EXHIBIT

7

000171

000171

TREASURE ISLAND
Las Vegas

Brad R. Anthony
General Counsel

May 14, 2015

Rose, LLC
5690 DTC Blvd., Ste. 515
Greenwood Village, CO 80111
Attn: Gary Dragul

Re: Percentage Rent

Dear Mr. Dragul:

Please be advised that you are not current on your rent. Specifically, Rose did not remit the required seven percent (7%) rent payment under the terms and conditions of the Lease Agreement dated April 13, 2011. The total amount of the missed payment is $119,229.00.

This letter constitutes the notice required by Section 15.1 of the Lease Agreement. If you do not pay in full within 10 days of the date of this letter, you will be in default. Partial payment will not be accepted.

Sincerely,

Brad R. Anthony
General Counsel

cc: Elizabeth Gold (via email)

000172

000172

000172

EXHIBIT

8

000173

000173

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff, vs. ROSE, LLC, a Nevada limited liability company, Defendant.	CASE NO: A-15-719105-B DEPT NO: XXIX
ROSE, LLC, a Nevada limited liability company, Counterclaimant, vs. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant.	

DEPOSITION OF GARY J. DRAGUL

LAS VEGAS, NEVADA

WEDNESDAY, NOVEMBER 18, 2015

REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

Job No.: 274959

000174

000174

DEPOSITION OF GARY J. DRAGUL, held at Fennemore Craig, located at 300 South Fourth Street, Suite 1400, Las Vegas, Nevada 89101, on Wednesday, November 18, 2015, at 2:41 p.m., before Brittany J. Castrejon, Certified Court Reporter, in and for the State of Nevada.

APPEARANCES:

For Plaintiff/Counterdefendant Treasure Island, LLC:

FENNEMORE CRAIG
BY: PATRICK SHEEHAN, ESQ.
300 South 4th Street
Suite 1400
Las Vegas, Nevada 89101
702-692-8011
psheehan@fclaw.com

For Defendant/Counterclaimant Rose, LLC:

PISANELLI BICE
BY: JARROD RICKARD, ESQ.
400 South 7th Street
Suite 300
Las Vegas, Nevada 89101
702-214-2100

I N D E X

WITNESS: GARY J. DRAGUL

EXAMINATION	PAGE
By Mr. Sheehan	4

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
EXHIBIT 1	Letter Dated January 31, 2012	19
EXHIBIT 2	Letter Dated August 31, 2012	41
EXHIBIT 3	Letter Dated September 19, 2012	42
EXHIBIT 4	Letter Dated November 12, 2012	50
EXHIBIT 5	Letter Dated January 2, 2015	52
EXHIBIT 6	Letter Dated January 7, 2015	53
EXHIBIT 7	Letter Dated January 15, 2015	54
EXHIBIT 8	Letter Dated May 14, 2015	55
EXHIBIT 9	Letter Dated May 28, 2015	59
EXHIBIT 10	Treasure Island Lease Notice	64
EXHIBIT 11	Fourth Amendment to Lease Agreement	71

Las Vegas, Nevada; Wednesday, November 18, 2015
2:41 p.m.
-oOo-

Whereupon --

(The court reporter requirements under Rule 30(b)(4) of the Nevada Rules of Civil Procedure were waived.)

GARY J. DRAGUL,

having been first duly sworn by the court reporter to testify to the truth, the whole truth, and nothing but the truth, was examined and testified under oath as follows:

EXAMINATION

BY MR. SHEEHAN:

Q. How do you pronounce your last name, sir?

A. Dragul.

Q. Mr. Dragul, have you ever had your deposition taken before?

A. I have.

Q. So you understand the process we're about to go through?

A. I do.

Q. You understand that if I ask you a question, you need to give me the best answer you can?

A. Yes.

Q. On the other hand, if you don't understand the question, please feel free to ask me to rephrase it.

A. Yep.

Q. If you answer the question, I'm going to assume you understood it. Fair enough?

A. Fair enough.

Q. You understand that the oath that you've just taken is as if you were in a court of law and that if you do not tell the truth here today that you can be prosecuted for perjury?

A. Yes.

Q. Is there any reason why we can't go forward with your deposition today, health reasons or anything like that?

A. No.

Q. Let's quickly talk about the events from yesterday. You informed your counsel that you could not appear today because there was a medical issue in your family; is that correct?

A. That's correct.

Q. And what is the medical issue?

A. I have a sister who's -- at the age of six months had a Dandy-Walker cyst in the back of her head in the cerebellum. When she was six months old they removed her cerebellum. She had a -- at the same time, she had

Page 6

a reworking of how the spinal cord goes up into her brain. That was at six months. Since then she's had four corrective surgeries. Six weeks ago today she had the fourth one.

For the past four years, she has had problems with a tube, several problems. But there's a tube that goes into her head and the area where the cerebellum was. Cerebellum is for mainly balance, drainage, and it stores the fluid that goes into your spinal cord. She didn't have any of that. So the things that she's got going on have to do -- they're life-altering, very, very critical issues, and over the past four years she started to lose the use of her extremities. She can't pick up a cup. She couldn't work because she can't type. She has had -- she hasn't had a day without debilitating pain to the point where it's affecting her ability to get up, move around, and walk, talk, construct sentences. And she had a surgery six weeks ago today that -- actually she had a surgery two years ago September that took some pressure off of the area. She had another surgery six weeks ago today that reconstructed the spinal area and how the cord is affected because the cord was being bunched. She has numbness in some hands. And today was a really big medical day with her. My parents are 80. My sister --

Page 7

my dad is 81. My mom is 79. They are -- my dad is newly retired six months ago. He's got some medical issues himself that don't allow him to be involved. It's on my shoulders. She doesn't live in Denver. Today was a big day with doctors.

So, you know, your guys' complete insensitivity to this issue was a real problem for me, and I couldn't be there with her today and she relies on me completely to handle these medical issues. I communicate with her doctors. I support her financially. And it's this insensitivity is why we're here today.

It started in May with Treasure Island. It's the exact same problem that happened. And, you know, I'm sitting here reading your motion, and I'm, like, shaking reading your motion because I think it's total garbage and, you know, it's without truth and it's without fact. "Dragul has avoided his deposition since September the 9th." If you knew my medical schedule with my sister -- in fact, you should add this to the record because I walked in here with it. So really I read it walking in. I hadn't seen it, and it blows me away. Life is not about, you know -- some things are bigger than money and this to me was. So I got on a plane, and I flew down here today.

Q. Okay. What were the medical appointments today?

Page 8

A. With doctors, her doctors.

Q. Which doctor?

A. I think that they -- I don't know all the doctors' names. Her main doctor is a guy named Paul Elliott who did the surgery. I don't know exactly. You know, she's got a whole host of doctors. She's got a doctor named Ian Levenson who I actually met with last night over dinner about this whole thing. He rearranged everything so I could come and be here with you today.

Q. And did you ask him to do that last week?

A. No. The issue just came up actually.

Q. What issue?

A. She's having recurring issues.

Q. What are the recurring issues?

A. She needed to see the docs today. I mean, she can't stand up in the shower. She's wobbly. She can't keep her balance.

Q. Where does she live?

A. She has pain. She lives in Devine, Colorado, but she was -- she had the surgery. She was in the hospital for seven days or something like that. Then she went to a longer term care facility and last week we brought her to my parents who live in Denver.

Q. And did she go to the doctor's appointments today?

Page 9

A. Nope. They were moved.

Q. And when were they moved?

A. When were they moved? Last night/this morning. I couldn't be there.

Q. How long did you know about those appointments?

A. Two days ago. Whenever we -- whenever I called you to move -- I don't know. A few days ago. Whenever you got the phone call from us.

Q. What's the doctor's name who moved the appointments? How do you spell it?

A. Levenson. I don't know how to spell his last name.

Q. What's his first name?

A. Ian.

Q. And is he a physician in Colorado? In Denver?

A. Denver.

Q. Which hospital?

A. I think -- I think he's at Sky Ridge. I think he's at Rose Medical. He's a doctor at a bunch of hospitals.

Q. And the first time that you knew that she had an appointment today was on Monday?

A. Yeah, it was. Well, whenever we called you is when I -- I called my attorneys and asked them if they could move it.

Q. How about October 29th? Where were you on October 29th?

A. I mean, I think I was in Denver attending -- these are all the same issues. It's all about my family medical issues.

Q. So you didn't appear to the deposition on October 29th because of a medical issue?

MR. RICKARD: I don't think the deposition was noticed for -- still -- I think we agreed to move the deposition from October 29th.

MR. SHEEHAN: Yes.

MR. RICKARD: It's not that he didn't appear.

BY MR. SHEEHAN:

Q. You were supposed to appear on October 29th, and you said you couldn't appear that day.

Why was that?

A. Same issues. Family issues.

Q. The same issues involving your sister?

A. Correct.

Q. And so it's your sworn testimony that you had to be at this doctor's appointment today?

A. I have to be at all her appointments.

Q. And it's your sworn testimony that you've been at all of her doctor's appointments?

A. I've tried unless I'm out of town.

Q. Well, have you been to all of her appointments or not?

A. Been to a majority. I mean, she might have had one or two without me. I don't know.

Q. And it's your sworn testimony that the appointments -- that your sister had appointments scheduled today that you needed to attend to?

A. That's correct. With Dr. Levenson.

Q. And that Dr. Levenson first advised you of those appointments on Monday of this week?

A. No, he didn't. My sister did.

Q. Do you keep track of your sister's medical appointments?

A. I have a staff; they keep track of my schedule.

Q. And is your sister lucid?

A. Pretty lucid.

Q. So she can talk freely and --

A. Yes.

Q. She's mentally fine?

A. She's mentally fine.

Q. The answer is yes?

A. Yes.

Q. Sorry. The court reporter has to take it down.

A. Got it.

Q. And why didn't you just provide the medical records or an affidavit from the doctor stating there was an appointment today that you needed to be at?

A. It's private.

Q. But you could have.

A. I don't know that she was comfortable with that. You know, I think there's HIPAA laws and -- I'm not an attorney. I don't know.

Q. What's your sister's name?

A. I mean, the truth is I really thought that it would be something that everybody would go, yeah, cool, no problem.

Q. It would have been if it was the first time.

A. Well, I'm sorry to interrupt your schedule.

Q. What about September 9th?

A. I think I've answered that.

Q. No. Well, okay. So are you saying that you couldn't come to the deposition on the first scheduled date of September 9th because of your sister also?

A. That was the original date of her surgery and that surgery got moved.

Q. What is her name?

A. Tammy Davis.

Q. Tammy Davis?

A. Yes.

Q. And where was the surgery at? Which hospital?

A. Swedish Medical Center in Denver.

Q. And where was the medical appointment scheduled for today?

A. I'm not sure where it was.

Q. Was it at Dr. Levenson's office?

A. I just said I don't know where it was.

Q. What time was it scheduled for?

A. I don't know that either. I think it was a series of appointments.

Q. And why is it that you couldn't attend a deposition between September 9th and October 29th?

A. I don't know.

MR. RICKARD: I don't think there's been any assertion that he couldn't attend a deposition since September 9th and October 29th. Sorry. I'm talking too much. Objection to the form.

MR. SHEEHAN: That's okay.

BY MR. SHEEHAN:

Q. Your counsel informed us that there was -- that you were unavailable for a deposition between the 9th and the 29th, September 9th and October 29th or at least some combination of you and him, I suppose.

MR. RICKARD: Object to the characterization.

000177

000177

BY MR. SHEEHAN:

Q. Were you available for a deposition between September 9th and October 29th?

A. I don't know. I don't know.

Q. So there was nothing preventing you from flying here during that time frame?

A. I don't know. I don't remember. That's a long period of time. I don't know.

Q. And on October --

A. I had fairly big family turmoil, you know. Frankly, you, Mr. Ruffin, Najam Khan, Brad Anthony, and the Treasure Island weren't at the top of my mind. This is a critical situation. I mean, the fact that she's alive is a real -- really -- really -- it's a really big thing. I mean, she's like -- it's a miracle.

Q. Did you go to the office on October 29th?

A. I have no idea.

Q. Do you have a calendar that would tell us whether you were at the office that day?

A. Not with me.

Q. But you do have a calendar?

A. I do have a calendar.

Q. Did you go to the office yesterday?

A. I did not go to the office yesterday.

Q. What did you do yesterday?

A. I was traveling.

Q. Where were you traveling?

A. I actually was traveling back from Vegas yesterday to attend medical appointments.

Q. You were in Las Vegas yesterday?

A. I was in Las Vegas yesterday morning early on the way back to Denver. You asked me where I was. That's where I was.

Q. And when did you leave Las Vegas to go back to Denver?

A. Let's see. We flew -- I flew privately. I think shortly around noon.

Q. When were you here in Las Vegas? From when to when yesterday?

A. I was here the night before for a dinner.

Q. And who did you have dinner with?

A. I had dinner with some of my staff.

Q. Who?

A. I had dinner with a gentleman named Aaron Mets. I had dinner with a person named Berkeley Bedell and I had dinner with Joy Allison and I had dinner with Terry Gimbow (phonetic name spellings).

Q. All of you had dinner together?

A. We did.

Q. Where'd you have dinner at?

A. We had dinner at Nobu.

Q. And then you took a private jet back midday yesterday?

A. Correct.

Q. How often do you have access to that private yet?

A. I own it. Any time I want to fly. Except today. I flew in United today.

Q. Okay. And you don't know where Ms. Davis' appointments were scheduled for today?

A. My answer that I answered the last three times is the same.

Q. Which is?

A. No.

Q. The last time Ms. Davis had an appointment that you attended was when?

A. I attended an appointment nine days ago at the Sky Ridge Center.

Q. Sky Ridge Center?

A. It's called the Sky Ridge Center.

Q. How do you spell that?

A. Sky Ridge, S-K-Y R-I-D-G-E.

Q. And that was where at?

A. In Denver.

Q. Is that at a hospital or a standalone facility?

A. It's a standalone facility.

Q. And what was that appointment for?

A. It was for her rehabilitation analysis.

Q. And what was today's appointments for?

A. I really am not totally sure.

Q. When were you in Las Vegas before that?

A. I don't remember. I don't remember.

Q. And what was the cause of you coming out to Las Vegas yesterday, being here yesterday or the day before?

A. I had a dinner.

Q. Just for dinner?

A. I had a dinner that I needed to attend with some of my staff. We have a business here.

Q. Oh, what's the business?

A. Señor Frogs.

Q. So how often do you come out to visit for Señor Frogs?

A. It's an occasional thing. It's not a set schedule.

Q. Would you say five times a year?

A. That's probably fair.

Q. Are you going to the office tomorrow?

A. I am going to the office tomorrow.

Q. Were you in the office every day last week?

A. No, I wasn't. Last week I was in Ohio in Cincinnati, let's see, Atlanta. I travel for a living.

000178

000178

I was in three or four cities last week. I was in the office a couple days last week.

Q. How about the week before that? Were you in the office a couple days a week before that?

A. The week before that I was -- let's see. I think I was in the office maybe two days.

Q. And where were you the other days?

A. That week I think I was in Cleveland, Cincinnati again, Chicago. I think that's it.

Q. All on business?

A. All on business.

Q. So is it fair to say that since September 9th that you have spent on average two days -- approximately two days a week in the office and approximately three days traveling on business?

A. Since October 29th?

Q. Since September 9th.

A. No, I don't think that's fair.

Q. Tell me what's fair then.

A. Since September 9th I've been in Denver, I don't know, 80 percent because of this issue with my sister.

Q. And how many of those days have you gone to the office?

A. Some portion probably of almost every day, including weekends.

Q. So the last appointment you went to for your sister was nine days ago; correct?

A. Yeah, I think so.

Q. And before that when was the last appointment that you went to with her?

A. I saw her almost every day with appointments. I mean, since she had her surgery, I've either seen her every day or been at appointments every day, had doctors come and see her there. We've taken her to the doctors. It's almost an everyday -- it's been almost an everyday thing.

MR. SHEEHAN: Let's take a short break. You got a second?

MR. RICKARD: Sure.

(A break was taken from 3:00 p.m. through 3:08 p.m.)

MR. SHEEHAN: All right, sir. I'm showing you what we'll mark as Exhibit 1.

(Exhibit 1 was marked for identification.)

BY MR. SHEEHAN:

Q. It's a letter dated January 31, 2012, from Mr. Griffis.

Have you seen this letter before?

A. I don't -- I don't know.

Q. Do you have any reason to believe that you didn't see this letter?

A. You know, I have a staff, and I rely on my staff. I don't know if I did or not.

Q. If a letter came in that said that the -- there was a default with respect to the lease at Treasure Island, would your staff make sure you got it?

MR. RICKARD: Object to the form.

THE WITNESS: I have very capable people. I mean, I don't know whether I'd get the letter or not. Somebody would talk to me about it, I'm sure. You've asked me if I've seen this letter. I don't know if I've seen it or not.

BY MR. SHEEHAN:

Q. I'm asking is it more likely or not that you have?

MR. RICKARD: Object to the form.

THE WITNESS: I'm telling you I don't know.

BY MR. SHEEHAN:

Q. But if a letter is sent to Gary Dragul regarding Rose LLC's lease at Treasure Island, chances are your staff would show it to you; correct?

A. I said I don't know.

Q. So what's the practice and procedure at your office?

A. Well, I have very capable people. I have people

that deal with all parts of my company. So I don't know.

Q. I'm just going to warn you that this transcript is going to be shown to the judge, and I want to give you a fair opportunity to answer these questions.

A. This is almost three years ago. This is a document -- I'm involved in many, many, many business type of transactions, daily, weekly, monthly, annually. Lots. I can't -- you asked me if I've seen this before, and I said I don't know. And that's the truth.

Q. Okay.

A. You can ask it to me a thousand ways. That's my answer.

Q. Would it be the practice and procedure at your office that if a letter came into Gary Dragul about the Rose, LLC, lease at the Treasure Island, would someone typically show it to you for you to review?

MR. RICKARD: Object to the form.

THE WITNESS: You know, I don't -- I don't know if they would show it to me. It might be sent off to outside counsel. It might be reviewed by some other people that work for me. I mean, I -- I'm just telling you I don't know.

BY MR. SHEEHAN:

Q. So there's no practice and procedure or orders

Page 22

there that says if a letter comes into Gary Dragul about the Rose, LLC, with Treasure Island to make sure that you see it?

A. There's no practice and procedures that if a letter comes in addressed to Rose, LLC, that it come directly to me.

Q. What if it's Rose, LLC, attention Gary Dragul?

A. Same. There's no practice or procedure for that specific letter transmission.

Q. So you may or may not get it?

A. Correct.

Q. Do you recall getting a series of letters about various defaults involving the Rose, LLC, lease over the years?

MR. RICKARD: Object to the form.

THE WITNESS: Can you ask me that again?

MR. SHEEHAN: Sure. Can you read back the question, please?

(The last question was read back by the reporter.)

THE WITNESS: What defaults?

BY MR. SHEEHAN:

Q. Any defaults?

A. Over what time period?

Q. The entire time frame of the lease.

Page 23

A. I remember one having to do with -- I don't know if it was about the lease. I remember one having to do with -- might have been payment of -- for food or something that they bought through them. I don't know.

Q. Any others?

A. Not that I remember.

Q. Let's assume for the sake of argument that you saw this particular document.

A. Okay.

Q. Take a look at it and tell me what your reaction would have been.

A. What would my reaction have been? If I had seen this, I would have been concerned. I would have been interested to know what happened or what the situation was.

Q. Okay. Would you have sent a copy of this to your subtenant Señor Frogs?

A. No, because they weren't my subtenant at the time. I mean, I wouldn't have sent it to them. They weren't my subtenant.

Q. If they were your subtenant at the time, would you have sent it to them?

A. I would not.

Q. Why not?

A. Because why would I not have sent it to them?

Page 24

Well, there's a couple reasons. One is, first off, the agreement that I have with Treasure Island, Treasure Island is to give Señor Frogs notice not me, number one. Number two, the letter you're referring to Señor Frogs was not my subtenant. They -- the situation had changed, and Treasure Island knows about that. So if I had got one of these, I would have assumed Treasure Island would have given notice to Señor Frogs directly.

Q. So assuming for the sake of argument that you got a default notice when Señor Frogs was your subtenant, would you have passed that notice on to Señor Frogs?

MR. RICKARD: Object to the form. Calls for speculation.

THE WITNESS: I don't know.

BY MR. SHEEHAN:

Q. I thought you just testified that you would not have sent --

A. I don't know what I would have done. You're asking me to presume what I would have done. I can tell you what I did in this case.

Q. Okay. What did you do in this case?

A. I was embroiled with family medical issues, as I've explained to you, that. I also have a brother who was very, very sick at the time. Back in May he was sicker than my sister. And you know what ? I was

Page 25

totally 100 percent embroiled with dealing with that.

And so in this case we missed making the payment and notice was given to us, but I wasn't even at work all that time. I really don't even know, and, you know, that's what happened. I mean, we didn't -- I didn't even think twice about it.

Q. You do recall the notice coming in saying you were in default?

A. I was told that we got a notice. I do not recall seeing a notice that came in, just to be grammatically correct.

Q. Who told you that the notice came in that you were default?

A. I can't remember. Somebody at my office.

Q. Approximately when the notice came in, somebody in your office told you we got a notice today saying that Rose is in default. Fair enough?

A. Actually, here's the situation was that I don't think anybody was in my office when the -- this all took place. So I don't -- I mean, if and when the notice came, I remember it being right around the time when we were all not there.

Q. And why weren't you there?

A. Because I was ICSC in Las Vegas with my staff.

Q. So you said that somebody told you at some point

000180

000180

that there was a notice sent saying you were in default; correct?
A. Sometime; correct.
Q. When that happened, did you tell that person to send a copy of that notice to Señor Frogs?
A. Did not.
Q. Why not?
A. Because I assumed they were noticed.
Q. Did you feel it was important for them to know about it?
A. I assumed Treasure Island had because it was a material part of the lease renegotiation.
Q. Did you have any obligation to send it to Señor Frogs yourself?
A. No.
MR. RICKARD: Object to the form.
BY MR. SHEEHAN:
Q. So Rose, LLC, did not have any obligation to send that default notice to Señor Frogs?
A. Correct. Well, I mean, I'm not an attorney. You know, I don't know what's in the lease or not in the lease. I can just tell you what we did.
Q. If it was in the lease, would you have sent it to them?
MR. RICKARD: Object to the form.

THE WITNESS: I don't know.
BY MR. SHEEHAN:
Q. So if it was in the lease, you don't know whether you would have sent it to them or not?
A. Well, I don't know. We didn't give them notice. I mean...
Q. Okay.
A. I didn't communicate any of this with Señor Frogs.
Q. Okay. Have you spoken with anyone from Señor Frogs since this all came down?
A. You mean since --
Q. Since May?
MR. RICKARD: Object to form.
THE WITNESS: Yeah, absolutely.
BY MR. SHEEHAN:
Q. About this issue?
A. Over the summer we talked about it.
Q. Who did you talk to?
A. David Krouhan.
Q. How do you spell that?
A. K-R-O-U-H-A-N.
Q. And describe to me that conversation.
A. Well, David -- well, actually this is what happened. I think you sent us notice that the rent had

not been paid, and then we -- we tried to -- we tried to tender rent by check and by wire, was refused. And after all of that time, then there was another default percentage rent that was sent to us. The first notice was sent -- the first notice was not legally tendered. We did not get legal notice. And Frogs didn't get legal notice. The second one, I think, Treasure Island noticed both people.
Q. And when that happened, what happened?
MR. RICKARD: Object to the form.
THE WITNESS: Well, I think the record is clear. We tendered the rent. We tendered the percentage rent. It was all refused and sent back.
BY MR. SHEEHAN:
Q. So again, what was your conversation -- when did you have the conversation with David Krouhan -- is that the name?
A. Krouhan.
Q. When did you have the conversation with him?
A. I don't know the exact date.
Q. Approximately? Let's assume you tendered the rent at the end of May, beginning of June.
A. Well, I don't think I talked to him then actually. I don't know exactly when I talked to him. I think it was -- it was -- I think it was, like, June, I

think, maybe. I don't know the exact time.
Q. Did you tell him that -- okay. So you said there was a first notice that went out; that went out just to you and did not include Señor Frogs?
A. Not -- I'm here as a person.
Q. Just to Rose?
A. To Rose, yeah.
Q. When that first notice came out just to Rose and let's --
A. I did not speak to David. I didn't -- we didn't have a conversation about it.
Q. Rose did not pass that on to Señor Frogs? Let's assume that letter was May 14th.
A. I don't know. May 14th we were not in the office. ICSC went the entire next week, the majority of the week. So I don't think any of us were around until -- I think then that was the long holiday, and I think it was after that we were back in the office.
Q. So you were out of the office from when?
A. The 14th was I think a Thursday and, you know, through the following -- majority of the following week.
Q. So when did you get back to the office?
A. I don't know exactly, but I think, you know -- I might personally have been in at the end of that week, but the majority of the staff is not because of the

000181
000181

Page 30

ICSC.
Q. So when did the majority of the staff come back?
A. The week after.
Q. What day?
A. Let's see. That would have been, like, the 25th or 6th, something like that. Maybe 7th. Oh, that Monday we were off. Everything's closed on that Monday, and that day would have been the 25th, yeah, the 26th, I think, everybody was back.
Q. Who's everybody?
A. My staff.
Q. Who opens your mail?
A. Sometimes it's opened by my assistant Sarah Hall. Sometimes it's opened by my receptionist. It depends who's available.
Q. What's your receptionist's name?
A. Francy Needle.
Q. So either Francy Needle -- or do you recall who told you that the notice came in?
A. I don't.
Q. But it would have been one of those two?
A. Don't think so.
Q. Who do you think it was?
A. It was either -- I mean, it might have been Elizabeth Gold. It might have been Sarah Hall. It

Page 31

might have been Kristen Wheater, another person that works for me. I don't know.
Q. How long was it before you found out that this default notice had been sent saying you were in default on rent and you tendered the rent?
MR. RICKARD: Object to the form.
THE WITNESS: I don't know the dates actually.
BY MR. SHEEHAN:
Q. Was it a week? Two weeks?
A. I'm telling you I really don't know. I can tell you that, you know, we -- I was in the middle of this very serious medical thing with my family that I'm still in the middle of and you know, it overtook me. You know, there's no question about it.
Q. When was that surgery?
A. This was actually in May. This is my brother. My brother was having -- he still is -- my brother has been out of work since January, and it can be documented.
Q. And when did he have surgery?
A. He didn't have surgery. He had -- he's had a few procedures that are -- that were invasive but not -- I don't think it's full-blown surgery.
Q. When was that?

Page 32

A. I think he had one in July, the previous July, and I think he had one in December, not quite a year ago. But he's been -- he's got some pretty serious documented medical problems.
Q. Do you remember the events from May of this year surrounding this incident?
A. I do.
Q. Tell me what you remember.
A. I remember that we missed paying rent. I remember that, you know, somebody gave, you know, we received a notice. How we received it? I don't know. I don't know how long it took them to send it to us. Legal notice I don't think we ever got. I don't think we -- and I could tell you that we attempted to pay it. I think that this case is, you know, Treasure Island, you know, back then, you know, Treasure Island was extremely sensitive to the situation with me. We -- we, you know, have been great tenants there. Frogs has been great tenants there. You're asking me what I remember. What I remember is --
Q. I'm asking for specifics.
A. Very clearly specifically, you know, Treasure Island -- it's very clear they wanted the space back. Treasure Island was doing everything they could to get the space -- Mr. Ruffin who was very clearly involved in

Page 33

every one of these decisions because every time that I had a conversation with Brad Anthony, he would tell me that he went to go talk to Phil Ruffin. Phil Ruffin this was his direction. This is what he wanted to do. He wanted the space back. And very clearly Treasure Island did not give notice to Señor Frogs. We did not give notice to Señor Frogs. We never would have. This is a material fact that they negotiated in their document, their lease, and that we got signed off on by Treasure Island because they didn't want this exact situation to happen. They would have paid the rent. If they had known, if they had known, they would have paid it instantly. That's what I remember.
Q. How do you know that they would have paid the rent instantly?
A. Because they negotiated very, very hard for this language in the document.
Q. Has anyone from Señor Frogs ever told you they would have paid the rent if they'd gotten the notice?
A. I don't remember if they have or not, but I know them. I know that they would have. Everybody had -- they had a huge investment here. So did we.
Q. But they got to stay in the lease even if you were out; correct?
A. I don't know that.

000182
000182

Q. Doesn't it say that right there in the lease?
A. That I don't know. I'm not an attorney. I don't know.
Q. Let's go back to your conversation with David Krouhan?
A. Krouhan.
Q. You said that took place in June or July?
A. I think so.
Q. You can't remember?
A. Can't remember.
Q. And what was the content of that conversation?
A. Well, I think that he initiated the conversation because he -- they had received the second notice. They never got the first notice. They received the second notice, and I think he called to find out what was going on.
Q. What did you tell him?
A. That we had tendered rent and percentage rent and that it was being refused. I mean, I don't know. I don't know what all the dates and times were then, but I think that's what the conversation was.
Q. And what did he say?
A. He said great. He said as long as it's being handled.
Q. Is that the only conversation you've ever had

with Señor Frogs, anyone from Señor Frogs, about this issue?
A. He's the only person I've talked to about it so...
Q. So the answer would be yes to my question then?
A. You said is that the only time I've talked to --
Q. Is that the only conversation you've ever had with someone from Señor Frogs about this issue?
A. I don't know. I might have -- I don't know. I mean, I know that I did have that conversation with him so...
Q. Can you remember any other conversation with someone from Señor Frogs?
A. I think I might have had another conversation with David when he called me -- oh, you know, he sent me an email just recently that you had given him notice of nonpayment or something, just a week or ten days ago.
Q. Did you talk to him then at all?
A. I have not talked to him.
Q. Did he offer to pay the rent at that time?
A. We already paid it.
Q. Has Señor Frogs ever been late on the rent with you?
A. Yeah, I believe so.
Q. Have you ever sent them a notice?

A. That I don't know. I mean, I have a legal department that would have handled it. We have a few thousand tenants so...
Q. A few thousand tenants?
A. We do.
Q. What is your business?
A. I'm in the shopping center business.
Q. How many --
A. I do acquisitions and leasing for a sister company in California. That company has, I don't know, 60 or so shopping centers.
Q. How many shopping centers do you own?
A. I don't know. Six or seven.
Q. And do you personally own those?
A. They're owned by an LLC.
Q. But do you have the majority interest?
A. No.
Q. Do you have a minority interest?
A. I don't know if it's me, but, you know, my family or Closio (phonetic spelling).
Q. And Rose, LLC, what does it own?
A. Rose, LLC, what does it own? Its asset is the lease.
Q. Is that the only asset?
A. Yes.

