mar Ltd.'s counsel to file for bankruptcy protection under Chapter 11 in the United States Bankruptcy Court for the District of Delaware (the state of incorporation of one of Baha Mar Ltd.'s affiliates), which petition was filed that same day. That petition would not have been filed but for the acts and

omissions of CCA as set forth herein. That Petition was dismissed by that same court on September 15, 2015 (537 B.R. 192).

354. On July 16, 2015, the Attorney General of the GOB filed a “winding up” action against Baha Mar Ltd. and numerous of its affiliates, including BML Properties. The Supreme Court of the GOB (the trial level court), upon the stipulation of the Attorney General, “struck out” (namely dismissed) the winding up petition against BML Properties (and certain other Baha Mar Ltd. affiliates) in a ruling dated September 4, 2015. That “winding up” action against Baha Mar Ltd. would not have been filed but for the acts and omissions to act of CCA as set forth herein.

355. Thereafter, on October 30, 2015 China Eximbank pursuant to the CFA commenced proceedings in the Bahamas to appoint a receiver to marshal the assets of Baha Mar Ltd. and its subsidiaries, exercised its rights under the Pledge Agreements dated January 2011 (in which, *inter alia*, BML Properties pledged its shares in Baha Mar Ltd. as collateral for the loan proceeds provided under the CFA), and thereby took control over the entirety of the common shares of Baha Mar Ltd. that had previously been owned and possessed by BML Properties. The receivership proceedings resulted in an agreement for the sale of the assets of Baha Mar Ltd. (and certain subsidiaries) to “Perfect Luck Assets Ltd.” (an entity owned by China Eximbank) on or about September 27, 2016 pursuant to an undisclosed agreement (nearly all of the receivership proceedings have been confidential and the pleadings and agreements have been sealed by the Court), followed by a conditional agreement of merger of “Perfect Luck” into an entity known as Chow Tai Fook Enterprises Limited (“CTFE”). China Eximbank would not have taken control of the Baha Mar Ltd. shares, or exercised its other rights under the CFA, or forced the September 2016 sale but for the acts and omissions of CCA as set forth herein.

356. Moreover, the people of The Bahamas suffered as well by reason of CCA's malicious and fraudulent conduct. Among many other benefits, starting in 2014 (but for CCA's conduct) there would have been huge benefits to the Bahamian people such as the hiring and training of thousands of residents in a country in which the long-prevailing unemployment rate averaged 18 percent.

357. The result for BML Properties of CCA's lies, deceit, and failures was that, among other damage, BML Properties lost its entire investment in Baha Mar Ltd., totaling some \$845 million, along with its expected future profits generated by an open and operating resort.

358. CCA's conduct was reprehensible, malicious, and undertaken with callous disregard for the rights of BML Properties, and CCA was oppressive in its, among other things, acts of sabotage, extortionate threats, and the like, and therefore deserves the imposition of punitive damages as well. All such conduct was engaged in by CCA's superior officers who directly participated in, authorized, consented to and/or ratified that conduct, and such conduct involved wanton and repeated dishonesty and indifference to the rights of BML Properties, and moreover CCA engaged in such conduct with an intent to cause the damage to BML Properties that it ultimately suffered. In particular:

- a. CCA's scheme hatched in 2012 to say whatever untruths it had to say, and to refuse to disclose information, findings, concerns, and recommendations that would have saved BML Properties' investment had CCA simply spoken the truth and reported accurately and fully, conduct engaged in by CCA to serve its own interests and in contravention of every duty it bore to the contrary, brought about the end result on which BML Properties sues for here.

- b. CCA's fraudulent and malicious conduct resulted in the transfer of tens if not hundreds of millions of dollars of payments, to which CCA was not entitled, to its bank accounts with Citi Bank in New York County, which transfers contributed to the severe liquidity crunch of March through June 2015, and ultimately lead to the bankruptcy filing of June 29, 2015 and the loss of BML Properties' investment and future expected return on its investment.
- c. CCA's conduct in, among other things, interfering with the contracts described above, committing acts of sabotage, acting with malice and extorting concessions from BML Properties resulted in the damages described above.
- d. CCA's conduct fraudulently inducing Baha Mar Ltd. and BML Properties to enter into and incur enormous expenses in connection with the November 2014 Meeting Meetings, and its wanton acts of fraud committed at a meeting of the Baha Mar Ltd. Board of Directors on December 5, 2014 where CCA falsely stated that it had the manpower to finish by March 27, 2015, in reliance on which the Board (including CCA's Tiger Wu) voted unanimously to begin accepting hundreds of reservations from and advertising in and seeking out those reservations from New York residents, resulted in great loss to BML Properties and its investment in Baha Mar Ltd. when CCA missed that date, which date it knew it would miss well before the November 2014 meeting minutes were executed and well before the December 5, 2014 Board meeting
- e. CCA's conduct was unlawful in the Bahamas, and in any event CCA knew and expected its conduct to be judged under New York law and in a New York courtroom, and in that way as well CCA's conduct regardless of where it was



engaged in was connected to and done in violation of the laws of the Bahamas and the law of the State of New York.

359. Pursuant to CPLR 3014 all statements contained in this complaint are deemed repeated or adopted in each cause of action, except as otherwise indicated in each such cause of action.

## **X. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Fraud Against Defendants CCA and CCA Bahamas In Connection With the Convention Center**

360. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

361. Starting in 2012, as significant “out of the ground” construction began, CCA knew that it would be unable to build the Project on time, on budget and in accordance with the plans and specs because, among other things, it did not have and would not commit to the Project the qualified workforce or sufficiently senior managers needed to meet its representations and obligations. CCA carried out its scheme to wring every dollar it could out of the loan funds without ever performing under its agreements or even providing the workforce necessary to do so by a series of false representations, extortions, material failures to disclose, acts of concealment, outright sabotage, and even lies to the Government of the Bahamas. CCA also

intended, again undisclosed to BML Properties, to use the Project as a massive training exercise for its young and inexperienced cadre of workers, which doomed the Project to failure, all without regard to its agreements and representations, and all at BML Properties' expense. In so doing CCA acted to conceal from BML Properties and otherwise delay BML Properties and Baha Mar Ltd.'s discovery of the scheme until CCA had wrung every dollar it could out of the China Eximbank loan funds. Defendants intended to and did make knowingly fraudulent representations, serial failures to disclose, extortion, and tortious interference with Plaintiff's valuable contracts with others, as well as sabotage of the progress of the work, to accomplish their improper and illegal ends. That scheme would necessarily and profoundly affect BML Properties by, among other things, causing a total loss of its investment in the Project and other damages.

362. In particular, the Convention Center was the Project's most important building, and its timely completion provided a Litmus Test for CCA's ability to meet its represented schedule and quality obligations, provide the workforce necessary to adequately complete the Convention Center and the remainder of the Project, and otherwise govern the critical steps leading from completion of principal construction through commissioning and to the receipt of TCOs and final certificates of occupancy.

363. Among the many representations made by CCA regarding the Convention Center which were false and were made by CCA knowing such representations were false, intending BML Properties to rely thereon, and as more fully set out in paragraphs 57-86 (among others) incorporated here by reference (re CPLR 3014), were the following:

- a. On September 28, 2012 at a Baha Mar Ltd. Board meeting with BML Properties executives in attendance, Tiger Wu of CCA and CCA Bahamas falsely and with

knowledge of such falsity represented that the Convention Center would be completed on time, even though he knew as a matter of certainty that CCA was intentionally understaffing the Convention Center (and the Project more generally) and otherwise had no information in his possession to warrant making such a false representation.

- b. At all relevant times prior to BML Properties' discovery of the truth in 2014, CCA intentionally misrepresented the numbers of its workers on the Project and in particular in the Convention Center.
- c. In the May 2013 MOU, CCA knowingly and intentionally misrepresented its intent to achieve March 31, 2014 as the date by which CCA would deliver "access for operational staff" to Baha Mar Ltd. at the Convention Center, intending for BML Properties and Baha Mar Ltd. to rely on such misrepresentations, and BML Properties and Baha Mar Ltd. did rely on those misrepresentations with the result that, among other things, CCA was awarded the Convention Center MEPF work package (totaling \$15.8 million).
- d. On October 26, 2013, Tiger Wu and a CCA mid-level executive named Mark Vice knowingly misrepresented to Baha Mar Ltd. executives during a Project site walk that CCA would deliver the Convention Center on-time, and hence a charity event scheduled to take place at the Convention Center could go forward there on March 29, 2014, notwithstanding the fact that at that time CCA knew it could not so timely deliver the Convention Center, that its workforce there and intended to arrive could not complete it by that date, and that otherwise CCA had no accurate and reliable facts on which to otherwise base such a statement.

- e. At the December 2013 Baha Mar Ltd. Board meeting, with BML Properties executives in attendance, Ning Yuan and Tiger Wu knowingly misrepresented to those in attendance that information they had in hand confirmed that Convention Center “Ballrooms A, B & C [would be] Ready for Owner’s Access” on March 31, 2014, when in fact CCA had no such information or any other fact on which to base such a statement.
- f. On January 17, 2014, during a presentation to Baha Mar Ltd. and BML Properties executives by CCA’s Tiger Wu and others, CCA falsely reconfirmed that CCA would meet the March 31, 2014 completion date for the Convention Center, knowing that CCA did not have the resources (*e.g.*, workforce, procured materials, experienced senior staff, completed planning to achieve the commissioning for and obtain a Temporary Certificate of Occupancy) necessary to so complete.

364. Among the many knowing and fraudulent acts by CCA, with the intent of inducing BML Properties to rely on such acts (which BML Properties did rely on to its detriment), regarding the Convention Center were numerous failures to disclose, when under a duty to disclose (by reason of its superior knowledge regarding its own efforts, its workforce, and other key elements of its work to progress the Project, by reason of duties arising from the MCC, and by reason of CCA’s other misrepresentations and statements that would mislead in the absence of the non-disclosures described below). Such acts included the following:

- a. On September 28, 2012 at a Baha Mar Ltd. Board meeting with BML Properties executives in attendance, Tiger Wu of CCA and CCA Bahamas failed (when he had a duty to speak) to inform BML Properties and the Baha Mar Ltd. Board that

CCA was understaffing the construction of the Convention Center and the consequence of that understaffing was that the Convention Center would not be completed and delivered on time.

- b. On September 28, 2012 at a Baha Mar Ltd. Board meeting with BML Properties executives in attendance, Mr. Wu knew but did not disclose (when he had a duty to disclose) that CCA had virtually no internal controls or information processing systems, or even experienced staff (CMs, supervisors, and the like), that could be used to gauge proper and timely procurement, workforce assignment, follow-on trades coordination, design coordination, or the like, or even to predict or project workforce arrival in the Bahamas or proper immigration processing for workforce arrival in The Bahamas, such that any statements regarding achieving completion dates or interim milestones for the Convention Center lacked any basis in fact.

365. CCA maintained its false claims with knowledge of the falsity thereof regarding the delivery date for the Convention Center, the intended and actual progress of the work there, and the presence of the workforce there necessary to meet that date, for as long as possible, never admitting and in fact intentionally withholding although it had a duty to disclose that it would breach its repeated and explicit guarantees regarding the March 31, 2014 deadline, until February 11, 2014, a mere six weeks before delivery was due.

366. Until that disclosure, BML Properties relied on the misrepresentations communicated by CCA's executives by, among other things, not demanding more complete information regarding the Convention Center workforce at an earlier date, committing to holding charity events at the Convention Center, reaching out to convention booking agents to schedule tours of the Convention Center, scheduling training for Baha Mar Ltd. staff to occur at the Convention

Center, and forbearing from exercising its remedies under the Investors Agreement and forbearing from directing Baha Mar Ltd. to pursue its remedies under the MCC at any date prior to the filing of the DRB action on May 16, 2014. As a result of CCA's conduct, that May 16, 2014 date, based on CCA's own admission about how long thereafter it would take to finish the Convention Center working on a "surge" (or accelerated) basis, namely January 2015, was already too late for BML Properties and Baha Mar Ltd. to do anything to compel timely completion of the Convention Center, and as a result was too late to compel timely completion of the Project as a whole.

367. CCA's conduct accelerated and increased from fraudulent and intentionally harmful to malicious as soon as BML Properties directed Baha Mar Ltd. to pursue its remedies on the Convention Center. By way of example only, on May 16, 2014, five hours after Baha Mar Ltd. filed its claim with the DRB regarding the Convention Center, CCA walked off the very work it had insisted on performing at the Convention Center. In addition to exacerbating the delay, CCA's walk off violated DRB procedures and materially breached the MCC.

368. CCA intended by its actions to deny to BML Properties and Baha Mar Ltd. even the opportunity to attempt to mitigate their losses regarding the Convention Center through a further series of intentionally false representations, exacerbating its fraud, that CCA communicated to BML Properties and the DRB members. Specifically, after a June 18, 2014 fire drill exposed the falsity of CCA's total on-site workforce claims for the lies they were, and with the intent to deceive BML Properties and the DRB members themselves about CCA's intent to "staff up" and complete the Convention Center, CCA shifted approximately 200 workers from another part of the Project and then falsely claimed before the DRB (via sworn but false testimony by Tiger Wu) that CCA was permanently "surging" workers into the Convention Center in such numbers as

necessary to work ten hours per day seven days per week to accomplish the Convention Center's completion and obtain a Temporary Certificate of Occupancy by approximately January 15, 2015 — some seven and one-half months after the March 31, 2014 deadline. As soon as the DRB members left town after the July 16-17 hearings, however, CCA revealed its true intent — the “surge” of workers swiftly departed the Convention Center, and CCA never thereafter staffed the Convention Center to the surge level, or any level required, to timely complete the Convention Center.

