DEFENDANTS' OPENING STATEMENT

People of the State of New York v. Donald J. Trump, et al.

October 2, 2023

CONTINENTAL PLLC
ATTORNEYS-AT-LAW

The Evidence Will Establish . . .

- President Trump has made many billions of dollars being right about real estate investments
- President Trump has built one of the most successful and highly recognized brands in the world
- Trophy Properties – Low Debt – Exceptional Operational Track Record
- Claims here involve only a few successful and profitable loan transactions
- No late payments, no missed payments, loans all paid back timely with $100mm+ interest
- SOFCs and certifications were submitted in connection with those loan transactions
- Only the specific parties involved in those transactions made any submissions
- Certifications were true and accurate when made – loan covenants not violated
- SOFCs accurate in all ***material*** respects
- SOFCs complied with GAAP and valuations were derived under ASC 274
- SOFCs had valid and obvious disclaimers negating intent, materiality and reliance
- Banks conducted their own independent valuation analysis
- No intent to defraud, no default, no breach, no fraud, no reliance, no unjust profits, no victims

Complex Private Agreement
Specific Parties
Sophisticated International Bank
Negotiated by top tier counsel
Provided protection and remedies

LOAN AGREEMENT

dated as of

August 12, 2014

by and between

TRUMP OLD POST OFFICE LLC

as Borrower

and

DEUTSCHE BANK TRUST COMPANY AMERICAS
as Lender

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized signatories as of the day and year first written above.

BORROWER:

TRUMP OLD POST OFFICE LLC, a Delaware limited liability company

By:____________________
Name: Donald. J. Trump
Title: President

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of July 2, 2015 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**"), between **LADDER CAPITAL FINANCE I LLC**, a Delaware limited liability company, on behalf of Series TRS of Ladder Capital Finance I LLC, a Delaware series of Ladder Capital Finance I LLC, having an address at 345 Park Avenue, 8th Floor, New York, New York 10154 (together with its successors and assigns, "**Lender**"), and **40 WALL STREET LLC**, a New York limited liability company, having an address c/o The Trump Organization, 725 Fifth Avenue, New York, New York 10022 (together with its successors and permitted assigns, "**Borrower**").

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

Complex Private Agreement
Specific Parties
Sophisticated Lending Institution
Negotiated by top tier counsel
Provided protection and remedies

BORROWER:

40 WALL STREET LLC,
a New York limited liability company

By: 40 Wall Street Member Corp.,
a New York corporation, its managing member

By: ______________________
Name: Donald J. Trump
Title: President

May 10, 2016

LENDER: **Deutsche Bank Trust Company Americas**

GUARANTOR: **Donald J. Trump**

BORROWER: **Trump Endeavor 12 LLC, a Delaware limited liability company**
401 North Wabash Venture LLC, a Delaware limited liability company
Trump Old Post Office LLC, a Delaware limited liability company

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1. ***Financial Information***. As applicable (please check applicable box below and insert the applicable date below):

- [X] Attached hereto is Guarantor's Statement of Financial Condition as of June 30, 2015 (Section 11(A) of the Guaranty).
- [X] Attached hereto is Guarantor's Schedule of Contingent Liabilities as of June 30, 2015 (Section 11(B) of the Guaranty).
- [X] Attached hereto is Guarantor's Excess Revenue over Disbursement Schedule for the twelve (12)-month period ended June 30, 2015 (Section 11(C) of the Guaranty).

The foregoing presents fairly in all material respects the financial condition of Guarantor at the period presented.

Specific Parties
Specific Representations
Materiality - No Absolutes

4. ***Net Worth of Guarantor.*** In respect of Section 10(iii) of the Guaranty, the "Net Worth" of Guarantor for the period ending on June 30, is not less than (x) Two Billion Five Hundred Million ($2,500,000,000) Dollars times (y) the applicable Step-Down Percentage on the date hereof.