Q. Is it registered to do business in Nevada?
A. Not a legal person. I assume so.
Q. All right. Let's go back to the letter in front of you.
When did Señor Frogs take over as a sublessee?
A. May of '14, I believe.
Q. Before that there was no -- Señor Frogs was not a sublease -- not subleasing space there?
A. No, no, no, that's not true. Señor Frogs was a subtenant, but Señor Frogs paid the rent directly. Rose didn't pay the rent because we were a partner in the restaurant. Rose was a partner in the restaurant.
Q. Okay.
A. That's the arrangement that changed.
Q. So tell me about -- give me the history then of Rose and Señor Frogs?
A. Rose and Señor Frogs were partners. They opened the restaurant together. Sometime after they opened, it became necessary to separate the business from the lease.
Q. But when the lease was entered into, there's a clause in the lease that says -- and this was in 2011, I believe; correct?
A. I'm sorry. What are you asking me?
Q. The lease was entered into in 2011; is that

000183

000183

right?
A. I don't know the exact date.
Q. April of 2011.
So April of 2011 the lease is entered into, and there's a clause in the lease that says that it can be assigned or sublet to Señor Frogs, LLC, Nevada, LLC; correct?
A. I haven't read it. I don't know.
Q. Do you recall the events surrounding the lease that was entered into in April of 2011?
A. Which events?
Q. The signing of the lease.
A. The day I signed the document?
Q. You didn't sign it. Ms. Gold did to be fair. But the day that it was entered into?
A. Do I remember the events of the day -- I don't know.
Q. And you don't recall whether or not you were -- where you were on May 21st of 2015, do you?
MR. RICKARD: Object to the form.
THE WITNESS: Let's see. The 21st was a Thursday, and I believe I was either in Las Vegas or Denver.
BY MR. SHEEHAN:
Q. And at that point did you know --

A. Do you know where you were on May 21st?
Q. You don't get to ask the questions unfortunately.
A. Really?
Q. Do you recall whether as of May 21st, you knew about the notice being sent about the default in the rent?
A. I don't recall.
Q. I'll show you the lease. We're going to go over this later on, but the lease as of April says that Señor Frogs -- that -- tenant may without landlord's prior consent sign the -- sublease this lease to Señor Frogs Las Vegas, LLC. I'll just represent to you that's in here.
Do you recall if there was a sublease right from the beginning?
A. I believe there was from the beginning.
Q. There was a sublease right from the beginning?
A. I believe so.
Q. So Señor Frogs --
A. That's what I said in your last question.
Q. Okay. So Señor Frogs -- as of the date of this letter, Señor Frogs was a subtenant?
A. As of the date of this letter, Señor Frogs was a subtenant. That is correct. The difference though is that I told you Señor Frogs paid the rent directly.

Q. Right.
And when -- if you had received this letter, would you have told Mr. Giffis, the author of this letter, you need to CC Señor Frogs on this letter pursuant to our agreement that you would provide notice to Señor Frogs?
MR. RICKARD: Object to the form. Calls for speculation.
THE WITNESS: I wouldn't have done that. I think it's Mr. Giffis -- actually, I think it's Phil Ruffin's job to make sure he's a good business guy and follow the letter of the lease.
MR. SHEEHAN: Okay.
THE WITNESS: To give us legal notice and to give notice to the appropriate party, that's their job not my job.
BY MR. SHEEHAN:
Q. Did you ever inform Treasure Island that when they sent out these notices they needed to include Señor Frogs?
A. No. I just said to you I --
Q. Okay.
A. I mean, I don't remember ever doing that. I don't regard that as my job to inform them to do anything.

Q. Showing you what we'll mark next.
A. Are we done with this one?
Q. Yeah.
A. Okay.
Q. We'll mark this as Exhibit 2. It's a letter dated August 31, 2012, and it's from Brad Anthony to Rose, LLC, attention Susan Markusch.
(Exhibit 2 was marked for identification.)
BY MR. SHEEHAN:
Q. And it talks about a -- that -- there's a default in the payment of some construction costs; correct?
A. Yes. I'm sorry. What'd you say? Default?
Q. Well, they're alleging that it's not paid. There's going to be a material default of this agreement.
A. Where does it say that?
Q. Last sentence of the third paragraph.
A. It does say that in this letter.
Q. Do you recall seeing this letter?
A. Again, I don't -- I don't, but I know the issue.
Q. Do you recall having a conversation with Mr. Anthony about this issue shortly after the letter was sent?
A. I don't.
Q. Do you recall having a conversation with him

000184
000184

during 2012 period?
A. I'm sure I talked to him. You know, I really didn't -- that's really not true. I don't know if I talked to him at that time or not. I might have. I don't know. I don't know if I did. Other people in my organization might have. I don't know. Most of my conversations were with Najam Khan.
Q. I'm going to show you -- and you notice that this was sent to Rose, LLC, attention Susan Markusch, and there was a CC to the Señor Frogs' folks at the bottom?
A. I see that.
Q. Showing you what we'll mark as Exhibit 3.
(Exhibit 3 was marked for identification.)
BY MR. SHEEHAN:
Q. Have you ever seen this letter before?
A. No. I mean, once again, I don't know.
Q. You'll notice that now the letter as opposed to being addressed to Rose, LLC, attention Susan Markusch with a CC to the Señor Frogs' address is now just addressed to Rose, LLC, attention you?
A. I see that.
Q. Do you recall a conversation with Brad Anthony in between August 31, 2012 and September 19, 2012?
MR. RICKARD: Object to the form.
THE WITNESS: I don't.

BY MR. SHEEHAN:
Q. Do you recall a conversation -- so you may have or you may not have?
A. Well, this says that -- let's see. You requested that Treasure Island postpone -- I mean, might have, but I don't remember. I don't remember.
Q. So you have no independent memory as we sit here today of any -- of the content of any conversation with Mr. Anthony during -- in between those two times?
A. Me personally?
Q. Yes.
A. No, I don't.
Q. But if he says he had a conversation with you, you'd have no reason to disagree with that?
A. I don't know. I don't -- I don't remember.
Q. Do you remember a conversation with him about the notice and who to give notice to and who not to give notice to?
A. Well, this actually doesn't say anything about a conversation with Brad Anthony. It says several days ago you -- I guess me -- requested that Treasure Island postpone your repayment obligation of the two and a half million dollar interest loan granted to you in accordance with section 3.4 of the lease between Rose and Treasure Island. I don't know. I have no idea

who -- if I had a conversation with him or who the conversation was with or somebody in my team did. I don't know.
Q. But this letter certainly seems to indicate that you had a conversation with somebody from Treasure Island?
A. Seems that way.
Q. And the person you were speaking to at that time was Brad Anthony; correct?
A. Once again, I don't remember if it was me, and I don't remember if it was Brad Anthony. I don't know if I had a conversation. I just said that there's a chance that there was communication from somebody on my team. I have a team of people that do a lot of stuff for me that are really good.
Q. Assuming that you did have a conversation with somebody from Treasure Island, would the chances be during this time frame that it was probably Brad Anthony?
A. Probably not.
Q. Who would it have been with?
A. Najam Khan. Could have been Michelle Knowell. Could have been Jerry Griffis. I mean, there's four or five other people up there. Could have been a lot of people.

Q. But it could have been Brad Anthony?
A. Could have been, but probably not to be honest.
Q. Why do you say probably not?
A. Because I didn't really deal with him at that time or people in my staff didn't deal with him much at that time. So I don't know. I don't have a -- I really have no idea. I couldn't even tell you.
Q. Do you ever recall having a conversation with Brad Anthony about who to notice and who not to notice?
A. Nope.
Q. Might have happened; might not have happened?
A. I don't think it ever happened.
Q. But you don't have a memory of any of your conversations with Brad Anthony --
A. Never happened. I could tell you no -- in regard to notice?
Q. Yes.
A. Notice is very clearly spelled out in the lease. It's a defined term, and it was -- it's very clear within the lease who Treasure Island needs to notice in that notice. It's not my job.
Q. You did get this letter; correct?
A. I just said I don't remember seeing this letter.
Q. You don't remember seeing that letter?
A. I don't remember seeing it.

Q. And you don't think that anyone would have brought this to your attention?
A. I didn't say that. You said that.
Q. Well, I'm asking you. What did --
A. No, no, no, that's not what you said. That's not what you said.
Q. Let me ask the question again.
A. Okay.
Q. Wouldn't it stand to reason that since this letter is directed to you and involves a response to a request that you made that you would have seen this letter back in --
A. Does it stand to reason?
Q. Back in September of 2012?
A. Based on your reason or mine?
Q. Generally speaking.
A. You don't know how I run my office so --
Q. Just answer the question.
A. Based on -- well, you're asking me based on reason would I have seen this? There's a chance that I would have seen it, but there's also a real chance I wouldn't have seen it.
Q. If you had seen it, would you have told Mr. Anthony that he needs to notice Señor Frogs pursuant to the terms of the party's agreement?

A. Like I said before, what his obligation is with regard to notice is his obligation. I don't claim to be his attorney or business partner. I would never have suggested or implied that he had to notice. That's what -- his obligations under the documents are his obligations.
Q. So the answer to the question is, no, you would have not have told -- if you had seen this document, you would have not have told him, hey, you need to notice Señor Frogs as per the terms of our agreement?
MR. RICKARD: Object to the form.
THE WITNESS: I don't think I would even have thought about notice.
BY MR. SHEEHAN:
Q. But it's clear that you never did tell anyone from Treasure Island to notice Señor Frogs on any of these letters --
A. How is that clear?
Q. I'm asking -- because you just told me.
A. No, you just said that it's clear.
Q. It's clear that you did not. You just told me --
A. I think you're coming to a conclusion. I'm telling you it's not my obligation to have them fulfill their business legal requirements under the document. Whatever they did or didn't do is up to them.

Q. Did you ever inform Treasure Island they needed to include Señor Frogs on any notices?
A. I have no idea.
Q. You may have; you may not have?
A. Well, I'm telling you I would -- I would -- if I would have said anything, I would have said you guys have to fulfill your obligation under the legal documents.
Q. Did you make such a statement?
A. I couldn't tell you.
Q. As we sit here today --
A. I couldn't tell you.
Q. As we sit here today, do you remember making such a statement to anyone at Treasure Island?
A. Maybe. Maybe not. I don't know, I'm telling you.
Q. Well, I'm asking you right now.
A. I know. You've asked me five times. My answer isn't going to change.
Q. As we sit here today, can you recall telling somebody specifically you need to include Señor Frogs on the notices? Yes or no?
A. Can you read that back to me?
(The last question was read back by the reporter.)

THE WITNESS: I think I was very careful once my agreement with them took place that they were clear about notice provisions in the document; that Treasure Island was because Señor Frogs had negotiated so hard for that notice provision, which Treasure Island did not fulfill.
BY MR. SHEEHAN:
Q. That's not the answer to the question.
A. Well, that's the answer I'm giving you.
Q. So if I read that question back in front of the judge and tell her -- just tell her that that's the answer that you're going to give and that you're not going to answer the question that was asked?
MR. RICKARD: Object to the form.
THE WITNESS: Well, I don't totally -- you're asking me if I've ever told Treasure Island to notice Señor Frogs; is that correct?
BY MR. SHEEHAN:
Q. I'm asking you if you recall -- as of today, do you recall doing that? As we sit here today?
A. I think I recall that I did tell Treasure Island that they had to notice Frogs after they put Frogs in default for not paying for their groceries.
Q. Okay. Other than that?
A. Might have happened.

Q. All right.
A. And I don't know if it was just me. It was one of my staff. When I said I, it would be my staff.
Q. So if I showed you other notices, your answer would be the same?
A. I believe so. Yes.
Q. But you don't -- specifically -- well, let me just show you another notice, the next document down, Exhibit 4.
(Exhibit 4 was marked for identification.)
BY MR. SHEEHAN:
Q. It's a letter from Mr. Griffis to you. Do you recall seeing this letter?
A. No.
Q. Would you have sent this letter to Señor Frogs?
A. No.
Q. Did you inform Treasure Island that any notices they needed to put Señor Frogs on after receiving that letter?
MR. RICKARD: Object to the form.
THE WITNESS: I have no idea.
BY MR. SHEEHAN:
Q. Did you ever instruct Brad Anthony not to talk to people at Señor Frogs?
A. I don't believe so.

Q. You may have?
A. No, I don't think I ever did that.
Q. Other than the two conversations that we talked about earlier with Mr. -- the folks from Señor Frogs, Mr. Krouhan, is there anyone else that you spoken to at Señor Frogs since May 15th of this year about this rent issue?
A. Let's see here. I don't know. I think a month ago or -- I mean, whenever I was on the phone. A month or -- whenever David Krouhan called me about some of these legal proceedings, he had attorneys on the phone. I met them over the phone. That's it.
Q. So the only conversations you had with Señor Frogs are the two that you've already told me about?
A. Yeah, but I wanted to let you know that they were there the last time.
Q. Right. So have you had any conversations with anybody else at Señor Frogs other than those two conversations?
A. I don't think so.
Q. Has anyone at Señor Frogs told you that Treasure Island has contacted them, the Señor Frogs folks, about this lease?
A. Nope.
Q. Do you know whether anyone from Treasure Island has contacted anyone from Señor Frogs?
A. Well, I saw a letter when this all happened that I think --
Q. Other than that --
A. -- Treasure Island sent out a letter trying to get them to, you know, abandon -- come lease directly from them.
Q. Other than that letter?
A. Not that I know of.
Q. I'm showing you next in order Exhibit 5.
(Exhibit 5 was marked for identification.)
BY MR. SHEEHAN:
Q. Have you ever seen this letter before?
A. This one I do think I remember seeing. I think all these letters have a legal notice issue. Anyway, I do think I remember seeing it.
Q. Is this the letter you were talking about earlier where you wrote --
A. I think that Mr. Ruffin -- I think Phil Ruffin really was upset with the Señor Frogs guys. I think Mr. Ruffin, you know, made a decision that he was going to do whatever he could to get this lease to go away and that's what happened here. I think Mr. Ruffin who was very involved in this start to finish -- I think it all started right here.

Q. Is this the letter that you were talking about earlier when you said they were looking money that Señor Frogs owed and you told them to go talk to Señor Frogs about the money, not us?
A. Yeah, I think so.
Q. And in fact, actually it was Elizabeth Gold that sent back the response. You never really spoke to anyone besides Jerry Griffis. You really just had your counsel send a letter back; is that correct? And I'll show you the letter, Exhibit 6.
(Exhibit 6 was marked for identification.)
BY MR. SHEEHAN:
Q. Does this refresh your memory?
A. Looks correct.
Q. So I am correct with my question?
A. I'm sorry. What was your question?
Q. The fact that you never really had a conversation with anybody from Treasure Island about contacting Señor Frogs directly; that this -- you had your -- Ms. Gold sent this letter?
A. Yeah, I don't know if anybody else had a conversation, anybody on my staff. Somebody might have talked to them. I don't know. I don't know.
Q. But you don't remember having a conversation with anyone from Treasure Island?

000187

000187

A. I don't with regard to this. You know, Mr. Ruffin -- it was relayed to me through Brad Anthony at one point in some conversation after all this that Mr. Ruffin was really upset about this. I was even told by I think it was Najam Khan that Mr. Ruffin, you know, had his eye on this and was really pissed off about this. Mr. Ruffin was very involved in all this, start to finish, every little twist and turn that went on. He was very well informed. He knew exactly what was happening, you know, with this situation and others. You know, Mr. Ruffin was -- had his pulse on every little piece of information with regard to this.

MR. SHEEHAN: Showing you next in order which is Exhibit 7.

(Exhibit 7 was marked for identification.)

BY MR. SHEEHAN:

Q. Do you recall seeing this letter before?

A. You know what? I don't remember. I don't remember this. I don't recall. You asked me if I recall seeing it. I don't recall seeing it.

Q. If you had seen it, would you have complained that Señor Frogs was not noticed on the letter?

A. Complained to who?

Q. To Treasure Island?

A. Probably not. I don't know. Maybe.

Q. Did you complain to Treasure Island?

A. I have no idea.

Q. Showing you next in order, Exhibit 8.

(Exhibit 8 was marked for identification.)

BY MR. SHEEHAN:

Q. Have you seen this document before?

A. Oh, May 14th. There you go.

Q. Have you seen this document before, sir?

A. I have.

Q. And when did you first see it?

A. I have no idea.

Q. Were you in Las Vegas when you saw it?

A. I don't know.

Q. Do you recall the circumstances of when you saw it?

A. Circumstances? I mean, listen. We missed paying the rent. We got the -- during the time when this was sent, we were all gone. And I believe that I didn't know about this until the 26th of May when we were all back in the office. And we -- I mean, I don't know the exact dates, but that's my opinion.

Q. Did you send a copy of this to Señor Frogs?

A. No.

Q. Did you have any duty or obligation to send this to Señor Frogs under your agreement with Señor Frogs?

A. I don't know. I'm not an attorney.

Q. If you had such an obligation, then I assume you would have?

A. I'm not an attorney. I have lots and lots of legal agreements. It's all governed by my, you know, my attorneys, you know, do all that stuff. I have a machine that runs, you know, we have lots and lots of legal stuff that happens all the time.

Q. I'm asking you a very specific question, and you have the obligation to answer the question.

If you had a legal obligation to send this to Señor Frogs pursuant to your agreement with Señor Frogs, would you have sent it to them?

MR. RICKARD: Object to the form.

THE WITNESS: You know what? It doesn't matter. You as Treasure Island had a legal obligation to send it to them and they didn't.

BY MR. SHEEHAN:

Q. Are you going to answer the question? I'll ask it one more time.

If you had a legal obligation to send this to Señor Frogs under your agreement with Señor Frogs, would you have sent it to Señor Frogs?

MR. RICKARD: Object to the form.

THE WITNESS: You know, it -- theoretically

if there's some contract that I deal with that has some legal obligation and it would have risen to my level and I would have known about it and -- yeah, I mean, the issue here is that it wasn't my obligation. The issue here is it was Treasure Island's obligation. I wasn't given the correct legal notice. The form wasn't correct, and they didn't notice Señor Frogs. That's the fact. And Mr. Ruffin knew all about this. Mr. Ruffin was in the middle of it. Mr. Ruffin was directing traffic on this.

BY MR. SHEEHAN:

Q. Sir, did you have a legal obligation to send this to Señor Frogs?

A. And I said that two questions ago. I don't know. I have attorneys that deal with that stuff. I really don't know.

Q. Have you ever read your lease with Señor Frogs, your sublease with Señor Frogs?

A. I don't know that I have. I mean, I've got pretty capable people. We do lots and lots of leases out of my shop.

Q. But if it was a material term of your contract with Señor Frogs that if you received this kind of notice, you would send it to Señor Frogs, then you or your legal team would send it to Señor Frogs; fair

000188

000188

enough?

MR. RICKARD: Object to the form.

THE WITNESS: If I had a legal obligation?

MR. SHEEHAN: (Nods head.)

THE WITNESS: I assume that that's the case. I don't know. I mean, once again, I'm not an attorney. I don't handle these things in my shop. I have a lot of attorneys that work for me that do that stuff.

BY MR. SHEEHAN:

Q. But does that make sense?

A. Yeah, it makes sense, but in this case we didn't give Frogs notice. Rose did not give Frogs notice.

Q. But you do admit that at the time of this May 14th letter, you were in -- had not met your rental obligations as set forth in this letter?

A. I do admit that.

Q. And you do admit that you received this letter -- someone from Rose, LLC, received this letter on or about May 14, 2015?

MR. RICKARD: Object to the form.

THE WITNESS: I have no clue how it was -- I mean, I don't know how it was sent. I don't know who received it. I don't know who signed for it. I don't know if it was sent regular mail. I don't know if it was sent by horse and buggy. I have no idea how it got

there, who received it, when it got there. It might have been typed up and dated the 14th and sent on the 20th. I have no idea.

BY MR. SHEEHAN:

Q. But you do recall receiving it by at least by May 26th?

A. I don't recall. What I said to you is I think I became aware of it after ICSC which was the prior week, and the 26th was the first day back at work after the long holiday.

Q. So you don't recall Elizabeth Gold telling you about this on or about May 14th?

A. Oh, no. I know that didn't happen.

MR. RICKARD: Careful about questions regarding Elizabeth. My understanding is she's an attorney. So remember privilege applies there.

THE WITNESS: Thank you.

MR. SHEEHAN: I don't think it applies unless there's legal advice being -- but that's for another day.

All right. We'll go to the next document, Exhibit 9.

(Exhibit 9 was marked for identification.)

BY MR. SHEEHAN:

Q. Have you seen this document before?

A. I have seen this before.

Q. Was this the one that was properly noticed?

MR. RICKARD: Object to the form.

THE WITNESS: I'm not quite sure what you're asking me.

BY MR. SHEEHAN:

Q. I thought you said earlier that there was a second notice that was actually properly noticed to Señor Frogs and Rose?

MR. RICKARD: Misstates testimony.

THE WITNESS: You know, this is not a notice. This is a letter of termination.

MR. SHEEHAN: Correct.

THE WITNESS: This isn't proper notice. I mean, we're not being notified.

MR. SHEEHAN: Okay.

BY MR. SHEEHAN:

Q. But this is the letter that you're talking about as far as the only communication between Treasure Island and Rose that you're aware of?

MR. RICKARD: Object to the form.

THE WITNESS: I'm sorry. I don't understand.

BY MR. SHEEHAN:

Q. Earlier you testified that you were only aware of

one communication between Treasure Island and Rose, and it was a letter inviting them to negotiate a lease with you. Is this the letter?

A. Oh, I'm sorry. Maybe I can help you. I said before I saw a correspondence where Treasure Island had invited Señor Frogs to lease directly with them, not Rose.

Q. Right. I'm sorry. Yes.

A. This is the letter.

Q. Okay. When did you receive this?

A. I don't know.

Q. Do you recall talking with anybody about this once -- what happened once you received this letter?

A. I think I had a heart attack. I don't know. I mean, you know, listen, during the month of May, I have said this to you before, I had very serious medical issues with my family. You know, that affected my focus. I was not at work that much, and, you know, this all happened. We very clearly tried to pay rent. We very clearly -- we FedExed it. We paid it exactly how it was supposed to be paid in the lease. It was rejected. We tried to wired it. It was rejected. And then we started playing this game. Mr. Ruffin started playing this game. Mr. Ruffin started, you know, he and his team did not notice. They did not give notice

000189

000189

appropriately to Frogs, and they started playing this game of, you know, trying to get the space back. And I don't appreciate it. Even when you guys knew in your form yesterday you put in your brief that you knew about a supreme court ruling that you could accept rent, and you still kept us going on this wild goose chase for the last four or five month.

Q. Sir, have you ever spoken with Mr. Ruffin between -- after the May 14th notice, Exhibit 8?

A. I don't believe I have.

Q. And did you ever speak with Mr. Ruffin following the May 28th termination letter?

A. I don't believe I have.

Q. But suffice to say you must have seen this on the 28th because on the 29th you sent out a letter or your counsel did -- no excuse me -- you did the following day and also submitted the funds the following day; correct?

A. If you say so. You have the dates in front of you.

Q. Well, I'm asking you. Do you recall that?

A. Listen. You know what? Oh, do I recall sending the letter and the funds? I do.

Q. Do you recall if it was the following day?

A. I don't.

Q. Do you recall what happened on May 28th?

A. I don't.

Q. Do you recall who you spoke to when you got this letter on May 28th?

A. I think I had a conversation with Ben Khan and some of my staff, Elizabeth Gold, Aaron Mets.

Q. And who's Ben Khan? Is he from Señor Frogs?

A. No. Ben is a legal advisor.

Q. And did you have a conversation with a lawyer here in town?

A. Might have.

Q. Mike Van?

A. Yep. That's correct.

Q. And who's -- Khan is a legal advisor?

A. He's an attorney.

Q. And did you have a conversation with anybody that wasn't a lawyer on that day? Or did actually did you have conversations on that day with these folks? Do you remember what day you had that conversation --

A. What folks?

Q. Ben Khan, Mike Van, Elizabeth Gold, so far who you told me?

A. That's who I spoke to.

Q. Then you drafted this letter which we'll mark as Exhibit 10 the following day; is that correct? I just have a couple questions about it. You signed this as president; correct?

A. One quick second.

(Exhibit 10 was marked for identification.)

THE WITNESS: Can I use the restroom for a sec?

MR. RICKARD: Is there a question pending?

THE WITNESS: Oh, I'm sorry.

BY MR. SHEEHAN:

Q. You are the decision maker and president or manager of Rose, LLC,; correct?

A. You asked three questions there. I am the president of Rose Management, Inc. I'm president of that, which is the manager of Rose, LLC.

Q. Go ahead and use the restroom.

A. Okay.

(A break was taken from 4:09 p.m. through 4:21 p.m.)

BY MR. SHEEHAN:

Q. So you are the ultimate decision maker for Rose; fair enough?

MR. RICKARD: Object to the form.

THE WITNESS: Yes.

BY MR. SHEEHAN:

Q. And shortly after that letter that I've just shown you, Exhibit 10, showing you Exhibit 11, you sent -- well, I won't mark it as an exhibit.

You tendered the rent because it was in fact late; correct? On or about May 29th, you tendered the full amount of rent in the notice because it was late; correct?

A. Correct. I think we tendered the rent with -- correct.

Q. Showing you a copy of the lease agreement which we'll -- we don't need to mark this.

A. We're done with this, yeah?

Q. Yeah.

A. And we're done with your love letter.

Q. So under the lease there was a 7 percent gross sales that was due in owing, and Rose had failed to pay on time; correct?

A. For what period?

Q. For the first quarter of 2015?

A. I'm sorry. So you said a few things. 7 percent rent, percentage rent. I'm sorry. I didn't hear you.

Q. Turn to page 4 of the lease, under paragraph B, there was percentage rent owed. And under paragraph C, that percentage rent was owed 30 days after the end of the first quarter.

So at the end of April, there was 7 percent percentage rent owed?

000190

000190

A. So for the first quarter of 2015; correct.
Q. And that was not paid as of May 14th -- was not paid until May 29th; correct?
A. I'm not sure the exact date it was paid.
Q. Well, it was --
A. It was paid.
Q. Right. But it was paid -- I just showed you the letters. It wasn't paid as of May 28th.
A. That's what you're saying; correct. The letter says that.
Q. Right. But you admit that?
A. We were late on the rent; I do admit that.
Q. You paid it the day after you go that letter?
A. I don't have the copy of the check, but I believe that that's the case. It's fact.
Q. And there's also default interest owed on any sum that's late; correct?
A. That I didn't know. I don't know.
Q. Look at the top of paragraph 5.
A. In the lease?
Q. Yes.
A. Okay. Paragraph 5.
Q. The paragraph -- paragraph 3.2 at the top of page 5.
That paragraph speaks for itself; correct?

A. Yes.
Q. And then there's a landlord contribution in paragraph 3.4 for tenant improvements.
Have you been current on throughout the term of the lease? Let me strike that back.
There was moneys owed for the build out of the space by the tenant meaning Rose; correct?
A. I'm sorry. There's money owed to who?
Q. Owed to Treasure Island. Well --
A. Be more specific.
Q. You tell me.
A. I'm not asking the questions.
Q. The -- I'm asking you to tell me what the arrangement was with respect to the build out. How was it going to get paid?
A. In regard to the build out, we paid a contractor directly.
Q. Have you paid that contractor in full?
A. Contractor has not been paid in full.
Q. Has the contractor sued you?
A. The contractor has sued us.
Q. What's the status of that suit?
A. I don't know.
Q. Is there a $50,000 payment a month due to Treasure Island for some kind of build out?

A. No.
Q. You just made a $50,000 payment a couple of days ago; correct, pursuant --
A. Yeah.
Q. And you got a default notice?
A. No.
Q. You never made a $50,000 payment in the last week?
A. No.
Q. Do you have a make a $50,000 payment per month?
A. Señor Frogs makes a payment directly to Treasure Island, $50,000 a month. You, which is who you directed the question to, I don't know if that's me personally or Rose, LLC.
Q. No, Rose, LLC.
A. Rose, LLC, doesn't currently make that payment.
Q. But are they obligated to make that payment?
A. Under this document?
Q. Or an amendment?
A. What amendment?
Q. I'll show it to you in a little bit. All right. How much is still owed to the contractor?
A. I don't know. I think it's under 200,000. Actually, I don't know what's owed to the contractor. Rose may not believe that they owe anything to the

contractor. The contractor believes -- the contractor believes that the contractor is owed money.
Q. How about the liability policy? Do you have liability insurance in place right now?
A. I assume so.
Q. Do you know?
A. Being deposed as a person not as the -- you know, not as the guy who runs the show. I don't --
Q. Do you know whether Rose, LLC, has the insurance that's required under this lease that's --
A. I'm sure of it.
Q. Who is the person that would know that?
A. My insurance agent.
Q. Who is that?
A. Mackey Insurance in Denver, Colorado.
Q. And who is the agent?
A. I don't know the person's name.
Q. Is it Mackey, M-A-C-K-E-Y?
A. I believe so. I'm not the attorney, and I'm not the insurance person.
Q. You would agree that pursuant to -- on page 16, paragraph 15.2.1, and I understand you're contesting the validity of the notice, but if the notice -- if you were in default and the proper notice was provided, the lease does provide that the landlord could terminate the lease

under paragraph 15.2; correct?
A. Well, first off, I'm not an attorney. So personally I'm not going to give you my opinion about legal matters because I don't deal with legal matters.
Q. But it does say that under paragraph 15, and then specifically under 15.2.1 --
A. Where does that say that under 15?
Q. Under 15.2.1, first sentence.
A. Landlord may -- okay.
Q. Fair enough? It does say that there?
A. What are you asking me that it says?
Q. It does provide -- the agreement does provide that upon default, the landlord may terminate this lease and tenant's estate hereunder by written notice of such termination --
A. Provided however, that the mere giving by landlord of the notice to pay or perform or a notice to quit shall not of itself constitute a notice of termination of this lease.
So what was your question?
Q. It does say that?
A. Those are the words.
Q. You were only -- Señor Frogs is only subleasing a portion of the space that you're leasing from Treasure Island; correct?