369. The DRB found unanimously against CCA -- CCA breached its contractual obligations to timely deliver the Convention Center, primarily through its failure to adequately staff the work at the Convention Center and the Project more generally. By way of example only, the DRB found that “[t]he actual Construction Schedules issued by CCA ... have not consistently and accurately reflected the state of construction for the Convention Center...” The DRB also noted that CCA (acting as Construction Manager and Work Package Contractor) represented repeatedly that it would and could deliver the Convention Center to BML on or before March 31, 2014 and that CCA knew while making those representations that Baha Mar Ltd. required and relied on full access by that date, *inter alia*, to provide a space for hiring and training of staff, and in order to be able to show the Convention Center to pre-sale group representatives, who customarily book meeting space a year in advance. In addition, the DRB confirmed in a finding the key fact that CCA sought to hide from BML Properties and Baha Mar Ltd. prior to Summer 2014: “[I]t is evident to the DRB that the levels of labor and manpower have not even achieved the levels projected by CCA; nor have these levels been adequate to achieve the interim completion dates for the Convention Center as reflected in the Construction Schedule. The clearest expression of this are the facts that during the week prior to the DRB proceeding, from on or about July 12,

until approximately July 17, 2014, CCA moved workers from other areas of the Project into the Convention Center area, thereby increasing the Convention Center manpower by nearly 50% to approximately 200 . . . Also, the Project Monitor for the Bank, RLB, agreed that there were insufficient labor resources supplied to the project by CCA.” (*emphasis added*)

370. The detrimental effects of CCA’s misrepresentations made intentionally with knowledge of the falsity thereof and intentional material failures to disclose are too numerous to list in full, but in material part those impacts were as follows:

- a. Baha Mar Ltd. could not use the Convention Center, as contemplated by the Contract Documents, CCA’s own schedules and the MOU, to train BML staff and the staff of the Hotel Operators;
- b. Baha Mar Ltd. could not commence sales of group meeting space, normally the key driver of sales of rooms, food, beverage, and gaming revenue for a newly constructed resort;
- c. Baha Mar Ltd. lost the opportunity to use the Convention Center as a test space to gauge CCA’s planning for and execution of the timing and process required to meet the Bahamian Government’s Ministry of Works (such as commissioning) inspection requirements that were a prerequisite to the issuance of TCOs and thus the right to occupy and use spaces throughout the Project (a major contributor to the delays plaguing the remainder of the Project in early 2015);
- d. Baha Mar Ltd. was required to divert its own consultants from other areas of the Project, and to retain additional construction professionals to make up for CCA’s construction management shortfalls at the Convention Center; and



- e. CCA's diversion of its own already inadequate workforce from other structures to the Convention Center resulted in delays to the other structures.

371. In sum, Defendants' knowing and intentional failures to disclose and misrepresentations (which were made with knowledge of the falsity thereof) in connection with the Convention Center constitute a representative subset of Defendants' acts, omissions and misrepresentations Project-wide: failing to adequately staff the Project in violation of its obligations under the MCC and subsequent promises, compounded by misrepresentations regarding the shortfalls calculated to cover up CCA's wrongdoing.

372. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seek timely and meaningful remedies for CCA's conduct or timely direct Baha Mar Ltd. to seek such remedies, or mitigate the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

373. BML Properties has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

374. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiffs are also entitled to recover punitive damages in an amount to be determined at trial.

## **SECOND CAUSE OF ACTION**

### **Fraud Against Defendants CCA and CCA Bahamas In Connection With On-Site Workforce and Workforce Purportedly Scheduled to Arrive**

375. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

376. Throughout the time period at issue, CCA regularly stated that it was part of a highly-skilled international construction behemoth with massive resources and an effectively endless labor pool found among devoted (and many times affiliated) subcontractors. At the beginning of the Project and well into 2013, BML Properties never expected CCA to lack the ability to supply enough skilled labor to the Project to complete it on time.

377. However, and unbeknownst to BML Properties until it was too late to remedy the situation and achieve a December 31, 2014 opening, CCA decided in 2012, as significant “out of the ground” construction began to not supply the labor it knew it needed to complete on time and on budget and instead decided to deceive BML Properties and supply fewer workers and “move them around” from task to task (which hampers finishing any one task, as BML Properties witnessed over time) without actually and sufficiently increasing the total labor to meet the needs of the Project and the agreed deadlines. As part of this scheme, CCA did not consider the 44-month commencement to completion date critical for its own work, but rather important only for BML Properties and Baha Mar Ltd., which fraudulent intent manifested on numerous occasions when CCA repeatedly and intentionally misrepresented the date by which it would achieve certain outcomes.

378. CCA also sought to impede the ability of BML Properties to determine an accurate count of the workers present on-site. Among other things, it instructed its subcontractors not to answer questions asked by BML Properties and Baha Mar Ltd. personnel about the number of workers the subcontractor had present on site, and to a similar end disabled turnstiles with a hand-imprint system that would have counted each worker by name entering and leaving the site, repeatedly asserting it would “fix” those turnstiles yet never fixing them. Moreover, in its later schedules

CCA sought to prevent the consequences of its understaffing to be hidden from BML Properties and Baha Mar Ltd. by deleting from later-propounded Construction Schedules the “labor loading” it had included in several previous schedules. By the time the Project was moving toward what should have been CCA’s peak projected manpower, CCA had prevented BML Properties from being able to determine in any consistently reliable way (other than by occasional approximate manual counts building-by-building) the numbers of workers CCA and its subcontractors had on site, and even as to those manual counts CCA threatened to walk-off the job in retaliation for Baha Mar Ltd. and BML Properties conducting those counts. Baha Mar Ltd.’s “manpower counts” tended to be approximately 50 percent less than CCA’s claimed and reported workforce.

379. As set forth in more detail above, CCA intentionally, and with knowledge of the falsity of its statements intending BML Properties to rely thereon which it did to its detriment, misrepresented the actual on-site labor in every monthly report and every other interim, daily, and weekly report it supplied to BML Properties and Baha Mar Ltd. from and after mid-2012. In fact, it took until well in to 2014, during a fire drill called by local authorities, for BML Properties to discover the truth about how many workers were actually on site.

380. Although under a duty to do so, CCA never disclosed that it had any accumulated workforce deficit, and BML Properties had no way to accurately calculate that deficit due to the lack of accurate daily counts. However, BML Properties and Baha Mar Ltd were able to estimate by the time of the DRB in July 2014 that there was an accumulated workforce deficit of approximately 20,000 man months (or 2,000 full-time workers laboring over 10 full months) as of April 2014. Between October 2013 and April 2014, CCA’s workforce deficit ranged from 1100 to 1600 laborers per month. In one week in May 2014, Baha Mar Ltd.’s on-site manpower

counts revealed that CCA overstated on-site workers by over double the actual count. CCA attempted to manipulate the accumulating workforce deficit as compared to its own scheduled manpower by decreasing peak manpower from earlier to later versions of its Construction Schedule and pushing the anticipated peak manpower later and later in the Project, without any basis for doing so other than as part of an effort to deceive BML Properties and Baha Mar Ltd. as to the required on-site workforce necessary to deliver the Project on time and on budget. As well, CCA lied about additional “new” workers arriving to add to the workforce and did not disclose on two key occasions that many hundreds of Chinese workers were in the process of leaving the Project for the Chinese New Year festival in China, and thus there would be a net *decrease* in the overall workforce instead of a steady or increasing amount of workers.

381. Of course, CCA itself possessed the information about the amount of its actual workforce on site, and its expected and arriving workers, based on among other things its own payroll and related staffing data, and thus, at all times relevant hereto, CCA possessed superior knowledge about its actual on-site workforce that it did not share with BML Properties. BML Properties relied on CCA’s statements of its on-site manpower until 2013 when the difference between CCA’s claimed on-site workforce and BML Properties’ observations could no longer be reconciled.

382. BML Properties attempted to mitigate the impact of CCA’s actions and omissions by, among other things, obtaining further representations from CCA as to increasing workforce numbers in the May 2013 MOU, the Podium Crunch process, and the November 2014 Meeting Minutes, however, CCA knew each representation it made and each commitment it signed in that respect would not be met and CCA did not intend to meet it but nonetheless intended that BML Properties rely on those misrepresentations, and BML Properties did so justifiably rely under the

circumstances. Indeed, CCA revealed its wanton and reckless behavior and its intent to say or do essentially anything to avoid “facing the music” on its understaffing of the Project by (i) entering into the November 2014 Meeting Minutes and confirming its commitment to, and agreeing with the Board of Baha Mar Ltd. to start taking reservations in reliance on, a March 27, 2015 opening, (ii) acknowledging in its January 20, 2015 letter that it had known for many months, indeed before the November 2014 Meeting Minutes were negotiated and signed, that CCA and its subcontractors had not supplied enough manpower for some number of months prior to complete the Project by March 27, 2015, and (iii) never disclosing to BML Properties the consequences of CCA’s intent not to supply the needed workforce numbers to meet even the late-delivery date of March 27, 2015. Concurrent with the execution of the November 2014 Meeting Minutes CCA (through Ning Yuan and Tiger Wu) represented that that \$54 million advanced under those meeting minutes would be paid to subcontractors and laborers so that their forces would continue working on the site toward the March 27, 2015 completion and opening. However, CCA’s representation in this regard was knowingly false as well, since it did not intend to so pay its subcontractors and laborers. After the Meeting Minutes were signed, in early 2015, laborers of one of CCA’s subcontractors engaged in a labor stoppage and protest over not being paid and at the March 26, 2015 meeting Ning Yuan admitted that the \$54 million advance paid under the Meeting Minutes had not been used to pay such subcontractors or CCA’s laborers but rather had been paid purportedly for “extra” overtime going forward, when in fact to BML Properties’ observation no crews worked “overtime” but rather the crews present were solely the already overworked regular day crews.

383. BML Properties relied on CCA’s misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented

BML Properties from being able to control the progress of the Project and seeking remedies for CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

384. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

385. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

### **THIRD CAUSE OF ACTION**

#### **Fraud Against Defendants CCA and CCA Bahamas In Connection With Diversion of Efforts of Senior Management and Equipment to Other Projects**

386. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

387. In 2014 and 2015, at a crucial time when the forward progress of the Project most needed CCA's focus and attention, CCA undertook to sabotage such progress of the work, with knowledge of its intent and with the intent to deceive BML Properties, undertook to intentionally divert equipment and executive and labor effort to its newly purchased competing project just a few miles from the front door of Baha Mar, and to divert the efforts of senior management to that project and to projects in Panama, while simultaneously representing to BML Properties and Baha Mar Ltd. that no such diversion was occurring and in the same breath reassuring BML Properties that CCA would meet all of its commitments to the March 27, 2015 opening date.

388. By way of example only, CCA purchased the Hilton Nassau in late October 2014 and immediately (without revealing such to BML Properties or Baha Mar Ltd.) instructed CCA Bahamas to divert manpower, executive time and efforts, and even materials needed for continuing construction at the Project (such as construction fencing and large site equipment), to the Hilton project, which CCA Bahamas did, causing even greater delays at the Project in the absence of these key elements needed for any on-time and on-budget Project. Consequently, in the latter half of 2014, CCA without notice to BML Properties or Baha Mar Ltd. diverted the efforts of its top managers (Tiger Wu, David Wang, and Daniel Liu) to other projects, including the Hilton in Nassau that CCA acquired in 2014 and a CCA project in Panama.

389. At the December 5, 2014 Baha Mar Ltd. Board meeting, upon questioning by members of the Board as to whether both were fully dedicated to the Project, whether they were onsite full time, and whether Mr. Wu was involved in the Hilton project, both Mr. Wu and Mr. Wang falsely denied that their time or efforts had been or would be diverted to, or that they were involved in, or that they would in any way be responsible for, the redevelopment work CCA planned at the Hilton in Nassau that CCA had just purchased at the end of October 2014, and that they were fully committed to the Project and achieving the opening date, thereby making false representations (or withholding true facts which they knew would be relevant and important to those to whom the representations were being made). Both Mr. Wu and Mr. Wang knew that those statements were false and misleading when made, and that they were made, and were made intentionally, with knowledge of the falsity thereof intending the Board and BML Properties to rely on them. Contrary to their statements, but unknown to BML Properties at that time, Mr. Wang was already heavily involved in the Hilton project and the Panama project, Mr. Wu was involved in the Panama project as well, and not only did they and CCA fail to disclose such, they

also knew that a substantial amount of their time would be required on those projects while Baha Mar was still underway and failed to disclose that fact as well. Despite the foregoing, at that December 5 meeting the Board voted unanimously (including Mr. Wu) to direct Baha Mar Ltd. to start accepting reservations in light of the assured March 27, 2015, opening date.

390. Shortly after the conclusion of the December 5, 2014 Board meeting, BML Properties and Baha Mar Ltd. directed consultants to look into the possible diversion of CCA's energies and equipment away from the Project and toward CCA's newly acquired Hilton Hotel in Nassau.

