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## FINE FIX MEDIATION

### Confidential Information for C. J. Bassin, President of Culture Bubble, Inc.

You have learned a great deal from Culture Bubble. Your move from Director of Strategic Planning at Club Jed to the President of Culture Bubble, and getting the whole operation up and running, offered you the formidable challenge of translating concepts to reality. You have learned that it takes time to spend money and that real projects always cost more than projections. Finally, within the last six months, you have also learned that the Culture Bubble concept was brilliant and will be highly successful. Your last six months of revenue (over the winter season) have been steadily catching up to projections. It has just taken longer than imagined to construct the Bubble and sell the concept to people interested in higher culture recreation. Your board of directors is becoming enthusiastic again, and willing to invest a bit more for “big draw attractions,” that will be less seasonal and weather dependent. You would like to attract families for long weekends and school vacations during fall and winter, and camp and school visits linked to educational exhibits at the technology learning center and the museum center. You had put these Culture Bubble elements on a later track for full development. For the opening in the summer season, it was more important to have completed the arts, performance, amusement rides, and recreational facilities. While the museum center and technology center structures were built and operational that first summer, as promised in marketing materials, they housed only basic exhibits.

Frankly, you’d rather be spending your time developing the Culture Bubble than arguing over “spilled milk” – which is how you view the Fine Arts Fabricators’ (FAF) lawsuit. You retained outside counsel to file suit last summer, to ease the headache of your operations manager and creative director screaming and making excuses about why the Culture Portal illusion wouldn’t be ready on time, and how the Opulent Opera’s Magic Flute would not be as spectacular as planned.

You have talked to your operations manager, Ian Marcu about his negotiations with FAF’s Fran Finley over the timing of delivery. Marcu admitted that Finley explained FAF’s policy not to commit to delivery sooner than 12 weeks before a contract. Marcu said:

I thought I had a contract by March 10 or so, based upon Finley saying that they were starting to work on the design in early March – that would have made June 7 about 12 weeks out. Finley said he would use “best efforts” to get the lifts here by June 7, and I suggested a \$10,000 incentive per lift so that he would meet the deadline. I couldn’t have been clearer with Finley that Culture Bubble’s opening was on June 22, and we needed two weeks to install and work with the lifts before opening. Why would I want a contract with no promise of delivery until July 5? Yes, we did tinker with the exact written specs, so the paperwork wasn’t done, and the contract wasn’t signed until April 13, but I didn’t think Finley would hold me on a technicality. He



said he would schedule the design and fabrication work to be done by June 7. Later, he assured me he was on track for that date.

As an experienced manager, you have your doubts about Marcu's story. You suspect he and the artistic director may be covering their you-know-whats because they didn't get around to finding a fabricator for the lifts until too late. Marcu's workload was undoubtedly off-the-charts during this period, as he had to handle construction delays and a myriad of problems at other Culture Bubble facilities. The artistic director was also responsible for many other productions. You suspect that putting out an RFP for the lifts was a task that fell through the cracks. So, Marcu was forced to put pressure on FAF. Though you're not a lawyer, when you read the contract, it looks like the lifts were not to be considered "late" until July 5, but that FAF promised to use "best efforts" to get them there by June 7 – and be rewarded by the incentive. You will be interested to know what "best efforts" were made.

Nevertheless, accepting Marcu's version of the story at face value, your lawyer has taken the legal position (on Culture Bubble's behalf) that the lifts were delivered late, because they were promised on June 7, weren't delivered until June 15, and then had to be returned. The most aggressive argument to be made is that Culture Bubble is entitled to delay damages from June 7 until replacement lifts are obtained over the winter, plus the return of the \$80,000 deposit and the \$120,000 additional cost of the new lifts.

Based upon this argument, Marcu worked with the business office to come up with calculations of delay damages: losses that resulted from the lack of the four lifts from June 7 through the summer season. These calculations are set forth in Exhibit A and were provided to FAF. The mediator has not yet seen them. (To be reasonable, you did not carry these projections out until December when the new lifts were installed. You would do so at trial.) The calculations were based upon the shortfall between revenue projections and actual revenues during the period: in general admissions to Culture Bubble as well as the shortfall in ticket revenues for the Opulent Opera performances. Prices and tickets for admission to the Culture Bubble are packaged in different ways. People can buy tickets to specific performances, day coupon books, event admissions, or a weekend or weeks' pass to the entire Bubble, or limited areas of interest. The local area residents tend to buy coupon books or tickets to specific performances.