A. I believe that's true.
Q. They're not leasing the upstairs space except for the kitchen?
A. Well, that's not true. Señor Frogs has -- they lease the downstairs, and they have the first right to lease the upstairs which they do occasionally.
Q. On occasion for Latin nights and --
A. At least once or twice a week for private parties.
Q. But the actual lease is only for -- sublease is only for the downstairs space?
A. No. It's for exactly what I just told you.
Q. Okay. All right.
Showing you what the we will mark as Exhibit 11.
(Exhibit 11 was marked for identification.)
BY MR. SHEEHAN:
Q. Take a look at paragraph 3 there. This is the fourth amendment to lease. And that's where it's provided that the tenant, meaning Rose, will pay $50,000 on a quarterly basis -- no excuse me -- on a monthly basis in an amount equal to 50,000 for the landlord contribution; correct?
A. You're asking me what it says?
Q. Yes.
A. It says landlord and tenant hereby amend section

3.4 of the agreement to provide --
Q. You don't need to read the whole thing. Just read it to yourself.
A. Oh, I'm sorry. You just asked me what it said.
Q. I'll ask you the question.
Does this document state that as of the date of this amendment, Rose, LLC, owes $50,000 a month to Treasure Island for the landlord contribution?
A. Okay. So you said does this document state as of the date of this amendment that Rose, LLC, owes $50,000 a month -- it says a bunch of things. Paragraph 3 of this document says that Rose -- let's see.
Q. Let's put --
A. Rose, LLC. Go ahead.
Q. Pursuant to this amendment, Rose, LLC, owed the amounts set forth on Exhibit A attached.
A. Okay.
Q. Fair enough? It basically equates to 50,000 a month from 5/15/13 through 5/15/17.
A. Let's see here. Okay. If you say so.
Q. Okay. That is the tenant, your, Rose's responsibility? You in turn collected from Señor Frogs. So if Señor Frogs doesn't pay it, it's your obligation, meaning Rose?
MR. RICKARD: Object to the form.

THE WITNESS: Rose, LLC, signed this amendment. Okay.
BY MR. SHEEHAN:
Q. And they agreed to pay that 50,000 a month?
A. In the amendment?
Q. (Nods head.)
A. It appears that way.
Q. Is there a sublease in full force and effect between Rose and Señor Frogs right now?
A. Yes.
Q. Are they current?
A. Yes.
Q. Have you had any discussions with Señor Frogs about raising the rent?
A. No.
Q. Have you had any discussions with Señor Frogs about paying you additional money so that you could stay current with Treasure Island?
A. No.
Q. Have you had any discussions with Señor Frogs other than the two conversations that you've told me in the last -- since May of 2015 regarding anything?
A. Well, David Krouhan is my friend. He's getting divorced. I talked to him about that one time. His son graduated from college. I talked to him about that. He

000192
000192

called me to help him get a reservation at a restaurant in New York City, and I talked to him about that. Let's see. I also had a conversation with him about he's opening a new store in New York City. Those are the things I've talked to him about.

Q. What is David Krouhan's position?

A. He's the president.

Q. Of?

A. I don't know their legal name, but it's the Señor Frogs company.

Q. What was your -- you had a lawsuit with him -- against him; correct?

A. I don't believe so.

Q. Well, you have a dispute against him?

A. I do now?

Q. No. Before.

Didn't you enter into a settlement agreement with him?

A. It might have been -- I don't think we had a lawsuit with each other.

Q. What was the dispute?

A. I don't think it was a dispute. I think we were trying to separate our business together.

Q. But what was your business at Treasure Island?

A. My personal business at Treasure Island?

Q. No. Rose, LLC, and Señor Frogs? Rose, LLC, was the tenant and Señor Frogs subleased from Rose and that's it or was there a business partnership there?

A. When?

Q. Ever? From 2011 to today?

A. From 2011 there was a business partnership.

Q. Tell me about that.

A. Rose, LLC, was a partner in the operating restaurant with Señor Frogs.

Q. Okay.

A. And Rose separately held the lease.

Q. Okay. And what happened?

A. Business didn't go very well. I mean, the business was fine. Even Mr. Ruffin who on occasion said, oh, I think this is going to do $30 million a year. Well, it did less than half of that, and the only person who made money on this deal up until that point was Mr. Ruffin. In fact, we don't even make that much money on it, but you know, the -- anyway.

Q. So then did you --

A. So it didn't go well. So we had a need to separate.

Q. Did you threaten a lawsuit against him?

A. I don't believe so.

Q. Was there a lawsuit filed?

A. You know, I don't remember, but I don't think so.

Q. So tell me what was the resolution to the suit or to the dispute?

A. The dispute. I don't think there was a dispute. I think that the issue was we -- my group didn't want to own the restaurant anymore. We weren't making any money. Our group was interested in just being a landlord.

Q. And did he agree to that?

A. He did.

Q. And in return what did you get?

A. I have a long-term lease. I got a tenant.

Q. So what were the terms of the resolution then?

MR. RICKARD: Careful because I believe the agreement's confidential.

THE WITNESS: Yeah, I don't know. I'm bound by that.

MR. SHEEHAN: Well, we'd like to see a copy of that and then I'll agree to be bound by confidentiality and not disclose it in here.

MR. RICKARD: I'm willing to discuss it off the record.

MR. SHEEHAN: Okay. Let's go off the record.

(A brief discussion was held off the record.)

BY MR. SHEEHAN:

Q. Now the fifth amendment -- I don't need to mark it. The fifth amendment -- oh, I'm sorry. Continuing on with the Rose, LLC/Señor Frogs relationship.

So you said you're not making that much money on the situation now?

A. (Shakes head.)

Q. How much money do you make?

A. Depends on the month. Bad months not much. Good months better.

Q. And why is that? Why does it differ?

A. Because tourism in Vegas is --

Q. No. I'm saying is the lease -- it's tied to their performance?

A. No. It's tied -- it's tied to how often -- we don't make any money -- let's back up.

We make extra money if they rent the top floor or if there's private parties. Convention season we do great. We do better not great. We do better. Really super great months they rent it more. January to May they do pretty well.

Q. What's their base rent?

A. I don't know. 33-5, something like that.

Q. That's what they pay you?

A. No. I'm sorry. That's what we pay Treasure

Island. They pay us 80,000.
Q. So every month you make approximately 46,000 minimum; correct?
A. Pull your pen out.
Q. All right.
A. If they do 12 million a year, they owe Mr. Ruffin 7 percent of that. Okay?
Q. Okay.
A. So 7 percent times 12 is what?
Q. 700,000, 800,000?
A. Right. 840,000.
Q. 840,000.
A. Divide it by 12.
Q. Okay.
A. That's how much each month?
Q. Okay. So --
A. No. How much?
Q. I see what you're saying. That's 60,000 a month or whatever.
A. Right. We owe Mr. Ruffin 33-5. They're paying me 80 a month fixed. Okay. You do the math.
Q. So who pays the percentage rent?
A. Rose pays the percentage rent. But it's due to Mr. Ruffin. Mr. Ruffin made this deal. Mr. Ruffin's the only person making money on this deal. Mr. Ruffin

is making 840 a year plus 33-5 which is approximately 400,000 a year. He's making -- I'm sorry -- a million-two, a million-three a year. Nobody else is making any money on this.

Now what we make money on is if they have private parties upstairs. That's our extra. We have partners in this deal that -- I mean, this may be no big deal to Mr. Ruffin because they told us they have nothing but money; they don't need money. That's what they told us. But it means a lot to the people who invested in this project. They're just hoping to get their monthly back. And at the end of the day, that monthly amount that they get every month helps them get their money back.

So when he in the month of May decides he wants to play this stupid game with us and kick us out because he's got other people that he wants to put in this space, I mean, it's kind of hard to take.

Q. Turning over to the fifth amendment. Real quickly turn to page 4, paragraph 11. See if you can agree with me to one minor point. This states that section 19.6 of the lease -- and you have the lease over there if you want to -- is replaced --
A. What am I looking at? Number 11 on page 4?
Q. Yep.
A. Okay. Go ahead.

Q. The point has been made in this case that Susan Markusch has not been put on a couple of notices. In fact, Susan Markusch is not required to be put on any notice under this amendment?
MR. RICKARD: Object to the form.
MR. SHEEHAN: Fair enough.
THE WITNESS: Okay. I need to look at 19.6 of the lease.
MR. SHEEHAN: Okay.
THE WITNESS: 19.6 -- so what was your question?
BY MR. SHEEHAN:
Q. That part that says Rose, LLC, to email Susan G. Dare that's been replaced with this paragraph 11; correct?
MR. RICKARD: Object to the form.
THE WITNESS: Not an attorney, but what it says to me is that the address, the actual physical address, tenants notice address is updated to 5690 DTC Boulevard, Suite 515 because we moved our offices.
BY MR. SHEEHAN:
Q. It doesn't say it needs to be attention Susan Markusch on paragraph 11?
A. Under the lease it does.
Q. Under this it says if the lease is being changed;

correct?
A. I'm not an attorney, but the notice is very clear to me that it had to be to Susan Markusch.
Q. Who is Susan Markusch?
A. My controller.
Q. And who is Elizabeth Gold?
A. My in-house attorney.
Q. Is she in your office, Elizabeth Gold?
A. She is.
Q. Do you speak with Elizabeth Gold most days?
A. Most days. Half days.
Q. In that fifth amendment, it talks about under paragraph -- page 3, paragraph 9(a)(i). It says subtenant's right of possession to the subleased portion of the leased premises and subtenant's other rights arising out of such sublease as defined by tenant and subtenant as part of such sublease shall not be affected or disturbed by the landlord in the exercise of its rights and lease or the obligations which it secures subject to landlord's right to demand a new leasing agreement with subtenant is outlined below.
So -- and then it says to the extent the lease agreement is terminated by the landlord due to a default by tenant subtenant is not in default under the sublease, subtenant and landlord will enter into

000194
000194

Page 82

negotiations for a new leasing agreement; correct?
A. That's what it says.
Q. And you agree to that; correct?
A. Me as a person?
Q. Rose Management -- or Rose, LLC, excuse me.
A. Rose signed the amendment; correct.
Q. And Elizabeth Gold is the vice president of Rose Management which is the manager of Rose, LLC; correct?
A. Yes.
Q. She's kind of the number two person in charge?
A. I wouldn't say that.
Q. Who's the number two person in charge?
A. I don't think I have a number two person in charge.
Q. But she's the only other officer of Rose?
A. She is.
Q. So if you did have to name a number two person in charge, do you think it would be her?
A. No. I just said I don't think I have a number 2 in charge.
Q. But if you did have to name one, who would it be?
A. I wouldn't name one.
Q. It's all you?
A. It's all me.
Q. So the rent to -- from Señor Frogs to Rose is

Page 83

still $80,000 per month?
A. No. The rent was increased. It went up some percentage in May, but I don't know what that is.
Q. And was that -- was that 3.5 percent pursuant to the terms of the contract?
A. Correct.
Q. No other changes besides that?
A. No. Earlier I just forgot that there was a rent increase.
Q. No problem.
And is there any rent -- are they in default right now?
A. They are not.
Q. Have they ever been in default?
A. Let's back up. They are -- I don't know. I can't remember. I don't think -- I don't think so, but I can't remember.
Q. Showing you a copy of the amended sublease.
A. Your pile is getting smaller.
Q. Yes. Almost done. Turn to page 7, please. Under paragraph 9D.
Can you please read the second sentence out loud?
A. In the event that prime landlord notifies landlord of any default under the prime lease and does not provide simultaneous notice to subtenant, landlord

Page 84

will provide subtenant with a copy of any prime landlord notice of default under the prime lease within 24 hours of an opportunity to cure --
Q. It says and an opportunity to cure; correct?
A. And an opportunity to cure. Same on behalf of landlord.
Q. The prime landlord is Treasure Island; correct?
A. I haven't read the defined terms. I assume so.
Q. The landlord is Rose; correct?
A. Correct.
Q. And the subtenant is Señor Frogs; correct?
A. That's correct.
Q. So this does say in the event prime landlord notifies landlord of any default under the prime lease --
A. No, no. It says prime landlord -- it says prime landlord is obligated to provide subtenant; right? Or were you reading a different --
Q. I'm reading the second sentence.
A. Okay. Go ahead.
Q. The second sentence says, in the event that prime landlord notifies landlord of any default under the prime lease and does not provide simultaneous notice to subtenant. That happened here; correct?
MR. RICKARD: Object to the form.

Page 85

BY MR. SHEEHAN:
Q. First of all, sir, have you seen this provision before? This is the contract that you sublease with your tenant Señor Frogs; correct?
A. Correct. I'm not an attorney. I don't --
Q. But Rose, LLC, negotiated this agreement with Señor Frogs; correct?
A. Correct, I believe.
Q. And who signed the document? Turn to page 13.
A. Yeah. I signed it.
Q. Okay. Now -- so you were aware of this term; correct?
A. Okay.
Q. All right. Now -- and the term says that if you get a notice from Treasure Island that is not copied to Señor Frogs, you have an obligation to send it to Señor Frogs and give them 24 hours to make the cure on your behalf; correct?
A. Well, let's read this. In the event prime landlord, which is Treasure Island, notifies landlord of a default under the prime lease and does not provide simultaneous notice of subtenant, landlord will provide subtenant with a copy of any prime landlord notice of default under the prime lease within 24 hours of an opportunity. That's what it says.

000195
000195

Q. Okay. So on May 14th you and your vice president, general counsel, Ms. Gold received a letter via federal express and emailed to Elizabeth Gold stating that Rose was in default for not paying rent and in fact Rose was in default for not paying rent at that time and that notice did not include simultaneous notice to Señor Frogs; correct?

MR. RICKARD: Object to the form. Mischaracterizes the document.

THE WITNESS: There's a few things. One, is you're saying on May 14th. I don't know when we got it. I already said to you I thought it was after the 26th of May.

MR. SHEEHAN: You see it was emailed to Elizabeth Gold on that day?

THE WITNESS: I see that's what it says on the document.

BY MR. SHEEHAN:

Q. And you also see that on the back of it, there was a requisition for shipping services, and it's to you --

A. I see it --

Q. -- by overnight mail?

A. I don't know how it was sent. I don't know if it was UPS or FedEx. It doesn't say.

Q. Well, it says right here.

A. Overnight mail, but it doesn't say how. Doesn't say what company. There's no shipping label attached.

Q. But you testified before that you did get this letter?

A. No. I testified before that I saw the letter.

Q. Yes.

That you saw it on or about May 26th?

A. Or later.

Q. Well, when you got -- when you first saw that letter, did you send it on to Señor Frogs?

A. I don't know if I did or not. I know that Treasure Island under their obligation didn't notice Señor Frogs.

Q. My question to you is: You've already testified that you did not send this letter on to Señor Frogs; correct?

A. I don't know if we did or not.

Q. Were you about to say you don't believe you did?

A. I don't know if we did or not.

Q. You remember testifying earlier that you never sent that letter on to Señor Frogs; that you never sent any letter on to Señor Frogs?

MR. RICKARD: Object to the form.

THE WITNESS: I don't know whether we did or not.

BY MR. SHEEHAN:

Q. Do you recall testifying earlier in this deposition that you never sent any letter on to Señor Frogs?

A. I remember testifying that I know Treasure Island never gave notice to Señor Frogs under their obligation.

Q. All right. Did you --

A. I don't believe that I'm at the deposition today for -- whatever. I'm sorry.

Q. But pursuant to this agreement -- if for sake of argument, you did receive this letter, this May 14th letter on or about May 14th, you would have had an obligation to send this letter on to Señor Frogs within 24 hours pursuant to the terms of your agreement with Señor Frogs; correct?

MR. RICKARD: Object to the form. Mischaracterizes the document.

THE WITNESS: I'm sorry. What was your question?

BY MR. SHEEHAN:

Q. Pursuant to the language of your agreement with Señor Frogs, if you had received this letter, this May 14th letter, which was not copied to Señor Frogs on May 14th, you would have had to send this letter on to Señor Frogs on or about -- within 24 hours of that date?

MR. RICKARD: Object to the form.

THE WITNESS: Okay. So here's the issue. First off, this was not legal notice. The letter that you are referring to is May the 14th which we don't know when it arrived or how it arrived and that I believe I might have seen after May the 26th. It's not sent appropriately based upon the lease, and it did not copy Rose. It was not a --

MR. SHEEHAN: Did not copy Rose?

THE WITNESS: I'm sorry. Did not copy Señor Frogs. It was not a legal notice.

BY MR. SHEEHAN:

Q. But doesn't your lease, sublease, with Señor Frogs contemplate this very thing; that if Treasure Island sent out a notice to you --

A. In the event that prime landlord notifies landlord of any default. Okay.

Q. That letter does that; correct?

A. I don't believe this is legal notice.

Q. Well, it does notify you of a default; correct?

MR. RICKARD: Object to the form.

MR. SHEEHAN: Or of nonpayment of rent?

THE WITNESS: This letter talks about rent that is late.

MR. SHEEHAN: Okay. All right.
BY MR. SHEEHAN:
Q. So then what happens? What happens if under your agreement with Señor Frogs if you receive a letter advising you of late rent that's not copied to Señor Frogs, what is your obligation?
MR. RICKARD: Object to the form.
THE WITNESS: I don't know. I'm not an attorney. I don't know what my obligation is. I have attorneys that tell me what to do with this stuff.
BY MR. SHEEHAN:
Q. You can't read that paragraph and --
A. I don't belittle you. Please don't belittle me. Okay? Fair enough?
Q. Is that paragraph clear that if you receive that May 14th letter, you should have sent it on to Señor Frogs?
A. Might be clear to you. You're an attorney.
Q. It's not clear to you?
A. I've answered the question.
Q. No, you haven't.
Is that language clear and unambiguous that upon receipt of a letter from Treasure Island --
A. I told you I'm not an attorney. I have attorneys that do this for me.

Q. So you're refusing to answer the question?
MR. RICKARD: Objection.
THE WITNESS: No. I'm telling you I don't have -- I'm not an attorney.
BY MR. SHEEHAN:
Q. Do you have any independent memory of sending the May 14th letter on to Señor Frogs?
A. I do not have any independent memory of that.
Q. And can you explain why you did not?
A. No. I just told you I don't have any independent memory of sending it on to Señor Frogs.
Q. And can you tell me why you did not?
MR. RICKARD: Object to the form.
THE WITNESS: I don't think one of the questions is tied to the other one. I just told you I don't remember. I have no independent memory of sending it.
BY MR. SHEEHAN:
Q. Assuming that you never sent it.
A. Okay.
Q. Why did you not send it?
MR. RICKARD: Object to the form.
THE WITNESS: I don't have an answer for you.
BY MR. SHEEHAN:

Q. Did you feel like you had an obligation to send it to them?
A. I just told you I have attorneys that guide me with these decisions.
Q. You have to answer the question. I understand that you're saying that you --
A. I don't know how to answer your question. I can sit here all day long and go back and forth. I don't know how to answer the question. Truthfully I have no idea.
Q. I'm asking you as a layman, do you recall that you had --
A. I believe that Treasure Island's obligation to notify the tenant was clear in their agreement, and they did not notify the tenant. There was no legal notice to the tenant on behalf of Treasure Island. That's what I believe.
Q. If you're not going to answer the question, just tell me, and we'll file a motion.
MR. RICKARD: Objection.
THE WITNESS: I'm telling you I don't have an answer for you.
BY MR. SHEEHAN:
Q. This might even be the last question of the deposition. I have to go through my notes. Let me try

one more time.
A. Okay.
Q. Did you believe -- if indeed you received this letter on May 14th or around that date, did you believe upon receipt of that letter whenever you received it, you had an obligation to send it on to Señor Frogs? Yes or no?
MR. RICKARD: Object to the form.
THE WITNESS: Do I -- I -- my answer is: Is that I have legal people that work for me. I have attorneys that work for me that would advise me with this stuff.
BY MR. SHEEHAN:
Q. I'm not asking for that. I'm saying as we sit here today, do you think you would have had that obligation? If you answer the question yes or no, we're walking out of here right now; you're never coming back, and we'll move on.
MR. RICKARD: Object to the form.
THE WITNESS: First off, I know Treasure Island had an obligation to notify them. Very clear. I think Mr. Ruffin had a very clear obligation.
MR. SHEEHAN: I understand that's your point.
THE WITNESS: The notice was not legal

notice.
BY MR. SHEEHAN:
Q. Sir, I'm going to ask you one more time, and I'll preface it with that. I understand that you believe that Treasure Island had an obligation to send the May 14th letter to Señor Frogs and copy them on that letter. I understand that.
My question though is: We know that they didn't. So when you got that letter and it wasn't down there, do you believe you had an obligation to send it on to Señor Frogs? Yes or no?
A. Whatever my obligations are under the agreement that I had with Señor Frogs are the obligations.
Q. So is that a yes?
A. I'm going to tell you I just read that three times. I don't totally understand what the paragraph means. I'm not an attorney. This is not what I do every day. I have an arsenal of attorneys that work for me on this stuff which includes very complicated leases.
So I'm telling you I don't -- I don't know whether I had an obligation or whether Rose had an obligation or not. I just read this three times. I don't totally understand all the words.
Q. Could you have picked up the phone and called your friend David Krouhan and told him you got that

notice?
MR. RICKARD: Object to the form.
THE WITNESS: I'm sorry. I mean, could I physically have done that?
MR. SHEEHAN: Yes.
THE WITNESS: I mean, was I able to do that?
MR. SHEEHAN: Yeah. Do you have his phone number in your contacts?
THE WITNESS: I do. I could have -- I mean, physically I can call him any time. I can pick up the phone and call whoever I want in my contacts.
BY MR. SHEEHAN:
Q. But you have Mr. Krouhan -- he's a friend of yours?
A. Krouhan is his name.
Q. He's a friend of yourself; correct?
A. He is.
Q. Did you pick up the phone and tell him when you got this notice -- the first time you saw this notice, did you pick up the phone and call Mr. Krouhan and say, hey, by the way, I just got this notice that I'm in default on the rent?
MR. RICKARD: Object to the form.
THE WITNESS: I don't -- I don't -- I don't know if he and I had that conversation right then. I

don't know. The guy is not that easy to get ahold of. I don't know. I could tell you that I did what most really good business people do. I looked into what the issues were, and I can also tell you, as I've testified here today, that I don't think anybody in my shop got this well until after we were back from ICSC.
BY MR. SHEEHAN:
Q. Is there any reason why you didn't call Mr. Krouhan and tell him when you got this notice?
MR. RICKARD: Object to the form. Mischaracterizes the document.
THE WITNESS: I don't think there's any reason. I don't think there's any reason why I didn't do anything or did -- I don't -- I don't know what you're asking me really so...
MR. SHEEHAN: All right. No further questions.
MR. RICKARD: No questions.
(The proceedings concluded at 5:06 p.m.)

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

CERTIFICATE OF REPORTER

I, Brittany J. Castrejon, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the DEPOSITION OF GARY J. DRAGUL, on Wednesday, November 18, 2015, at 2:41 p.m.;

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said stenographic notes into written form, and that the typewritten transcript is a complete, true and accurate transcription of my said stenographic notes. That the reading and signing of the transcript was not requested.

I further certify that I am not a relative, employee or independent contractor of counsel or of any of the parties involved in the proceeding; nor a person financially interested in the proceeding; nor do I have any other relationship that may reasonably cause my impartiality to be question.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 1st day of December, 2015.

Brittany J. Castrejon

Brittany J. Castrejon, CCR NO. 926

EXHIBIT

9

000199

000199

FENNEMORE CRAIG, P.C.

Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
(702) 692-8000

Brenoch R. Wirthlin
Direct Phone: (702) 692-8005
Direct Fax: (702) 692-8065
bwirthlin@fclaw.com

Law Offices
Denver (303) 291-3200
Las Vegas (702) 692-8000
Nogales (520) 281-3480
Phoenix (602) 916-5000
Reno (775) 788-2200
Tucson (520) 879-6800

May 28, 2015

Rose, LLC
5690 DTC Boulevard, Ste. 515
Greenwood Village, CO 80111
Attention: Gary Dragul

Operadora Andersons S.A. de C. V., Boulevard
Kukulkan km 14.2,
Cancun, Mexico, CP 77500 ZONA HOTELRA

Ronald R. Fieldstone, Esq.
Susan Trench, Esq.
Armstein and Lehr LLP
200 S. Biscayne Blvd., Ste. 3600
Miami, FL 33131

Dear Mr. Dragul:

Please be advised that our firm has been retained to write you this letter concerning the lease between Rose, LLC and Treasure Island, LLC dated April 13, 2011. This letter shall serve as notice that the Landlord has elected to terminate that lease effective immediately pursuant to the defaults of Rose, LLC. Said defaults include but are not limited to, the failure to remit the full required 7% gross sales rent payment pursuant to the terms and conditions of the lease, and the demand letter sent to you dated May 14, 2014.

Mr. Fieldstone please have your client contact Brad Anthony, General Counsel for Treasure Island to enter into negotiations for a new leasing agreement for either the sub-leased portion of the leased premises or the entire lease premises. He can be reached at 702-894-7510.

Sincerely,

FENNEMORE CRAIG, P.C.

Brenoch R. Wirthlin

10448108.1/039472.0001

000200
000200
000200

MILLER, ADAM

From: trackingupdates@fedex.com
Sent: Friday, May 29, 2015 6:59 AM
To: amiller@fclaw.com
Subject: FedEx Delivery Exception

fedex.com | Ship | Track | Manage | Learn | Office/Print Services

We were unable to complete delivery of your package

See "Resolving Delivery Issues" for recommended actions

See "Preparing for Delivery" for helpful tips

Tracking # 773708384922

Ship (P/U) date:
Thursday, 5/28/15

Brenoch R. Wirthlin
Fennemore Craig
Las Vegas, NV 89101
US

Delivery exception

Estimated delivery date:
Monday, 6/1/15 by 10:30 AM

Ronald R. Fieldstone, Esq.
Armstein and Lehr, LLP
200 S. Biscayne Blvd. Suite 3600
MIAMI, FL 33131
US

Shipment Facts

FedEx attempted, but was unable to complete delivery of the following shipment:

Tracking number:	773708384922
Status:	Delivery exception
Reference:	039472.0001
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday

000201

000201

EXHIBIT

10

000202

000202

FIFTH AMENDMENT TO LEASE AGREEMENT

WHEREAS Treasure Island, LLC ("Landlord") and Rose, LLC ("Tenant") (collectively the "Parties") entered into that certain Lease Agreement ("Agreement") dated April 13, 2011 and Amended by those certain documents entitled First Amendment to Lease Agreement ("Amendment 1") dated October 10, 2011, Second Amendment to Lease Agreement ("Amendment 2") dated December 22 2011, Third Amendment to Lease Agreement ("Amendment 3") dated April 20, 2012, and Fourth Amendment to Lease Agreement ("Amendment 4") dated April 18, 2013.

WHEREAS the Parties desire to further amend the Agreement as amended;

NOW, THEREFORE, in consideration of the terms, covenants, conditions, and provisions set forth in the Agreement as amended and herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties that:

1. The Parties agree Section 2.3 is amended and replaced as follows:

"Tenant may extend the Term of this Lease for four (4) additional periods of five (5) years (each, an "Additional Term") by providing written notice to Landlord not later than one hundred eighty (180) days prior to the expiration date of the Initial Term or that Additional Term (each, an "Option"). Minimum Annual Rent for the Option terms is set forth in Section 3.1(A), herein. Minimum Annual Rent for the third and fourth Option terms shall be equal to 105% of the Minimum Annual Rent payable by Tenant during the period immediately preceding the applicable Option period."

2. The Parties agree Section 3.1(A) is amended, effective April 15, 2014, and replaced as follows:

"Minimum annual rent in the amount of Three Hundred Ninety Nine Thousand Dollars ($399,000) per annum payable in monthly installments of Thirty Three Thousand Two Hundred Fifty Dollars ($33,250) in advance upon the first day May, 2014, and continuing thereafter through April, 2021 (such monthly installment being hereinafter called "Minimum Monthly Rent"). Upon the first (1st) date of the first Option Term, Minimum Monthly Rent shall be increased to Fifty Four Thousand Six Hundred Dollars ($54,600), and upon the first day of the second Option Term, Minimum Monthly Rent shall be increased to Fifty Seven Thousand Three Hundred Thirty Dollars ($57,330). Minimum Monthly Rent for further renewal terms shall be calculated pursuant to Section 2.3. If the Commencement Date is other than the first day of a month, Tenant shall pay on the Commencement Date a prorated partial Minimum Monthly Rent for the prior to the first day of the next calendar month."

000203

000203

000203

3. The Parties agree Section 5.1 is amended to include the following:

"Notwithstanding anything to the contrary contained herein, Landlord and Tenant agree Tenant Additional Alterations shall include without limitation such alterations, additions or improvements to the Leased Premises, at no cost to Landlord, as are necessary to accommodate within the Leased Premises the operation by Tenant of an additional Mexican-themed business complementary to, consistent with, and in conjunction with Señor Frog's (which name and concept shall be approved by Landlord, but, for example, The Big Deck at Señor Frog's) ("Complementary Use")."

4. The Parties agree Section 7.1 is amended to include the following:

"In addition to the foregoing, Tenant may use, upon receiving Landlord's consent, the Leased Premises as set forth herein for the Complementary Use. In no instance shall Tenant's Complementary Use operate as a sports bar, private club, separate nightlife venue, or permit any use not specifically permitted in this Section 7.1."

5. The Parties agree that Section 7.4 shall be modified to add the following phrase to the end of the first sentence of Section 7.4:

", provided that the main level of the Leased Premises shall be operated a minimum of 11 hours per day, unless business dictates otherwise, in which instance the Parties shall meet to determine the acceptable hours of operation."

000204

000204

6. The Parties agree Section 7.7 is amended to include the following:

"In addition, the Trade Name may include the approved operating name of a Complementary Use conducted by Tenant."

7. The Parties agree Section 17.1 is amended to remove existing item (e), which encompasses Landlord's representation, warranty and covenant to Tenant that, as of the Effective Date and at all times during the Term, Landlord shall conduct, or cause to be conducted, the live-entertainment show, known as the pirate show, in the same location adjacent to the Leased Premises, and in substantially the same form as it was conducted, as of March 2011.

8. The Parties agree Section 19.2 is amended to include the following:

"In addition, Tenant shall have the right to install signage on the exterior of the Leased Premises identifying its Complementary Use business, subject to Landlord's reasonable approval and Clark County approval as to such exterior signage. For purposes of this Section 19.2, all signage and advertising available to Tenant shall be available to be shared between Subtenant and the Complementary Use business."