391. BML Properties learned in January and February 2015 that because of the needs of the Hilton development, CCA was in fact not only diverting much needed manpower and executive attention but was also diverting and converting physical assets that were bought and paid for under the MCC General Conditions Work Package. In particular, as to furnishings in use on the Project site for staff and consultants, many of these items were removed by CCA from the Project before substantial completion and sent to CCA's Hilton project in Nassau. The same is true regarding computer work stations, including software -- many of these items were removed by CCA from the Project before substantial completion, and to Baha Mar Ltd.'s information and belief delivered by CCA to CCA's Hilton project in Nassau. CCA diverted heavy equipment as well.

392. By March 2015, long before CCA expected (as not disclosed to BML Properties) to be finished at the Project, CCA had ordered its subcontractor responsible for construction fencing to move all eight foot (8') high fencing (consisting of hundreds of yards of such fencing) away from the Project and to the Hilton development and ordered one of its senior superintendents and CMs, Jason McAnarney, to divert his attention to the Hilton as well.



393. Indeed, in April or May 2015, while CCA was purporting to discuss resolution of its disputes with BML Properties, and thus the need for the presence of CCA's on-site personnel was obvious, CCA dispatched one of its two executives with the most experience and knowledge of the Project (David Wang) to Panama, to announce the creation of CCA's Panama office and the new projects these executives and CCA would be working on, falsely stating that Mr. Wang was leaving to attend to a family matter. Following on a plan formulated by CCA well before the December 5, 2014, Baha Mar Ltd. Board meeting, CCA opened its Panama office, announced its new affiliate "CCA Panama" and concurrently announced the new Chairman and CEO of CCA Panama, Tiger Wu, and its new president, David Wang, the same persons in the Board meeting on December 5 who fraudulently omitted any reference to the diversion of his or their time to any other project, and indeed denied any such diversion as to the Hilton in Nassau.

394. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

395. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

396. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

#### **FOURTH CAUSE OF ACTION**

**Fraud Against Defendants CCA and CCA Bahamas  
In Connection With Misrepresentations in November 2013  
that CCA Had On-Site All the Construction Workers  
CCA Needed to Finish On Time and On Budget**

397. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

398. On November 11, 2013, Ning Yuan on behalf of CCA stated to Messrs. Izmirlian and Dunlap during a telephone call that CCA had on site at that time enough laborers to finish the Project on time and on budget. Ning Yuan knew at the time he made that statement that such statement was false and that it was made by him with knowledge of the falsity thereof, and Mr. Yuan intended for BML Properties and Baha Mar Ltd. to rely on his statement, which they did to their detriment.

399. Mr. Yuan knew at the time he made that false statement that the labor reports CCA had supplied and would continue to supply dramatically overstated the CCA workforce on site.

400. Mr. Yuan knew at the time he made that false statement that CCA had manipulated its construction schedules to push back later in the Project CCA's peak manpower in a manner that was designed to and did mislead BML Properties and Baha Mar Ltd.

401. Mr. Yuan knew at the time he made that false statement that CCA never intended to bring on to the site the peak manpower set forth in the CCA schedules and that BML Properties had been misled to believe that CCA would supply.

402. Mr. Yuan knew at the time he made that false statement that the scheme he and Tiger Wu and David Wang had developed and put into action in mid-2012 meant that CCA would never supply enough manpower to the site, either as promised in the May 2013 MOU or promised at

numerous Board meetings or in scores of emails and letters, to achieve the key milestones or the December 31, 2014 deadline for completion.

403. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

404. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

405. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

## **FIFTH CAUSE OF ACTION**

### **Fraud Against Defendants CCA and CCA Bahamas In Connection With Misrepresentations regarding "Experienced" and "Senior" CMs and Superintendents Present On the Project and In Transit to the Project**

406. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

407. Starting in 2012, as significant “out of the ground” construction began, CCA knew that it would be unable to build the Project on time, on budget and in accordance with the plans and specs because, among other things, it did not have and would not commit to the Project the qualified workforce or sufficiently senior managers needed to meet its representations and obligations. CCA carried out the scheme by a series of false representations, extortions, material failures to disclose, acts of concealment, outright sabotage, and even lies to the Government of the Bahamas. CCA also intended, again undisclosed to BML Properties, to use the Project as a massive training exercise for its young and inexperienced cadre of workers, which doomed the Project to failure, and without regard to its agreements and representations, but all at BML Properties’ expense.

408. As part of that scheme, CCA falsely stated, with full knowledge of such falsity, both the actual number of experienced and senior CMs and Superintendents present on the site and misrepresented that it would be adding to the Project in the near-term Senior and Experienced CMs and superintendents intending BML Properties to rely on such false statements which they did rely on, to their detriment. Even as CCA hired a handful of such persons, far fewer than it said it would and far fewer than even CCA’s own schedules said were needed, CCA gave the few it hired restricted decision-making authority, contrary to CCA’s representations to BML Properties and Baha Mar Ltd. in this respect, depriving these people of the necessary “seniority” on the Project that mega-projects like Baha Mar require to progress toward completion. CCA required CCA Bahamas to limit far more than on a normal large-scale project the decision-making authority of the few senior Construction Managers and supervisors that CCA hired that

had formerly worked on the City Center project and thus drove those senior CMs off the Project, causing a significant experience gap to exist which, as described below, caused delays to the Project and contributed to the delay of the Project well past its contractual completion date.

409. By December 2013, the vast majority of the “senior” staff CCA brought to the Project (who in any event did not fulfil the role of Construction Manager while there but acted more like a contractor’s superintendent under the “supervision” of inexperienced CCA personnel) had departed, and many of the staff positions previously occupied by those who departed were not replaced with anyone at all or anyone of similar or equivalent experience and training.

410. Even as late as November 27, 2014, CCA intentionally misrepresented the presence of “senior managers” on the Project (who were in actuality not there) and misrepresented that 15 additional people would be coming to the Project, none of whom ever actually arrived.

411. CCA intentionally misrepresented the foregoing to BML Properties consistent with CCA’s undisclosed intent to train its own people through “trial and error” to do things the way CCA wanted them done, not the way CCA represented to BML Properties it would do them.

412. The results of these misrepresentations were, among other impacts, that as the Project went forward and increased in complexity and thus the need for highly experienced personnel increased, CCA was delivering fewer and fewer experienced personnel and driving off the Project the “experienced” personnel it had represented to BML Properties would be present on the Project.

413. BML Properties relied on CCA’s misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for CCA’s conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the

cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

414. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

415. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

### **SIXTH CAUSE OF ACTION**

#### **Fraud Against Defendants CCA and CCA Bahamas In Connection with Misrepresentations in Construction Schedules and Regarding Claimed "Acceleration" Efforts to Meet CCA's Schedules**

416. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

417. Part of CCA's scheme, hatched in mid-2012, was to build the Project on its own schedule with its own understaffed workforce. In order to accomplish this scheme, CCA had to issue Construction Schedules that were materially false and misleading, in order to cause BML Properties and Baha Mar Ltd. to believe that CCA intended to achieve on time and on budget completion of the Project.

418. Accordingly, and as further detailed herein, CCA repeatedly and intentionally issued false and misleading schedules, knowing them to be false and intending to mislead BML Properties due to their falsity and did in fact mislead BML Properties to its detriment.

419. CCA told BML Properties in 2012, as significant "out of the ground" construction began and the first floors above the foundations were being constructed, that it was going to sequence

the construction of the two hotel towers in the usual and expected manner employed on similarly large projects – namely, constructing the towers by following the steel and concrete work (six to eight floors below the leading edge of the floor-by-floor steel and concrete work) with the MEPFP and then the EIFS work. Instead, and without disclosure to BML Properties that it would deviate from V1.6 or its representations in this respect, CCA chose without explanation or advance notice to build the towers “to the top” with just the steel and the concrete work before even starting any meaningful work on MEPFP or EIFS. While BML Properties noticed that such was occurring by approximately July and August 2012 at a point where the floors constructed within the towers had reached an elevation such that the follow-on trades should have arrived and started their work, the accurate and truthful Construction Schedules that would have revealed that CCA intended not to sequence in the way represented within V1.6 were hidden by CCA from BML Properties and Baha Mar Ltd. and were not provided in time to allow BML Properties or Baha Mar Ltd. to compel CCA to alter its plan or compel CCA to adopt acceleration efforts to make up for the lost time that resulted from this sequencing, wholly at odds with the CCA-issued schedule and industry norms.

420. CCA even undertook to knowingly misrepresent facts to the DRB and to BML Properties and Baha Mar Ltd. about its Schedules. By way of example only, at a DRB meeting on December 7, 2012, BML Properties’ Tom Dunlap commented to CCA (Tiger Wu and Daniel Liu) that “the Project looked like it had stalled,” and Mr. Dunlap added (without objection or contradiction by Messrs. Wu or Liu) that Ning Yuan had said that CCA’s “logic to completion” was different than most western firms, and that CCA “intended to blitz the Project with workers to finish the curtain wall, MEP and finishes.” In addition, at that same meeting and after Mr. Dunlap and others there on behalf of BML Properties and Baha Mar Ltd. had finished listing

over 23 “scheduling concerns,” Messrs. Wu and Liu stated their “strong opinion that they had the Project Schedules and procurement planning under control and CCA was committed to bringing the Project in according to the updated Schedule and Contract requirements.” Messrs. Wu and Liu knew when they made them that such statements were false and intended to have BML Properties and Baha Mar Ltd. rely on such false statements.

421. On February 20 to 28, 2013, Ms. Chang Yu of China Eximbank visited the Project. During a conversation regarding the construction schedule, with Doug Ludwig (CFO of Baha Mar Ltd. and BML Properties) and Tiger Wu (Executive Vice President of CCA) present, Ms. Chang asked Tiger Wu if the original construction completion schedule of December 2014 would be achieved and Mr. Wu assured her that CCA had the resources on site to and would be able to achieve that original completion date. That statement made with the intention to induce reliance by BML Properties was intentionally false and misleading – CCA uniquely and solely (at that time) knew its own workforce deficit numbers and accumulating deficits, and knew that it did not intend to provide the substantially increased (and more experienced) workforce necessary to avoid the delays that resulted from unremedied workforce deficits and lack of senior and experienced staff that had accumulated to that date.

422. On October 14, 2013, CCA issued its “Construction Manager’s Monthly Report No. 34” purporting to be a “Status Report as at September 2013.” Among the many false and misleading statements found therein, indeed statements that were intended to mislead China Eximbank, BML Properties, and RLB about the true progress of CCA’s work, CCA altered its reporting regarding status of the Work in subsequent months without explanation. By way of example only, while comparing CCA’s schedule v3.2 to the present status of the work, CCA “identified” delays increasing and decreasing with no explanation (such as marking “bathroom pods” as six



days behind schedule when in the previous report CCA reported that such were ahead of schedule). This common occurrence was no accident -- CCA was affirmatively trying to sow confusion and hide the truth about the real status of the Project, when no “global, sophisticated” contractor could possibly make these kinds of mistakes, month after month. In that same vein:

- a. Regarding the Casino Hotel, the April 2014 CCA Monthly report advised BML Properties that the Superstructure for that hotel had been completed on November 29, 2013 which was 4 days ahead of schedule. The June 2014 CCA report revised this to a completion date of April 1, 2014 with a delay of 120 days. Having previously reported this as complete on two separate dates, the July 2014 and August 2014 reports contradicted the earlier reports and stated that this completion would be September 28, 2014 with a delay of 300 days, without CCA providing any explanation for these contradictory statements and without providing any evidence or reasoning for any claimed delay regardless of the contradictions.
- b. In September 19, 2014, CCA submitted its Monthly Report 45 as of the end of August 2014. The materially misleading and intentionally false statements (and material omissions) in that report include statements regarding CCA’s Schedules that reflect dates shifting both forward in time and back in time for no apparent or factually supportable reason and which were not consistent with Version 5 of the Construction Schedule which was issued by CCA in late October 2014 (just a few weeks later).

423. By way of further example only, even though under a duty to do so, CCA failed to disclose in its monthly schedule update and in its Construction Schedules (as and when issued)

that it did not have the procurement of materials coordinated with its schedules and those schedules which were issued on a Project of this scale, which ordinarily are tied to and reliant on proper procurement scheduling, were untethered to procurement and thus were materially misleading.

424. In January through March 2014, in connection with the “Podium Crunch,” CCA issued a series of knowingly false and misleading schedules which misrepresented both the then-present status of the work in the Podium, the work CCA expected to accomplish in the Podium in the near term thereafter, and the expected milestone completion dates for that work, all while CCA possessed information that such reported status was not correct, and that it did not have the workforce, senior supervisors, procurement, or other material elements of the resources necessary to achieve any of the milestones and deadlines set forth in those schedules either on-site or anticipated to arrive.

425. By way of further example, at all times relevant hereto, CCA had the duty to disclose all aspects of a “critical path” schedule, a duty arising from the MCC and otherwise as would be required on any project of this size and scale, which includes a duty to tie into the schedule the labor “loading” necessary to achieve the milestones and deadlines set forth in the agreement, which loading CCA represented it had done but which it failed to do with every schedule after May 2013.

426. Each month, CCA was obligated to provide an updated schedule and compare its progress against such a schedule, and thus had a duty to disclose its variance from that schedule, and it was not until after CCA missed the deadline for the Convention Center in March 2014 that CCA ever provided a schedule that purported to deliver any one or more of the buildings after December 31, 2014.