***

IN WITNESS WHEREOF, Guarantor has executed this Compliance Certificate as of the date set forth above.

GUARANTOR:

DONALD J. TRUMP

SOFCs Materially Accurate

All SOFC values comply with GAAP/ASC 274 – (Intent/Materiality)

All valuations derived in compliance with ASC 274 – (Intent/Materiality)

Incorporated Unequivocal Disclaimers – (Intent/Materiality/Reliance)

The Governing Standard: Accounting Standards Codification 274

- ASC 274 = Personal financial statements (***compilations***) shall present assets at their ***estimated current values*** and liabilities at their *estimated current amounts* at the date of the financial statements
- ECV = not the same as "Fair Value" or "Market Value"
- ECV = great latitude in valuation methodology
- ASC 274 = no one generally accepted procedure for determining ECV
- ASC 274 = does not require a specific method to be used to derive ECV
- ASC 274 = many ways to value assets and all are accurate/acceptable even though they yield different results

ASC 274 Wide Latitude

ASC 274-10-55-6 = available bases for determining ECV include "[t]he discounted amount of projected cash receipts or payments relating to property or net realizable value of the property . . . based on planned courses of action."

ASC 274 Approved Methods do not all hinge substantially on current market conditions but instead focus on a long-term perspective

ECV not intended to be a market value model.

Appraisals simply not the only appropriate valuation method

Compliance with ASC 274 will demonstrate no intent to defraud

Compliance with ASC 274 will demonstrate no material inaccuracies

Eli Bartov, NYU Stern School of Business

There is no such thing as objective valuation either in GAAP, economic theory, or in the applicable laws, regulations, and principles that govern this case.

Valuation is an opinion about price and therefore subjective, period.

Which valuation methodology to choose and which assumptions to apply depends on GAAP, economic theory, and, perhaps most important on the perspective of the person performing the valuation, because that person picks the valuation methods and the underlying assumptions.

ECV under ASC 274 places "very little weight on current market conditions."

Disagreement as to SOFC valuations does not establish fraud

- "[D]isparate but legitimate valuations of a specific property may co-exist" and the "mere existence of such disparate valuations for a given property does not in itself establish any specific valuation is inaccurate or inflated." (Laposa)

- This is indeed the essence of the commercial real estate marketplace

- SOFCs not designed to show precise value of a reporting entity

- SOFCs = the beginning, not the end, of the complex and highly subjective valuation process users such as banks and insurance companies engage in as they perform their own diligence (Bartov)

- Banks and insurers know SOFC estimates are just that – estimates (Unell)

Materiality an Essential Element

As Court recognized - for Counts II-VII Materiality is an essential element

Statutes make this clear:

Issuance of a false financial statement occurs when an individual, with intent to defraud, "knowingly makes or utters a written instrument which purports to describe the financial condition . . . which is inaccurate in some ***material*** respect" or "represents in writing that a written instrument purporting to describe a person's financial condition . . . is accurate . . . whereas he knows it is ***materially inaccurate*** in that respect."

Insurance fraud = "causes to be presented" a "written statement as part of, or in support of, an application for the issuance of" a "commercial insurance policy," which he "knows" to "contain ***materially false*** information" with an intent to defraud. *Id.* § 176.05.

The Compliance Certificates Incorporate Materiality

"The foregoing presents fairly in all **material respects** the financial condition of Guarantor at the period presented."

(May 10, 2016 Compliance Certificate)

Guarantor made this representation

Material inaccuracy is the standard – cannot read this out of Certificate

GAAP Incorporates Materiality

GAAP does not apply to immaterial items (Bartov)

GAAP recognizes that not all accounting errors, violations, or departures from GAAP have a material impact on the inferences of financial statement users. Thus, GAAP only prohibits material violations (Bartov)

None of the items on the SOFCs identified by the NYAG as misstatements or omissions were departures from GAAP (Bartov)

Any such items were immaterial from the viewpoint of the sophisticated banks and underwriters who received the SOFCs (Bartov)

IACR and SOFC Notes a Unified Presentation

AICPA standards dictate the IACR and SOFC are issued together and mutually dependent.