000204

9. The Parties agree the Lease is amended to include the following new Section 20 for the benefit of Señor Frog's Las Vegas, LLC, a current subtenant of Tenant ("Subtenant"):

a. Provided there is a Sublease in full force and effect between Tenant and Subtenant ("Sublease"), and Subtenant is not in default under such Sublease (beyond any period given the Subtenant under the Sublease to cure any default) then:

i. Subtenant's right of possession to the subleased portion of the Leased Premises and Subtenant's other rights arising out of such Sublease as defined by Tenant and Subtenant as part of such Sublease shall not be affected or disturbed by the Landlord in the exercise of any of its rights under the Lease or the obligations which it secures subject to Landlord's right to demand a new leasing agreement with Subtenant as outlined below. To the extent the Lease Agreement is terminated by Landlord due to a default by Tenant and Subtenant is not in default under the Sublease, Subtenant and Landlord will enter into negotiations for a new leasing agreement for either the subleased portion of the Leased Premises or the entire Leased Premises in Landlord's discretion and in a form acceptable to Subtenant and Landlord to replace the Sublease. Landlord may require from Subtenant any of the financial assurances it has required from Tenant or might require from any other primary lessee for the purpose of any new leasing agreement.

ii. In the event any person acquires title to the subleased portion of the Leased Premises by conveyance or sale or any related proceeding, the Landlord covenants that any such transfer of the subleased portion of the Leased Premises shall be made subject to the Sublease and the rights of Subtenant under the Sublease. provided that in such event, Subtenant covenants and agrees to attorn to such person as its new landlord, and the Sublease shall continue in full force and effect as a direct lease between the new landlord and the Subtenant upon all of the terms, covenants, conditions, and agreements set forth in the Sublease and/or any additional amendments. However, in no event shall the new landlord be:

i) liable for any act or omission of Subtenant;

ii) bound by any payment of rent or additional rent made by Subtenant to the Tenant for more than one month in advance.

b. The Sublease shall be subject and subordinate to the rights of the Landlord or any new landlord under the Agreement, to the extent applicable.

c. Any notices required or permitted to be given under this Agreement shall be in writing and personally delivered, given by certified mail, postage prepaid, return receipt requested, or delivered by overnight courier, in each instance addressed to the parties at the addresses listed in the first paragraph of this Agreement or at such other addresses as the parties may designate in writing as provided herein for the purpose of receiving notices under this Agreement. Notices shall be deemed given when actually received by the recipient, or when the recipient thereof refuses receipt.

d. This Agreement: (a) shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns; (b) may be executed in counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument; (c) constitutes the entire agreement of the parties hereto concerning its subject matter except as outlined herein; and, (d) may not be modified except in writing signed by both parties or by their respective successors in interest.

e. The above provisions shall be self-operative and effective without the execution of any further instruments on the part of either party. However, Subtenant shall execute and deliver to Landlord, or any such person to whom Subtenant agrees to attorn, such other instruments as either shall reasonably request in order to comply with these provisions. In addition, at Tenant's request, Landlord shall execute and deliver to Tenant and Subtenant a separate instrument confirming these provisions. In such event, the separate instrument shall include the following: THE PARTIES HERETO, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS INSTRUMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INSTRUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LANDLORD'S ACCEPTANCE OF THIS INSTRUMENT.

f. The provisions of this Section 20(c) shall inure to the benefit of and be binding upon the parties, their heirs, successors and assigns.

g. Except as outlined in this Section 20(c), nothing herein otherwise modifies the rights, obligations or the remedies of the parties where applicable with respect to the Agreement as amended or the Sublease.

10. Except as otherwise set forth herein or in any other applicable instruments as outlined in Section 20(c) of the Agreement as amended, the terms and conditions of the Agreement shall remain in full force and effect.

11. The Parties agree that for purposes of Section 19.6 of the Lease, Tenant's notice address is updated to 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, and that copies of notices sent to Tenant per the Lease shall also be sent to Subtenant addressed to: Operadora Andersons S.A. de C.V, Boulevard Kukulkan km 14.2, Cancun, Mexico, C.P. 77500 Zona Hotelera, and to Subtenant's counsel, addressed to: Ronald R. Fieldstone, Esq. and Susan Trench, Esq., Arnstein & Lehr LLP, 200 South Biscayne Boulevard, Suite 3600, Miami, Florida 33131.

000206

WHEREAS, IN WITNESS WHEREOF, the Parties have signed this Fifth Amendment to Lease Agreement as of the dates set forth below.

Treasure Island, LLC

By: _____

Dated: 4/30/14

Rose, LLC

By: Rose Management, Inc., Manager

By: _____
Elizabeth Gold, Vice President

Dated: 4-30-14

000207

000207

000207

EXHIBIT 11

000208

000208

ARNSTEIN & LEHR LLP
Accomplished lawyers who understand your goals.

200 South Biscayne Boulevard · Suite 3600
Miami, Florida 33131
Phone 305.428.4500 · Fax 305.374.4744
www.arnstein.com

Susan E. Trench
305.428.4508
setrench@arnstein.com

December 23, 2015

VIA REGULAR MAIL

Brad D. Anthony
General Counsel
Treasure Island Las Vegas
3300 Las Vegas BLvd. South
Las Vegas, NV 89109

Re: "Loan Repayment" letter

000209

Dear Mr. Anthony:

Mr. Fieldstone and I are in receipt of your letter of December 17, 2015, purportedly advising the two of us that we owe money to Treasure Island under its Lease Agreement with Rose. We are somewhat at a loss as we did not borrow money from Treasure Island, are not parties to the referenced Lease Agreement, and do not represent Rose. We solely serve as counsel to Operadora Andersons.

We therefore are going to assume this letter was a mistake. If that is incorrect, please contact me to explain.

Sincerely,

Susan E. Trench

SET:AES
cc: Ronald Fieldstone, Esq.

EXHIBIT

12

000210

000210

000210

AMENDED SUBLEASE

This Amended Sublease ("Sublease") is entered into by and between Rose, LLC, a Colorado limited liability company ("Landlord"), and Senor Frogs Las Vegas, LLC, a Nevada limited liability company ("Subtenant"), as of the 6th day of May, 2014, to be effective as of the Effective Date defined in this Sublease.

This Sublease is entered into with reference to the following facts:

A. Landlord is the tenant under a Lease, dated April 13, 2011, as amended (collectively, the "Prime Lease"), between Landlord and Treasure Island, LLC, a Nevada limited liability company ("Prime Landlord"). An executed copy of the Prime Lease shall be provided to Subtenant upon the Effective Date of this Agreement as defined herein.

B. Pursuant to the Prime Lease, Landlord leased certain premises located in the Treasure Island Hotel Casino, consisting of approximately eighteen thousand one hundred thirty five (18,135) square feet ("Premises"). Landlord and Subtenant are parties to an existing Sublease dated June of 2011, a First Amendment dated October 4, 2011, and a Second Amendment dated April 20, 2012, for the entire Premises (collectively, the "Existing Sublease").

C. Landlord and Subtenant are parties to a confidential Settlement Agreement, Release and Covenant Not to Sue ("SA").

D. In accordance with the terms of the SA, Landlord and Subtenant desire to enter into this Sublease for only a portion of the Premises, which Sublease shall become effective on the Effective Date (defined below), and Landlord and Subtenant desire that the Existing Sublease terminate on the Effective Date. The portion of the Premises to be subleased by Landlord to Subtenant ("Subleased Premises") is further described in this Sublease.

000211

000211

AGREEMENT

In consideration of the agreements made in this Sublease and the SA, Landlord and Subtenant hereby agree:

1. Effective Date. The SA is confidential but provides in relevant part that upon the parties' satisfaction of any and all of their obligations under the SA, the Existing Sublease will terminate and this Sublease will become effective ("Effective Date"). Any claims under the Existing Sublease shall thereafter be deemed waived unless excepted under the SA or unknown to Landlord or Subtenant as of the Effective Date. Landlord will provide Subtenant with a Notice of Sublease Effective Date in the form attached as Exhibit A upon the parties' satisfaction of any and all of their obligations under the SA, but the SA is not incorporated herein or otherwise part of this Sublease and nothing herein waives any of the confidentiality protections afforded by the SA.

000211

2. Term. The term of this Sublease shall begin on the Effective Date and shall terminate upon expiration of the Prime Lease, unless sooner terminated in accordance with the terms set forth herein ("Sublease Term"). The Landlord must exercise all options to renew under the Prime Lease if Subtenant is not in default and is otherwise in compliance with this Sublease, and the term of this Sublease shall extend through the terms of the Prime Lease, as such term may be extended; or else, Subtenant can enter into direct negotiations with the Prime Landlord to renew the term of this Amended Sublease subject to the SDNS as defined below.

3. Subleased Premises. The term "Subleased Premises" as used herein shall mean the portion of the first floor of the Premises, and only the existing kitchen portion of the second floor of the Premises. The Subleased Premises shall not include any portion of the second floor of the Premises other than the kitchen existing as of February 1, 2014.

4. Surrender of Premises Other Than Subleased Premises.

a. Landlord and Subtenant acknowledge that as of the Effective Date, Subtenant shall vacate and surrender to Landlord all portions of the Premises other than the Subleased Premises in good and clean condition, including all furniture, fixtures, restaurant equipment, audio-visual equipment, televisions, decorations, improvements, personal property and other property of Subtenant existing in the portion of the Premises that does not include the Subleased Premises ("Existing FF&E").

b. Landlord shall be entitled to the exclusive use of the Existing FF&E in the Premises other than the Subleased Premises as long as Landlord provides Subtenant with reasonable written notice of right of first refusal to staff and supply catered food and beverages in the Premises other than the Subleased Premises on an event by event basis provided that Subtenant's price to staff and supply catered food and beverages is consistent with Section 4(f) herein (the "Subtenant Catering ROFR"). Subtenant shall, if it so elects, exercise the Subtenant Catering ROFR by delivering to Landlord written notice of such election within 24 hours of Landlord's notice. If Subtenant does not exercise the Subtenant Catering ROFR for any particular event, Landlord still shall be entitled to the exclusive use of the Existing FF&E in the Premises other than the Subleased Premises.

c. Unless and until Landlord terminates the Subtenant Catering ROFR, Subtenant shall be obligated to rent from Landlord, on an event by event basis, a portion of the Premises other than the Subleased Premises if space is available at the applicable time for special events, private parties, convention engagements and other event bookings for more than 150 people and for any "Latin Night" or any similar event irrespective of size. Subtenant can cancel any reservation of the Premises other than the Subleased Premises for such purposes without penalty by providing 30 days written notice to Landlord, however, and Landlord may cancel any such reservation by providing 60 days written notice to Subtenant.

000212

000212

000212

d. If Subtenant rents from Landlord a portion of the Premises other than the Subleased Premises for special events, private parties, convention engagements or other event bookings or for "Latin Night" or any similar themed party irrespective of size, Subtenant shall pay Landlord Thirty-Two Hundred Dollars ($3,200.00) or 12% of Gross Sales from the booking as rent for any event scheduled for a Saturday (whichever is greater) or shall pay Landlord a minimum of One Thousand Dollars ($1,000.00) or 15% of Gross Sales from the booking as rent for any event scheduled for a day other than a Saturday (whichever is greater), provided however, that the amount payable to Landlord by Subtenant will be 20% of Gross Sales from the booking as rent for any event scheduled for the following periods during the term of this Sublease, as it may be extended, and must be reserved by Subtenant sufficiently in advance if space is available: New Year's eve and day, Super Bowl weekend, St. Patrick's Day, Cinco de Mayo holiday period, Memorial Day weekend, Labor Day weekend, the Halloween holiday period, and Thanksgiving Day and weekend.

e. Subtenant will continue to operate "Latin Night" and rent a portion of the Premises other than the Subleased Premises for same as outlined in Section 4(c) and 4(d) above, as long as Subtenant operates "Latin Night" or any similar party irrespective of size. Subtenant may not operate "Latin Night" or any similar party irrespective of size out of the Subleased Premises under any circumstances without renting a portion of the Premises other than the Subleased Premises for same as outlined in Section 4(c) and 4(d) above.

f. Subtenant shall bill Landlord for staff provided under the Subtenant Catering ROFR at Subtenant's actual hourly wage costs for such staff. Subtenant also shall bill Landlord for any food and beverages provided under the Subtenant Catering ROFR with a twenty percent (20%) discount applied to food and a twenty-five percent (25%) discount applied to beverages based upon the standard menu offered by Subtenant to patrons. Subtenant understands that Landlord may provide food and beverages pursuant to the Subtenant Catering ROFR to Landlord's patrons at a rate higher than the discounted rate billed by Subtenant, and that Subtenant will not be entitled to anything other than the discounted rate applicable to the Subtenant Catering ROFR.

g. Landlord and Subtenant will cooperate with respect to any licensing or branding needs related to the Subtenant Catering ROFR for the Premises other than the Subleased Premises, including but not limited to application of the Trade Name requirements in Section 7.7 of the Prime Lease as outlined in Section 9(a) herein. Except that, Landlord will define and promote the Premises other than the Subleased Premises as "The Big Deck above t Senor Frogs," "The Huge Deck above Senor Frogs," "Above Senor Frogs" or as otherwise agreed in writing by Landlord and Subtenant.

000213

000213

000213

h. Subtenant shall transition to the Subleased Premises in a timely fashion, *i.e.*, within approximately thirty (30) days after the Effective Date. Landlord will secure general liability insurance for the Premises other than the Leased Premises by the time that Subtenant transitions to the Subleased Premises.

i. Landlord may terminate the Subtenant Catering ROFR at any time and in its discretion. If Landlord terminates the Subtenant Catering ROFR, Landlord will not utilize any licensed or branded materials or decorations as outlined in Sections 4(a) and 4(g) above included in the Existing FF&E further and will allow Subtenant to remove any licensed or branded materials or decorations included in the Existing FF&E from the Premises other than the Subleased Premises within but no later than ten (10) days from the date of Landlord's termination of the Subtenant Catering ROFR. In addition, if Landlord terminates the Subtenant Catering ROFR then Landlord and Subtenant will cooperate with respect to any necessary amendments or modifications relating to Section 7.7 of the Prime Lease as outlined in Section 9(a) herein for the Premises other than the Subleased Premises. In the event that Landlord terminates the Subtenant Catering ROFR Landlord will retain possession of and exclusive use over any fixtures, restaurant equipment, audio-visual equipment, televisions, or improvements encompassed within the Existing FF&E, and Subtenant will be entitled to remove any licensed, branded or proprietary materials or decorations included in the Existing FF&E, including but not limited to any furniture (including non-branded furniture) supplied by Subtenant.

000214

j. In the event that Landlord terminates the Subtenant Catering ROFR and Landlord continues to honor this Sublease, Landlord may lease the Premises other than the Subleased Premises to a third party subject to the requirements of Section 8 herein, the consent of the Prime Landlord, and Prime Landlord's consent to modify the Prime Lease and SDNS as defined below so that any default related to the Premises other than the Subleased Premises will not constitute a default under this Sublease and consistent with the SDNS as defined below.

k. Landlord will be responsible for complying with any applicable liquor licensing requirements with respect to the Leased Premises other than the Subleased Premises, except when Subtenant rents from Landlord, or exercises the Subtenant Catering ROFR on an event by event basis for, that portion of the Leased Premises other than the Subleased Premises.

5. Use of Subleased Premises. Subtenant may use the Subleased Premises for the purpose of conducting thereon the operation of a bar, lounge, restaurant and/or nightclub serving Mexican food and international food; that may feature live entertainment and/or pre-recorded music and disc jockeys, dancing, bottle service, live entertainment and private events; and that may offer retail sales and services, including any existing operational uses currently being conducted by the Subtenant on the Premises. Subtenant agrees it shall not serve Breakfast in the

000214

Subleased Premises, unless consented to by the Prime Landlord. For the purpose of this Sublease, the term "Breakfast" is defined by, and subject to the discretion of, Prime Landlord. Subtenant also agrees it shall not operate within the Subleased Premises a Hawaiian-themed restaurant. Subtenant shall operate under the trade name "Señor Frogs" unless Prime Landlord consents in writing to the use of a different trade name at the Subleased Premises. Landlord affirms, however, that it has obtained the Prime Landlord's consent for the uses of the Subleased Premises as outlined in this Sublease.

6. Rent. In consideration of Subtenant's lease of the Subleased Premises as set forth herein, Subtenant shall pay Rent directly to Landlord as defined and set forth herein. From the Effective Date through the end of the 12th full month following the Effective Date, Subtenant shall pay to Landlord rent equal to $80,000 per month ("Rent"). Monthly Rent payable to Landlord by Subtenant shall then increase by three and one half percent (3.5%) on each anniversary of the Effective Date. Rent shall be payable in monthly installments, on or before the third day of each month during the Sublease Term, without notice or demand and without abatement, counterclaim, setoff or deduction whatsoever. All payments of Rent to be made by Subtenant shall be made payable to Landlord and sent to Landlord at the place to which notices to Landlord are required to be sent unless Landlord shall direct otherwise by notice to Subtenant, on or before the first day of each month during the Sublease Term. Landlord shall provide Subtenant with written notice of default for any Rent payment and five (5) days to cure same, If any installment of Rent is not paid when due, Subtenant also shall pay to Landlord a late charge equal to seven and one/half percent (7.5%) of the amount due along with interest from the due date at the rate of twelve percent (12%) of the amount due.

000215

000215

7. Default.

a. Subtenant's failure to timely pay Rent or Additional Rent or any other amounts due hereunder or to perform any obligation of Subtenant hereunder, Subtenant's violation of any other provision of this Sublease, or any act or omission by Subtenant or Subtenant's employees, agents or contractors that results in a violation by Landlord of the Prime Lease shall constitute an "Event of Default," subject to any Rent default notice and opportunity to cure as set forth above and subject to a period of twenty (20) days after written notice of a non-monetary default by Landlord to Subtenant; provided, however, that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said twenty (20) day period, then such failure shall be deemed to be rectified or cured if Subtenant shall, within said twenty (20) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence.

b. Upon the occurrence of an Event of Default as a result of a monetary default hereunder or any other default under Subsection 7(a), Landlord may (i) terminate this Sublease as of the date set forth in Landlord's written notice to Subtenant, in which case Subtenant's right to possession of the Subleased Premises shall cease and this Sublease shall thereupon be terminated,

000215

provided that Subtenant's obligations, including but not limited to past due Rent to be paid, and the balance of the Rent due for the remainder of the then-current Sublease Term, shall be due and payable to Landlord when due under the then-current Sublease Term subject to any offsets for Landlord's actual and reasonable tenant or leasing mitigation efforts; (ii) re-enter and take possession of the Subleased Premises and repossess the same, expel Subtenant and remove Subtenant's personal property, without being liable for prosecution for same and without prejudice to any remedies to accelerate Rent for the balance of the Sublease Term or for any breach of the covenants or conditions of this Sublease; and/or (iii) pursue any other remedy available at law or equity.

8. Separation of Subleased Premises from Premises.

a. Landlord and Subtenant agree that the Subleased Premises will be modified as necessary to provide Landlord with unrestricted and marketable access to all portions of the Premises other than the Subleased Premises, including without limitation construction in the first floor casino bar areas of the Premises of a new entrance to the second floor of the Premises and construction of an employee entrance to the second floor of the Premises through or near the existing kitchen and employee entrance area of the second floor of the Premises. Subtenant and Landlord shall mutually cooperate as necessary to accomplish such objectives and shall provide access to the Subleased Premises as necessary to accomplish such objectives.

b. Subtenant and Landlord shall cooperate in arriving at a reasonable plan to separate the Subleased Premises from the Premises in compliance with any and all municipal, local, or federal codes, statutes, regulations or ordinances ("Separation Plan") related thereto, and in selecting materials, vendors and contractors, and shall each pay half of the cost to complete the agreed upon Separation Plan by prefunding a third party neutral account held by Fidelity National Title out of which payments will only be made after both parties are provided copies of and approve in writing the invoices or other documents relating to same. No party will unreasonably withhold consent for payments relating to completed work, however.

c. Subtenant shall, at Subtenant's sole cost and expense and within ten (10) days of demand by Landlord or Prime Landlord, remove and/or modify any and all exterior and/or interior signage of Subtenant as required by Landlord or Prime Landlord in connection with the separation of the Subleased Premises from the Premises. Subtenant may, subject to Prime Landlord's consent and all applicable requirements of any governing authorities, install in and on the Subleased Premises alternative signage at Subtenant's sole cost and expense consistent with the existing signage of the Premises and the separation of the Subleased Premises as outlined herein, except that any signage opportunity on the exterior of the Premises shall be split 50/50 between Landlord and Tenant.

000216

000216

000216

d. If Landlord has not terminated the Subtenant Catering ROFR and maintains use of the Existing FF&E, Landlord will forego any of the modifications, construction or other improvements outlined above in Sections 8(a), 8(b) and/or 8(c).

9. Prime Lease

a. Except as set forth herein or in the Subordination, Non-Disturbance and Attornment Agreement set forth in Exhibit C attached hereto (the "SDNS"), this Sublease is subject to and subordinate to the provisions of the Prime Lease if invoked by Landlord, Prime Landlord or Subtenant.

b. During the term of this Sublease, Landlord shall be responsible to observe and perform the provisions of the Prime Lease. During the term of this Sublease, Subtenant shall be responsible to observe and perform the provisions of the Prime Lease set forth for any tenant as designated in relevant part within Exhibit B, attached hereto and incorporated herein. The Landlord and Subtenant will cooperate to amend Exhibit B as necessary to reflect any amendments to the Prime Lease.

c. Subtenant and Landlord shall, to the extent applicable, not, by any act or omission, cause there to be a violation of or in default under the provisions of the Prime Lease set forth on Exhibit B outlined below or otherwise.

d. Prime Landlord is obligated to provide Subtenant with simultaneous notice of any Landlord default under the Prime Lease as outlined in Exhibit D. In the event that Prime Landlord notifies Landlord of any default under the Prime Lease and does not provide simultaneous notice to Subtenant, Landlord will provide Subtenant with a copy of any Prime Landlord notice of default under the Prime Lease within twenty-four (24) hours and an opportunity to cure same on behalf of Landlord and to the satisfaction of Prime Landlord. If Subtenant cures any alleged default under the Prime Lease on behalf of Landlord and to the satisfaction of Prime Landlord and excepting when the alleged default is prompted or caused by Subtenant, Landlord will be responsible to repay Subtenant within thirty (30) days for any monetary amounts reasonably expended to cure the alleged default under the Prime Lease, plus a late charge equal to seven and one/half percent (7.5%) of the amount due along with interest per annum in the amount of twelve percent (12%) from the date paid by Subtenant until repaid by Landlord. If Subtenant cures an alleged default under the Prime Lease that is not prompted or caused by Subtenant on behalf of Landlord and to the satisfaction of Prime Landlord as noted above more than four (4) times, then Landlord will not object to Subtenant's efforts to assume the Prime Lease consistent with the SDNS. Nothing herein, however, allows Subtenant to offset any monetary amounts

000217

000217

000217

expended to cure any alleged defaults under the Prime Lease from the Rent due under Sections 4 or 6 hereunder.

e. The SDNS shall be executed and protect the Subtenant from a default of the Landlord under the Prime Lease subject to the terms of the SDNS.

f. During the term of this Sublease, Subtenant and Landlord, if deemed applicable to Landlord by the Prime Landlord, also shall observe and perform the Section 3.1(B) and 3.1(C) provisions of the Prime Lease set forth within Exhibit B, by reporting Gross Sales directly to Prime Landlord in the manner required of a tenant under Section 3.1(B) and 3.1(C) of the Prime Lease.

g. Subtenant shall comply with the terms of any Collective Bargaining Agreement to which Prime Landlord is a party, which applies to the Premises and/or the Subleased Premises, or which is otherwise required or necessary for the Use of Subleased Premises as outlined in Section 5 above. If applicable, Landlord also shall comply with the terms of any Collective Bargaining Agreement to which Prime Landlord is a party, for activities in the Premises Subleased Premises other than the Use of Subleased Premises by Subtenant outlined in Section 5 above.

000218

h. Subtenant shall institute a policy and procedure acceptable to Prime Landlord and use its best efforts to ensure that no underage drinking occurs in the Subleased Premises, or any other consumption of alcohol in violation of any applicable law. Similarly, Landlord shall institute a policy and procedure acceptable to Prime Landlord and use its best efforts to ensure that no underage drinking or any other consumption of alcohol in violation of any applicable law occurs in the Premises other than the Subleased Premises.

000218

i. Landlord agrees to comply with its obligations under the Prime Lease and not to create a default thereunder due to Landlord's actions, however, in no event shall this provision apply to any default under the Prime Lease prompted or caused by Subtenant and Subtenant shall not have the right or authority to determine whether or not Landlord has in fact complied with its obligations under the Prime Lease.

j. Landlord agrees that the Prime Landlord obligations under the Prime Lease as outlined in Exhibit D inure to the benefit of the Subtenant except as set forth herein, and that the Subtenant can take steps to enforce the provisions of the Prime Lease with respect to the obligations outlined in Exhibit D unless excepted or contradicted herein, as a third party beneficiary under the Prime Lease without objection from Landlord, except that Subtenant shall remain obligated under this Sublease to comply with the provisions of the Prime Lease set forth on Exhibit B.

000218

k. Landlord will not modify or amend the Prime Lease in any material fashion without the prior consent of Subtenant.

l. Landlord retains any rights under the Prime Lease that it does not specifically share with Subtenant under this Sublease and Exhibit D hereto.

10. Subtenant Point of Contact for Landlord and Prime Landlord. Subtenant hereby designates Renato Alvarado ("Subtenant Representative") as Subtenant's point of contact for Landlord and Prime Landlord with respect to all matters related to the Sublease, and confirms that Subtenant Representative's contact information is as follows: rana@frogsorlando.com. Landlord shall work in good faith with Prime Landlord to identify a representative of Prime Landlord ("Prime Landlord Representative") as a point of contact for the Subtenant Representative and Landlord with respect to the Subleased Premises as outlined below and to facilitate contact between the Subtenant Representative and the Prime Landlord Representative regarding the Subleased Premises with respect to any non-monetary issues related to the Subleased Premises, any of the non-monetary obligations outlined in Exhibits C and E, or with respect to the Complimentary Items as defined below.

11. Hours of Operation. Subtenant agrees to operate the Subleased Premises a minimum of eleven (11) hours per day, unless business dictates otherwise, in which instance the Landlord and Subtenant shall meet to determine hours of operation acceptable to Prime Landlord.

12. Complimentary Items. Subtenant agrees that Prime Landlord shall have the right to offer complimentary meals and admission at Subtenant's business in the Subleased Premises to Prime Landlord's patrons and employees pursuant to the terms of the Prime Lease ("Complimentary Items"). To the extent applicable, Subtenant shall bill Complimentary Items to Prime Landlord with a forty percent (40%) discount applied in accordance with the Prime Lease.

13. Prime Landlord Systems. Subtenant agrees to comply with all rules and regulations of Prime Landlord with respect to the Premises and Subleased Premises in accordance with Exhibit B attached hereto.

14. Prime Landlord Contribution. Prime Landlord provided a total of $2.5 Million ("Prime Landlord Contribution") for improvements to the Premises that have been used by Subtenant pursuant to the Existing Sublease and may continue to be used by Subtenant in the Subleased Premises pursuant to this Sublease. A portion of the Prime Landlord Contribution to be repaid to Prime Landlord, plus 6% interest, remains due and outstanding to Prime Landlord as set forth in Exhibit E, attached hereto and incorporated herein. During the Sublease Term, Subtenant shall pay to Landlord the unpaid Prime Landlord Contribution on a monthly basis in an amount equal to $50,000, with interest as set forth in Exhibit E, on or before the first day of each month of the Sublease Term, through and including May 2017 or until such payments satisfy the unpaid portion of the Prime Landlord Contribution.

15. Assignment.

000219

000219

a. This Sublease may not be assigned or the Subleased Premises subleased to a third party by Subtenant except to a franchisee or other business entity or individual for the same use as permitted under the Prime Lease, *i.e.*, for the operation of a bar, lounge, restaurant and/or nightclub serving Mexican food and international food and that may feature live entertainment and/or pre-recorded music and disc jockeys, dancing, bottle service, live entertainment and private events in accordance with the Prime Lease, including but not limited to application of the Trade Name requirements in Section 7.7 of the Prime Lease as outlined in Section 9(a) herein, or for any other purpose to which the Landlord and Prime Landlord give prior written consent which shall not be unreasonably withheld, conditioned or delayed under certain conditions pursuant to the terms of the Prime Lease.

b. Notwithstanding anything to the contrary contained in the Prime Lease, Subtenant may, assign or sublease this Sublease to a Subtenant affiliate, in connection with a sale of all or substantially all of the Subtenant's operations, or the merger or consolidation of the Subtenant with another entity.

c. Subtenant shall not permit the Subleased Premises to be used or occupied for any purpose other than as set forth herein. No sublease or assignment shall release Subtenant of any of its obligations under this Sublease and/or the Prime Lease or be construed as, or constitute a waiver of, any of Landlord's rights or remedies hereunder. Absent a written agreement to the contrary which is executed by Landlord, no assignment, sublease, mortgage, pledge, hypothecation or encumbrance of this Sublease by Subtenant shall act as, or affect a release of, Subtenant from any of the agreements, obligations and covenants of this Sublease to be performed by Subtenant hereunder.

d. Moreover, to the extent that Subtenant is permitted to sublease or assign this Sublease, Subtenant is not allowed to profit from any such sublease assignment (except for profits associated with the sale of all or substantially all of the Subtenant's operations as outlined in Section 15(b) above), and Landlord will be entitled to any positive income margin between the Rent outlined in Section 6 herein and any rent charged or collected by Subtenant from any permitted sublease or assignment. Nothing herein, however, prevents Subtenant from selling or franchising its business for profit and retaining the proceeds related thereto.

16. Recording. Subtenant may not record this Sublease or a memorandum thereof.

17. Notice. Any notice, statement, demand or any other communication required or permitted to be given, rendered or made by either party to the other pursuant to this Sublease shall be in writing and shall be addressed as follows:

000220

000220

000220

a. if to Landlord at 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, with a copy to Benjamin Kahn, The Conundrum Group, LLP, PO Box 848, Salida, Colorado 81201, or

b. if to Subtenant at 3300 Las Vegas Boulevard South, Las Vegas, Nevada 89109, with a copy to Ronald R. Fieldstone, Esq. and Susan Trench, Esq., Arnstein & Lehr LLP, 200 South Biscayne Boulevard, Suite 3600, Miami, Florida 33131, and

c. any such notice, statement demand or any other communications required or permitted to be given, rendered or made shall be deemed to have been properly given, rendered or made upon personal delivery, or as of the immediately following business day after deposit with Federal Express or a similar overnight courier service, with delivery charges for morning delivery on the next business day prepaid, and

d. any party may change its address for notices pursuant to this Sublease by written notice to the other party as set forth herein, or may waive in writing the right to formal notice as outlined herein.