427. Indeed, in August 2014, the DRB found that the “Construction Schedules issued by CCA were often tardy and have not consistently and accurately reflected the state of construction for the Convention Center; nor did these Construction Schedules comply with all of the requirements of the AIA-201 General Conditions, §§ 3.10.1 – 3.10.5. . . . Accordingly, CCA has been proceeding in breach of the Contract with respect to the timing and content of the Construction Schedules.” (8/13/14 DRB Ruling at p. 21, 28). Based on the evidence before it, the DRB determined that CCA’s schedules did not accurately reflect the state of construction for the “litmus test” building, the Convention Center.

428. The DRB ordered CCA, *inter alia*, “to provide to BML . . . an accurate, complete and realistic Construction Schedule that strictly meets all requirements of the [MCC]”. In bad faith CCA simply ignored the DRB’s order.

429. CCA knew well before March 2014 that it would not make the December 31, 2014 deadline for completion of the entire Project, however, CCA’s schedules did not reveal that fact and CCA intentionally concealed and suppressed that fact in line with its scheme as set forth above, omitting such information from its monthly schedule updates, its Construction Schedules (version 1-3.2) and its reports.

430. CCA even went so far as to deliver a version 3.2 of its Construction Schedule that actually decreased the planned on-site workforce without explanation, consistent with its intent to proceed at its own pace and regardless of the Construction Schedules provided to BML Properties and Baha Mar Ltd.

431. On October 27, 2014, CCA submitted a revised Construction Schedule Version 5 covering only the hotels and the Podium. Rather than accurately report the present status and expected future status of the progress of the work toward completion, Version 5 contained

numerous additional false statements regarding the then-present status of the Work and false statements of future progress that were not reasonably supported by fact or attainable by any reasonably informed contractor or construction manager. Thus, as late as October 27, 2014, 65 days from the initial “open for guests” date agreed between the parties and a date on which continued funding from China Eximbank and new “key money” from the hotel operators relied, CCA continued to make knowingly false and misleading statements in critically important documents such as this Version 5 of the completion schedule.

432. CCA’s lies in the schedules and scheduling-related reports eventually caught up with CCA. By way of example, in its Progress Report No. 45, dated December 15, 2014, RLB reported as of that date and with respect to the “Core Works” of the Project (the vast bulk of the construction Work and expenditures), that (among other things) CCA’s “recent” schedules were not accurate as to progress thus far achieved and expected progress in the future.

433. Also on April 24, 2015, CCA presented to BML Properties and Baha Mar Ltd. a TCO Completion Schedule, which within days when CCA did not meet any of the referenced deadlines became simply more evidence not only that CCA could not meet its own schedules but that CCA was affirmatively trying to mislead BML Properties and Baha Mar Ltd. by refusing to provide any firm or reasoned dates until CCA was paid its extortion money in furtherance of its scheme.

434. On May 15, and then again on May 23, 2015, CCA prepared and delivered to BML Properties and Baha Mar Ltd. so-called Revised TCO Completion Schedules, which were rejected at BML Properties’ direction because, among other things, they did not include an explanation of the status of the testing required to support the dates, they lacked meaningful reference to critical activities or overall strategy to engage the Ministry of Works of the GOB to

accomplish all that was promised in these schedules, and there was an assumption by CCA that there would be a significant reduction in the number of fire alarm tests even though (i) CCA had failed nearly every key previous test of the fire alarm system and (ii) passing the tests was necessary to obtain TCOs.

435. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

436. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

437. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

#### **SEVENTH CAUSE OF ACTION**

##### **Fraud Against Defendants CCA and CCA Bahamas In Connection With Misrepresentations Regarding Claimed "Acceleration" Efforts to Meet the December 31, 2014 Completion Deadline**

438. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

439. CCA knowingly made material misrepresentations to BML Properties concerning three different purported efforts by CCA to "accelerate" its work to achieve the December 31, 2014 deadline – CCA's ostensible efforts under the May 2013 MOU, the December 2013 – March

2014 Podium Crunch, and the November 2014 Meeting Minutes, all of which were intentionally false and made by CCA with knowledge of its falsity intending BML Properties to rely thereon which it did to its detriment.

440. In the May 2013 MOU, CCA represented that it would “Guarantee to achieve the Substantial Completion Date per the Contract by December 31st 2014,” after it was observed that CCA was already falling behind its own schedule. CCA also represented the following in the MOU regarding its efforts to “accelerate” (“expedite labor mobilization”) its work, as follows:

- a. CCA represented it would submit 250 new work permit applications per month starting in May 2013 until it achieved on site its Peak Manpower.
- b. CCA represented it would “ramp up” to 3400 workers by the end of 2013.
- c. CCA represented it would schedule charter flights from Havana to Nassau to “facilitate mobilization of Chinese laborer’s at CCA’s cost.”
- d. CCA represented it would submit weekly to Baha Mar Ltd. and BML Properties an “actual productivity measurement, monitor report.”
- e. CCA represented it would have its laborers work “overtime . . .to accelerate the work....”
- f. CCA represented it would prepare and submit a new “version 3 Work schedule. . . which will be measurable, resource and cash loaded . . . Monthly measurable milestones will be provided” in that schedule.

441. CCA knew each of these representations was false when made. In actuality, CCA had no plans or ability to accelerate the Work, knew it would never achieve 250 new work permits per month, knew it could not work its present workforce, let alone one that it expected to arrive,

overtime for enough hours, days, weeks and months to ever erase the labor deficit already accrued, and knew that it did not have the present resources to achieve 3400 workers on site by the end of 2013.

442. Not only did CCA not “accelerate” its work after the MOU in the ways it represented or otherwise, CCA actually fell further behind, failed to issue 250 new work permits per month, did not come close to having 3,400 workers on site by the end of 2013, did not schedule sufficient charter flights to allow for mobilization of the workforce it said was coming, never submitted the productivity report, and never issued the version 3 work Schedule that met the requirements CCA represented it would meet.

443. In an attempt to further propel the work toward completion, BML Properties and Baha Mar Ltd. in December 2013 and January 2014 obtained from CCA a series of representations regarding CCA’s purported re-focused effort on a critical path element that had fallen well behind -- the Podium.

444. Putting the status of the Project in December 2013 in context:

- a. Baha Mar Ltd. and BML Properties had in their possession manual building-by-building labor counts by December 2013 and therefore believed that CCA was not providing the workforce that its own schedules said was required.
- b. BML Properties also suspected (based on its own manual building-by-building counts) that the workforce CCA claimed in its reports was present was not in fact present. Indeed, by using these manual counts it appeared that only approximately 48 percent of the amount that CCA claimed its workforce numbered were actually on-site.

- c. There was a dramatic difference between CCA's "scheduled" workforce and the numbers counted by BML Properties. In December 2013, the scheduled workforce was 2,675 workers, but CCA's actual workforce was only 1,084 workers.
- d. This lack of total workforce, and lack of experienced CMs (described elsewhere herein), were substantial factors in CCA's continued failure to miss milestones and fall steadily and further behind schedule overall and in the Podium in particular.

445. In December 2013 and January 2014 CCA made a series of representations regarding the Podium which it knew to be false when made and on which it intended BML Properties to rely and on which BML Properties did in fact rely. Those knowingly false representations included the following:

- a. CCA stated it was able to bring to the Project 1,000 additional workers in the coming few months, when in fact CCA was not bringing in those workers, nor did it have any plan to do so, and those 1,000 workers never arrived. Indeed, CCA clearly knew it would not add this number of workers. First, in late February CCA reported from January 18, 2014 to February 21, 2014 an increase of only 219 workers as compared to its Podium Crunch commitment of supplying 1000 additional workers (even assuming the CCA report was not as wildly overstated as its other workforce reports). Second, CCA allowed hundreds of workers needed to achieve the progress contemplated by the Podium Crunch to leave the Bahamas and travel home for Chinese New Year in late January 2014 without informing BML Properties or Baha Mar Ltd. that it was doing so. Third, for the



four-month period beginning January 2014 and ending April 2014, the Project manpower figures contained in CCA reports and Baha Mar Ltd. manual counts consistently lagged behind CCA's own projected workforce. CCA reports on average recorded 11.20% fewer workers than the projected workforce, yet they recorded 52.49% more workers than counted during Baha Mar Ltd.'s manual counts. During the last week in May, CCA reports recorded 2,901 workers as compared to a projected workforce of 2,937 workers and a Baha Mar Ltd. manual count of only 1,631 workers.

- b. CCA stated that it had a plan to accelerate the work in the Podium MEP in order to achieve Wild Air by March 2014, when in fact no such plan existed, and CCA did not achieve Wild Air until 2015.
- c. CCA represented to BML Properties and Baha Mar Ltd. that it would not divert resources from other parts of the Project and delay them merely to attempt to make up for delays on the Podium, yet as BML Properties thereafter observed that is exactly what CCA did.
- d. After BML Properties pointed out to CCA in late March 2014 that it was not meeting its milestones for completed work in the Podium, CCA blamed "design delays" but had in fact expressly taken all the claimed design delays into account when it provided its Podium Crunch schedules in January and February 2014.

446. The third "effort" CCA misrepresented that it had undertaken and would undertake occurred concurrent with and after the November 2014 Meeting Minutes. CCA led up to the time of the November 2014 Meeting Minutes by engaging in an intentional and, given its

consistent record of failing to meet milestones, malicious series of work stoppages and slow-downs.

447. In the November 2014 Meeting Minutes, CCA represented that it was undertaking to accelerate its work so that it would “ensure the achievement of Substantial Completion and operational start for paying guests in all hotels [by March 27, 2015]...on time by all necessary methods, including but not limited to the maintenance of sufficient manpower, both local and international, with a minimum of 200 new Chinese workers within 30 days ...working overtime as necessary.” In addition, CCA represented that it was undertaking to “enhance the on-site management” and would by January 19, 2015 deliver a Substantially Complete Convention Center (but for a small wedding chapel and elevator tower). In the December 5, 2014 Baha Mar Ltd. Board meeting, CCA repeated its assurances of accelerated work and CCA’s representative, along with the rest of the Board, agreed to start accepting reservations based on CCA’s acceleration plan and assurances of completion for opening for paying guests by March 27, 2015.

448. Unbeknownst to BML Properties, CCA knew when it made the representations it made in connection with the November 2014 Meeting Minutes that it could not achieve any of what it said it would achieve, or that it had a plan to achieve. In CCA’s January 20, 2015 letter to CSCECL, CCA admits the following:

- a. CCA admits that it did not have the workforce to meet deadlines that it missed prior to January 20, 2015.
- b. CCA admits that it would miss the deadline of March 27, 2015 as well because of these previous missed deadlines and for the same reasons.

- c. CCA admits that any delay in opening the resort by March 27, 2015 will result in “unmeasurable damages to the brand and reputation” of CSCEC, admitting as well under the same missed opening concept that BML Properties’ investment in Baha Mar Ltd. will suffer “unmeasurable” damages to brand and reputation which, in the hospitality industry, is an even greater loss than to a construction company.
- d. CCA admits that if the “situation” of its own making and design “cannot be turned around” it will soon cause “irreversible and catastrophic loss” to Baha Mar Ltd. and BML Properties, as the parties that had relied on CCA’s prior misrepresentations.
- e. CCA admits that it has not been able to “order” or even persuade its subcontractors (most of which are also affiliates or subsidiaries of CSCEC) to send more workers, and thus admits that it knew many months before writing the January 20, 2015 letter (due to the long lead time to obtain work permits, a process CCA was responsible for under the MCC) that its subcontractors would not be able to send the needed workers to meet a March 27 opening date or any date even proximate to that opening.
- f. CCA admitted in its January 20, 2015 letter that it was required to seek “emergency measures” reflecting a complete and undisclosed failure of its management of the Project and revealing that it never disclosed the emergency it admittedly created and had not remedied.

- g. CCA admits that CCA, and not CCA Bahamas, was in charge of this Project and directed the actions of the subcontractors, and answered to Baha Mar Ltd. and in turn BML Properties.
- h. CCA admits it has no defense to the assessment of liquidated damages of “US\$250,000” per day.
- i. CCA admits that at a minimum it was 450 workers and many untold number of “extra technical workers and experienced managers” short of what it needed to simply maintain the pace of work to the end of January 2015 (since CCA admits it needs those workers “by the end of January...”).
- j. And, in the end, this letter demonstrates that CCA was defrauding BML Properties and Baha Mar Ltd. all along regarding workforce numbers and the reasons for missing prior deadlines, including but not limited to at the meetings in Beijing in November 2014, in the subsequent meeting in the Bahamas, in the weekly senior executive meetings that took place at the Project in January, February, and March 2015, and at every other opportunity where CCA should have been acting and reporting accurately for the benefit of the investors, in particular BML Properties.

449. BML Properties relied on CCA’s misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for CCA’s conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

450. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

451. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

## **EIGHTH CAUSE OF ACTION**

### **Fraud Against Defendants CCA and CCA Bahamas In Connection with Misrepresentations Regarding Defects and Failure to Disclose the Consequences of those Defects**

452. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

453. As alleged above, at the times identified herein, CCA had to be in a position to force payment even on its fraudulent claims for additional costs or alleged delay caused by Baha Mar Ltd., given that CCA knew later in the Project, reinforcing its decision to engage in this scheme hatched in 2012, that it had incorporated so many material errors and defects into the Project (one of the many consequences of using untrained workers on a complex mega-project), that Baha Mar Ltd. would have tens if not hundreds of millions of dollars of defect remedy and related costs that it could back-charge to CCA diminishing what CCA might reap out of the Project. Consequently, and consistent with its scheme generally to not disclose any material information regarding its own failures or omissions, and concealing the consequences of those failures from BML Properties for as long as it could, CCA undertook to fraudulently conceal from BML Properties the numerous defects in the Work that it was creating and had created that CCA knew it had an obligation to disclose but intentionally and knowingly refused and failed to

disclose, intending BML Properties to rely, to its detriment, on such failure to disclose and BML Properties did rely thereon to its detriment.