(Flemmons)

SOFCs “not relied upon in a vacuum” and must be “reviewed in concert with the accountant's report”

(Flemmons)

IACR and SOFCs issued together, cross-reference each other, and therefore could not reasonably have been viewed by users as separate documents that were not dependent on each other.

(Flemmons)

SOFC Disclaimers Unequivocal

- SOFC Notes:

- ***Considerable judgment is necessary*** to interpret market data and develop the related estimates of current value.
- Accordingly, the estimates presented herein are ***not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities***.
- The use of different market assumptions and/or estimation methodologies ***may have a material effect on the estimated current value amounts***.

IACR Disclaimer Unequivocal

Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the statement of financial condition, ***users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump*** if they had access to a revised statement of financial condition without the above referenced exceptions to accounting principles generally accepted in the United States of America.

Disclaimers Alone Establish No Intent/Materiality/Reliance

Disclaimers told the banks what was being provided – and what was ***not*** being provided

Disclaimers notified SOFC users (like DB and Zurich) they needed to conduct their own analyses

Disclaimers put sophisticated users of the SOFCs (like Deutsche Bank) on complete notice to perform their own diligence, which a sophisticated user like Deutsche Bank would have performed anyhow even in the absence of such disclaimers. (Bartov)

Banks required to conduct own independent underwriting analysis

Evidence will show banks actually did perform an independent underwriting analysis

DB 2014 Credit Memo (Page 13)

II - Financial Analysis – Guarantor

It should be noted that the Guarantor, DJT, is required to provide financials within 120 days of 6/30 FYE. Thus the most recent financials available are as of 6/30/13. We are not aware of any material changes to the Guarantors financial profile.

Guarantors – Financial Summary: Although all three Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor. As part of this underwriting we have met with several members of the family office to update our due diligence on the client reported financial information, as prepared by WeiserMazars, an independent public accounting firm. Based on the results of this due diligence we have made certain assumptions that have resulted in adjustments to reported values. Details on such adjustments are included in the analysis that follows. Additional details are included in the Guarantor's financial statements which are attached as Exhibit V.

Financial Summary *($ in millions)* **Source:** *Client provided financials*	**DJT 6/30/2011 (Client Reported)**	**DJT 6/30/2012 *(Client Reported)***	**DJT 6/30/2012 *(DB Adjusted)***	**DJT 6/30/2013 *(Client Reported)***	**DJT 6/30/2013 *(DB Adjusted)***
Cash & Marketable Securities	$258.9	$169.7	$146.3	$339.1	$154.5
Escrow & Reserve Deposits	$9.1	$10.8	--	$15.2	--
Real Estate – Net Equity	$2,996.9	$3,184.2	$1,707.5	$3,268.7	$1,834
Partnerships & Joint Ventures	$720.0	$823.3	$411.7	$869.3	$434.7
Real Estate Licensing	$89.3	$65.2	$32.6	$174.7	$87.3
Other Assets	$199.2	$318.5	$159.3	$352.0	$176.0
Total Assets	$4,273.4	$4,563.9	$2,448.8	$5,019.0	$2,686.2
Personal Mortgage other Debt	$8.4	$8.3	$8.3	$20.5	$20.5
Other Liabilities	$3.7	$4.4	$4.4	$20.4	$20.4
Net Worth	**$4,261.3**	**4,559.0**	**2,436.1**	**4,978.0**	**2,645.2**
Contingent Obligations	$114.0	$195.7	277.7	$197.2	$420.5
Net Cash Flow *	$82.4	($89.2)	$13.4	$169.7	($25.2)
Key Ratios – Unsecured Lending Guidelines (excludes Swap PFE)					
Leverage Ratio (<= .30)	.13	.14	.13	.01	0.16
Cash Flow Ratio (>= .35)	.57	-0.67	.05	0.45	-0.05
Liquidity Ratio (>= .25)	2.04	1.32	.47	0.90	0.41
Asset Coverage Ratio (>=6.0)	31.7	33.32	8.43	13.27	7.10