18. Indemnification.

a. Subtenant agrees to indemnify and hold Landlord and its members, managers, officers, agents, employees, representatives, affiliates and controlling persons harmless from and against any and all loss, damage, liability or expense (including, without limitation, attorney fees and disbursements) due to or arising out of (in each case in whole or in part) any use of the Subleased Premises or Event of Default or other failure by Subtenant to fulfill its covenants or agreements as set forth herein or in Exhibit B attached hereto.

b. Landlord likewise agrees to indemnify and hold harmless Subtenant and its members, managers, officers, agents, employees, representatives, affiliates and controlling persons harmless from and against any and all loss, damage, liability or expense (including, without limitation, attorney fees and disbursements) due to or arising out of (in each case in whole or in part) any failure by Landlord to fulfills its covenants or agreements as set forth herein.

19. Costs. Landlord and Subtenant shall bear and pay their own costs and expenses incurred in connection this Agreement and with the consummation of the transactions contemplated by this Sublease.

20. Entire Agreement. This Sublease, together with the Subordination, Non-Disturbance and Attornment Agreement executed contemporaneously herewith, contains the entire agreement of the parties with respect to the subject matter hereof and shall only be changed by a written agreement signed by all of the parties to this Agreement.

000221

000221

000221

21. Governing Law. This Sublease and all matters and issues collateral thereto shall be construed according to the laws of the State of Nevada.

22. Attorney Fees. If either party shall commence any action or proceeding against another party in order to enforce the provisions of this Sublease, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing party therein shall be entitled to recover all reasonable costs incurred in connection therewith, including without limitation reasonable attorney fees.

23. Waiver of Breach. The waiver by any party of a breach of any provision of this Sublease shall not operate or be construed as a waiver of any subsequent breach by any party.

24. Severability. If any provision of this Sublease becomes or is found to be illegal or unenforceable for any reason, such clause or provision must first be modified to the extent necessary to make this Sublease legal and enforceable and then if necessary, second, severed from the remainder of the Sublease to allow the remainder of the Sublease to remain in full force and effect.

25. Further Assurances. Each party shall execute and deliver or cause to be executed and delivered to the other such further instruments and shall cooperate and take such other action as may be reasonably required for the purpose of giving effect to provisions of this Sublease, including but not limited to complying with any amendments to the Prime Lease and/or any requests by Landlord to update or supplement Exhibits C, D and/or E accordingly.

000222

000222

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed as of the date first written above.

[SIGNATURE PAGES FOLLOW]

000222

Landlord:

Rose, LLC,
a Colorado limited liability company

By: Rose Management, Inc.,
Its Manager

By: _____
Name: Corey Deangel
Its: President

000223

000223

000223

Subtenant:

Señor Frogs Las Vegas, LLC,
a Nevada limited liability company

By: Our People USA, LLC,
Its Manager

By: 05/06/2014
Name: Jorge Lizarraga F.
Its: Manager

000224

000224

000224

EXHIBIT

13

000225

000225

MICHAEL C. VAN, ESQ.
Nevada Bar No. 3876
SAMUEL A. MARSHALL, ESQ.
Nevada Bar No. 13718
SHUMWAY VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770
Facsimile: (702) 478-7779
Email: michael@shumwayvan.com
samuel@shumwayvan.com
Attorneys for Defendant/Counterclaimant

ELECTRONICALLY SERVED
04/05/2016 11:26:08 AM

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff v. ROSE, LLC, a Nevada limited liability company, Defendant	Case No.: A-15-719105-B Dept. No.: XI **DEFENDANT/COUNTERCLAIMANT ROSE LLC'S SECOND SUPPLEMENTAL DISCLOSURES PURSUANT TO NRCP 16.1**
ROSE, LLC, a Nevada limited liability company, Counterclaimant v. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant	

Pursuant to NRCP 16.1, Defendant Rose, LLC ("Rose") hereby submits its second supplemental list of persons who may be called as witnesses and documents that may be used at trial as follows (**newly supplemented information is indicated in bold**):

. . .

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000226

000226

000226

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000227

A. LIST OF WITNESSES

1. Najam Khan
Treasure Island
c/o Patrick J. Sheehan, Esq.
John H. Mowbray, Esq.
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

Mr. Khan is expected to testify as to the fact and circumstances concerning the action.

2. Phil Ruffin
Manager, Treasure Island, LLC
c/o Patrick J. Sheehan, Esq.
John H. Mowbray, Esq.
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

Mr. Ruffin is expected to testify as to the fact and circumstances concerning the action.

3. Jerry Griffis
Treasure Island
c/o Patrick J. Sheehan, Esq.
John H. Mowbray, Esq.
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

Mr. Griffis is expected to testify as to the fact and circumstances concerning the action.

4. Brad Anthony, Esq.
c/o Patrick J. Sheehan, Esq.
John H. Mowbray, Esq.
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

Mr. Anthony is expected to testify as to the fact and circumstances concerning the action.

5. The NRCP 30(b)(6) representative(s) for Treasure Island, LLC
c/o Patrick J. Sheehan, Esq.
John H. Mowbray, Esq.
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

000227

The NRCP 30(b)(6) representative(s) for Treasure Island, LLC is/are expected to testify as to the fact and circumstances concerning the action.

6. NRCP 30(b)(6) representative(s) for Rose, LLC
Michael C. Van, Esq.
SHUMWAY VAN
8985 S. Eastern Ave., Suite 100
Las Vegas, Nevada 89123

The NRCP 30(b)(6) representative(s) for Rose, LLC is/are expected to testify as to the fact and circumstances concerning the action.

7. Jorge Lizarraga
Manager, Senor Frogs, Las Vegas, LLC
c/o Ronald R. Fieldstone, Esq.
Susan Trench, Esq.
Arstein & Lehr LLP
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131

Mr. Lizarraga is expected to testify as to the facts and circumstances concerning the action.

Defendant/Counterclaimant reserves the right to amend and/or supplement this list of witnesses as discovery continues.

B. LIST OF DOCUMENTS

1. Lease Agreement between Treasure Island, LLC and Rose, LLC, dated April 13, 2011, attached hereto in electronic format and identified as ROSEOOOOOI through ROSE000030;

2. First Amendment to Lease Agreement between Treasure Island, LLC and Rose, LLC, dated October 10, 2011, attached hereto in electronic format and identified as ROSE000031 through ROSE000032;

3. Second Amendment to Lease Agreement between Treasure Island, LLC and Rose, LLC, dated December 22, 2011, attached hereto in electronic format and identified as ROSE000033;

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000228
000228
000228

4. Third Amendment to Lease Agreement between Treasure Island, LLC and Rose, LLC, dated April 20, 2012, attached hereto in electronic format and identified as ROSE000034 through ROSE000035;

5. Fourth Amendment to Lease Agreement between Treasure Island, LLC and Rose, LLC, dated April 18, 2013, attached hereto in electronic format and identified as ROSE000036 through ROSE000038;

6. Fifth Amendment to Lease Agreement between Treasure Island, LLC and Rose, LLC, dated April 30, 2014, attached hereto in electronic format and identified as ROSE000039 through ROSE000043;

7. Subordination, Non-Disturbance and Attorney Agreement between Rose, LLC and Senor Frogs Las Vegas, LLC, dated May 6, 2014, attached hereto in electronic format and identified as ROSE000044 through ROSE000051;

8. Correspondence dated May 28, 2015, from Brenoch R. Wirthlin, Esq. to Gary J. Dragul regarding Termination of Lease, attached hereto in electronic format and identified as ROSE000052;

9. Correspondence dated May 29, 2015, from Gary J. Dragul to Najam Khan and Brad Anthony, Esq. regarding Treasure Island Lease Notice, attached hereto in electronic format and identified as ROSE000053 through ROSE000062;

10. Correspondence with attachments and fax confirmation dated June 3, 2015, from Gary J. Dragul to Najam Khan, and shipping label with June rent check payment and identified as ROSE000063 through ROSE000070;

11. Correspondence with attachments and fax confirmation dated June 3, 2015, from Gary J. Dragul to Najam Khan, cc: Brad Anthony, and shipping label with June rent check payment

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000229
000229
000229

to Jerry Griffis, regarding Treasure Island Payment Notice, attached hereto in electronic format and identified as ROSE000071 through ROSE000078;

12. Refusal of FedEx delivery of June rent check to Jerry Griffis, dated June 4, 2015, attached hereto in electronic format and identified as ROSE000079;

13. Refusal of FedEx delivery of June 3, 2015 correspondence to Brad Anthony, dated June 4, 2015, attached hereto in electronic format and identified as ROSE000080;

14. Refusal of FedEx delivery of June 3, 2015 correspondence to Najam Khan, dated June 4, 2015, attached hereto in electronic format and identified as ROSE000081;

15. Correspondence dated October 31, 2015, from Brad R. Anthony to Susan Markusch regarding Percentage Rent, with Certified Mail envelope dated October 30, 2015, attached hereto and identified as ROSE000082 through ROSE000083;

16. Copy of check no. 6451, in the amount of $168,127.00, made payable to Treasure Island, LLC from Rose, LLC, dated October 30, 2015, attached hereto and identified as ROSE000084;

17. Email correspondence between Brad Anthony, Gary Dragul, and Najam Khan, dated March 5, 2014, attached hereto and identified as ROSE000085 through ROSE000086;

18. Email correspondence between Brad Anthony and Elizabeth Gold, dated April 24, 2014, attached hereto and identified as ROSE000087;

19. Email correspondence between Brad Anthony and Elizabeth Gold, dated April 25, 2014, attached hereto and identified as ROSE000088 through ROSE000089;

20. Email correspondence between Brad Anthony and Elizabeth Gold, dated April 25, 2014, attached hereto and identified as ROSE000090;

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000230

000230

21. Email correspondence between Elizabeth Gold and Gary Dragul, dated July 2, 2015, attached hereto and identified as ROSE000091 through ROSE000093;

22. Email correspondence between Brad Anthony and Elizabeth Gold, dated December 16, 2011, attached hereto and identified as ROSE000094;

23. Email correspondence between Brad Anthony and Elizabeth Gold, dated March 12, 2014, attached hereto and identified as ROSE000095 through ROSE000097;

24. Email correspondence between Brad Anthony and Elizabeth Gold, dated March 19, 2014, attached hereto and identified as ROSE000098 through ROSE000100;

25. Email correspondence between Brad Anthony, Elizabeth Gold, and Gary Dragul, dated March 25, 2014, attached hereto and identified as ROSE000101 through ROSE000103;

26. Email correspondence between Brad Anthony and Elizabeth Gold, dated April 4, 2014, attached hereto and identified as ROSE000104;

27. Email correspondence between Brad Anthony and Elizabeth Gold, dated April 7, 2014, attached hereto and identified as ROSE000105 through ROSE000106;

28. Email correspondence between Brad Anthony and Elizabeth Gold, dated April 15, 2014, attached hereto and identified as ROSE000107 through ROSE000108;

29. Email correspondence between Brad Anthony and Elizabeth Gold, dated April 25, 2014, attached hereto and identified as ROSE000109 through ROSE000110;

30. Email correspondence between Brad Anthony, Elizabeth Gold, and Gary Dragul, dated April 21, 2014, attached hereto and identified as ROSE000111;

Rose reserves the right to amend and/or supplement this list of documents as discovery continues.

. . .

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000231
000231
000231

C. DAMAGES COMPUTATION

Rose seeks, among other things, the recovery of the attorney's fees and costs it will have incurred to defend this action. Rose reserves its right to amend and/or supplement this damage computation as discovery continues.

D. INSURANCE AGREEMENTS

Rose is unaware of any insurance agreements applicable to this action.

DATED this 5th day of April, 2016.

SHUMWAY VAN

By: _____

MICHAEL C. VAN, ESQ.
Nevada Bar No. 3876
SAMUEL A. MARSHALL, ESQ.
Nevada Bar No. 13718
8985 S. Eastern Ave. Suite 100
Las Vegas, Nevada 89123
Attorneys for Defendant/Counterclaimant

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000232
000232
000232

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT/COUNTERCLAIMANT ROSE LLC'S SECOND SUPPLEMENTAL DISCLOSURES PURSUANT TO NRCP 16.1** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 5th day of April, 2016. I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

PATRICK SHEEHAN, ESQ.
FENNEMORE CRAIG, P.C.
300 S. FOURTH STREET SUITE 1400
LAS VEGAS, NV 89101

Kamra Tuller
An employee of Shumway Van

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000233

000233

13

Electronically Filed
06/30/2016 11:13:06 AM

CLERK OF THE COURT

BREF
MICHAEL C. VAN, ESQ.
Nevada Bar No. 3876
SAMUEL A. MARSHALL, ESQ.
Nevada Bar No. 13718
SHUMWAY VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770
Facsimile: (702) 478-7779
Email: michael@shumwayvan.com
samuel@shumwayvan.com
Attorneys for Defendant/Counterclaimant

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff v. ROSE, LLC, a Nevada limited liability company, Defendant	Case No.: A-15-719105-B Dept. No.: XI **DEFENDANT/ COUNTERCLAIMANT'S TRIAL BRIEF**
ROSE, LLC, a Nevada limited liability company, Counterclaimant v. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant	

Defendant/Counterclaimant Rose, LLC, by and through its counsel of record, the law firm of Shumway Van, respectfully submits the following Trial Brief pursuant the parties' Stipulation and Order entered by this Court on May 19, 2016 ("Stipulation") vacating the May 25, 2016 trial date in exchange for the parties' agreement to submit briefs on June 27, 2016 for potential

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000234

000234

000234

resolution of this dispute as a matter of law based on the existing factual record. The parties subsequently agreed to extend the deadline for briefs to June 29, 2016. Pursuant to the Stipulation, this Court maintains jurisdiction to hold an evidentiary hearing in the event the Court is unable to decide this case as a matter of law.

I. INTRODUCTION

This case represents an attempt by Plaintiff and Counterdefendant Treasure Island, LLC ("TI") to claw back valuable leased space from its tenant, notwithstanding a long-term contractual occupancy agreement and based purely on a technical leasing infraction. As evidenced below, TI's notice of any alleged breach or default did not properly notify all of the necessary and involved parties in accordance with the Lease and TI's failure to notice the appropriate parties was material with respect to available cure opportunities. Moreover, TI subsequently refused to accept properly tendered lease payments and has acted in bad faith by using this litigation as a pretextual platform to renegotiate or abandon its contractual leasing commitments.

This Court should reject TI's claims as a matter of law based on the governing leasing provisions and uncontested facts, and award Defendant and Counterclaimant Rose, LLC ("Rose") its associated costs and attorney fees. This Court also should grant judgment in favor of Rose on its counterclaims as amended as a matter of law based on the stipulated record, and require involved party submissions or hold an evidentiary hearing with respect to Rose's related damages. Alternatively, if this Court concludes that it cannot grant judgment as a matter of law to Rose with respect to the claims and counterclaims at issue based on the briefs before the Court then this Court should hold a more involved evidentiary hearing pursuant to the express terms of the Stipulation allowing the Court to be provided testimony from the parties involved.

II. FACTUAL BACKGROUND

This case primarily concerns a lease agreement between TI and Rose that was entered into between the parties on April 13, 2011 and amended ("Lease")[1] for a space located on TI's property

[1] See the Lease dated April 13, 2011 and five Amendments thereto dated October 10, 2011, December 22, 2011, April 20, 2013, April 18, 2013, and April 30, 2014 respectfully. True and correct copies of which are attached hereto as **Exhibits 1, 2, 3, 4, 5, and 6** respectfully.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000235
000235
000235

(the "Premises") wherein Grupo Anderson's ("Anderson's") operates a Mexican-themed restaurant called Señor Frog's ("Señor Frog's").[2] The Premises is a two story space of over 18,000 square feet[3] with a completely custom Señor Frog's design and is located directly adjacent to the body of water where TI historically held its famous pirate shows.[4] Without a doubt, the Premises are prime real estate on the Las Vegas Strip and the Lease itself is a substantial asset.

Anderson's is based out of Cancun, Mexico and owns over forty restaurants throughout Latin America and the United States.[5] Rose is based out of Greenwood Village, Colorado and deals primarily in the business of real estate.[6] Prior to the execution of the Lease, Gary Dragul ("Mr. Dragul"), President of Rose, contacted David Krouham ("Mr. Krouham"), President of Anderson's and licensee of the Señor Frog's name, to discuss the joint venture that would later become one of the most prominent Señor Frog's restaurants in the United States ("Joint Venture").[7] After reaching a deal agreeable to both Rose and Anderson's, Mr. Dragul approached Phillip G. Ruffin ("Mr. Ruffin"), President of TI, to negotiate the terms of the Lease.[8]

Shortly after the Lease was executed and Señor Frog's was operating, it became apparent to both Rose and Anderson's that it would be best to forego the Joint Venture so that Operadora, *i.e.*, Anderson's operating company charged with the responsibility of overseeing the operations of all the Señor Frog's restaurants, could operate Señor Frog's alone while Rose continued to act as its landlord and utilized a portion of the Premises for other uses.[9] As a result, Anderson's subleased, under its subsidiary Senor Frog's Las Vegas, LLC ("SFLV"), most of the Premises from Rose in June of 2011 (the "Sublease") and the two entities continue to maintain those same business relationships to this day.[10]

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000236

000236

---

[2] See the Amended Sublease dated May 6, 2014, a true and correct copy of which is attached hereto as **Exhibit 7**.
[3] See **Exhibit 1** at Section 1.1.
[4] See images of Señor Frog's attached hereto as **Exhibit 8**.
[5] Krouham Aff. ¶ 6, a true and correct copy is attached hereto as **Exhibit 9**.
[6] Dragul Aff. ¶ 5, a true and correct copy is attached hereto as **Exhibit 10**.
[7] See **Exhibit 9** at ¶ 10 and **Exhibit 10** at ¶ 6.
[8] See **Exhibit 10** at ¶ 9.
[9] See **Exhibit 9** at ¶¶ 8, 12, 13, 15, and 16; and, **Exhibit 10** at ¶ 11.
[10] See generally **Exhibit 7**.

000236

THE LEASE, SUBLEASE, AND FIFTH AMENDMENT

Mr. Ruffin and Mr. Dragul were directly involved in negotiations over the Lease terms and each amendment thereto as the primary party decision-makers.[11] Although Anderson's is not a party to the Lease, Anderson's is a third-party beneficiary of the Lease so Mr. Krouham was also involved in the Lease negotiations and Operadora bargained for a number of provisions within the Lease as amended including TI's obligation to provide direct notice of any alleged breach or default, together with the associated cure provisions, to Operadora *and* SFLV counsel in Florida.[12]

The Lease is a long-term commitment for all of the involved parties.[13] The initial term of the Lease is ten (10) years and grants Rose the unilateral right to exercise options adding additional terms totaling twenty (20) years, resulting in a potential expiration date of approximately April 13, 2041.[14] Rose initially paid $52,000.00 per month in addition to seven percent (7%) of the gross sales of Señor Frog's within thirty (30) days after the end of each quarter ("Percentage Rent").[15] At the time, TI was obligated under the Lease to continue its highlight reel attraction pirate show during the leasing term.[16] Because TI's construction projects and decision to abandon the pirate show significantly affected the sales of Señor Frog's, Rose successfully negotiated its monthly obligation down to $33,250.00 through leasing amendments ("Rent") and continues to pay Percentage Rent as well.[17] As part of those Lease amendment efforts, Rose, Operadora, and SFLV also bargained for stronger notice and cure rights and TI received permission to discontinue its pirate show attraction.[18]

Under the Lease, Rose, Operadora, and SFLV all have significant notice and cure rights.[19] The Lease defines an event of default as failure "to pay any installment of Rent or any other amount or charge required to be paid by Tenant to Landlord pursuant to the terms of [the] Lease, and such

---

[11] See generally email correspondence regarding Mr. Ruffin's involvement at **Exhibit 11** and **Exhibit 10** at ¶ 9.
[12] See **Exhibit 9** at ¶ 13 and **Exhibit 10** at ¶ 10.
[13] See **Exhibit 1** at Section 2.1.
[14] Id.
[15] See **Exhibit 1** at Section 3.1.
[16] See **Exhibit 1** at Section 17 and Section 17.1(e).
[17] See email correspondence regarding the construction at ROSE000111 of **Exhibit 12** and **Exhibit 6** at Section 2 and Section 7.
[18] Id.
[19] See **Exhibit 1** at Section's 15.1 and 19.6 and **Exhibit 6** at Section 11.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000237
000237
000237

failure continues for ten (10) days from [TI's] written notice to Rose that any such Rent installment or other amount or charge is due."[20] In other words, Rose's failure to make timely payments to TI would put Rose in breach; however, the Lease allows Rose ten (10) days to cure any such breach after written notice and prior to default. TI does not dispute the notice obligations or cure rights in the Lease, or consider them to be ambiguous.[21]

Indeed, the Lease was always very specific with respect to appropriate notice procedures.[22] Along with the requirements for any notice to be in writing, Section 19.6 of the Lease outlines the methods and manner of proper notice under the Lease[23]:

> Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties (a) on the date of personal delivery, (b) on the date delivered by a nationally recognized overnight courier service when deposited for overnight delivery, (c) on the next Business Day following any facsimile transmission to a party at its facsimile number set forth below; provided, however, such delivery is concurrent with delivery pursuant to the provisions of clauses (a), (b) or (d) of this Section 19.6, or (d) three (3) Business Days after being placed in the United States mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address and/or contact person by giving notice as aforesaid):
>
> If to Landlord: Treasure Island, LLC
> 3300 Las Vegas Blvd., South
> Las Vegas, NV 89109
> Attn: Najam Khan
> Facsimile: 702-894-7680
> E-mail: nkhan@treasureisland.com
>
> With a copy via facsimile to:
>
> Brad Anthony, General Counsel
> Facsimile: 702-894-7295
> E-mail: banthony@treasureisland.com
>
> If to Tenant: Rose, LLC
> 8301 E. Prentice Ave., Suite 210
> Greenwood Village, CO 80111
> Attn: Susan Markusch
> Facsimile: 303-221-5501
> E-mail: susan@gdare.com

[20] See Section 15.1 of the Lease at **Exhibit 1**
[21] See Pg. 2, ll. 5-8 of TI's opposition to Rose's Motion to Continue Trial, a true and correct copy is attached hereto as **Exhibit 13**.
[22] See **Exhibit 1** at Section 19.6.
[23] Id.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000238
000238
000238

With a copy to:

Operadora Andersons S.A. de C.V.
Boulevard Kakulkan km 14.2
Cancun, Mexico
C.P. 77500 Zona Hotelera

Accordingly, the Lease has always required TI to put Operadora directly on notice of any alleged breach or default.

In the early months of 2014, Rose and Anderson's were in negotiations regarding the Sublease and the involved parties revisited the master leasing relationship again.[24] In conjunction with the subleasing negotiations and in anticipation of an amended Sublease, Rose and TI executed the Fifth Amendment to the Lease to amend a number of its sections ("Fifth Amendment").[25] In relevant part, TI and Rose amended the notice provision of Section 19.6 to reiterate TI's requirement to send Operadora a copy of any notice sent to Rose and added an additional requirement that TI also send a copy of any such notice to SFLV's counsel in Florida.[26] Section 11 of the Fifth Amendment specifically provides[27]:

> The Parties agree that for purposes of Section 19.6 of the Lease, Tenant's notice address is updated to 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, and that copies of notices sent to Tenant per the Lease shall also be sent to Subtenant addressed to: Operadora Andersons S.A. de C.V, Boulevard Kukulkan km 14.2, Cancun, Mexico, C.P. 77500 Zona Hotelera, and to Subtenant's counsel, addressed to: Ronald R. Fieldstone, Esq. and Susan Trench, Esq., Arnstein & Lehr LLP, 200 South Biscayne Boulevard, Suite 3600, Miami, Florida 33131.

As such, the Lease as it currently is amended continues to require TI to notice Operadora directly of any alleged breach or default *and* was strengthened to require TI to provide notice directly to the operating subtenant SFLV's counsel. These Lease amendments provided Rose, Operadora, and SFLV with heavily negotiated and reinforced notice rights and cure options.

On May 6, 2014 Rose and SFLV amended the Sublease and further reinforced SFLV's need to be directly involved in any notice and cure efforts associated with an alleged breach or default ("Amended Sublease").[28] Under the Amended Sublease, Operadora maintained a direct

[24] See **Exhibit 9** at ¶¶ 24, 25, and 26; and, **Exhibit 10** at ¶ 16-18.
[25] See generally **Exhibit 6**.
[26] See **Exhibit 6** at Section 11.
[27] Id.
[28] See generally **Exhibit 7**.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000239
000239
000239

payment right for cure purposes which allowed SFLV to pay TI directly if necessary for any amounts owed by Rose under the Lease.[29] The purpose of this provision was to enable SFLV to cure any alleged breach and then revisit the issue with Rose as necessary in the context of their ongoing financial relationship.[30] The updated notice provision found under Section 11 of the Fifth Amendment is reinforced in the Amended Sublease as Section 9.d, which provides in relevant part[31]:

> [TI] is obligated to provide [SFLV] with simultaneous notice of any [Rose] default under the Prime Lease.... If [SFLV] cures any alleged default under the Prime Lease on behalf of [Rose]... Landlord will be responsible to repay [SFLV] within thirty (30) days for any monetary amounts reasonably expended to cure the alleged default under the Prime Lease.

Again, the purpose of these notice and direct payment terms was to provide Anderson's an assurance that it would have an opportunity to cure any default on the part of Rose so that Anderson's and Operadora could protect their significant investment of over eight million dollars in SFLV and the Premises.[32] Rose also bargained for the revised notice requirement so that its tenant would cure any inadvertent default on Rose's part and protect Rose's nearly four-million-dollar investment in SFLV and the Premises.[33] While Anderson's and Rose dissolved their Joint Venture, Rose and Anderson's nevertheless maintain an ongoing subleasing relationship and both parties are still heavily invested in the success of SFLV and work together toward that mutual goal.[34]

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000240

ROSE'S ALLEGED BREACH AND ATTEMPTS TO CURE

On Thursday May 14, 2015, TI sent correspondence purporting to provide Rose with notice of an alleged breach of the Lease because Rose had failed to tender timely Percentage Rent ("Alleged Breach Notice").[35] In other words, the base Rent was timely paid but the additional Percentage Rent amount was late. However, Mr. Dragul and his staff were not present at Rose's

---

[29] Id. at Section 9.d.
[30] See **Exhibit 9** at ¶¶ 20-23 and **Exhibit 10** at ¶ 19-20.
[31] See **Exhibit 7** at Section 9.d.
[32] See **Exhibit 9** at ¶ 17.
[33] See **Exhibit 10** at ¶ 20.
[34] See **Exhibit 9** at ¶ 16 and **Exhibit 10** at ¶ 12.
[35] See TI's May 14, 2015 Alleged Breach Notice, a true and correct copy is attached hereto as **Exhibit 14**.

000240

office in Colorado because they were out of town on other business and the following weekend was Memorial Day.[36] Considering the ten (10) day cure period provided by Section 15.1.1 of the Lease, TI nevertheless expected Rose to cure the alleged default by Sunday, May 24, 2015.[37] It was a scenario such as this that was contemplated by Rose and Anderson's when the parties executed the Fifth Amendment reiterating TI's requirement that TI notify Operadora and adding a requirement to notify SFLV's counsel in Florida should Rose be in breach or default.[38] If Rose was out of pocket or if payment lapsed for any reason with respect to the Premises, Operadora had bargained for the right to fix any leasing problem one way or another and then resolve the issue with Rose directly.[39]

Despite these specific bargained for rights, TI's Alleged Breach Notice under the Lease was infirm and inadequate on its face.[40] TI failed to send a copy to either Operadora or SFLV's Florida counsel and addressed the Alleged Breach Notice to Rose with attention to Mr. Dragul, who was out of town, rather than to Rose's "contact person" under Section 19.6, *i.e.*, Susan Markusch ("Ms. Markusch") - the Vice President of Rose who was actually in charge of accounting issues.[41]

TI then immediately tried to exploit the alleged breach and default as an opportunity to exit its long-term leasing obligations with Rose and develop a direct leasing relationship with SFLV or otherwise repurpose the Premises.[42] Rose received a letter from TI's counsel purporting to terminate the Lease on May 28, 2016 ("Alleged Termination").[43] On the very same day, TI filed its Complaint against Rose (the "Complaint") initiating this action for breach of the Lease and contacted SFLV's counsel to initiate lease negotiations directly with Anderson's.[44] Indeed, TI wrote SFLV directly and attempted to circumvent and interfere with Rose's contractual

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000241

[36] See **Exhibit 10** at ¶ 21-25.
[37] See **Exhibit 1 at** Section 15.1.1.
[38] See **Exhibit 9** at ¶ 22-23 and 26-29; and, **Exhibit 10** at ¶ 19-20.
[39] See **Exhibit 7** at Section 9.d.
[40] See **Exhibit 14**.
[41] Id.
[42] See TI's May 28, 2015 Alleged Termination letter, a true and correct copy is attached hereto as **Exhibit 15**.
[43] Id.
[44] See TI's May 28, 2015 Complaint, a true and correct copy is attached hereto as **Exhibit 16**.

000241

relationships by negotiating a leasing relationship between TI and SFLV that boxed Rose out of the business equation.[45]

Rose immediately responded to TI's Alleged Breach Notice and letter regarding TI's Alleged Termination.[46] In his May 29, 2015 letter, Mr. Dragul pointed out that TI's notice of Rose's alleged breach and TI's Alleged Termination letter were in breach of the Lease and Fifth Amendment and immediately thereafter attempted to tender payment of the Percentage Rent to TI in the amount of $119,229.00 via wire transfer, but TI returned the funds.[47] Rose again attempted to make the same payment to TI on June 3, 2015 via wire transfer into another account, but TI also returned those payments.[48] Rose attempted to pay TI a third time using a cashier's check that was sent via FedEx overnight to TI, but once again TI again refused to accept Rose's payment.[49] Rose ultimately made several more payment attempts to TI without gaining any traction on advancing TI's actual acceptance of the tendered funds.[50]

TI eventually accepted Rose's payment after receiving a Court Order confirming its ability to do so without waiving any of its rights under the Lease.[51] Since that time, Rose has been current with all of its payment obligations to TI pursuant to the Lease.