454. CCA was obligated under the MCC to report accurately and truthfully to Baha Mar Ltd. regarding when and where it had created defects in the Work, and knew that its failure to so report would harm both Baha Mar Ltd. and BML Properties, because, among other things, CCA knew that BML Properties was responsible for the day-to-day management of Baha Mar Ltd. CCA knew that BML Properties was faithfully discharging its management duties and was attempting to determine, as best it could, when and where CCA had created defects in the Work. Moreover, CCA inherently possessed superior information regarding the defects it was creating in comparison to BML Properties, and therefore was duty-bound in that respect as well to disclose those defects and to disclose the consequences to the quality and progress of the Work as and when those defects were created. CCA utterly failed to fulfill those duties, intentionally acting to omit references to such defects from its reports, failing to discuss the diversions of manpower and resources that would be necessary to remedy the defects and thus in turn delay progress on the remainder of the Project, and failing to discuss the direct impact to CCA's ability to achieve the deadlines set forth in the MCC.

455. CCA communicated, if at all, with BML Properties regarding defects if and only if BML Properties raised concerns initially and then pursued CCA for remedies, mitigation, and answers.

456. CCA even misrepresented its intent and ability to create and comply with a key document, the entire focus of which was the avoidance of the creation of defects in the Work. In particular, and by way of example only, CCA represented in 2012 as work progressed its ability to comply with its own QA/QC plan (a key plan CMs prepare for large projects) and then never complied, or even tried to comply, evidencing its intent to not follow that plan. CCA in

numerous different ways ignored the requirements of its own Quality Management Plan (QMP). The QMP required that robust testing and inspection plans (T&IP) were to be in place prior to the commencement of the Work. CCA continued to progress the Work, as the Work critically “came out of the ground” in 2012, even though it knew that the T&IP was not in place, which resulted in substandard, hazardous and defective Work.

457. As of February 2013, Baha Mar Ltd. had brought to CCA’s attention hundreds of material defects in its Work as documented in Non-Compliance Reports (“NCRs”), which NCRs identified those material defects for CCA’s immediate repair and rework.

458. In March of 2013, CCA requested that Baha Mar Ltd. stop writing NCRs immediately upon detecting non-compliance. Hence, at CCA’s request, and in an effort to cooperate on some levels with CCA’s requests for changes in procedure and policy, Baha Mar Ltd. instead began to send observation reports (or photos and a letter describing the problem) allowing CCA two weeks to respond. Consequently, the voluminous NCRs issued after that time (numbering in the hundreds) were generated only *after* CCA failed to address identified problems in the added time period it had requested and to which Baha Mar Ltd. had agreed.

459. In March and April 2014, the GOB Ministry of Works issued two stop-work orders due to “questionable workmanship” by CCA, and the Project was otherwise plagued by defects that were languishing, unrepaired by CCA. In particular, on March 26, 2014, the Ministry of Works of the GOB sent a letter to the Project Architect of Record (Brent Creary), conveying from its Deputy Inspectors at Reiss Engineering, something that CCA had entirely failed to report to BML Properties -- that there was “an alarming level of Mechanical, Electrical and Plumbing (MEP) deficiencies onsite. [These] are being repeated at other locations onsite, despite having been previously identified as code violations.” CCA had failed to remedy its own prior MEP

issues, and had been replicating its previously noticed violations elsewhere. Despite its obligation to do so, CCA never reported to BML Properties about the repetition of work that resulted in previous code violations by its workers because, among other things, it was CCA's intent to not disclose these errors and failures to Baha Mar Ltd. or to BML Properties.

460. In September 2014, in one of CCA's monthly reports, CCA communicated a series of materially false and misleading statements about the state of the Project, among them references to Superstructure Non-Compliance Reports ("NCRs") as noted in previous reports that were omitted by CCA in Report No. 45, notwithstanding that 325 NCRs remained open and unresolved as late as the end of August 2014, each one awaiting CCA action to remedy the defects and deficiencies identified, some of which dated back to July 13, 2012, none of which CCA had brought to the attention of BML Properties initially nor had CCA ever reported regarding the consequences to strained resources and delay impacts from the required remedy for those defects.

461. Even as late as December 15, 2014, CCA's failures in this regard were accumulating and having severe impacts on the opening of the Project. The reasons were many, and included unfinished rectification of previously incorrectly installed works creating piecemeal work to areas; new NCRs identifying additional defective Work; and slow to non-existent rectification of prior NCRs, which, if CCA were to devote the resources to rectify, would divert CCA's limited workforce from completion of spaces/buildings to repairing the thousands of defective conditions identified in the NCRs.

462. In early 2015, by way of example only, CCA attempted to profit from its own failures and errors and compounded intentionally false and misleading reporting in that respect. CCA submitted sham and fraudulent pay applications (that were signed under oath as to their



accuracy), that included, upon examination, inflated invoices for, among other things, work not yet completed and work plagued with unremedied defects, as well as work undertaken to correct its own prior defective work. This blatant fraudulent conduct caused BML Properties and Baha Mar Ltd. to investigate prior submitted pay applications, and in so doing determined that CCA had engaged in this knowing and intentional compounding of the harm of its fraudulent conduct on numerous prior occasions. Under the MCC, CCA was barred from requesting payment for defective work.

463. CCA intentionally did not report to BML Properties or Baha Mar Ltd. about the full scope and consequences to the Project of the following defects CCA created (among others), including those defects that imperiled the lives and the safety of its own workers, Baha Mar Ltd. staff and separate contractors, and the future guests of the resort:

- a. Life Safety Defects;
- b. Fire Alarm Cabling Defects;
- c. Fireproofing Defects;
- d. Defective Fire Alarm Systems and Testing for the Elevators;
- e. Water Damage and Microbial Growth;
- f. Defective Tower Railings;
- g. Defective Guestroom Sliding Glass Doors;
- h. Podium and Project Stairway Railing Defects;
- i. Guestroom Balcony Delamination;
- j. Dowel and Epoxy Deviations and Related Defects;
- k. Defective Guestroom Interiors and Guestroom Corridors;
- l. Water Intrusion;

- m. Improper Penetrations to the EIFS and Resulting Water Intrusion Pathways;
- n. Air Conditioning Defects.

464. These and many other defects, when totaled in terms of the value of the original work that was done in a defective manner rather than as required by the contract, resulted in tens of millions (if not hundreds of millions) being paid to CCA over the life of the Project that should not have been paid to CCA. Had such amounts *not* been improperly paid, they would have been available as part of the loan proceeds in the crucial months of March through June 2015.

465. Indeed, it appears that defects and the cumulative effects of CCA's conduct described herein continue to plague the Project. The GOB announced in August 2016 that work was to recommence on the Project "within two weeks," and as of August 2017 no hotel had been entirely completed and only one hotel -- the Grand Hyatt -- was accepting reservations.

466. CCA's knowing and deceitful conduct in this regard caused BML Properties' focus to shift from managing the Project and planning to open the resort once completed to investigating one lie and error by CCA (and related cover-up) after another. Without question, Defendants covered up serious defects (caused by their lack of experience and qualified CMs) resulting in inordinate numbers of delay days to investigate and repair those defects and extensive costs incurred to attempt to correct those defects.

467. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

468. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

469. Because the above-described deliberate actions by Defendants were willful and wanton, and indeed caused great risk of personal injury and death, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

### **NINTH CAUSE OF ACTION**

#### **Fraud Against Defendants CCA and CCA Bahamas In Connection with Failures to Disclose Based on Duties to Disclose Arising Under the MCC**

470. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

471. As described in detail above, CCA intended, starting in 2012, to not disclose the myriad facts that would normally be disclosed in connection with a mega-project like Baha Mar, and also intended to not disclose the critical information CCA was required to disclose under the MCC, as referenced below in this cause of action.

472. The MCC, entered into between (as assigned) Baha Mar Ltd. and CCA Bahamas based on revisions to the form AIA A131 and A201 contracts, imposed substantial duties on CCA to, *inter alia*, report accurately on the status of the Project and on whether it had a sufficient workforce to complete the Project on time and on budget as "Construction Manager" for a fee (a fee that would total nearly \$100 million). Attached and made a part of the MCC were the General Conditions as well as hundreds of pages of Contract Documents, Specifications, and Amendments, totaling some 1163 pages of contract terms and conditions (all of which were initialed by the parties in December 2012), plus subsequent amendments. Given the size and

scope of the Project, it was of critical importance that CCA, as the Construction Manager for the Project and as the Work Package Contractor, not only provide sufficient workforce and management resources to progress and complete the work but also report truthfully on the status of the workforce, any workforce deficits, lack of skilled management resources, and other matters that might affect the progress of the work generally or otherwise imperil the investment of BML Properties.

473. By way of example only, CCA's reporting duties under the MCC included expediting development of the drawings and specifications and reporting any scope gaps or other issues with the drawings, coordinating the phased issuance of drawings and reporting any difficulties in that regard, efficiently constructing the works, adopting a proper sequence for the work and overseeing compliance with that sequence, or reporting on the consequences of a lack of efficiency and remedies for such, insuring sufficient manpower and overseeing that manpower to productively work and meet an on-time delivery and reporting accurately on all aspects of that manpower and workforce, overseeing timely and efficient procurement of materials for the work and reporting on that procurement, preparing accurate cost estimates, target project schedules, tender event schedules, and a final, accurate schedule with updates as required, submitting and overseeing the submission of accurate pay applications, and reviewing for compliance with the Contract Documents all shop drawings, product data, samples and submittals and accurately reporting on the status of such. Many critical duties owed by CCA are set forth in the MCC at Attachment 1 to the A131, "Key Deliverables."

474. CCA's companion role as the CM for the Project not only created concurrent duties to report accurately regarding every aspect of the Project, but also gave rise to CCA's duties as an

advisor, looking out for the “best interests” of Baha Mar Ltd. as it sought to bring the Project to on-time and on-budget completion.

475. CCA’s intentional reporting failures described in more detail herein, including failures to report accurately or at all regarding the true state of its scheduling, fulfillment of deadlines, setting and achievement of milestones, the amount, required experience and quality of its workforce, and status of its procurement, among others, arise from a duty to do so under the MCC, and/or a duty to do so separately under New York law in light of other, previous misstatements or material failures to disclose, and/or CCA’s possession of superior information regarding these aspects of the Project. CCA knew it had an obligation to so disclose but intentionally and knowingly refused and failed to disclose, intending BML Properties to rely, to its detriment, on such failure to disclose and BML Properties did rely thereon to its detriment.

476. Among the many examples of CCA’s failures to report at all or truthfully, are the following: failure to report to BML Properties and Baha Mar Ltd. in an honest and open manner, regarding, among other things, site use and improvements, building systems, mitigation of impacts from inadequate or unqualified labor or material shortages, timing of procurement, installation and construction completion, failure to provide recommendations to allow for efficient WPC bids, failure to provide any comments and updates on the Target Project Schedule, failure to report timely and honestly regarding manpower on-site, failure to accurately and honestly report on and provide schedules, and failure to accurately report on anticipated Substantial Completion and interim milestones.

477. In this same vein, CCA intentionally failed to report to BML Properties or to Baha Mar Ltd. any claimed “delay” that was supported by an analysis of the true critical path delay brought about by any singular claimed delay or aggregation of claimed delays. Accordingly, by reason

of that intended lack of reporting, CCA made it impracticable for BML Properties to, among other things, (i) instruct or advise CCA on how to accelerate and make up for any claimed critical path delay or make other decisions by which the Project could have circumvented or mitigated the critical path delay while still completing the bulk of the resort timely, (ii) issue a specific CCD directing CCA to accelerate in certain particular respects to mitigate delay regardless of cause, or (iii) seek the involvement of China Eximbank in the replacement of CCA in whole or in part on certain aspects of the Project where delay to the critical path as set out in CCA's reports could be inherently traced to CCA's own activities.

478. To accomplish its key duty as CM of controlling the bidding process to bring in the highest quality bids for the lowest responsible price, CCA was obligated to create a TES, however CCA's TES was misused and unmanaged by CCA. CCA intentionally failed to accurately report to BML Properties on its mismanagement of this process, and CCA intentionally failed to report on the negative consequences of its mismanagement after the Project reached the critical stage when such needed to be done, namely starting in early 2012.

479. CCA constructed the towers "to the top" before even starting the MEPFP and the EIFS at the lower and following levels (6 to 8 floors below the leading edge), and deliberately failed to inform BML Properties of its intent to do so before or while constructing this element of the Project. CCA allowed these activities to lag behind schedule by many months, which necessarily resulted in, among other things, installation of MEP and fit-out without adequate environmental protection, CCA and its subs working out of sequence, unnecessary overlap of activities, and compressed durations of the Works as a result of, *inter alia*, understaffing, all to the detriment of Project quality and deadlines.