DB 2014 Credit Memo (Page 14)

Property Type	DJT Valuation	DB Valuation	Reported Debt	DJT Net Equity	DB Adjusted Net Equity
Trump Tower – 725 5th Ave	$526.8	$480.0	$100.0	$426.8	$380.0
Niketown – East 57th St	$287.6	$175.0	$39.2	$248.4	$135.8
40 Wall Street	$530.7	$500.0	$160.0	$370.7	$340.0
Trump Park Ave	$346.1	$173.0	$21.8	$324.3	$151.2
Subtotal – 4 Trophy Properties	***$1,691.2***	***$1,328.0***	***$321.0***	***$1,370.2***	***$1,007.0***
Club Facilities	$1,656.2	$828.1	$147.5	$1,508.7	$680.6
Other Property Interest	$412.3	$168.6	$22.5	$389.8	$146.1
Total – Portfolio	***$3,759.7***	***$2,324.7***	***$491.0***	***$3,268.7***	***$1,833.7***

- *4 Trophy Properties* – The valuations for each of these properties were discussed with DB Valuation Services Group ("DBVSG") who advised on adjustments for each.
  - Trump Towers – The 68 story building contains residential and condominiums that are owned by residents along with 178,000 square feet in commercial space and 114,000 square feet of retail space. As of 6/30/13 the property had associated debt of approx $100MM. The loan is non-recourse and matures in 2022. A recent appraisal performed in conjunction with the refinance valued the property at $480MM resulting in a roughly 21% LTV.
  - Niketown – The Guarantor is the lessee with respect to 2 long-term ground leasehold estates related to the land and the building located on 57th street between Madison and 5th Avenue. Since 1994 the building has been leased to Nike Retail Services. The current lease is scheduled to expire in May 2017. The space includes 65,000 square feet of retail space. Based on sq foot assumption DBVSG has indicated an adjusted value of $175 million. Financing on the space is in the form of long-term bonds which are scheduled to fully amortize by June 1, 2017.
  - 40 Wall Street – The 72 floor tower consist of 1.3 million in premier office space. Based on a SF assumption DBVSG has indicated an adjusted value of $500 million. The existing debt in the amount of $160 million, of which the Guarantor currently guarantees $20 million, is scheduled to mature in November 2017.
  - Trump Park Avenue – The property located on 59th Street and Park Avenue consists of 134 condominium units coupled with 30,000 square feet of retail space has a reported value based on unsold units and retail rates of $346.1 million. The unsold condominium units have been pledged as collateral for the mortgage which, as of 6/30/13, had an outstanding balance of 21.84MM and matures 8/1/15. Based on discussions with DBVSG we elected to take an approximate 50% haircut on the reported value.

Bank Officer Testimony

The actual individuals involved in the loan decisions will testify

Thomas Sullivan
David Williams
Emily Pereless
Rosemary Vrablic

DB conducted independent risk analysis – did not rely on SOFCs

Valuation disparities not falsity/fraud – fully anticipated/ordinary in normal process

SOFCs were not misleading

Bank Officer Testimony

President Trump Was Overqualified for the Subject Loans (NW far exceeded minimum)

President Trump did not violate the loan agreements

President Trump did not default

President Trump did not make any false statements

Alleged SOFC valuation disparities did not impact loan approval or pricing

Summation of What the Evidence Will Establish

SOFCs were materially accurate and complied with GAAP/ASC 274

No evidence of intent to defraud or agreement (conspiracy)

Never any breach, late payments or loan defaults and banks received $100mm+ in interest

Sophisticated banks/insurers were never misled about anything

Disclaimers notified users to conduct independent underwriting analysis

Defendants did not receive any unjust benefits or profits

There was no fraud

There are no victims