TREASURE ISLAND'S DEFAULTS UNDER THE LEASE

When it became clear that TI had no intention of honoring the notice, cure or payment terms of the Lease, Rose was forced to put TI on notice of its related defaults.[52] In its first Notice of Default, Rose laid out each of TI's breaches under the Lease with respect to notice and payment and stated, "Treasure Island cannot manufacture a breach of the Lease by ignoring the notice provisions in the Lease and unilaterally rejecting rental payments tendered by Rose and/or

[45] See **Exhibit 15**.
[46] See Rose's May 29, 2015 letter, a true and correct copy is attached hereto as **Exhibit 17**.
[47] See **Exhibit 1** at Section 3.1 and Rose's June 3, 2015 letter to TI along with payment documents at **Exhibit 18**.
[48] Id.
[49] Id.
[50] Id.
[51] See TI's August 27, 2015 Motion for Confirmation that Treasure Island May Collect Rent During the Pendency of the Litigation, a true and correct copy is attached hereto as **Exhibit 19**.
[52] See Rose's Notice of Default dated September 11, 2015, a true and correct copy is attached hereto as **Exhibit 20**; and, Rose's Second Notice of Default dated November 18, 2015, a true and correct copy is attached hereto as **Exhibit 21**.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000242
000242
000242

Treasure Island in accordance with the Lease. And in doing so, Treasure Island has breached the Lease itself."[53] Similarly, Rose outlined TI's breaches a second time in its Second Notice of Lease Default — after TI had filed a motion seeking the Court's permission to accept Rose's rent payments even though it recognized Nevada Supreme Court precedent that permitted landlords to accept rent for continued occupancy without waiving any rights — and stated, "Based on Treasure Island's judicial admissions, it appears uncontested that Treasure Island rejected rental payments properly tendered by Rose pursuant to the Lease. Treasure Island concedes that it did not have the right to reject rental payments that Rose properly tendered pursuant to the Lease, based on Nevada law. It should be noted that all of Rose's Notices to TI pursuant to the Lease conformed with the relevant notice provisions; nevertheless, TI never responded to Rose regarding the Notices or made any attempt to cure its defaults."[54] All told, TI has never disputed that it breached the Lease with respect to its notice failures or refusal to accept Rose's Lease payments.

DEFAULT USED AS A PRETEXT TO REMOVE ROSE

Although Rose tried a number of times to take the deposition of Mr. Ruffin to determine why TI was hampering the notice and cure rights that Rose and Operadora bargained for by refusing to comply with the Lease and accept Rose's payments, TI obtained a protective order preventing Mr. Ruffin from testifying regarding the very claims he and TI had initiated.[55] On March 30, 2016, Rose therefore took the deposition of Brad Anthony ("Mr. Anthony") as the person most knowledgeable for TI.[56] Mr. Anthony was designated as the person most knowledgeable because he has been TI's general counsel for many years and was directly involved in negotiations and business interface regarding the original Lease, the Fifth Amendment, the Alleged Breach Notice and Alleged Termination sent to Rose, and the Notices of Default and

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000243

[53] See **Exhibit 20**.
[54] See **Exhibit 21**.
[55] See the Court's January 6, 2016 Order Granting, in Part, Treasure Island, LLC's Motion for Protective Order, a true and correct copy is attached hereto as **Exhibit 22**.
[56] See Brad Anthony's Deposition Transcript generally, a true and correct copy is attached hereto as **Exhibit 23**.

000243

Breach sent by Rose to TI.[57] In his deposition, Mr. Anthony agreed that TI had failed to provide proper notice to Rose, Operadora, and SFLV's counsel when it sent its Alleged Breach Notice.[58]

When asked, "Based upon your prior testimony, the notices of default were not properly sent consistent with the terms of the lease; correct?"; Mr. Anthony responded, "The notices of default – the original notice of default that was sent, that is the ten-day notice, was not sent in accordance with the written document."[59] Worse yet Mr. Anthony admitted that TI's failure to notify the appropriate parties in accordance with the Fifth Amendment was intentional for whatever reason.[60] Mr. Anthony also confirmed Rose's belief that Mr. Ruffin is the only one with knowledge of TI's plans for the Premises in the event SFLV and/or Rose are removed, even though TI had previously represented that Mr. Ruffin was only involved in this matter because of his status as TI's president.[61] It also became evident from Mr. Anthony's deposition testimony that Mr. Anthony is a mere surrogate for Mr. Ruffin and that Mr. Ruffin possesses information relevant to Rose's allegations that TI's default efforts were part of a preconceived plan to avoid TI's Lease obligations and that TI's failure to notice the appropriate parties adequately was an intentional ploy to prevent Rose or Anderson's from curing the alleged payment default.[62]

DAMAGES IN THE EVENT THE LEASE IS TERMINATED OR MAINTAINED

TI is a well-established name on the Las Vegas Strip and leases space to tenants for a substantial sum. For example, Mr. Anthony testified that TI leases a five-foot by ten-foot space to a tenant for approximately $7,000.00 per month.[63] On the other hand, Rose successfully negotiated an extremely favorable long-term lease for substantial square footage with significant visibility from Las Vegas Boulevard at a much greater discount per square foot, as well as a profitable Sublease with its subtenant SFLV.[64] Rose currently has approximately twenty-five (25) years left

[57] See **Exhibit 23** at 11:8-10, 10: 5-7, 18:9-11 and 83:14-16.
[58] See Anthony Dep. Exhibit 10, a true and correct copy is attached hereto as **Exhibit 24** as well as Anthony Dep. 80:5-81:12 at **Exhibit 23**.
[59] See Id. at 85:3-11.
[60] See Id. at 26:9-25 and 48:12-22.
[61] See generally TI's October 13, 2015 Motion for Protective Order Regarding the Deposition of Phillip G. Ruffin, a true and correct copy is attached hereto as **Exhibit 25**.
[62] See Anthony Dep. 50:24-51:1 at **Exhibit 23**.
[63] See Id. at 12:3-19.
[64] See generally **Exhibit 1**, **Exhibit 7**, and **Exhibit 10** at ¶ 14.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000244
000244
000244

on the Lease and generates revenue each year on the Sublease.[65] Terminating the Lease will cause Rose to forfeit nearly four million dollars it has already invested in Señor Frog's, millions of dollars in future profits, and other significant opportunity costs.[66] Moreover, if the Lease is terminated and Rose is removed from the equation, Anderson's will be forced to renegotiate its leasing relationship with TI on terms that could be much less favorable than it currently enjoys.[67]

On the other hand, TI has nothing to lose in this litigation apart from exposure for Rose's incurred costs and attorney fees, *i.e.*, an amount roughly equivalent to a single bad day for just one gambler at the TI casino.[68] TI effectively has decided to risk relatively modest exposure for Rose's litigation fees on a flyer claim, with the ambitious hope (however remote) that it might gut the Lease and seize the Premises back. This Court should not reward TI for its brazen attempt to circumvent contractual rights or serve as an agent for TI to renegotiate its leasing obligations just because TI can flippantly afford to push the judicial envelope, and Rose is entitled to recover its incurred costs and fees in both defending TI's meritless claims and prosecuting its related counterclaims.

FACTUAL ISSUES THAT REMAIN OUTSTANDING

Although both parties have conducted discovery in this case, there are still a number of factual issues that potentially remain outstanding. For example, neither Operadora nor SFLV nor Anderson's are parties to this case but they are third party beneficiaries of the Lease under any analysis. Given the nature of the relationship between Rose and Anderson's, this Court may need to hear testimony from Anderson's regarding the willingness and ability of Operadora and SFLV to have cured Rose's default if they had received proper notice in the event this Court is unable to rule in Rose's favor as a matter of law based on the Affidavit from Mr. Krouham. Anderson's was intimately involved in the negotiations of the Fifth Amendment and bargained for exacting terms

[65] See **Exhibit 10** at ¶ 14.
[66] Id.
[67] Id. at ¶ 34.
[68] See **Exhibit 1** at Section 13.3 and Section 19.14.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000245
000245
000245

in the Lease that are dispositive of this entire case.[69] Therefore, Mr. Krouham's testimony is critical to resolving any outstanding issues of fact. This is especially true where, as here, Mr. Krouham has offered the Court testimony that should be conclusive with respect to TI's claims and mandate judgment as a matter of law on the claims and counterclaims in favor of Rose.

Furthermore, it is Rose's belief that Mr. Ruffin is the ultimate decision-maker behind the Alleged Breach Notice and the Alleged Termination and that Mr. Ruffin either failed to cross-check TI's notice efforts under the Lease or deliberately chose to ignore TI's notice and cure obligations. In addition, Rose believes that Mr. Ruffin has engaged in a conscious plan to obviate the Lease to piggyback off of Rose's subleasing efforts, renegotiate the economics associated with the Premises, or use the Premises for other purposes. Any one of these factual issues could prove probative with respect to the claims and counterclaims. If TI contests these issues and they are not clear from the existing record, issues of fact also remain with respect to Rose's related defenses and counterclaims at a minimum. Given the potential outstanding factual issues that exist, this Could should honor the parties' Stipulation and hold an evidentiary hearing in the event it is unable to rule in Rose's favor as a matter of law.

III. LEGAL ARGUMENT

It is uncontested that a valid contract was breached by TI when it failed to comply with the notice requirements under Section 19.6 of the Lease and Section 11 of the Fifth Amendment. The undisputed record also reflects that TI breached the payment acceptance terms of the Lease, and that TI both circumvented Rose's contractual Sublease relationship with SFLV and had alternative plans for the Premises.

The only issues before the Court therefore are: 1) whether TI's breaches of the Lease were material; 2) whether TI's actions were in bad faith and in direct violation of the covenant of good faith and fair dealing; and, 3) whether TI's Alleged Termination of the Lease was equitable under such circumstances. In the event this Court is unable to decide these issues or associated damages

[69] See **Exhibit 9** at ¶ 13.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000246
000246
000246

as a matter of law, the Court must hold an evidentiary hearing with respect to the various outstanding factual issues pursuant to the Stipulation.

A. TI FAILED TO PROVIDE PROPER NOTICE OR ACCEPT TENDERED RENT PAYMENTS, DESPITE THE TERMS OF THE LEASE

Both TI and Rose have claims before this Court that depend on the adequacy or lack thereof of TI's Alleged Breach Notice. In particular, TI has alleged that Rose breached the Lease when it failed to tender the Percentage Rent due to TI for the first quarter of 2015 after notice and an opportunity to cure and has sought a related declaratory judgment.[70] Similarly, Rose has asserted a counterclaim against TI for a breach of the Lease with respect to notice requirements and the implied covenant of good faith and fair dealing and has asked this Court for a declaratory judgment barring TI from the draconian relief it has sought.[71]

In addition, Rose has asserted counterclaims for breach of the Lease and its actual and/or implied covenants due to TI's failure to accept properly tendered rental payments. Rose can establish that TI rejected properly tendered payments as part of its ongoing effort to manufacture a dispute sufficient to warrant termination of the Lease so that TI could seize Rose's substantial investment in the SFLV relationship without any compensation or repossesses Rose's valuable interest in the leased Premises. These two core issues, *i.e.*, TI's improper notice and refusal to accept tendered rent payments, have been the focus of each court proceeding and deposition in this case and should be the focus of this Court's analysis.

1. TI's Claims for Breach of Lease and Declaratory Relief.

TI's claims all depend on the adequacy of its notice efforts under the governing Lease provisions.

a. TI's Claims Allegations

TI alleges that Rose breached the contractual Lease when it failed to tender its Percentage Rent portion of rent for the first quarter of 2015. As a result of Rose's alleged breach, TI claims

---

[70] See **Exhibit 16**.

[71] See generally Rose's November 16, 2015 First Amended Counterclaim, a true and correct copy is attached hereto as **Exhibit 26**.

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000247
000247
000247

that it provided proper notice and an opportunity to cure to Rose. TI's claims that Rose failed to satisfy its contract obligations therefore depend on the adequacy of TI's notice of the alleged breach pursuant to the Lease as amended.[72]

Neither party disputes the validity of the leasing contract or claims that the related notice and cure provisions are ambiguous, and Rose does not dispute that it failed to timely pay its Percentage Rent payment for the first quarter of 2015. TI's claim for breach of Lease is infirm, however, due to TI's abject failure to provide Rose and Operadora with the mandated adequate notice of any alleged breach and an appropriate opportunity to cure under Section 19.6 of the Lease and the Fifth Amendment and because TI's notice and cure failings were material as outlined below. Furthermore, TI has requested a declaratory relief order stating that the Lease has been terminated properly and that Rose therefore needs to exit the Premises.

b. Standards of Review Applicable to TI's Claims

TI cannot prove its claim for breach of the Lease or support its request for declaratory relief based on the governing standard of review. TI cannot establish the elements necessary to prevail on its breach of Lease claim. To prevail on a claim for breach of contract in Nevada, a plaintiff must prove: 1) the existence of a valid contract; 2) a breach by the defendant; and, (3) damage as a result of the breach.[73] Further, a party exercising contractual remedies has to comply with any contractual conditions precedent.[74] As outlined above, neither party disputes the existence of a valid and unambiguous contract or the occurrence of an initial payment oversight; therefore, the issues before this Court with respect to TI's claim for breach of the Lease are whether TI properly noticed any alleged breach and complied with any conditions precedent to the exercise of default remedies, and if so whether TI even suffered any actual damages as a result of the alleged breach.

Rose, Operadora or SFLV would have timely cured any payment mistake if TI had properly notified Rose, Operadora and SFLV. Instead, TI *chose* to avoid complying with the governing notice provisions in the Lease as amended to allow Rose, Operadora, and SFLV the opportunity

[72] See **Exhibit 25** at ¶¶ 5, 7, 8, 12 and 13.
[73] Saini v. Int'l Game Tech., 434 F. Supp. 2d 913, 919-20 (D.Nev.2006) (citing Richardson v. Jones, 1 Nev. 405, 405 (1865)).
[74] Mayfield v. Koroghli, 184 P.3d 362, 124 Nev. 343 (2008).

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000248
000248
000248

to cure. Irrespective of any payment error with respect to Percentage Rent for the first quarter of 2015, Rose quickly attempted to tender full payment to TI. However, TI refused Rose's attempts to tender payment for months. As such, TI did not comply with conditions precedent in the Lease for proper notice of breach, notice of default, or termination. In addition, Rose has made TI whole and TI has suffered no damages under the Lease. Therefore, TI cannot establish a viable claim for breach of Lease.

TI similarly cannot support its request for declaratory relief as TI never properly put Rose in default after adequate notice and opportunity to cure, so TI has no grounds for terminating the Lease or any related declaration by this Court. In order to establish an equitable claim for declaratory relief in Nevada, the party seeking such relief must prove: 1) a justifiable controversy exists between the parties regarding their respective rights pursuant to a contract such that the party seeking such relief asserts a claim of a legally protected right; 2) the issue is ripe for judicial determination; and, 3) the party seeking relief asks the court to determine the parties' relative rights under the contract.[75] As outlined below, TI's claim for declaratory relief is barred because TI failed to notify Rose, Operadora and SFLV of the alleged breach or default in accordance with the terms of the Lease.

In this case, TI also cannot support a request for equitable relief since TI cannot articulate a justiciable breach or default controversy without establishing compliance with the conditions precedent of adequate notice and opportunity to cure under the Lease and Fifth Amendment. Because TI did not properly notify Rose, Operadora, and SFLV's counsel in Florida, the notice and opportunity to cure periods were never triggered before Rose made so many attempts to satisfy any outstanding payment obligations. Therefore, TI cannot establish an equitable basis for a claim for Declaratory Relief under the governing legal standards.

[75] See NRCP 57; NRS Chapter 30; and, Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948).

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000249
000249
000249

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000250

2. **Rose's Counterclaims Against TI for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory Judgment.**

Likewise, Rose's counterclaims are based in part on TI's failure to provide Rose with proper notice under the Lease. Once more, TI's notice and cure mistakes are conclusive with respect to Rose's notice failure counterclaims.

a. Rose's Claim Allegations

Rose's claims against TI are based in part on TI's clear breach of the notice and cure provisions in the Lease. In the event of default under the Lease, any enforcing party must provide written notice of the alleged breach or default to certain persons and entities in accordance with Section 19.6 of the Lease and the Fifth Amendment.[76] However, TI failed to comply with the notice requirements under both Section 19.6 and the Fifth Amendment.[77] Rose therefore provided TI with a Notice of Default on September 11, 2015[78] and a subsequent Notice of Default on November 18, 2015 that both accorded with the notice provisions in the Lease.[79] Because TI failed to cure its Lease communication mistakes after proper notice by Rose and an appropriate opportunity to cure, TI has defaulted under the Lease.

Rose's counterclaims against TI also are based in part on TI's failure to accept properly tendered rent payments. Rose made a number of attempts to cure its alleged default, but TI was so intent on concocting a dispute that it actually rejected rent payments for contemporaneous and ongoing tenancy and in turn breached the Lease when it rejected Rose's numerous attempts to tender Percentage Rent and other rent payments.[80] Again, Rose provided TI with a Notice of Default on September 11, 2015 with respect to the payment tender issues[81] and a subsequent Notice of Default regarding TI's payment acceptance defaults on November 18, 2015 that both conformed with the notice provisions in the Lease.[82] But TI failed to cure its Lease payment acceptance

---

[76] See **Exhibit 1** at Section 19.6; **Exhibit 6** at Section 11; and, **Exhibit 25** at ¶ 27.
[77] See **Exhibit 25** at ¶ 27.
[78] See **Exhibit 20**.
[79] See **Exhibit 21** and **Exhibit 25** at ¶ 32.
[80] See **Exhibit 25** at ¶ 31.
[81] See **Exhibit 21**.
[82] Id.

000250

Case No. 71941

In the Supreme Court of Nevada

Electronically Filed
Jul 24 2017 03:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

ROSE, LLC,

Appellant,

vs.

TREASURE ISLAND, LLC,

Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable ELIZABETH GOFF GONZALEZ, District Judge
District Court Case No. A719105

APPELLANT'S APPENDIX
VOLUME 1
PAGES 1–250

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellant

Docket 71941 Document 2017-24497

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
01	Complaint	05/28/15	1	1–4
02	Defendant's Answer and Counterclaim	07/06/15	1	5–12
03	Treasure Island's Answer to Counterclaim	07/25/15	1	13–15
04	Motion for Confirmation that Treasure Island May Collect Rent During the Pendency of the Litigation	08/27/15	1	16–26
05	Defendant's Opposition to Plaintiff's Motion for Confirmation that Treasure Island May Collect Rent During the Pendency of the Litigation	09/14/15	1	27–72
06	Reply in Support of Motion for Confirmation	09/21/15	1	73–75
07	Errata to Reply in Support of Motion for Confirmation	09/22/15	1	76–81
08	Transcript of Proceedings: Hearing on Motion Re Payment/Acceptance of Rents	10/15/15	1	82–87
09	Notice of Entry of Order Granting in Part Motion for Confirmation that Treasure Island May Collect Rent During the Pendency of the Litigation	11/04/15	1	88–92
10	Defendant's First Amended Counterclaim	11/16/15	1	93–100
11	Treasure Island's Answer to First Amended Counterclaim	11/30/15	1	101–103
12	Trial Brief	06/29/16	1	104–233
13	Defendant/Counterclaimant's Trial Brief	06/30/16	1 2	234–250 251–500

			3	501–555
14	Certificate of Service for Defendant/Counterclaimant's Trial Brief	06/30/16	3	556–557
15	Joint Pretrial Memorandum	09/06/16	3	558–568
16	Defendant/Counterclaimant Limited Pre-Trial Memorandum	10/05/16	3	569–582
17	Transcript of Proceedings: Bench Trial – Day 1	10/06/16	3 4	583–750 751–783
18	Transcript of Proceedings: Bench Trial – Day 2	10/07/16	4	784–927
19	Civil Order to Statistically Close Case	10/12/16	4	928
20	Notice of Entry of Findings of Fact and Conclusions of Law	11/07/16	4	929–946
21	Motion for Reconsideration, to Amend Findings of Fact, to Amend the Judgment, or, in the Alternative, for a New Trial on an Order Shortening Time	11/18/16	4	947–963
22	Opposition to Motion for Reconsideration	12/06/16	4	964–976
23	Notice of Appeal	12/07/16	4	977–998
24	Case Appeal Statement	12/07/16	4 5	999–1000 1001–1003
25	Reply in Support of Rose, LLC's Motion for Reconsideration, to Amend Findings of Fact, to Amend the Judgment, or, in the Alternative, for a New Trial	12/07/16	5	1004–1014
26	Transcript of Proceedings: Hearing on Defendants' Motions for Stay of Execution and Reconsideration to Amend Findings of Fact	12/08/16	5	1015–1025
27	Transcript of Proceedings: Continued Hearing on Defendants' Motions for Stay	12/14/16	5	1026–1037

	of Execution and Reconsideration to Amend Findings of Fact			
28	Notice of Entry of Order Denying Motion for Reconsideration	12/16/16	5	1038–1042
29	Notice of Entry of Judgment	12/22/16	5	1043–1047
30	Notice of Entry of Order and Judgment Granting Treasure Island's Motion for Attorneys Fees in the Amount of $126,000 Against Rose, LLC	01/11/17	5	1048–1052
31	Notice of Entry of Final Judgment	01/11/17	5	1053–1057
32	Amended Notice of Appeal	01/17/17	5	1058–1103
33	Amended Case Appeal Statement	01/17/17	5	1104–1108

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
33	Amended Case Appeal Statement	01/17/17	5	1104–1108
32	Amended Notice of Appeal	01/17/17	5	1058–1103
24	Case Appeal Statement	12/07/16	4 5	999–1000 1001–1003
14	Certificate of Service for Defendant/Counterclaimant's Trial Brief	06/30/16	3	556–557
19	Civil Order to Statistically Close Case	10/12/16	4	928
01	Complaint	05/28/15	1	1–4
16	Defendant/Counterclaimant Limited Pre-Trial Memorandum	10/05/16	3	569–582
13	Defendant/Counterclaimant's Trial Brief	06/30/16	1 2 3	234–250 251–500 501–555
02	Defendant's Answer and Counterclaim	07/06/15	1	5–12
10	Defendant's First Amended Counterclaim	11/16/15	1	93–100
05	Defendant's Opposition to Plaintiff's Motion for Confirmation that Treasure Island May Collect Rent During the Pendency of the Litigation	09/14/15	1	27–72
07	Errata to Reply in Support of Motion for Confirmation	09/22/15	1	76–81
15	Joint Pretrial Memorandum	09/06/16	3	558–568
04	Motion for Confirmation that Treasure Island May Collect Rent During the Pendency of the Litigation	08/27/15	1	16–26

21	Motion for Reconsideration, to Amend Findings of Fact, to Amend the Judgment, or, in the Alternative, for a New Trial on an Order Shortening Time	11/18/16	4	947–963
23	Notice of Appeal	12/07/16	4	977–998
31	Notice of Entry of Final Judgment	01/11/17	5	1053–1057
20	Notice of Entry of Findings of Fact and Conclusions of Law	11/07/16	4	929–946
29	Notice of Entry of Judgment	12/22/16	5	1043–1047
30	Notice of Entry of Order and Judgment Granting Treasure Island's Motion for Attorneys Fees in the Amount of $126,000 Against Rose, LLC	01/11/17	5	1048–1052
28	Notice of Entry of Order Denying Motion for Reconsideration	12/16/16	5	1038–1042
09	Notice of Entry of Order Granting in Part Motion for Confirmation that Treasure Island May Collect Rent During the Pendency of the Litigation	11/04/15	1	88–92
22	Opposition to Motion for Reconsideration	12/06/16	4	964–976
06	Reply in Support of Motion for Confirmation	09/21/15	1	73–75
25	Reply in Support of Rose, LLC's Motion for Reconsideration, to Amend Findings of Fact, to Amend the Judgment, or, in the Alternative, for a New Trial	12/07/16	5	1004–1014
17	Transcript of Proceedings: Bench Trial – Day 1	10/06/16	3 4	583–750 751–783
18	Transcript of Proceedings: Bench Trial – Day 2	10/07/16	4	784–927
27	Transcript of Proceedings: Continued Hearing on Defendants' Motions for Stay	12/14/16	5	1026–1037

	of Execution and Reconsideration to Amend Findings of Fact			
26	Transcript of Proceedings: Hearing on Defendants' Motions for Stay of Execution and Reconsideration to Amend Findings of Fact	12/08/16	5	1015–1025
08	Transcript of Proceedings: Hearing on Motion Re Payment/Acceptance of Rents	10/15/15	1	82–87
03	Treasure Island's Answer to Counterclaim	07/25/15	1	13–15
11	Treasure Island's Answer to First Amended Counterclaim	11/30/15	1	101–103
12	Trial Brief	06/29/16	1	104–233

1

A-15-719105-B

XXI X

BUSINESS COURT CIVIL COVER SHEET

_____ County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Treasure Island, LLC	Rose, LLC
Attorney (name/address/phone):	Attorney (name/address/phone):
Patrick J. Sheehan	
Fennemore Craig, P.C.	
300 South Fourth Street, Suite 1400	
Las Vegas, NV 89101	

II. Nature of Controversy *(Please check the applicable boxes for both the civil case type and business court case type)*

☐ Arbitration Requested

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☒ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Civil Writs
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Judicial Review/Appeal/Other Civil Filing

Judicial Review
- ☐ Foreclosure Mediation Case

Appeal Other
- ☐ Appeal from Lower Court

Other Civil Filing
- ☐ Foreign Judgment
- ☐ Other Civil Matters

Business Court Filing Types

CLARK COUNTY BUSINESS COURT
- ☐ NRS Chapters 78-89
- ☐ Commodities (NRS 91)
- ☐ Securities (NRS 90)
- ☐ Mergers (NRS 92A)
- ☐ Uniform Commercial Code (NRS 104)
- ☐ Purchase/Sale of Stock, Assets, or Real Estate
- ☐ Trademark or Trade Name (NRS 600)
- ☐ Enhanced Case Management
- ☒ Other Business Court Matters

WASHOE COUNTY BUSINESS COURT
- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 91)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art.8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademark/Trade Name (NRS 600)
- ☐ Trade Secrets (NRS 600A)
- ☐ Enhanced Case Management
- ☐ Other Business Court Matters

May 8, 2015
Date

Signature of initiating party or representative

Nevada AOC - Research Statistics Unit
Pursuant to NRS 3.275

Form PA 201
Rev 3.1

Electronically Filed
05/28/2015 06:07:20 PM

CLERK OF THE COURT

COMP
FENNEMORE CRAIG, P.C.
Patrick J. Sheehan (Nevada Bar No. 3812)
John H. Mowbray (Nevada Bar No. 1140)
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
Email: psheehan@fclaw.com

Attorneys for Plaintiff Treasure Island, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company;

Plaintiff,

v.

ROSE, LLC, a Nevada limited liability company;

Defendant.

CASE NO.: A-15-719105-B

DEPT. NO.: XXI X

Plaintiff complains and alleges as follows:

COMPLAINT

FIRST CLAIM FOR RELIEF
(Breach of Lease)

1. On or about April 13, 2011, Plaintiff Treasure Island, LLC ("Treasure Island") entered into a Lease with Defendant Rose, LLC ("Rose").

2. Pursuant to the terms of the Lease, Treasure Island leased space to Rose inside the Treasure Island Hotel and Casino in Las Vegas, Nevada.

3. One of the obligations of Rose under the Lease was to pay rent in two forms. First, minimum monthly rent. Second, an amount equal to 7% of gross sales.

000002

000002

000002

4. The Lease provided that the rent for gross sales would be paid pursuant to a certain formula and that within 30 days of the end of each calendar quarter during the lease term, the Tenant (Rose), would deliver to Landlord a writing setting forth the amount of Tenant's gross sales made during each month of the proceeding calendar quarter and concurrently therewith, pay the Landlord the percentage rent due and payable for the proceeding calendar quarter.

5. The Lease further provided for default interest on any rents or other charges to be paid by Tenant to Landlord if the same was not paid following a 10 day additional notice from the Landlord.

6. Rose breached the Lease and its obligation to pay the 7% gross sales portion of the rent for the first quarter of 2015.

7. As a result, on May 14, 2015, Treasure Island sent Rose, LLC, a notice of default.

8. Despite the obligation to pay the rent under the Lease, and despite the notice of default to pay the rent, Rose, LLC failed and refused to pay the same.

9. As a result of this breach of Lease, Treasure Island has been damaged in an amount to be proven at trial. The damages include not only the missed rent payments, interest and other late charges as provided for under the lease but in addition other damages for future lost rents and other things as set forth in the lease including but not limited to paragraph 15 under the lease.

10. The total amount of those damages exceeds $10,000.

11. It has been necessary for Treasure Island to hire an attorney to prosecute this action and it is entitled to its reasonable attorney's fees therefore pursuant to the terms of the Lease.

SECOND CLAIM FOR RELIEF
(Declaratory Relief)

12. Pursuant to the parties' Lease if Tenant failed to pay any installment of rent or any

other amount or charge required to be paid by Tenant [Rose] to Landlord, [Treasure Island] and such failure continued for 10 days from Landlord's written notice to Tenant that any such rent installment, other amount or charge was due, Tenant/Rose was in default.

13. This occurred as Rose failed to pay the 7% gross sales rent payment when due and further, failed to pay the same after a 10 day notice from Treasure Island.

14. As a result, Rose, LLC was and is in default of the Lease.

15. Under paragraph 15.2.1 of the Lease, upon such a default Landlord had the right to terminate the Lease and Tenant's estate thereunder by written notice of such termination.

16. Treasure Island has provided such written notice of termination.

17. Accordingly, the Lease has been terminated.

18. As a result, Plaintiff asks the Court to issue a declaratory relief order stating that the Lease has been terminated and that Rose, LLC needs to remove itself from the premises.

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages in an amount to be proven in excess of $10,000.

2. For an order of declaratory relief declaring the Lease terminated.

3. For its reasonable costs and attorney's fees.

4. For such other and further relief as the Court may allow.

Dated this 29 day of May, 2015.

FENNEMORE CRAIG, P.C.

By: _____

Patrick J. Sheehan, Esq. (Bar No. 3812)
John H. Mowbray (Nevada Bar No. 1140)
1400 Bank of America Plaza
300 South Fourth St. 14th Floor
Las Vegas, NV 89101
Attorneys for Plaintiff

2

Electronically Filed
07/06/2015 05:13:07 PM

CLERK OF THE COURT

ACC
James J. Pisanelli, Esq., Bar No. 4027
jjp@pisanellibice.com
Jarrod L. Rickard, Esq., Bar No. 10203
jlr@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

Attorneys for Rose, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff, v. ROSE, LLC, a Nevada limited liability company, Defendant.	Case No.: A-15-719105-B Dept. No.: XXIX **DEFENDANT'S ANSWER AND COUNTERCLAIM**
ROSE, LLC, a Nevada limited liability company, Counterclaimant, v. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant.	