480. CCA intended to never provide a coherent and coordinated Food & Beverage (“F&B”) and kitchen construction schedule, to coordinate the multitude of trades, and the detailed sequencing, testing, commissioning and training required in these complex spaces to allow operation teams to train and operate pre-opening. The result was that not a single kitchen at the Project (for which CCA was responsible) was fully complete and ready for MOW inspection and operational use by July 1, 2015 (other than limited aspects of the kitchen at the Convention Center).

481. CCA intentionally and knowingly failed to report to BML Properties on the consequences of its failures regarding its Wild Air “strategy,” creating problems with damage and increased risks with materials installed in advance of suitable air conditioning in a predictably humid and hence high-risk environment.

482. CCA intentionally and knowingly failed to disclose its own failures regarding commissioning. In this regard, CCA bore the responsibility to fully perform all the tasks necessary to commission the resort. Without fully reporting on its commissioning failures in advance so as to give BML Properties and Baha Mar Ltd. an opportunity to mitigate the damage to the resort resulting from CCA’s delayed commissioning, (i) as of October 31, 2014, seven (7) months after it was supposed to be finished and occupied, zero percent (0%) of the commissioning was completed with respect to the electrical, mechanical, plumbing, and fire protection systems in the Convention Center, and (ii) as of October 10, 2014, as to the resort as a whole, 80 days before the resort was to open to guests, CCA had only completed two percent (2%) of the commissioning tests alone (much less all of the commissioning tasks) – 151 tests had been completed out of 6421 required, excluding security, AV, lighting controls, external works, Northside pools, and a host of other exclusions. CCA did not report this profound failure of

performance; BML Properties had to pursue this information months after the fact from its own consultants in order to begin to understand the then-present status of commissioning, and then at Baha Mar Ltd.'s sole expense to engage its consultants to learn, among other things, just how far behind CCA really was regarding commissioning and how poorly CCA's MEPFP and other systems were performing during the limited commissioning tests that had been conducted.

483. CCA intentionally and knowingly failed to report that it would be delayed in achieving "power on" despite its continuous representations that it would be timely, and delay of "power on" profoundly harmed progress and created other problems around the Project.

484. CCA intentionally failed to accurately report on the status of, and did not supply the contractually required, general conditions.

485. CCA intentionally failed to provide the report required by section 5.10 of the Key Deliverables intending thereby to deceive BML Properties: "provide to the owner timely adequate detailed summary reports of each monitoring [in relation to CCA regular monitoring of the Construction Schedule as construction progresses], and document all changes in schedule and take timely action to ensure the Project is begun and completed in accordance with the schedule, and is implemented in good order."

486. Moreover, CCA never issued any "report" that highlighted the risks of existing and future work, workforce deficits, and the like, in a form as was expected or normal and accepted in the industry as a CM, or that otherwise completely and accurately informed BML Properties of the harmful consequences of CCA's failures and misrepresentations over the course of the Project.

487. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for



CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

488. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

489. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

### **TENTH CAUSE OF ACTION**

**Fraud Against Defendants CCA and CCA Bahamas  
In Connection with the November 2014 Meeting Minutes,  
the November 27, 2014 Follow-Up Meeting, the December 5, 2015  
Board Meeting, and the January 5-6, 2015, Meetings in Beijing**

490. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

491. In the lead up to and at the series of meetings at which the parties negotiated the November 2014 Meeting Minutes, CCA (through Ning Yuan, Tiger Wu and David Wang) made a series of deliberate misrepresentations, knowing them to be false and intending BML Properties and Baha Mar Ltd. to rely on those knowingly false misrepresentations. Those misrepresentations included, but are not limited to, that CCA had the manpower available and on site to complete the Project by March 27, 2015, and that it would complete the Project by March 27, 2015; and that it had on site and available enough senior and experienced managers to guide the work to completion. CCA's fraudulent intent in this respect stemmed from several sources. First, after CCA lost an important dispute in 2014 before the DRB that found CCA in breach of

its agreement to, among other things, adequately staff-up the Convention Center in particular and the Project more generally, CCA knew it could not afford to go back before that body and suffer yet another humiliating loss, faced with evidence of its own wrongdoing. Accordingly, CCA would make whatever agreement was necessary to avoid going back before the DRB including committing in the November 2014 Meeting Minutes to a massive influx of workers to finish the resort by March 27, 2015 even while secretly knowing but not disclosing to BML Properties that it could not achieve that date. Second, CCA's admission of that "big lie" in a January 20, 2015 letter to CCA's ultimate parent company demonstrates that CCA had not had enough workers on site for many months, and that it would not meet its March 27, 2015 promised (albeit late) delivery of the Project without a massive influx of workers, who never arrived.

492. BML Properties had no option by this point other than to rely on CCA to supply the workforce as represented and to deliver completion of the Convention Center and the resort as a whole since, among other things, no replacement contractor could take over and complete by March 2015 or open in time for Baha Mar Ltd. and BML Properties to take advantage of incoming revenues from opening during the 2014-2015 season on which BML Properties had, based on CCA's false assurances, relied, and no other option to avoid the dire consequences of not opening, even somewhat later than agreed.

493. Baha Mar Ltd. and BML Properties left the meetings at which the November 2014 Meeting Minutes were negotiated with the understanding that CCA would supply the newly represented incoming workforce and increased effort (that had been previously been withheld, intentionally, by CCA to extract the "commercial" concessions in the November 2014 Meeting Minutes unbeknownst to BML Properties).

494. Based entirely on CCA's repeated but false representations that it would complete the resort by March 27, 2015, and to attempt to avoid the disastrous consequences of not proceeding towards such completion, BML Properties directed Baha Mar Ltd. to draw down the credit facility by an additional \$20 million to pay for pre-operational expenses associated with operating the resort, training the staff, and the like. In reliance on CCA's representations, Baha Mar Ltd. began to prepare for the new targeted opening dates. Between January 1, 2015 and March 27, 2015, Baha Mar Ltd. at BML Properties' direction hired an additional 2,070 employees needed to operate the Project at an aggregate additional cost of more than \$4 million per month. These new hires included over 1,700 employees for whom Baha Mar Ltd. spent significant time and money training for positions in the Project's new hotels and casino. In addition, Baha Mar Ltd. spent substantial funds on its pre-opening marketing and advertising campaigns, fully stocking its facilities with food and beverage supplies and other inventories, and stocking its vault with the \$4.5 million in cash necessary to open and begin operations at the casino.

495. After returning to the Bahamas from the meetings in Beijing to observe and help guide CCA's implementation of the requirements of the November 2014 Meeting Minutes, Baha Mar Ltd., BML Properties, and CCA met on November 27, 2014 at the Project. At that November 27, 2014 meeting, with Tiger Wu and David Wang in attendance for CCA, Tiger Wu made the following representations to BML Properties and Baha Mar Ltd. that were knowingly untrue when stated and/or were not based on any reasonable belief that such were true at the time they were made:

- a. CCA knowingly misrepresented that notwithstanding the circumstances leading up to the Meeting Minutes, it would deliver a completed Project on or before March 27, 2015.
- b. CCA knowingly misrepresented that to meet the workforce requirements of the Project no workers were leaving the Project, whether hired by CCA or its subcontractors, however, CCA had previously planned (but never disclosed to BML Properties) to allow 800 workers to leave the Project in December 2014 and January 2015, and this large proportion of workers did in fact leave by the end of January 2015 and the beginning of February (Chinese New Year in 2015 was on February 19).
- c. CCA knowingly and intentionally misrepresented that it would report on the daily and weekly tracking of workers against the version of the construction schedule then used to monitor workforce commitments (version 2.3); however, CCA never provided those reports to BML Properties or Baha Mar Ltd. and intentionally failed to do so, so as to keep BML Properties in the dark as to the true status of the work for as long as possible.
- d. CCA knowingly misrepresented that all senior managers would remain on the Project and that CCA had already planned to bring in 15 additional people at the level of manager. Not only did the 15 additional “managers” never arrive, scores of managers departed during December 2014 and January 2015, and others were diverted to other competing projects (like the Nassau Hilton) and to other CCA projects and offices (such as Panama) as alleged elsewhere herein. At the time it made these false representations, CCA knew it would be diverting more of the

time and effort of its senior-most executives to in the Hilton and to Panama without ever disclosing to BML Properties such intent to divert the time and effort of these executives.

- e. CCA falsely and intentionally misrepresented that at least 200 additional workers would be arriving immediately and that CCA would add more as needed. While some new workers did arrive, their arrival did not increase the net number of workers on the Project or help accelerate the work, since 800 (or more) other workers were in the process of leaving during that same period of time.
- f. CCA falsely and intentionally misrepresented that it was setting up bonus programs for workers to help make deadlines. No such system was ever implemented, since (as BML Properties is informed and believes) CCA refused to provide such bonuses and instead CCA continued to suffer from labor strife and unrest due to CCA's failures to pay its own subcontractors and employees and, apparently, suffer from its own fraudulent diversion of the \$54 million paid it in connection with the November 2014 Meeting Minutes.

496. A mere eight (8) days later, CCA doubled-down on its misrepresentations in November, this time at a critical Baha Mar Ltd. Board meeting, with BML Properties executives in attendance. On behalf of CCA, Tiger Wu was in attendance (as a member of the Board and a representative of CCA), and David Wang attended as well. At that meeting, upon questioning by the Board and by BML Properties CCA re-assured the Board that the Project would open on March 27, 2015 and that CCA had brought in and was bringing in enough labor and supervisors to accelerate the Work and complete the Project by March 27, 2015. In reliance on this reassurance, the Board including all four of BML Properties' appointees to that Board and BML

Properties' Mr. Izmirlian – including as well CCA's appointee Tiger Wu (who did not disclose that he knew it was not possible for CCA to finish the resort by March 27, 2015 with the available workforce) – voted unanimously to immediately commence taking reservations for the new hotels and Convention Center from the public for accommodations starting March 27, 2015 in reliance on CCA's representations that it would complete the Project by that date. At that meeting, Messrs. Wu and Wang presented the following (among other) knowingly false and otherwise inaccurate statements to BML Properties and Baha Mar Ltd. in their oral presentation and/or in the materials that they handed out at that meeting and presented in a power-point presentation, all of which was designed to mislead BML Properties and Baha Mar Ltd.:

- a. Wild Air would be available for all buildings 10 days later – CCA made that false statement without any reasonable basis in fact for believing it to be true.
- b. Upon questioning by members of the Board as to whether both were fully dedicated to the Project, whether they were onsite full time, and whether Mr. Wu was involved in the Hilton project, both Mr. Wu and Mr. Wang denied that their time or efforts would be diverted to, or that they were involved in, or that they would in any way would be responsible for, the redevelopment work CCA planned at the Hilton in Nassau that CCA had just purchased at the end of October 2014. This statement was false at the time it was made. In actuality, both Mr. Wu and Mr. Wang were already heavily involved in that project but failed to disclose the truth, and both knew that a substantial amount of their time would be required on the Hilton project while Baha Mar was still underway but failed to disclose that fact as well. Moreover, in the same vein, both Mr. Wu and Mr. Wang knew that they would both be spending a substantial amount of time away

from the Project because of yet another project that CCA had only recently become involved in -- the expansion of the Panama Canal. Indeed, in April 2015, following on a plan formulated by CCA well before the December 5, 2014, Baha Mar Ltd. Board meeting, CCA opened its Panama office, announced the formation of its new affiliate “CCA Panama” and concurrently announced its new president, David Wang, and its Chairman, Tiger Wu, the same persons in the Board meeting on December 5 who omitted any reference to the diversion of his or their time to any other project, and indeed expressly denying any such diversion as to the Hilton in Nassau. This misrepresentation was critical, as well, under the November 2014 Meeting Minutes, pursuant to which CCA received a \$54 million advance on disputed “change orders” in exchange for its promise of (*inter alia*) an increased workforce, refocused and increased efforts of senior management, and accelerated work to reach a March 27, 2015 opening.

- c. Both Ning Yuan and Tiger Wu at and before the December 5 Board meeting likewise omitted to mention that their colleague and Senior CCA Executive Daniel Liu, as BML Properties is informed and believes, was not focusing his efforts even in substantial part on the Project, because he had since at least August 2014 traveled extensively outside of the Bahamas (but had not been in China “attending” to materials procurement, as CCA had falsely stated to BML Properties months before), to locations around the Caribbean (Panama, Bermuda, Jamaica, etc.), and in the South Pacific in search of business opportunities (in conformity with China State Construction Chairman Yi’s directive to expand CCA and other remote subsidiaries’ activities outside China). CCA knew it had

an obligation to so disclose but intentionally and knowingly refused and failed to disclose, intending for BML Properties to rely, to its detriment, on such failure to disclose and BML Properties did rely thereon to its detriment.

497. In December 2014, unbeknownst to BML Properties until August 2015, CCA closed on the purchase of the Hilton for \$60 million cash, a mere \$6 million more than the \$54 million advance (purportedly for CCA to use to pay its subcontractors) that CCA had received just a few weeks earlier pursuant to the November 2014 Meeting Minutes. In March 2015 CCA's Ning Yuan admitted that CCA had not used the \$54 million advance for its intended purpose but rather had used it to "pay overtime," yet another misrepresentation because, among other things, CCA's workforce on site worked no significant "overtime" (and certainly not \$54 million worth) after December 2014 and before March 27, 2015. Indeed, CCA's workforce engaged in walkoffs and staged work slowdowns, as described elsewhere herein. Accordingly, the evidence indicates that CCA diverted that \$54 million to the purchase of the Hilton – CCA signed the documents for the Hilton purchase in October 2014 (before the November 2014 Meeting Minutes were negotiated and signed) and closed on (and thus paid for) that purchase in December 2014 after the \$54 million was paid to CCA pursuant to the November 2014 Meeting Minutes.