It is impossible to calculate with any precision how many people elected not to come to the Opera or to all of Culture Bubble because certain performances or experiences were not as spectacular as originally intended. That's why you told your lawyer to claim \$180,000 - only 50% of the \$360,000 shortfall –for lost Opera ticket sales. And, though it might be hard to prove, you believe that if the Culture Portal and the Opera had been more of a "wow," Culture Bubble's general admission attendance might have been higher than the first season. That's why you insisted that your lawyer also claim losses in general admission revenues. During that first year, these general revenues were \$2,200,000 lower than business projections. It didn't seem like over-reach to attribute 20% of that, or \$440,000, to the lost "wow" factor. This may also be hard to prove, especially when other areas of the Bubble have also been completed or enhanced since that June and July.



The portion of the delay damages calculation about which you are more confident in are ticket sales at the Opulent Opera. You had sold approximately \$60,000 in tickets for a week of “preview” performances of the Magic Flute Opera to area residents (\$20 per ticket, 1,000 seats, 3 performances) which had to be returned.

You also think the reviews of the regular performances were not as good as they would have been had the lifts been installed. Thus, you might estimate that \$180,000 in reduced revenues for the 8-week summer opera season (July and August) (50% of the total shortfall, \$360,000) -- was attributable to the less-than-spectacular staging. You see that even this would be hard to prove. It is also possible that some of the people whose preview tickets were returned eventually came to the Opera after its official opening.

Leaving aside the delay issue, you have spent considerable time with the operations manager, Ian Marcu, to understand how and why the 4 FAF lifts delivered were “defective” and why he didn’t think the defect could be cured. You do know from your lawyer that the contract provided 14 days for FAF to cure any defects. Because they were not given this opportunity, FAF maintains that Culture Bubble breached the contract. You can see their point, though your lawyer seems to wish you couldn’t. On the other hand, if curing the defect was impossible, then Marcu made the right decision by rejecting the lifts.

Marcu has explained to you that the base of the lifts was much larger than originally stated when FAF provided Marcu with a document stating the “weights and measures” of the lifts as designed. The lift’s base dimension stated in the document was 7’x 9’. Although Marcu and his tech crew would have preferred that it come in at 6’x 8’, they understood that 7’ x 9’ was necessary because of the specifications for height, weight-bearing, and speed of movement. The original architect’s plans for the staging area at the Culture Portal, and the stage trap doors and back entrance ramps at the Opera House and at the Portal had been somewhat reduced in later design and construction phases to accommodate other architectural features. (The difference between the original architectural plans and the “as-builts” were reductions from 11’ to 10 feet for the entrances and trap doors, and 30’ to 28’ for the staging area at the Portal.) Marcu thought that 7’x 9’ would be “a little tight” but still workable with the reduced dimensions. He was horrified when the base of the lifts delivered on June 15 measured 10’ x 12’. That would not have been workable even under the original architectural dimensions. Everyone knew that the lifts were intended to be modular, and easy to move flexibly within performances and between Culture Bubble facilities. With a 10’ x 12’ base dimension, the lifts failed to fulfill their intended purpose.

Marcu is adamant that common sense and experience would have made it clear to anyone that the design could not have been “adjusted” by shrinking the base dimension. The base had to be larger than originally represented because FAF had added extra steel structural support. Without those supports, he could see that the lift wouldn’t meet height and speed performance specs and maintain stability.



Marcu told you to anticipate that FAF will whine about his replacing the lifts with the highest of the four original bidders. Marcu did so because the two other bid designs were similar to FAF's design. He was not confident that these would end up any better (or any smaller) than FAF's lifts. His conversations with the chief engineer at the highest bidder convinced Marcu that an entirely different design approach was needed. Marcu agreed to adjust his performance specs for weight and speed to keep the cost down.