Defendant Rose, LLC ("Rose"), by and through its counsel of record, the law firm of Pisanelli Bice, PLLC, answers Plaintiff Treasure Island, LLC's ("Treasure Island") Complaint and admits, denies, and alleges as follows:

FIRST CLAIM FOR RELIEF

(Breach of Lease)

1. Rose admits the allegations contained in paragraph 1.

2. Rose admits the allegations contained in paragraph 2.

000005

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000005

3. Answering paragraph 3, the referenced agreement speaks for itself and, therefore, Rose neither admits nor denies these allegations.

4. Answering paragraph 4, the referenced agreement speaks for itself and, therefore, Rose neither admits nor denies these allegations.

5. Answering paragraph 5, the referenced agreement speaks for itself and, therefore, Rose neither admits nor denies these allegations.

6. Rose denies the allegations contained in paragraph 6.

7. Answering paragraph 7, Rose admits that Treasure Island sent correspondence dated May 14, 2015, purporting to provide a notice of default. However, Treasure Island's correspondence failed to comply with the Lease's notice provisions. Therefore, Rose denies any and all remaining allegations contained in paragraph 7.

8. Rose denies the allegations contained in paragraph 8.

9. Rose denies the allegations contained in paragraph 9.

10. Rose denies the allegations contained in paragraph 10.

11. Rose denies the allegations contained in paragraph 11.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

12. Answering paragraph 12, the referenced agreement speaks for itself and, therefore, Rose neither admits nor denies these allegations.

13. Rose denies the allegations contained in paragraph 13.

14. Rose denies the allegations contained in paragraph 14.

15. Answering paragraph 15, the referenced agreement speaks for itself and, therefore, Rose neither admits nor denies these allegations.

16. Rose denies the allegations contained in paragraph 16.

17. Rose denies the allegations contained in paragraph 17.

18. The allegations contained in paragraph 18 do not call for a response and, therefore, Rose neither admits nor denies these allegations.

900000
PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000006

000006

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Treasure Island's claims are barred by the doctrine of waiver.

3. Treasure Island's claims are barred by the doctrine of unclean hands.

4. Treasure Island's claims are barred by the doctrine of estoppel.

5. Treasure Island's claims are barred by the parole evidence rule.

6. Treasure Island's claims are barred by the statute of frauds.

7. Treasure Island has failed to satisfy a condition precedent for its claims.

8. Treasure Island's claims are barred by the fact that it is in breach of the parties' agreement.

9. Treasure Island's claims are barred because its damages, if any, were caused by its own conduct.

10. Treasure Island's claims are barred by the doctrine of prevention of performance.

11. Treasure Island has failed to act in a commercially reasonable manner.

12. Rose reserves the right to amend this Answer to assert additional affirmative defenses as they are discovered or determined.

WHEREFORE, Rose prays for judgment as follows:

1. Treasure Island takes nothing by way of its Complaint;

2. Rose be awarded its attorneys' fees and costs of suit; and

3. Any additional relief this Court deems to be just and proper on the evidence presented at trial.

COUNTERCLAIM

For its counterclaim, Rose, LLC ("Rose") alleges as follows:

PARTIES

1. Rose is a Nevada limited liability company.

2. Rose is informed and believes and thereon alleges that Counterdefendant Treasure Island, LLC ("Treasure Island") is a Nevada limited liability company.

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

GENERAL ALLEGATIONS

3. On or about April 13, 2011, Rose, as the tenant, and Treasure Island, as the landlord, entered into a Lease Agreement (the "Lease") for premises located within the Treasure Island resort hotel casino, consisting of approximately 18,135 square feet (the "Premises").

4. The Lease identifies that the Premises are to be used for the operation of a bar, lounge, restaurant and/or nightclub.

5. On or about June 11, 2011, Rose entered into a sublease for a portion of the leased Premises with Senor Frog's Las Vegas, LLC ("Senor Frogs") as the subtenant.

6. Section 15 of the Lease identifies certain events of default whereby Rose may be deemed to be in default of the Lease ("Events of Default").

7. Such Events of Default include Rose's failure "to pay any installment of Rent or any other amount or charge required to be paid by Tenant to Landlord pursuant to the terms of this Lease, and such failure continues for ten (10) days from Landlord's written notice to Tenant . . . ."

8. Section 19.6 of the Lease identifies the manner in which the parties are to provide "[a]ny notice or other communication required or permitted to be given by a party hereunder . . . ."

9. Pursuant to Section 19.6, any notice to Rose must be directed to the attention of Susan Markusch at the address identified. Additionally, a copy of any such notice must be provided to Senor Frogs.

10. On or about April 30, 2014, the parties entered into a Fifth Amendment of the Lease which, among other things, updated certain contact information for notice purposes under the Lease with respect to both Rose and Senor Frogs and imposed an additional requirement that Senor Frog's counsel be copied on any notice.

11. On or about May 14, 2015, Treasure Island sent correspondence purporting to provide Rose with notice of an alleged breach of the Lease ("Alleged Breach Notice").

800000
PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000008

000008

12. However, despite the terms of Section 19.6, Treasure Island failed to deliver its Alleged Breach Notice to the attention of Susan Markusch. Additionally, Treasure Island failed to send a copy to Senor Frogs or counsel for Senor Frogs.

13. Having failed to comply with the Lease's express notice provisions, Treasure Island cannot claim that Rose is in default of the Lease.

14. Despite this, Treasure Island sent correspondence to Rose on or about May 28, 2015, purporting to terminate the Lease ("Alleged Termination"). However, like the Alleged Breach Notice, the Alleged Termination failed to comply with the notice requirements of Section 19.6.

15. Following delivery of the Alleged Termination, Rose is informed and believes that Treasure Island contacted Senor Frogs with the intention of contracting directly with Senor Frogs as the tenant for a portion of the Premises.

FIRST CAUSE OF ACTION

(Breach of Contract)

16. Rose repeats and realleges the allegations set forth in paragraphs 1 through 15 above as though fully set forth herein.

17. The Lease sets forth certain notice requirements that Treasure Island must follow in order to provide Rose valid and sufficient notice.

18. Despite agreeing to these notice requirements, Treasure Island breached them.

19. In light of its failure to provide sufficient notice, Treasure Island's Alleged Termination is invalid and a breach of the Lease.

20. Rose has performed all of its obligations under the Lease.

21. Rose has been damaged by Treasure Island's breaches.

22. Rose has been forced to hire an attorney to prosecute this action and therefore seeks recovery of their attorney's fees and court costs.

600000
PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

600000

000009

SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

23. Rose repeats and realleges the allegations set forth in Paragraphs 1 through 22 above as though fully set forth herein.

24. Implied in every agreement under Nevada law is the obligation of good faith and fair dealing.

25. Treasure Island breached its duty of good faith and fair dealing by, among other things, delivering the Alleged Termination in violation of the Lease's notice provisions and attempting to contract directly with Senor Frogs. Treasure Island's actions were unfaithful to the purpose and intent of the Agreement.

26. As result of the acts and omissions of Treasure Island, Rose's justified expectations under the Lease have been denied.

27. Rose has been forced to hire an attorney to prosecute this action and therefore seeks recovery of their attorney's fees and court costs.

THIRD CAUSE OF ACTION

(Declaratory Judgment)

28. Rose repeats and realleges the allegations set forth in Paragraphs 1 through 27 above as though fully set forth herein.

29. A true and ripe controversy exists between Rose and Treasure Island as to their respective rights regarding the Lease.

30. As set forth in the Lease, Treasure Island must comply with certain notice requirements in order to provide Rose notice of any alleged breach.

31. However, in sending the Alleged Breach Notice and Alleged Termination, Treasure Island failed to comply with these notice requirements.

32. Declaratory relief pursuant to NRS 30.040 is necessary to declare the respective rights, responsibilities, and obligations of Rose and Treasure Island under the Lease.

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000010

33. Rose seeks a declaratory judgment from this Court that Treasure Island failed to comply with the notice requirements of the Lease and, therefore, the Alleged Breach Notice and Alleged Termination are ineffective.

34. Rose has been forced to hire an attorney to prosecute this action and therefore seeks recovery of their attorney's fees and court costs.

WHEREFORE, Rose prays for judgment as follows:

1. Direct, incidental and consequential damages against Treasure Island in an amount to be proven at trial but, in any event, in excess of $10,000.00;

2. For a declaratory judgment finding that:

(a) Treasure Island's Alleged Breach Notice and Alleged Termination are invalid;

(b) Rose has not defaulted under the Lease;

(c) The Lease between the parties' remains in effect.

3. For a temporary and permanent injunction precluding Treasure Island from moving forward with terminating the Lease and denying Rose its leasehold interests in the Premises.

4. An award of reasonable costs and attorneys' fees;

5. Prejudgment and post-judgment interest on the foregoing sums at the highest rate permitted by law; and

6. Any additional relief this Court deems to be just and proper on the evidence presented at trial.

DATED this 6th day of July, 2015.

PISANELLI BICE PLLC

By: /s/ James J. Pisanelli
James J. Pisanelli, Esq., Bar No. 4027
Jarrod L. Rickard, Esq., Bar No. 10203
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Rose, LLC

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000011

000011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 6th day of July, 2015, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **DEFENDANT'S ANSWER AND COUNTERCLAIM** to the following:

Patrick J. Sheehan, Esq.
John H. Mowbray, Esq.
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000012

000012

3

Electronically Filed
07/25/2015 02:08:18 PM

CLERK OF THE COURT

CCAN
FENNEMORE CRAIG, P.C.
Patrick J. Sheehan
Nevada State Bar No.: 3812
John H. Mowbray
Nevada State Bar No.: 1140
300 S. Fourth Street, Suite 1400
Las Vegas, NV 89101
Tel.: (702) 692-8000
Fax: (702) 692-8099
Email: psheehan@fclaw.com
Attorney for Treasure Island, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company; Plaintiff, vs. ROSE, LLC, a Nevada limited liability company; Defendant.	**CASE NO.: A-15-719105-B** **DEPT.: XXI X** **TREASURE ISLAND'S ANSWER TO COUNTERCLAIM**
ROSE, LLC, a Nevada limited liability company, Counterclaimant, vs. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant.	

Treasure Island answers the counterclaim as follows:

1. Treasure Island is without sufficient information to form a belief as to the truth of the allegations contained in paragraphs 1, 16, 28, 29, 32 and 33.

000013

000013

000013

2. Treasure Island admits the allegations contained in paragraphs 2 and 24.

3. Answering paragraphs 3 through 12, 17, and 30, Treasure Island states that the document referred to therein speaks for itself.

4. Treasure Island denies the allegations contained in paragraphs 13 through 15, 18, 25 through 27, 31, and 34.

AFFIRMATIVE DEFENSES

1. The counterclaim fails to state a claim upon which relief can be granted.

2. The counterclaims are barred under the doctrines of waiver laches and estoppel.

3. The claims are barred on the doctrine of unclean hands.

4. The counterclaims are barred due to the fact that it is in breach of the parties agreement.

WHEREFORE, Treasure Island prays that counterclaimant take nothing by reason of its counterclaim and that the counter defendant be awarded it's reasonable cost and attorney's fees.

Dated this 25 day of July, 2015.

FENNEMORE CRAIG, P.C.

By: _____
Patrick J. Sheehan (Bar No. 3812)
John H. Mowbray (Bar No. 1140)
1400 Bank of America Plaza
300 South Fourth St. 14th Floor
Las Vegas, NV 89101
Attorneys for Treasure Island, LLC

000014
000014
000014

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on July 25, 2015, service of the TREASURE ISLAND'S ANSWER TO COUNTERCLAIM was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

James J. Pisanelli, Esq.
Jarrod L. Rickard, Esq.
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Rose, LLC

An Employee of Fennemore Craig, P.C.

000015

000015

4

4

Electronically Filed
08/27/2015 10:56:54 AM

CLERK OF THE COURT

MOT

PATRICK J. SHEEHAN, ESQ.
Nevada Bar #3812
FENNEMORE CRAIG, P.C.
300 S. 4th Street, Suite 1400
Las, Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
Email: psheehan@fclaw.com
Attorney for Plaintiff Treasure Island, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff, v. ROSE, LLC, a Nevada limited liability company, Defendant.	CASE NO.: A-15-719105-B DEPT. NO.: XXIX
ROSE, LLC, a Nevada limited liability company, Counterclaimant, v. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterclaimant.	**MOTION FOR CONFIRMATION THAT TREASURE ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION**

Treasure Island LLC ("Treasure Island") hereby files its motion for confirmation that it

///

///

///

000016

000016

000016

can collect rent during the pendency of the litigation. The motion is based on the Nevada Supreme Court case of *Davidsohn v. Doyle*, 108 Nev. 145, 825 P.2d 1227 (1992).

FENNEMORE CRAIG, P.C.

By: _____

PATRICK J. SHEEHAN, ESQ.
Nevada Bar #3812
300 S. 4th Street, Suite 1400
Las Vegas, Nevada 89101
Attorney for Plaintiff
Treasure Island, LLC

NOTICE OF MOTION

TO: ALL ATTORNEYS AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on the 28 day of September, 2015, the undersigned will bring the foregoing **TREASURE ISLAND, LLC'S MOTION FOR CONFIRMATION THAT TREASURE ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION** for hearing in Department XXIX of the above-entitled Court at the hour of 9:30, a.m. ~~p.m.~~ of said day, or as soon thereafter as counsel may be heard.

Dated this 27 day of August, 2015.

FENNEMORE CRAIG, P.C.

By: _____

PATRICK J. SHEEHAN, ESQ.
Nevada Bar #3812
300 S. 4th Street, Suite 1400
Las Vegas, Nevada 89101
Attorney for Plaintiff
Treasure Island, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. OUT OF AN ABUNDANCE OF CAUTION TREASURE ISLAND HEREBY MOVES THE COURT FOR CONFIRMATION THAT IT CAN COLLECT RENTAL PAYMENTS DUE DURING THE PENDENCY OF THE LITIGATION BETWEEN TREASURE ISLAND AND ROSE, LLC.

On or about April 13, 2011 Plaintiff Treasure Island, entered into a lease with Defendant, Rose, LLC ("Rose"). Pursuant to the terms of the lease, Treasure Island leased space to Rose inside the Treasure Island Hotel and Casino in Las Vegas, Nevada. One of the obligations of Rose under the Lease was to pay rent in two forms. The first, minimum monthly rent, the second in an amount equal to 7% of gross sales.

Regarding the latter, the Lease provided that the rent for gross sales would be paid pursuant to a certain formula and that within 30 days of the end of each calendar year during the lease term, the tenant (ROSE), would deliver to landlord a writing setting forth the amount of tenant's gross sales made during each month of the preceding calendar quarter and concurrently therewith, pay the landlord the percentage rent due and payable for the preceding calendar quarter. The Lease further provided for default interest on any rents and other charges to be paid by tenant to landlord if the same where not paid following a ten (10) day notice from the landlord.

Rose breached the Lease and its obligation to pay the 7% gross sales portion of the rent for the first quarter of 2015. As a result, on May 14, 2015, Treasure Island sent Rose a notice of default. Despite the obligations to pay the rent under the Lease, and despite the notice of default to pay the rent, Rose failed and refused to the pay the same.

As a result of this breach of lease, Treasure Island sent a letter purportedly terminating the party's Lease. However, Rose disputes that Treasure Island had the ability to terminate the Lease claiming that one or more notices were defective. As a result, this litigation has been filed and in effect both sides seek declaratory relief as to whether the Lease was properly terminated. The parties have recently filed the case conference report and have begun the discovery phase of the case.

In the meantime, the question of rent has been the subject of ongoing discussions between the parties. Despite those discussions no resolution to the issue has been reached.

As a result, Treasure Island hereby seeks an order confirming that it may demand the rent (in fairness Rose has tendered rent but Treasure Island has, out of an abundance of caution, not accepted that rent pending negotiations to try and put the rent into a court escrow) during the pendency of the litigation.

Attached as Exhibit I is the case of *Davidsohn v. Doyle, id.* In that case, the Nevada Supreme Court stated that the lessor has the right to accept rent after breach by lessee when lessor timely expresses his/her intent to terminate the lease and the lessee nevertheless remains in possession pending litigation. Plaintiff seeks confirmation by this Court that it does in fact, have the right to collect the rent, and/or provide notice of default should Rose fall in arrears, during the pendency of this litigation as set forth in the Nevada Supreme Court in the *Davidsohn* matter.

Dated this 27 day of August, 2015.

FENNEMORE CRAIG, P.C.

By: _____

PATRICK J. SHEEHAN, ESQ.
Nevada Bar #3812
300 S. 4th Street, Suite 1400
Las Vegas, Nevada 89101
Attorney for Plaintiff
Treasure Island, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on August 21, 2015, service of the MOTION FOR CONFIRMATION THAT TREASURE ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

James J. Pisanelli, Esq.
Jarrod L. Rickard, Esq.
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Rose, LLC

Adriana Harris
An Employee of Fennemore Craig, P.C.

000020

000020

EXHIBIT "I"

000021

EXHIBIT "I"

WestlawNext

Davidsohn v. Doyle
Supreme Court of Nevada January 30, 1992 108 Nev. 145 825 P.2d 1227 (Approx. 6 pages)

Original Image of 825 P.2d 1227 (PDF)

108 Nev. 145
Supreme Court of Nevada.

Luis DAVIDSOHN, Appellant/Cross-Respondent,
v.
Helen DOYLE, Respondent/Cross-Appellant.

No. 21481. Jan. 30, 1992.

Landlord filed complaint for declaratory relief to terminate commercial lease. The District Court, Clark County, Thomas A. Foley, J., entered judgment in favor of tenant, and landlord appealed. The Supreme Court held that: (1) landlord did not waive his right to terminate commercial lease by accepting rent from tenant after informing tenant that she had breached lease by failing to keep property in good repair, and (2) landlord was not required to comply with notice requirements of unlawful detainer statute.

Reversed and remanded.

West Headnotes (5)

Change View

1 Landlord and Tenant Acceptance of rent
Landlord did not waive his right to terminate commercial lease by accepting rent from tenant after informing tenant that she had breached lease by failing to keep property in good repair; landlord timely pursued his action to terminate lease, and tenant was aware of landlord's intentions to terminate if repairs were not timely made.

1 Case that cites this headnote

2 Landlord and Tenant Acceptance of rent
Lessor has right to accept rent after breach by lessee when lessor timely expresses his or her intent to terminate lease and lessee nevertheless remains in possession.

1 Case that cites this headnote

3 Landlord and Tenant Necessity
Landlord who sought to terminate commercial lease based on tenant's alleged violation of lease term requiring tenant to keep premises in good repair was not required to comply with notice requirements of unlawful detainer statute. N.R.S. 40.2516.

2 Cases that cite this headnote

4 Landlord and Tenant Necessity
Lessor who seeks termination under lease provision is not obligated to meet notice requirements of unlawful detainer statute. N.R.S. 40.2516.

1 Case that cites this headnote

5 Forcible Entry and Detainer Requisites and sufficiency
In unlawful detainer action, strict compliance with statutory notice provision is jurisdictional prerequisite.

1 Case that cites this headnote

SELECTED TOPICS

Landlord and Tenant

Terms for Years

Lease and Lessor Accepted Payment of Rent

Civil Liability

Commercial Forcible Entry and Detainer Proceedings

Secondary Sources

Landlord's acceptance of rent as waiver of right to forfeit because of tenant's past or future violation of terms of lease

109 A.L.R. 1267 (Originally published in 1937)

It is a generally accepted principle of law that any act done by a landlord, knowing of a cause of or right of forfeiture, which affirms the existence of the lease and recognizes the lessee as his tena

Relief against forfeiture of lease for nonpayment of rent

31 A.L.R.2d 321 (Originally published in 1953)

...This annotation supplements that in 16 A.L.R. 437 and supersedes those in 24 A.L.R. 724 and 56 A.L.R. 800. The purpose of the present discussion is to collect the more recent cases in which the courts

§ 207.Election against forfeiture—What constitutes

1 Tiffany Real Prop. § 207 (3d ed.)

Any act on the part of the grantor or lessor, after knowledge of the breach, which unequivocally recognizes the interest of the grantee or lessee as still existing, is sufficient to show a waiver or el...

See More Secondary Sources

Briefs

Brief for Petitioner.

1937 WL 40483
Kennedy v. Boston-Continental Nat. Bank
Supreme Court of the United States
February 05, 1937

...The opinion of the District Court for the District of Massachusetts is to be found in the Record at pages 39 to 55 and is reported in 11 F. Supp. 611. The opinion of the majority of the Circuit Court o...

Supplemental Joint Appendix

1983 WL 879634
Hawaii Housing Authority v. Midkiff
Supreme Court of the United States
October 01, 1983

...FHA FORM NO. 2372H (Rev. 2/67) VA FORM NO. 26-6450G This Indenture, made this _ day of _, 19_, by and between hereinafter called "Lessor," of the first part, and whose residence and post-office address

Joint Appendix

2009 WL 2601362
Mac's Shell Service, Inc. v. Shell Oil Products Company LLC
Supreme Court of the United States
August 21, 2009

...FN1. All references to "Dist. Ct. Dkt." are to the docket in No. 1:01-cv-11300-RWZ. 1. In response to the ruling in Civil Action number 00-11295-RWZ, the plaintiffs in the above-captioned matter are th

Attorneys and Law Firms

**1227 *145 Michael R. Mushkin & Associates and Mark C. Hafer, Las Vegas, for appellant/cross-respondent.

Lionel Sawyer & Collins and David N. Frederick, Las Vegas, for respondent/cross-appellant.

*146 OPINION

PER CURIAM:

Facts

Appellant Luis Davidsohn leased land and commercial warehouses to the respondent, Helen Doyle. Doyle, in turn, subleased space to various parties. The Davidsohn–Doyle lease requires Doyle, at her own cost, to keep the entire demised premises in good condition and repair.[1] Paragraph 7(h) of the lease permits the lessor to reenter the property and terminate the lease upon the lessee's breach.[2]

**1228 In February 1988, Davidsohn hired Ivan Tippetts, a real estate appraiser and licensed contractor, to inspect the condition of the leased premises. Tippetts' inspection revealed "a complete disregard for the maintenance, health, safety and code requirements." Consequently, Davidsohn's attorney sent a letter to Doyle and her attorney. The first three paragraphs of the letter discuss the Tippetts report. The fourth paragraph of the letter states:

> THIS LETTER IS NOTICE OF TERMINATION OF THE LEASE TENANCY. Pursuant to the Lease, you have thirty (30) days within which to institute significant repair efforts. I am well aware that it is virtually impossible to accomplish what is needed to bring this property up to the very minimum standard within thirty (30) days. This notice is sent pursuant to the Lease and the requirements within the State of Nevada.

The remainder of the letter expresses concern over the condition of the leased property, and suggests that the parties' attorneys sit down to devise a plan of action.

Tippetts reinspected the property in April after Doyle made *147 some repairs, but found that the work was not done in a professional manner, and that it failed to cure the major problems. Thereafter, Davidsohn's attorney sent a second letter to Doyle, dated April 25, 1988. This letter stated that Doyle's lease was terminated because she failed to remedy the breach charged in the March 14th letter.

Davidsohn filed a complaint for declaratory relief to terminate the lease on May 3, 1988. Doyle continued to pay rent through August 1989 by depositing checks in a Los Angeles bank under an account maintained in the name of Davidsohn's wife. On June 1, 1988, Davidsohn sought a temporary restraining order, enjoining Doyle from (1) collecting rent from her sublessees, (2) interfering with Davidsohn's access to the property and tenants, and (3) doing further work on the property without prior approval. The district court denied this motion, but ordered Doyle to give Davidsohn reasonable access to the property. Tippetts inspected the property again on July 21, 1988, and found the repair work still inadequate and unprofessional. That day Tippetts filed a complaint with the Las Vegas Police Department stating that his life had been threatened by Doyle's property manager during the inspection.

Davidsohn moved for summary judgment on August 10, 1988. After being granted time for discovery, Doyle also moved for summary judgment. The court denied Davidsohn's motion and granted Doyle's, on the basis that Davidsohn had waived his right to terminate the lease by accepting rent from Doyle despite knowledge of the breach. Additionally, the court determined that the March 14, 1988 letter did not comply with NRS 40.2516, which requires that written notice in an unlawful detainer action give the tenant the option to comply with the lease terms or vacate the premises.

Doyle filed a motion to amend the court's findings of fact and conclusions of law and judgment, seeking attorney's fees and costs of $38,917.36 under the lease. After oral argument, the court denied Doyle's motion, finding that the lease provision regarding attorney's fees did not apply under the facts of the case.

Davidsohn appealed from the grant of summary judgment in favor of Doyle, and Doyle cross-appealed from the denial of her motion requesting attorney's fees and costs. We are convinced that under the facts of this case, Davidsohn did not waive his right to terminate

See More Briefs

Trial Court Documents

SBSS Holdings, LLC v. JBLS, LLC

2014 WL 7773802
SBSS Holdings, LLC v. JBLS, LLC
District Court of Nevada, Clark County
December 22, 2014

...This matter came on for bench trial on the 4 and 5 days of December 2014 before Department XXII of the Eighth Judicial District Court in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presid...

Meyer v. Pattiz

2007 WL 4742626
Meyer v. Pattiz
District Court of Nevada, Clark County
October 01, 2007

...Dept. No. VI The above-entitled case having come on regularly for trial on August 27, 2007 at the hour of 10:00 a.m., the Court having heard the testimony of witnesses and having received documentary e...

Tuscano, LLC v. Colorado Belle Gaming, LLC

2013 WL 7855695
Tuscano, LLC v. Colorado Belle Gaming, LLC
District Court of Nevada, Clark County
October 29, 2013

...The above-entitled case, having come on for bench trial on June 17, 2013 through July 10, 2013, before Department XVI of the Eighth Judicial District Court, in and for Clark County, Nevada, with the Ho...

See More Trial Court Documents

the lease by accepting rent from Doyle. We are also persuaded that Davidsohn gave Doyle adequate notice of his intent to terminate the lease. Therefore, we reverse the summary judgment and remand the matter to the district court for further proceedings.

**148 Discussion*

A party is entitled to summary judgment when there are no material issues of fact to be resolved, and the moving party is entitled to judgment as a matter of law. ***1229** NRCP 56 (c). Neither party contends that there are any disputed material factual issues. Therefore, our analysis centers on whether the district court correctly perceived and applied the law. *Mullis v. Nevada Nat'l Bank*, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982).

A. Acceptance of rent as a waiver of breach.

1 In ruling as it did, the district court relied on the general rule that when a lessor accepts rent, with full knowledge of a breach by his lessee, the lessor waives his right to terminate the lease based upon that breach. *Reno Realty v. Hornstein*, 72 Nev. 219, 301 P.2d 1051 (1956); *Sharp v. Twin Lakes Corp.*, 71 Nev. 162, 283 P.2d 611 (1955).

Davidsohn urges this court to recognize an exception to the general rule based upon the protracted pendency of the action between the parties, the commercial nature of the subject lease, and the March 14, 1988 "notice of default" communicated to Doyle. The principal Nevada case holding that a lessor waives his right to terminate a lease by accepting rent from the lessee is *Sharp v. Twin Lakes Corp.*, 71 Nev. 162, 283 P.2d 611 (1955). In *Sharp*, a lessee sued its lessor for the return of deposit money which was held in escrow to ensure performance of the lease terms. The lessor counterclaimed for forfeiture of the lease based on numerous breaches by the lessee. We held that the lessor had waived his right to terminate the lease for breach by accepting rent without giving the lessee any "intimation that he regarded the lease as forfeited." 71 Nev. at 167, 283 P.2d at 613. Until filing the counterclaim, the lessor's actions "affirmed the existence of the lease and recognized the lessee as his tenant." *Id.*

In *Sharp* we were concerned about the lessor seeking to terminate the lease after lulling the lessee into believing that its breach of the terms of the lease would be overlooked. In the present case, Doyle cannot reasonably contend that Davidsohn's actions led her to believe that any failure to properly maintain the leased premises would be excused. Davidsohn acted promptly after learning of the deteriorated condition of the buildings. After giving Doyle an opportunity to repair the property, Davidsohn pressed for termination of the lease. Doyle was aware of these efforts as she continued to pay rent for well over a year after Davidsohn brought suit. Thus, Davidsohn did not induce Doyle into believing the breach would be excused.

Additionally, the lease involves commercial property. Doyle is ***149** a businesswoman subleasing the property for profit, not an unsophisticated residential tenant in need of a roof over her head. Doyle was in need of no special protection from Davidsohn.

Several neighboring jurisdictions permit a lessor in certain instances to accept rent without waiving the right to terminate the lease. *See DMV Co. v. Bricker*, 137 Ariz. 589, 672 P.2d 933, 935 (1983); *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657, 662–63 (1982); *Fogel v. Hogan*, 496 P.2d 322, 324 (Colo. Ct. App. 1972). These states recognize the general rule that a landlord's acceptance of rent after notice of a breach waives the right to terminate the lease based on that breach. However, when a lessor takes definite action to terminate a lease, and the lessee opposes the action and remains in possession, these jurisdictions allow the lessor to continue accepting rent from the lessee while pursuing termination. *But see Woodland Theatres v. ABC Intermountain Theatres*, 560 P.2d 700 (Utah 1977) (finding a waiver even though lessor initiated two actions to terminate lease).

2 We agree with the reasoning of those cases that recognize as an exception to the general rule, a lessor's right to accept rent after a breach by the lessee when the lessor timely expresses his intent to terminate the lease and the lessee nevertheless remains in possession.[3] Irrespective ***1230** of who prevails in litigation, the lessee will be liable for rent incurred during the period of possession of the demised premises. The issue is simply one of timing, not of entitlement. Requiring a lessor to forego rental payments until resolution of a dispute may be unduly burdensome, as in the instant case involving a commercial lease with a substantial monthly rental. To recognize a waiver in the present case would be tantamount to sanctioning the breach by allowing Doyle to continue collecting rent from her sublessees without paying Davidsohn or curing the breach. As stated in *Riverside Development*:

> The doctrine of waiver is an equitable doctrine based upon fairness and justice. However, the lessor, who has mortgages, taxes and other expenses to pay, cannot fairly be said to be a beneficiary of such fairness and justice as long as he is forced to avoid the acceptance of any compensation for a tenant's unlawful possession of the property (which may extend for periods of months or years due to litigation), because of the threat that as soon as he does the tenant will cry waiver.
> 650 P.2d at 662.