498. During the week of January 5, 2015 CCA knowingly and intentionally misrepresented to Mr. Izmirlian, China Eximbank, government officials and others that the Project would be completed on time, while concurrently advising China State Construction in a secret letter that the Project could not be so completed without help that never arrived. In particular, during the week of January 5, 2015, Mr. Izmirlian and the Prime Minister of The Bahamas traveled to Beijing to meet with representatives of China Eximbank and CCA and to obtain assurances that the Project would be open to guests starting on March 27, 2015. Once again CCA's President



Ning Yuan and its Executive Vice President Tiger Wu stated unconditionally that they would complete CCA's work so that the Project would open to guests on March 27, 2015, statements they knew to be false when made because at that moment they knew they lacked the resources (including personnel) available to finish by that date. Based on these continued false reassurances, Baha Mar Ltd., at the direction of BML Properties, continued accepting reservations and continued planning to open on March 27, 2015, and China Eximbank also expected that opening to occur.

499. What the representatives of CCA did not tell anyone at the January meeting in Beijing, and never told any representative of BML Properties or Baha Mar Ltd. at any time previously or thereafter, is that they had known for some time, before CCA signed the November 2014 Meeting Minutes, that CCA and CCA Bahamas could not finish the Project even by the late opening date of March 27, 2015, or even to make any of the hotel rooms available to guests.

500. Caught at a point now where it had been unable to finish even late, or obtain the TCOs necessary to start opening spaces to guest use, and having come close to its goal of extracting as much of the available loan funds as it could possibly extract without completing the Project, CCA had to actually begin to consider what the dire consequences could be of their scheme conceived almost three years before.

501. Within 15 days after the meeting in Beijing described above in paragraph 181, CCA sent an urgent letter to the Chairman of China State Construction, Mr. Yi. That letter contains a signature block identifying the sender as China Construction America, Inc. CCA stated in that letter (translated into English – emphasis added), as follows:

***"Report regarding request for extra workforce for the Baha Mar Project***

Dear Mr. Yi, director of CSCEC,

The Baha Mar Project has been progressed under the care and support of CSCEC.

Currently, the Project is at a crucial dash to meet the final deadline. However,

because the professional subcontractors failed to provide sufficient workforce in time, several deadlines for sub-projects were missed and the target completion for several sections got delayed. This will directly impact the target of opening on 27 March 2015.

The situation now is very difficult which, if cannot be turned around, will soon cause irreversible and catastrophic loss. Not only will there be a daily delay penalty of US\$250,000, unmeasurable damages to the brand and reputation of CSCEC will also be caused. CCA gratefully request CSCEC to coordinate and order the subcontractors to take emergency measures, organize labor force in a timely manner and provide extra technical workers and experienced managers to the project by the end of January in order to meet the target of opening by 27 March 2015. According to the current status of the unfinished work, we request as follows: CSCEC Decoration to provide not less than 200 workers; Bureau One Decoration to provide not less than 100 workers; CSCEC Industrial Equipment Installation to provide not less than 100 workers; and CSCEC Electronic to provide not less than 50 workers.

Hereby report for approval.

**China Construction America Inc.**

**20 January 2015"**

502. As such, and unbeknownst to BML Properties, CCA knew when it made the representations it made in connection with the November 2014 Meeting Minutes, and in connection with the January 5-6 meetings in Beijing, that it could never achieve any of what it said it would achieve, or that it said it had a plan to achieve. In CCA's January 20, 2015 letter to CSCECL, CCA admits the following:

- a. CCA admits that it did not have the workforce to meet deadlines that it missed prior to January 20, 2015.
- b. CCA admits that it would miss the deadline of March 27, 2015.
- c. CCA admits that any delay in opening the resort by March 27, 2015 will result in "unmeasurable damages to the brand and reputation" of CSCEC, admitting as well under the same missed opening concept that BML Properties' investment in Baha Mar Ltd. will suffer "unmeasurable" damages to brand and reputation which, in the hospitality industry, is an even greater loss than to a construction company.
- d. CCA admits that if the "situation" of its own making and design "cannot be turned around" it will soon cause "irreversible and catastrophic loss" to Baha Mar Ltd. and BML Properties, as the parties that had relied on CCA's prior misrepresentations.
- e. CCA admits that it has not been able to "order" or even persuade its subcontractors (that are also affiliates and subsidiaries of CSCEC) to send more workers, and thus admits that it knew many months before writing the January 20, 2015 letter that its subcontractors would not be able to send the needed workers

to meet a March 27 opening date or any date even proximate to that opening(due to the long lead time to obtain work permits, a process CCA was responsible for under the MCC).

- f. CCA admits it was required to seek “emergency measures” reflecting a complete failure of its management of the Project and revealing that it never disclosed the emergency it admittedly faced and had not remedied.
- g. CCA admits that CCA, and not CCA Bahamas, was in charge of this Project and retained and supervised the subcontractors.
- h. CCA admits it has no defense to the assessment of liquidated damages of “US\$250,000” per day.
- i. CCA admits that at a minimum it is 450 workers and many untold number of “extra technical workers and experienced managers” short of what it needed to simply maintain the pace of work to the end of January 2015 (since CCA admits it needs those workers “by the end of January...”).

503. And, in the end, the January 20, 2015 letter demonstrates that CCA was defrauding BML Properties and Baha Mar Ltd. all along regarding workforce numbers and the reasons for missing prior deadlines, including but not limited to at the meetings in Beijing in November 2014, in the subsequent meeting in the Bahamas, in the weekly senior executive meetings that took place at the Project in January, February, and March 2015, and at every other opportunity where CCA should have been acting and reporting accurately.

504. In a letter dated March 14, 2015, and notwithstanding its admissions (concealed from BML Properties) regarding its chronic lack of manpower, and prior admissions (in David

Wang's February 9 email) that CCA was behind in its payments to subcontractors, David Wang represented, among many other false statements, that CCA was presently increasing its workforce, was accelerating its efforts to achieve a March 27, 2015 opening, and claimed that a lack of payment on the entirety of CCA's sham payment applications made it difficult to "motivate [CCA's] subcontractors." He did not mention any inability to finish the Project by March 27, 2015, indeed he affirmed the false representation that CCA intended to meet that date by claiming that CCA was accelerating its efforts "to allow CCA to achieve Substantial Completion...by March 27, 2015, such that [Baha Mar Ltd.] could achieve operational start for paying guests by that date."

505. All of these knowing and fraudulent misrepresentations had been made to achieve the illegal and improper goals of the scheme hatched three years before, and CCA's startling admissions at a meeting on site on March 26, 2015, in addition to (among other things) the "sham" pay applications that CCA had recently submitted, revealed CCA's true intent.

506. On March 26, 2015, one day before CCA's promised delivery of the resort, ready for "heads in beds," Tiger Wu and Ning Yuan on behalf of CCA and CCA Bahamas met with Sarkis Izmirlian and Thomas Dunlap on behalf of BML Properties and Baha Mar Ltd. The meeting lasted approximately 90 minutes. Among other topics of discussion, Messrs. Izmirlian and Dunlap asked on numerous occasions during the meeting "when will we be done – when will the TCOs be issued" along with related inquiries. Each time, CCA (through Ning Yuan and/or Tiger Wu) said CCA did not know the answer, that it would have to discuss the issue with its subcontractors and would respond at a later date. Such a response is (i) unheard of in an industry where professional CMs always know, using properly prepared schedules, when completion will occur barring unforeseen circumstances or other *force majeure* interruptions, and (ii) in direct

contradiction to all the representations and statements by CCA in November, December (including at the December 5 board meeting), January (including in the meeting with the Prime Minister of the Bahamas), and in every other setting – CCA had consistently said it knew the answer and the answer was March 27, 2015.

507. CCA then at that same meeting affirmatively commenced a new phase of its fraudulent activity -- engaging in unlawful extortion. CCA claimed it had asked its subcontractors what the completion date might be, as CCA asserted, and that the subcontractors were not giving CCA information about delivery and completion dates until they were paid, therefore Baha Mar Ltd. and BML Properties needed to arrange to pay these subcontractors in order for CCA to obtain a completion date from them. CCA consequently by this statement compounded its seriatim lies and acts of deception, since, among other things, (i) the vast majority (over 70 percent) of the “subcontractors” CCA claimed it had to extract this information from “after” they were paid were, in fact, affiliates of CCA as wholly-owned subsidiaries of China State Construction and thus duty bound and able to supply the information to CCA, and (ii) the secret letter from CCA to China State Construction on January 20, 2015, confirms that the subcontractors were not withholding information, rather the subcontractors had not been asked about the completion date since CCA admitted in that letter that it did not have the workforce, including the subcontractors, to complete the job on time. What this meeting also revealed was that completing the job on time was not important to CCA. Rather, CCA’s singular focus was collecting the money CCA (falsely) claimed was due it (notwithstanding that those claims were unsupported by evidence and such documentation as CCA did submit did not comply with the contract requirements) to the detriment of the investors. Plainly, no duty to provide truthful reporting or accurate statements mattered to CCA.

508. As well, during the meeting on March 26, 2015, Ning Yuan admitted that instead of using the \$54 million advance under the November 2014 Meeting Minutes as payment for commercial disputes as CCA had promised to do (and thus as substantial payment to subcontractors which were performing the work on the Project from November 2014 until March 27, 2015), CCA falsely stated that it had used the \$54 million on “overtime” labor at the site (despite the fact that this claim could not be true, given how little after hours work was done anywhere on the Project from November 2014 through and including March 2015) and used it on other unspecified “resources” (that were obviously not enough, since the March 27 deadline was missed). By so claiming, CCA admitted that it had not spent the \$54 million advanced for the purposes intended, and it caused, in CCA’s own words, its subcontractors to walk off, otherwise slow-down, and (as CCA claimed) not provide completion dates. Essentially, CCA had converted this \$54 million to a purpose unrelated to the purposes represented at the meetings leading up to and in the November 2014 Meeting Minutes, which CCA knew would and which did imperil the March 27, 2015 opening.

509. As soon after the March 26 meeting as CCA could organize it, CCA concurrently walked-off numerous elements of the Project and on other areas of its self-performed work and subcontractor works, and as a result progress noticeably slowed down. Throughout, CCA kept workers inside the man camp paid for by Baha Mar Ltd. under the General Conditions Work Package. CCA knew that the Hotel “key money”, the reputation of the Resort once completed, and the overall financial health of Baha Mar Ltd. and BML Properties hung in the balance, however, and without factual support for its reasons for the walk-off (allegedly unresolved commercial matters, needs for further advanced monies, and retainage monies not yet due that

even RLB stated were not due), CCA acted in bad faith in this manner in an attempt to advance its extortion efforts.

510. CCA's demands for advanced monies and retainage payouts and its walk-off and slow-down described above were not disclosed to BML Properties, nor were the consequences of such actions. Indeed, by way of example, CCA's directors on the Board of Baha Mar Ltd. (Ning Yuan and Tiger Wu) intentionally and knowingly never disclosed to BML Properties or the Board (of which they were members) any of CCA's and their intent to proceed with an inadequate workforce even after assuring BML Properties that CCA would achieve the delayed opening of March 27, 2015. Ning Yuan and Tiger Wu, after engaging in their shakedown during the March 26 meeting, played a round of golf at the newly completed Baha Mar course. Although admitting to extortion and fraud is virtually unheard of, Tiger Wu on behalf of CCA did just that. On April 7, 2015, in a meeting attended by BML Properties and Baha Mar Ltd. executives, the Prime Minister of The Bahamas and several of the members of his Government, the Ambassador to The Bahamas of the People's Republic of China, and others, Mr. Wu stated that prior to March 27, 2015 (the promised and delayed delivery date of the Project open for guests) CCA had been deliberately slowing down construction at the Project. When asked by the Prime Minister, Mr. Wu unabashedly confirmed that statement yet again.

511. CCA as well engaged in the malicious acts and acts of sabotage described elsewhere herein, all designed to achieve the goals of its scheme.

512. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the



cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

513. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

514. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

### **ELEVENTH CAUSE OF ACTION**

#### **Fraud Against Defendants CCA and CCA Bahamas For All Misrepresentations and Non-Disclosures Otherwise Alleged Herein as Breaches of the Investors Agreement**

515. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

516. In the event that CCA and CCA Bahamas are determined by the trier of fact to not be liable under the Investors Agreement or liable for the breaches of that agreement, then CCA and CCA Bahamas, as described in detail above and as part of their scheme to defraud BML Properties, (i) failed to disclose those material facts required to be disclosed under the Investors Agreement to BML Properties, intending for BML Properties to rely thereon, and (ii) misrepresented those facts it was required to accurately represent, intending BML Properties to rely thereon, all as set forth more specifically above.

517. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for

CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described herein.

518. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

519. Because the above-described deliberate actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

## **TWELFTH CAUSE OF ACTION**

### **Fraud Against Defendants CCA and CCA Bahamas In Connection with Inducing BML Properties to Direct Baha Mar Ltd. to Enter into the May 2013 MOU and the November 2014 Meeting Minutes**

520. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014.