You believe it would be appropriate for FAF to return the \$80,000 deposit, pay for most of the difference in the cost of the replacement lifts (\$120,000), and maybe pick up a bit of lost ticket revenues (for Marcu to save face). However, you also recognize that, after trial, the net would be lowered by your attorney's fee – estimated at \$50,000. The attorney assured you that your management team will be excellent witnesses at the deposition and a trial. The thought made you wince. Worse than the attorney's fees are the invaluable management time that will be expended in depositions and at trial – particularly your time. You can't afford to invest time worrying about the past. The FAF suit is a small problem that will become a big problem if it prevents you and your management team from focusing on the bigger picture: the economic success of the Culture Bubble.

You can't lose sight of the fact that you have money and a mission to create more "seasonless" educational attractions at Culture Bubble: improving the technology learning center and the museum center. The director of the museum center has been out of commission for two months due to surgery: you had wanted him to follow up on two big ideas for the museum: a phenomenal dinosaur exhibit or a space travel exhibit. You can afford to invest *sizeable* money in these ideas (\$1.5 million has been budgeted), because they would attract camp and school visitors year-round, rain or shine. While you prefer the dinosaur idea, the lead time for a dinosaur exhibit may be too long, as paleontologists/consultants tend to move slowly. You also recognize that kids might be just as attracted to an exhibit that moves – like a simulation space module.

The technology learning center is another issue: it's been hard to coax University professors to give accessible and entertaining lectures on their technological innovations. It has also been difficult to find technological displays that attract large numbers of visitors. Much of technology these days is "micro" – your marketing people tell you that kids (and many grown-ups) like to look at "big" engines and other apparatus. You even had the crazy (?) idea that one or two of the lifts would make an interesting exhibit. You'd entertain getting one or two back at a highly discounted price.

It is theoretically possible that Fine Arts Fabricators might be able to work on some of these projects – working on dinosaurs, a spaceship (with lift), or supplying engineers to talk about the technology. (Unlike the professor types, they might allow their talks to be edited by your childhood education and creativity consultants.)

You would be willing to consider this as a possibility *if Finley is not obnoxious during the upcoming mediation, is willing to "step up to the plate" for some of the problems caused by the FAF lifts, and if he has a reasonable explanation as to what went wrong. You will need to like*



*and trust him to spend even a second in the mediation on these ideas.* Just to feel comfortable that you wouldn't run into future trouble, you would want to see references or other information about successful FAF projects.



## Exhibit A

Damages Claimed in complaint filed by  
Culture Bubble, Inc. vs. Fine Arts Fabricators, Inc.

<b>Deposit Payment to Fine Arts Fabricators</b>	<b>\$80,000</b>
<b>Additional Cost of Replacement Lifts</b> (Price of Replacement Lifts - \$360,000 – less the Price of FAF lifts - \$240,000)	<b>\$120,000</b>
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<b>Lost Ticket Revenues – Preview Performances</b> (3 performances, sold out, scheduled for week of June 15 @ \$20 per ticket. 1000 tickets each were returned or had to be honored. during regular performances, when regular ticket prices were higher)	<b>\$60,000</b>
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<b>Lost Opera Ticket Sales<sup>1</sup></b>	
Projected ticket sales (\$25 per ticket, 1,000 tickets, 4 performances, \$100,000 per week for 8 weeks)	\$800,000
Actual ticket sales	<u>\$440,000</u>
Shortfall	\$360,000 (50%)
	<b>\$180,000</b>
<b>Lost General Admission Revenues</b>	
Projected General Admission Revenues (based upon market survey data, 8-week summer season, week & weekend packages)	
\$1,000,000 per week, 8 weeks	\$8,000,000
Less General Admission Revenues	<u>\$5,800,000</u>
Difference	\$2,200,000
Est. 20% attributable to lifts	<b>\$440,000</b>
<b>Loss of reputation:</b>	<b><u>\$1,000,000</u></b>
<b>Total claim:</b>	<b>\$1,880,000</b>

<sup>1</sup> Alleged to be attributable to bad reviews.