521. CCA and CCA Bahamas knew that the misrepresentations they made to Baha Mar Ltd. and to BML Properties (described herein), and the failures to disclose to Baha Mar Ltd. and to BML Properties all material facts (also described herein), intending to induce Baha Mar Ltd. to execute the May 2013 MOU and the November 2014 Meeting Minutes were also intended to induce BML Properties, the day-to-day manager of Baha Mar Ltd. and in control of four of the five votes on the Baha Mar Ltd. Board, to cast its votes and recommend to the Board of Baha Mar Ltd. that they approve the actions of Baha Mar Ltd. in entering into the May 2013 MOU and the November 2014 Meeting minutes.

522. Those misrepresentations and failures to disclose did in fact induce BML Properties to so act, and Baha Mar Ltd. did execute those agreements.

523. The May 2013 MOU, had it been performed as CCA promised, would have resulted in the timely opening of the Project in December 2014. Because of CCA's misrepresentations and failures to disclose, not knowing that CCA never intended to perform, BML Properties awaited CCA's performance during the critical May 2013 to January 2014 time frame, and BML Properties forebore from acting otherwise or seeking its remedies during this time period against CCA, and incurred the losses and suffered the harm more fully described herein.

524. The November 2014 Meeting Minutes, had it been performed as CCA promised, would have resulted in the opening of the Project on or before March 27, 2015. Because of CCA's misrepresentations and failures to disclose, not knowing that CCA never intended to perform, BML Properties awaited CCA's performance during the critical November 2014 to March 2015 time frame, and BML Properties forbore from acting otherwise or seeking its remedies during this time period against CCA, and incurred the losses and suffered the harm more fully described herein.

525. The Project did not open on either such date, to the catastrophic harm and damage of BML Properties, as set forth herein.

526. BML Properties relied on CCA's misrepresentations and failures to disclose as set forth above, to its harm and detriment. Each and all of these acts of fraud and deception prevented BML Properties from being able to control the progress of the Project and seeking remedies for CCA's conduct or timely directing Baha Mar Ltd. to seek such remedies, or mitigating the cumulative effect of such acts of deception, as more fully described in paragraphs 341-358 herein.

527. Accordingly, Plaintiff has been damaged as a direct result of Defendants' fraud in an amount to be determined at trial but believed to exceed \$1.15 billion.

528. Because the above-described actions by Defendants were willful and wanton, Plaintiff is also entitled to recover punitive damages in an amount to be determined at trial.

**THIRTEENTH CAUSE OF ACTION**  
**Breach of Contract Against All Defendants**

529. Plaintiff BML Properties repeats all statements and matters alleged herein pursuant to CPLR 3014, but for Paragraph 358.

530. Plaintiff and CSCEC Bahamas entered into the Investors Agreement, a valid and binding contract, the operative terms of which are set forth above. Defendants CCA and CCA Bahamas are each separately and collectively successors under the Investors Agreement, and each were assigned and assumed, and are otherwise liable for, full performance of the obligations of CSCEC Bahamas under the Investors Agreement as alleged above.

531. Plaintiff performed its material obligations under the Investors Agreement in all material respects except to the extent excused by the conduct of Defendants.

532. As set forth in greater detail above, Defendants materially breached their contractual obligations to Plaintiff, *inter alia*, by failing to perform as required under section 4.7 of the Investors Agreement, by their acts of fraud each of which constitutes an "Event of Default" under section 4.10(a)(v) of the Investors Agreement, and by their breaches of their express covenants and obligations under the Investors Agreement which resulted in material adverse effects on BML Properties each of which constitutes an "Event of Default" under section 4.10(a)(vi) of the Investors Agreement.

533. Plaintiff has been damaged as a direct result of Defendants' breaches of the Investors Agreement and Events of Default, and thus is entitled to damages under section 4.10(b) of the Investors Agreement, and otherwise, in an amount to be determined at trial but believed to exceed \$2.25 billion.

#### **FOURTEENTH CAUSE OF ACTION**

##### **Breach of Contract Asserted by Plaintiff as an Intended Third-Party**

##### **Beneficiary Against Defendants CCA and CCA Bahamas**

##### **In Connection with the May 2013 MOU and the November 2014 Meeting Minutes**

534. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014, but for paragraph 358.

535. Ning Yuan, listing his title as the Chairman and President of China Construction America, signed the MOU as such without stating that he was an executive or otherwise authorized to sign the MOU ostensibly on behalf of CCA Bahamas, constituting yet another example of the domination and control of CCA Bahamas by CCA – CCA's own executive believed it entirely proper to sign on behalf of another entity further confirming the total unity of interest and management between CCA Bahamas and CCA. In any event, set forth elsewhere in

this Complaint are facts that impose on CCA liability for the breaches of contracts signed by CSCEC Bahamas and by CCA Bahamas.

536. The parties to the MOU, CCA Bahamas and Baha Mar Ltd., intended to confer a benefit on third party BML Properties by executing the MOU, because, among other things, (i) the MOU does reference that CCA will be awarded certain work packages, which CCA could not have been awarded without BML Properties' approval acting as the day to day manager of Baha Mar Ltd. subject to the direction of the Baha Mar Ltd. Board and its Chairman, (ii) the duties CCA assumed under the MOU principally related to increasing a deficient workforce in order to achieve re-established deadlines and milestones, the same subject of the misrepresentations CCA had been making to BML Properties' executives and agents and Baha Mar Ltd.'s Board and the BML Properties' appointed directors and Chairman before the MOU was signed, (iii) unlike the MCC and the Investors Agreement, and unlike numerous other documents executed to construct and finance the construction of the Project, the MOU does not contain a "no third party beneficiaries" clause, (iv) the parties did not append this MOU to the MCC or any other document, nor did the parties amend the MCC or any other document expressly, but rather created a stand-alone set of obligations that CCA, as the party promising accelerated efforts, knew that BML Properties, as the day-to-day manager of Baha Mar Ltd., was demanding, (v) CCA and CCA Bahamas knew of and understood that section 4.1 of the Investors Agreement created a reporting obligation to BML Properties in an effort to allow BML Properties to not only manage Baha Mar Ltd. but to protect its investment, as section 4.7 of the Investors Agreement references, and (vi) the circumstances surrounding the adoption of the MOU, whereby a formal signing took place in the presence of the Chinese Ambassador to the Bahamas, CCA and CCA Bahamas executives, executives from China Eximbank, and executives and

directors of Baha Mar Ltd. and executives of BML Properties, signaled that CCA Bahamas, the party executing the MOU, as well as Baha Mar Ltd. intended for BML Properties to benefit from the MOU and the accelerated efforts promised therein in much the same way that CSCEC Bahamas, as an investor in Baha Mar Ltd., was intended to be benefitted by the agreement.

537. CCA Bahamas breached the MOU by, *inter alia*, failing to supply the promised laborers and management staff, failing to provide the required reports, failing to meet the interim milestones and deadlines, failing to participate in any meaningful way in the expressly required OCA and other meetings and site walks, and failing to issue a properly “loaded” revised Construction Schedule. For its part, Baha Mar Ltd. performed all its material obligations under the MOU except to the extent excused by the conduct of Defendants.

538. The May 2013 MOU, had it been performed by CCA, would have resulted in the timely opening of the Project in December 2014.

539. As to the November 2014 Meeting Minutes, the parties to those “Minutes,” CCA Bahamas and Baha Mar Ltd., intended to confer a benefit on third party BML Properties by executing the “Minutes,” because, among other things, (i) the Minutes reference that CCA will be paid monies on commercial disputes, which CCA could not have been paid without BML Properties’ approval acting as the day-to-day manager of Baha Mar Ltd. subject to the direction of the Baha Mar Ltd. Board and its Chairman, (ii) the duties CCA assumed under the MOU principally related to increasing a deficient workforce, increasing senior staff and managers, and increasing labor productivity in order to achieve re-established deadlines and milestones, the same subject of the misrepresentations CCA had been making to BML Properties’ executives and agents and Baha Mar Ltd.’s Board and the BML Properties’ appointed directors and Chairman before the Minutes were signed, (iii) unlike the MCC and the Investors Agreement,

and numerous other documents executed to construct and finance the construction of the Project, the Minutes do not contain a “no third party beneficiaries” clause, (iv) the parties did not append the Minutes to the MCC or any other document, nor did the parties amend the MCC or any other document expressly, but rather created a stand-alone set of obligations that CCA, as the party promising accelerated efforts, knew that BML Properties, as the day-to-day manager of Baha Mar Ltd., was demanding (indeed the parties expressly stated that these “minutes do not waive or amend” any of the executed project documents or finance documents), (v) CCA and CCA Bahamas knew of and understood that section 4.1 of the Investors Agreement, giving BML Properties duties as the day to day manager of Baha Mar Ltd., created a reporting obligation to not only Baha Mar Ltd. and its board but also BML Properties in an effort to allow BML Properties to not only manage Baha Mar Ltd. but to protect its investment, as section 4.7 of the Investors Agreement provides, and (vi) the circumstances surrounding the adoption of the Minutes, whereby a formal signing took place in the presence of CCA and CCA Bahamas executives, executives from China Eximbank, and executives and directors of Baha Mar Ltd. and executives of BML Properties, signaled that CCA Bahamas, the party executing the MOU, as well as Baha Mar Ltd. intended for BML Properties to benefit from the MOU and the accelerated efforts promised therein much the same way CSCEC Bahamas, as an investor in Baha Mar Ltd., was intended to be benefitted by the agreement.

540. CCA Bahamas breached the November 2104 Meeting Minutes by failing to supply the promised laborers and management staff, failing to increase worker productivity, failing to meet the deadlines, and failing to return certain monies advanced under the Minutes when CCA Bahamas failed to deliver the Convention Center on January 19, 2015, as required by those



Minutes. Baha Mar Ltd. performed all its material obligations under the Minutes except to the extent excused by the conduct of Defendants.

541. The November 2014 Meeting Minutes, had they been performed by CCA, would have resulted in the opening of the Project on or before March 27, 2015.

542. Defendant CCA Bahamas and Defendant CCA (as the party directing all aspects of and dominating and controlling CCA Bahamas as alleged herein) directly and materially breached their contractual obligations to Plaintiff by failing to perform as required under the MOU and under the November 2014 Meeting Minutes.

543. Plaintiff has been damaged as a direct result of Defendants' breaches in an amount to be determined at trial but believed to exceed \$2.25 billion.

### **FIFTEENTH CAUSE OF ACTION**

#### **Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants**

544. Plaintiff repeats all statements and matters alleged herein pursuant to CPLR 3014, but for paragraph 358.

545. Implied into every contract alleged in this Complaint on which Plaintiff predicates a cause of action (the Investors Agreement, the May 2013 MOU, and the November 2014 Meeting Minutes) is a duty of good faith and fair dealing, requiring Defendants to not prevent due performance of or deprive BML Properties of its right to receive the benefits of such agreement.

546. As set forth in greater detail above, Defendants did in fact prevent due performance of such agreements and did deprive BML Properties of its right to receive the benefits of such agreements, including but not limited to the following: (a) Defendants interfered with the source

of funding for the Project, the funding needed for the full performance of the Investors Agreement and the creation of value for BML Properties as the 100 percent holder of the common shares of Baha Mar Ltd. as was contemplated by full performance of the Investors Agreement; and (b) CCA engaged in work stoppages and work slowdowns, and admitted as much on several occasions, and otherwise intended from 2012 on to not complete the Project on-time and on-budget, but determined instead to build it on its own undisclosed schedule and with its own inadequate and inexperienced workforce, acts intended to deprive BML Properties of its rights under the Investors Agreement and to prevent full performance under the Investors Agreement, to wit: an on-time and on-budget delivery of a completed Project on or before December 31, 2014 that would in turn bring about a hugely valuable, completed, four and five star destination resort in Nassau, Bahamas.

547. For its part, BML Properties, and as the case may be Baha Mar Ltd., performed each of its and their material obligations under the Investors Agreement, the May 2013 MOU, and the November 2014 Meeting Minutes except to the extent excused by the conduct of Defendants.

548. Plaintiff has been damaged as a direct result of Defendants' breaches of the implied covenant of good faith and fair dealing in an amount to be determined at trial but believed to exceed \$2.25 billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- (a) On its First, Fourteenth and Fifteenth Causes of Action for Breach of Contract, judgment in favor of Plaintiff in an amount to be determined at trial but believed to exceed \$2.25 billion together with pre-judgment and post-judgment interest on such amount;
- (b) On its Second through Thirteenth Causes of Action for Fraud, judgment in favor of Plaintiff in an amount to be determined at trial but believed to exceed \$1.15 billion together with pre-judgment and post-judgment interest on such amount, and an award of punitive damages in an amount to be determined at trial;
- (c) An award of the costs of this action to Plaintiff; and
- (d) Such other and further relief as this Court deems just.

Dated: New York, New York  
December 26, 2017

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*Attorneys for Plaintiff BML Properties Ltd.*

Index No.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK

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BML PROPERTIES LTD.,

Plaintiff,

-against-

CHINA CONSTRUCTION AMERICA INC., NOW  
KNOWN AS CCA CONSTRUCTION INC., CSCEC  
BAHAMAS, LTD., CCA BAHAMAS LTD., AND DOES  
1-10,

Defendants.

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SUMMONS AND COMPLAINT

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ATTORNEYS FOR PLAINTIFFS

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