*150 Based upon our adoption of the exception to the general rule, as discussed above, we hold that Davidsohn did not waive his right to terminate the lease by accepting rental payments from Doyle after knowledge of the breach. Davidsohn timely pursued his action, and we cannot seriously doubt that Doyle was aware of Davidsohn's intention to terminate the lease if repairs were not timely made. Although the first letter sent to Doyle was somewhat equivocal, the second letter and the initiation of the declaratory judgment action adequately notified Doyle that Davidsohn was seeking to terminate the lease because of the state of disrepair of the leased property. Davidsohn's complaint about the condition of the premises appears well supported in the record. Therefore, Davidsohn may pursue his action for termination despite his acceptance of the rent tendered by Doyle.

B. Sufficiency of the notice.

3 4 The district court determined that Davidsohn failed to give adequate notice of his intent to terminate the lease, because the March 14, 1988 letter did not satisfy the statutory notice requirements for unlawful detainer actions. Davidsohn contends, however, that the unlawful detainer statute was inapplicable because he sought to terminate Doyle's tenancy under the terms of the lease. We agree and hold that a lessor who seeks termination under a lease provision is not obligated to meet the notice requirements of NRS 40.2516.

5 NRS 40.2516 outlines the procedures for regaining possession of real property from a tenant in unlawful detainer.[4] In an unlawful detainer action, strict compliance with the statutory notice provision is a jurisdictional prerequisite. *Roberts v. District Court*, 43 Nev. 332, 340, 185 P. 1067, 1069 (1920); *Paul v. Armstrong*, 1 Nev. 70, 76 (1865). Here, Davidsohn did not institute an unlawful detainer action; he sought a declaratory *151 judgment terminating the lease pursuant to a provision of the lease. When a lessor seeks termination under a lease provision, the notice requirements for an unlawful detainer action are inapplicable.[5] Thus, the district court improperly found that Davidsohn was **1231 required to comply with NRS 40.2516.[6]

Because of our disposition of this appeal, it is unnecessary to discuss Doyle's cross-appeal from the district court's ruling denying her attorney's fees.

For the reasons specified above, we reverse the district court's summary judgment in favor of Doyle and remand the case for further proceedings consistent with this opinion.

MOWBRAY, C.J., and ROSE, STEFFEN, and YOUNG, JJ., and LEHMAN, District Judge,[1] concur.

Parallel Citations

825 P.2d 1227

Footnotes

1 The lease provision reads:

> 4. MAINTENANCE: Lessee shall at their own cost and expense keep the entire demised premises, including any building or buildings constructed by Lessee, in good condition and repair at all times. Lessor shall be under no obligation whatsoever to make any repairs to any portion of the demised premises nor shall Lessor at any time be called upon or obligated to remodel, redecorate or perform pertaining to the demised premises or any building or buildings thereon.

2 Paragraph 7(h), in pertinent part, states:

> If any default be made by the Lessee in the observance or performance of any of the terms, conditions or covenants hereof, the Lessor shall have

> the right, after first having given the Lessee at least fifteen days written notice of such default, and the Lessee not having cured the same within such fifteen days, to enter into possession of the demised premises and to remove all persons and property therefrom and, at Lessor's option to terminate this lease.

3 *Cf. Wecht v. Anderson*, 84 Nev. 500, 506, 444 P.2d 501, 505 (1968) (lessor did not waive breach by accepting rent during a grace period given to the lessee to either cure the default or purchase the property).

4 NRS 40.2516, in pertinent part, is set forth below:

> A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in NRS 40.250 to 40.252, inclusive, and NRS 40.254, and *after notice in writing, requiring in the alternative the performance of the condition or covenant or the surrender of the property*, served upon him, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplied with for 5 days after the service thereof.
>
> (Emphasis added.)

5 However, under NRS 40.252, a contractual provision which attempts to shorten the notice period required in NRS 40.2516 is void.

6 Since we have determined that the notice given was sufficient, Davidsohn may be entitled, under the lease, to expenses incurred in drafting and serving the notice of termination to Doyle. The district court, determining that no "notice" was served, denied such expenses.

7 The Honorable Jack Lehman, Judge of the Eighth Judicial District, was designated by the Governor to sit in the place of the Honorable Charles E. Springer, Justice. Nev. Const. art. 6, § 4.

000026

000026

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

WestlawNext © 2015 Thomson Reuters Privacy Statement Accessibility Supplier Terms Contact Us 1-800-REF-ATTY (1-800-733-2889) Improve WestlawNext

5

Electronically Filed
09/14/2015 03:54:11 PM

CLERK OF THE COURT

OPP

James J. Pisanelli, Esq., Bar No. 4027
jjp@pisanellibice.com
Jarrod L. Rickard, Esq., Bar No. 10203
jlr@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

Attorneys for Rose, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff, v. ROSE, LLC, a Nevada limited liability company, Defendant.	Case No.: A-15-719105-B Dept. No.: XXIX **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR CONFIRMATION THAT TREASURE ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION**
ROSE, LLC, a Nevada limited liability company, Counterclaimant, v. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant.	**Date of hearing:** September 28, 2015 **Time of hearing:** 9:30 a.m.

I. INTRODUCTION

Plaintiff/Counter-defendant Treasure Island, LLC's ("Treasure Island") Motion is an impermissible attempt to obtain an advisory opinion from the Court. As Treasure Island concedes, Defendant/Counter-claimant Rose, LLC ("Rose") continues to tender all rental amounts due under the Lease. Moreover, Rose does not dispute that the Nevada Supreme Court's decision in Davidsohn v. Doyle is settled law. Thus, there is no dispute upon which the Court should

000027

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000027

rule. While Rose agrees that Treasure Island may collect rent, and was required to do so pursuant to the terms of the Lease, no ruling is necessary or proper. An advisory opinion from this Court is inappropriate.

II. BACKGROUND

As Treasure Island concedes, Rose disputes any termination of its Lease and continues to tender rent. Treasure Island and Rose executed their Lease on April 13, 2011. (See Ex. 1 hereto.) Thereafter, on or about June 11, 2011, Rose entered into a sublease for a portion of the leased premises with Senor Frog's Las Vegas, LLC ("Senor Frogs") as the subtenant. Naturally, the Lease contains explicit provisions protecting Rose's tenancy, and Senor Frogs' sub tenancy, from unilateral termination. These protections include Section 15.1.1's instruction that any failure to pay rent could not become an "Event of Default" unless "such failure continues for ten (10) days from Landlord's written notice …."

Additionally, Section 19.6 of the Lease contains unambiguous requirements for providing proper notice, including the identity and addresses of those individuals who must receive notice of any Event of Default. These individuals include representatives for Rose **and** Senor Frogs:

> **19.6** Notices. Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and … addressed to the following addresses (each of the parties shall be entitled to specify a different address and/or contact person by giving notice as aforesaid):
>
> If to Landlord: Treasure Island, LLC
> 3300 Las Vegas Blvd., South
> Las Vegas, NV 89109
> Attn: Najam Khan
> Facsimile: 702-894-7680
> E-mail: nkhan@treasureisland.com
>
> With a copy via facsimile to:
> Brad Anthony, General Counsel
> Facsimile: 702-894-7295
> E-mail: banthony@treasureisland.com
>
> If to Tenant: Rose, LLC
> 8301 E. Prentice Ave., Suite 210
> Greenwood Village, CO 80111
> Attn: Susan Markusch
> Facsimile: 303-221-5501

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000028
000028
000028

E-mail: susan@gdare.com

With a copy to:
Operanda Andersons S.A. de C.V
Boulevard Kukulkan km 14.2
Cancun, Mexico
C.P. 77500 Zona Hotelera

See id.

Operanda Andersons S.A is the business address of Senor Frogs. Thus, Treasure Island is required to provide notice to **both** Rose and Senor Frogs regarding any alleged Event of Default. On April 30, 2014, the parties executed a Fifth Amendment to the Lease updating the notice provisions to provide a current address for Rose and adding Senor Frogs' counsel to the service list. (See Ex. 2 hereto.) No other provision of Section 19.6, including the requirement that Treasure Island's notifications to Rose be sent to the attention of Susan Markusch, was modified.

However, Treasure Island flaunted these notice obligations in the Lease. Despite the explicit instructions of Section 19.6, Treasure Island sent a May 14, 2015, letter to Rose, which purported to provide a notice of default. However, the notice was **not** sent to the attention of Susan Markusch or copied to Senor Frogs or its counsel. Thus, Treasure Island's "notice" was fundamentally and fatally defective under the Lease's clear terms. Indifferent to Rose's Lease rights and its obligation to provide actual effective notice of any claimed breach, Treasure Island sent a second letter on May 28, 2015, purporting to terminate the Lease, effective immediately. This letter again violated the clear mandates of Section 19.6 and Section 11 as it once again violated the notice provisions of the Lease. Tellingly, Treasure Island filed its Complaint initiating this action at 6:00 p.m. that same day.

Treasure Island seems intent on undermining its own Lease by preventing performance by Rose and Senor Frogs. Toward that apparent end, Treasure Island rejected Rose's May 29, 2015, wire transfer of the amounts that were allegedly overdue. Since that time, Rose continues to timely tender all rental amounts under the Lease, and Treasure Island consistently and stubbornly has either rejected these checks/transfers or held them without deposit, all in breach of the Lease. Now, Treasure Island comes to this Court seeking an advisory opinion so as to ensure that its

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000029

000029

overreaching doesn't come back to haunt it. Regretfully, it is far too late in the day for Treasure Island's second-guessing.

III. ANALYSIS

As the Court is aware, "[i]t is inappropriate for the courts to issue advisory opinions where there is no justiciable controversy …." Carlisle v. Spatola, 232 A.D.2d 444, 445 (N.Y. 1996); see e.g., Herbst Gaming, Inc. v. Heller, 122 Nev. 877, 890, 141 P.3d 1224, 1232 (2006) ("Essentially, the district court's determination was an improper advisory opinion. Thus, it is void."); Equitable Trust Co. v. Commodity Futures Trading Comm'n, 669 F.2d 269, 275 (U.S. Ct. App. 1982) ("As the Commission properly points out, this is, in effect, an improper request for an advisory opinion as to who, if anyone, may contest the Commission's emergency order."); see also Legendary Investors Group No. 1, LLC v. DP NPI Century City, LLC, 2013 WL 4496390, at *2 (Cal. Ct. App. 2013) ("We express no opinion about the judgment's preclusive effect on any remaining disputes between the parties since those disputes are not properly before us.").

. . .

. . .

. . .

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000030

000030

Here, Rose does not dispute that Treasure Island must accept rent. The clear terms of the Lease require Treasure Island to do so and Rose continues to tender all due amounts. (See Ex. 3 hereto.) Thus, there is no justiciable controversy before the Court and Treasure Island is just trying to have this Court provide a roadmap of insurance for what is contractually necessary to comply with the Lease terms. Rose tendered all rent since the onset of litigation and will continue to do so. Because Treasure Island is not entitled to an advisory opinion regarding Davidsohn v. Doyle, its Motion should be denied. Treasure Island, like any other litigant, must live with any consequences of its strategic maneuvering given the context of unambiguous contractual leasing terms.

DATED this 14th day of September, 2015.

PISANELLI BICE PLLC

By: /s/ James J. Pisanelli
James J. Pisanelli, Esq., Bar No. 4027
Jarrod L. Rickard, Esq., Bar No. 10203
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Rose, LLC

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000031

000031

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 14th day of September, 2015, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR CONFIRMATION THAT TREASURE ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION** to the following:

Patrick J. Sheehan, Esq.
John H. Mowbray, Esq.
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000032

000032

000032

000033

000033

EXHIBIT 1

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), is made and entered into this 13th day of April, 2011 ("Effective Date"), by and between Treasure Island, LLC, a Nevada limited liability company ("Landlord"), and Rose, LLC, a Colorado limited liability company ("Tenant"). All capitalized terms used herein are defined, or listed for reference purposes, on the Index of Defined Terms attached hereto.

RECITALS

WHEREAS, Landlord is the owner of certain real property located at 3300 Las Vegas Boulevard South, Las Vegas, Nevada 89109 ("Property"), within which Landlord operates that certain resort hotel casino commonly known as Treasure Island ("Hotel Casino"); and

WHEREAS, Landlord desires to lease to Tenant the Leased Premises for the operation of a bar, lounge, restaurant and/or nightclub upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, it is hereby mutually agreed by and between Landlord and Tenant as follows:

000034

AGREEMENT

1. CONSIDERATION; RESERVATION.

1.1 Consideration. Landlord does hereby lease, demise and let unto Tenant, and Tenant does hereby take, hire and lease from Landlord, those certain commercial premises and improvements, fixtures and equipment thereon located in the Hotel Casino, consisting of approximately eighteen thousand one hundred thirty five (18,135) square feet including adjacent outdoor space located at the Hotel Casino (collectively, "Leased Premises"), and as more particularly depicted on Exhibit "A" attached hereto.

1.2 Reservation. Landlord reserves to itself the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and all other utility and structural elements now or in the future leading through the Leased Premises and which serve the Leased Premises or other parts of the Hotel Casino, provided that Landlord agrees to conceal any work performed by Landlord pursuant to this Section and repair any damage to the Leased Premises caused by or resulting from Landlord's performance of such work. Such rights may only be exercised after Landlord has given Tenant ten (10) days' prior written notice, and then such work shall be exercised after Tenant's business hours so as to not disrupt or disturb Tenant Operations; provided, however, if Landlord shall have reasonable ground to believe an Emergency (as defined below) exists or is threatened, Landlord shall be entitled to take all such actions and to proceed at all reasonable times as are appropriate. An "Emergency" shall mean a substantial threat to life or property.

1.3 Gaming Authorities. The Gaming Authorities require Landlord to complete background checks of Persons involved with Landlord and Landlord's business operations. "Gaming

000034

Authorities" means those federal, state and local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities in any jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Commission, the Nevada State Gaming Control Board, together with those local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation, licensing or permit authority over the sale, distribution and possession of alcoholic beverage. On five (5) Business Days written request by Landlord to Tenant or as required by the Gaming Authorities, Tenant shall provide to Landlord written disclosure of all Associated Parties. "Business Day" means any day other than a Saturday, a Sunday, or any day when Federal Banks located in the State of Nevada are closed for a legal holiday or by government directive. "Associated Parties" means the managers, members, officers, employees, agents, designees, representatives, management personnel, consultants, suppliers, lenders, licensors, financial participants or permitted sublessees of any Person. Tenant or any of its Associated Parties shall provide all requested information, apply for and obtain all necessary Approvals required or requested of Tenant by Landlord or the Gaming Authorities. For purposes of this Lease, "Person" means a natural person, any form of business or social organization and any other legal entity including, but not limited to, a corporation, partnership, association, trust, unincorporated organization, estate or limited liability company and "Affiliate" means with respect to a specified Person, any other Person who or which is (a) directly or indirectly Controlling, Controlled by or under common Control with the specified Person, or (b) any member, stockholder, director, officer, manager, or comparable principal of, or relative or spouse of, the specified Person. "Approvals" means all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, waivers, exemptions and entitlements issued by any Governmental Authority, including any Gaming Authority, necessary for Tenant Operations or with respect to the operations of Hotel Casino, Landlord or any of Landlord's Affiliates. "Control", "Controlling", "Controlled" mean the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

000035

000035

1.4 Limitation on Remedies. All rights, powers and remedies provided in this Lease may be exercised only to the extent that the exercise thereof does not violate any applicable provision of the Gaming Laws, and all provisions of this Lease are intended to be subject to all applicable mandatory provisions of the Gaming Laws that may be controlling and to be limited to the extent necessary so that they will not render this Lease invalid or unenforceable, in whole or in part. "Gaming Laws" means all laws pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gaming within any applicable jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Control Act, as codified in NRS Chapter 463, the regulations of the Nevada Gaming Commission and the Nevada State Gaming Control Board promulgated thereunder and the Clark County Code.

2. TERM; HOLDING OVER.

2.1 Term. This Lease shall be for an initial term of ten (10) years commencing on the Commencement Date, unless earlier terminated as provided herein ("Initial Term" and, as may be extended by the Additional Term pursuant to Section 2.3, "Term"). "Commencement Date"

000035

means the date that the Tenant opens the Leased Premises for business to the public for Tenant Operations. Within ten (10) days after Landlord's or Tenant's request therefore, Landlord and Tenant shall execute and deliver to the other, who shall execute within ten (10) days of receipt, a Certificate of Commencement, in the form attached hereto as Exhibit "B" setting forth the Commencement Date and the expiration date of the Initial Term of this Lease. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to terminate this Lease if Tenant is unable to obtain or maintain any permit, license or other consent necessary for Tenant to conduct Tenant Operations in the Leased Premises. In such event, this Lease shall terminate ten (10) days following Tenant's delivery to Landlord of written notice of Tenant's inability to obtain or maintain any permit, license or other consent necessary for Tenant to conduct Tenant Operations in the Leased Premises. For purposes of this Lease, "Lease Year" means, for the first Lease Year, the period beginning on the Commencement Date and ending twelve (12) months thereafter, except that if the Commencement Date is other than the first day of a calendar month, the first Lease Year shall end twelve (12) months from the last day of the calendar month during which the Commencement Date occurs. For the Lease Years after the first Lease Year, "Lease Year" means the twelve (12) month period beginning on the next day following the expiration of the preceding Lease Year. If the Term of this Lease shall end prior to the last day of a Lease Year, the final Lease Year under this Lease shall be deemed to end on the last day of the Term.

2.2 Landlord Delivery. Landlord will deliver the Leased Premises on a mutually acceptable date following Landlord's approval of Tenant's Final Plans, as set forth in Section 5.2.2.

000036

2.3 Additional Term. Tenant may extend the Term of this Lease for four (4) additional periods of five (5) years (each, an "Additional Term") by providing written notice to Landlord not later than one hundred eighty (180) days prior to the expiration date of the Initial Term or the first Additional Term (each, an "Option"). As set forth in Section 3.1.A of the Lease, Minimum annual rent during each Option Term shall be equal to 105% of the Minimum annual rent payable by Tenant during the period immediately preceding the applicable Option period.

000036

2.4 Holding Over. If Tenant holds over and continues to be in possession of the Leased Premises with Landlord's consent after expiration or termination of the Term, such holding over shall be considered to be a tenancy from month-to-month only, subject to all provisions of this Lease except those relating to the Term and any renewal option, and except that the Rent shall be adjusted on the first day of such holding over to be one hundred twenty-five percent (125%) of the Rent payable for the last month of the Term preceding the holding over, prorated for partial months. If Tenant holds over and continues to be in possession of the Leased Premises without Landlord's consent after the expiration or termination of the Term, such holding over shall be a tenancy from month-to-month only, subject to all provisions of this Lease except those relating to the Term and any renewal option and except that the Rent shall be adjusted on the first day of such holding over to be one hundred fifty (150%) of the Rent payable for the last month of the Term preceding the holding over, prorated for partial months; provided, however, the acceptance by Landlord of such Rent during such tenancy shall in no manner limit or preclude Landlord's exercise of any rights or remedies available to Landlord as a result of such holding over, as provided pursuant to the terms of this Lease, at law, or in equity.

3. RENT AND LANDLORD CONTRIBUTION.

3.1 Minimum and Percentage Rent. Tenant covenants and agrees to pay to Landlord, without notice or demand, at Landlord's address for notice, as rent for the Premises:

A. Minimum annual rent in the amount of Six Hundred Twenty Four Thousand Dollars ($624,000) per annum payable in monthly installments of Fifty Two Thousand Dollars ($52,000) in advance upon the first day of each and every month commencing upon the Commencement Date and continuing thereafter through and including the last month of the Lease Term (such monthly installment being hereinafter called "Minimum Monthly Rent"). Upon the first (1st) day of the first Option Term, Minimum Monthly Rent shall be increased to Fifty Four Thousand Six Hundred Dollars ($54,600), and upon the first (1st) day of the second Option Term, Minimum Monthly Rent shall be increased to Fifty Seven Thousand Three Hundred Thirty Dollars ($57,330). If the Commencement Date is other than the first day of a month, Tenant shall pay on the Commencement Date a prorated partial Minimum Monthly Rent for the prior to the first day of the next calendar month.

B. The amount of seven percent (7%) of "Gross Sales," provided that the amount of Minimum Monthly Rent due and payable by Tenant for each period shall be deducted from Gross Sales before determining seven percent (7%) of Gross Sales, payable in the manner, and under the terms, set forth in Section 3.1.C of this Lease (hereinafter called "Percentage Rent"). "Gross Sales" means, following the Commencement Date, the aggregate of all revenues derived from Tenant Operations, whether from cash or credit. Excluded from Gross Sales for purposes of this Lease shall be: (i) complimentary food or beverage provided to patrons by Tenant at the Leased Premises, (ii) gratuities paid by patrons, including, without, limitation, automatic gratuities charged to patrons and distributed to employees, (iii) returns to vendors or manufacturers, (iv) refunds to customers (but only to the extent included in Gross Sales), (v) sales of fixtures, machinery and equipment after use in Tenant's business in the Leased Premises, (vi) sales of trade fixtures, store equipment, furniture, or furnishings used in the operation of Tenant's business of the Premises, (vii) insurance proceeds, (viii) credit card fees, (ix) sales taxes, so called luxury or value added taxes, casino entertainment taxes or similar taxes now or hereafter imposed upon the sale of products, merchandise or services, whether such taxes are added separately to the selling price thereof and collected from customers or paid by Tenant and included in the retail selling price, (x) amounts collected from patrons for the account of, and for direct payment to, unrelated third parties providing services specifically for a patron's function which generate Gross Sales, such as flowers, music and entertainment, (xi) the amount of over-rings, refunds, rebates, discounts and credits given, paid or returned in the course of obtaining Gross Sales in connection with credit card transactions occurring with respect to obtaining Gross Sales, unless recovered by Tenant, (xii) the purchase of gift certificates, but not the redemption of gift certificates; and (xiii) the amount of all themed goods and merchandise (i.e., apparel, accessories and similar merchandise, including without limitation, t-shirts, hats, glassware, souvenirs, etc.) sold, in, upon or from the Leased Premises.

C. Within 30 days after the end of each calendar quarter during the Lease Term, Tenant shall deliver to Landlord a written statement setting forth the amount of Tenant's Gross Sales made during each month of the preceding calendar quarter and Tenant shall, concurrently therewith, pay Landlord the Percentage Rent due and payable for the preceding calendar quarter.

000037
000037
000037

3.2 Default Interest. If Tenant shall fail to pay, when same is due and payable, Rent or any other amount or charge to be paid by Tenant to Landlord hereunder within ten (10) days of the due date, and the same continues for an additional ten (10) days after Tenant's receipt of written notice of such failure, then such unpaid amount shall bear interest from the date such payment is due at the rate of ten percent (10%) per annum, compounded monthly ("Default Rate"), payable upon demand; provided, however, that nothing contained herein shall give Tenant the right to pay any such installment of Rent or other amount or charge other than on the due date thereof and Landlord's collection of such Default Interest shall not waive any other rights which Landlord may have hereunder or at law or in equity in respect to such late payment.

3.3 Real Estate Taxes and Other Costs. Landlord shall pay or cause to be paid all Real Estate Taxes assessed or imposed upon the Hotel Casino which become due or payable during the Lease Term. As used in this Lease, "Real Estate Taxes" means all real estate taxes, public and governmental chargers and assessments, including extraordinary and special assessments, or assessments against any of Landlord's personal property now or hereafter located in the Hotel Casino, all costs, expenses and attorneys' fees incurred by Landlord in contesting or negotiating with public authorities as to any of the same, but shall not include taxes on Tenant's personal property or assets of Tenant, Tenant agreeing to pay, before delinquency, all taxes upon or attributable to such excluded items without apportionment. Landlord shall pay or cause to be paid all costs of any kind paid or incurred by Landlord in connection with the ownership, management, maintenance, repair, replacement, restoration or operation of the Property (including all Common Areas), including by way of illustration but not limitation, all Real Property Taxes, all costs, charges and surcharges for utilities, water, sewage, janitorial, waste disposal and refuse removal and all other utilities and services provided to the Property, and all insurance costs for the Property.

000038

000038

3.4 Landlord Contribution. Landlord shall provide to Tenant Two Million Five Hundred Thousand Dollars ($2,500,000) ("Landlord Contribution") with Five Hundred Thousand Dollars ($500,000.00) payable no later than ten (10) days following the full execution of this Lease, and the remainder due within ten (10) days following Tenant's acquisition of all permits required to commence construction. Commencing on the 15th day following the first full calendar quarter for which Rent is due and payable by Tenant, and continuing on the 15th day following each calendar quarter until such payments equal, in the aggregate, the amount of the Landlord Contribution, Tenant shall deliver to Landlord the Net Income attributable to Tenant Operations for the prior calendar quarter (and any partial calendar quarter, if applicable), if any, as repayment of the Landlord Contribution. "Net Income" means Gross Sales, less all costs and expenses reasonably incurred in the ordinary course of business with respect to all Tenant Operations, which costs and expenses shall include without limitation, the following: (a) all amounts paid by Tenant to Landlord pursuant to the Lease, including but not limited to Minimum Monthly Rent and Percentage Rent; (b) cost of food, beverages, merchandise and other goods sold as part of Tenant Operations; (c) payroll expenses for Tenant employees and reimbursement of payroll expenses, insurance, and union payments relating thereto; (d) credit card fees charged by credit card companies; (e) complimentary expenses; (f) general corporate overhead; (g) advertising and promotion expenses and decoration expenses; (h) dues and subscriptions; (i) cost of uniforms, linen and laundry; (j) cost of maintenance, repairs, refurbishment and replacement of the furniture and equipment; (k) cost of menus; (l) office expense and supplies; (m) cost of operating supplies; (n) cost of security services and

000038

cleaning services; (o) cost of service contracts for the Leased Premises; (p) sales taxes not otherwise included in another component of operating expenses or previously deducted from Gross Sales; (q) accounting and other professional fees and cost of telephones, printing, stationary and postage; (r) cost of employee relations and training, including the cost of housing and transportation; (s) cash losses, including cash shortages, and theft not previously deducted from Gross Sales or required to be included in Gross Sales; (t) cost of outside entertainment; (u) cost, if any, of support functions, for Tenant Operations, including but not limited to, service bar and bar porters, stewards, cashiers and reservations; (v) income taxes; (w) interest and principal paid on indebtedness. In no instance shall this quarterly repayment amount be less than $300,000.00.

4. DELIVERY, INITIAL IMPROVEMENTS.

4.1 Landlord Delivery of Leased Premises. Landlord shall deliver to Tenant the Leased Premises on an "as-is" basis, including all existing furniture fixtures and equipment and personal property in the Leased Premises as of March 2011, which Tenant shall be permitted to utilize during the Term, except for the interior space furnishings, including artwork that is not owned by Landlord, and the items listed as excluded items in Exhibit "C" attached hereto, which Landlord may remove, promptly following the full execution of this Lease (the date of such delivery being the "Delivery Date"). Notwithstanding anything in the foregoing to the contrary, Landlord represents and warrants that as of the Delivery Date, the Leased Premises shall conform in all respects with all Applicable Laws and shall be free of Hazardous Materials (defined in Section 14.3.1). Landlord shall indemnify, defend and hold harmless Tenant and Tenant's Associated Parties from all claims, suits, liabilities, obligations, judgment, fees, costs and expenses, including reasonable attorney fees, incurred as a result of the foregoing representation being untrue in any material respect. For purposes of this Lease, "Applicable Laws" means those applicable existing and future statutes, laws, rules, regulations, orders, codes, permits, authorizations, building regulations, zoning laws and ordinances of any Governmental Authorities, as amended from time to time, now or hereinafter in effect, including, without limitation, Gaming Laws, having jurisdiction over Landlord or any Affiliate of Landlord, Tenant, this Lease, Tenant Operations or the Hotel Casino. For purposes of this Lease, "Governmental Authorities" means those federal, state and local governmental, quasi-governmental authorities, agencies, courts, departments, boards and officials, as amended from time to time, now or hereinafter in effect having jurisdiction over Landlord or any Affiliate of Landlord, Tenant, this Lease or Tenant Operations

4.2 Tenant Work. Tenant shall construct such improvements to the Leased Premises as Tenant deems necessary to open the Leased Premises for business to the public for Tenant Operations ("Tenant Work"). Tenant hereby agrees that (i) all plans, specifications and drawings for Tenant Work shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed and shall be deemed provided if Landlord fails to respond within seven (7) Business Days after Landlord's receipt of Tenant's request for approval of any plans, (ii) Tenant shall obtain all applicable Approvals of Governmental Authorities necessary for the completion of the Tenant Work, Tenant's occupancy of the Leased Premises, and Tenant's conducting of the Tenant Operations at the Leased Premises, and (iii) all Tenant Work shall comply with all Applicable Laws. Tenant Work may also be referred to herein as the "Initial Improvements". Tenant's use and occupancy of the Leased Premises prior to the

000039
000039
000039

Commencement Date for purposes of constructing Tenant Work is subject to all of the terms, conditions and provisions of the Lease, except for Tenant's obligation to pay Rent, Minimum Monthly Rent, Percentage Rent or any other amounts to Landlord. Following construction of the Tenant Work, Tenant shall submit Adobe .PDF "As-Built" drawings to Landlord for its records, along with copies of all construction contracts, and proof of payment for all labor and materials, and copies of lien waivers of the Contractor. Tenant agrees to begin the permitting process expeditiously and shall commence construction at the earliest practical date thereafter. Tenant further agrees that construction will commence, at the latest, within 30 days after obtaining all required permits.

4.3 Contractor and Contract. Prior to Tenant's selection of the general contractor for the work contemplated by this Lease, Tenant will provide Landlord with the name of such general contractor, along with evidence of such contractor's insurance, and any other information that Landlord may reasonably request, for Landlord's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall cause its Contractor, subcontractors, vendors and/or suppliers to execute lien waivers in a form acceptable to Landlord contemporaneously with its receipt of payment, copies of which shall be immediately delivered to Landlord. Tenant shall also immediately repair or cause to be repaired, at its expense, all damage caused to the Leased Premises and/or the Property by Tenant's Contractor.

000040

4.4 Liens. Tenant, at all times, shall keep the Landlord, the Property, the Leased Premises, the Improvements, the leasehold estate created by this Lease and all of Tenant's Property free and clear from any claim, lien or encumbrance, tax lien or levy, mechanic's lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Tenant whatsoever. In the event any lien is filed against the Leased Premises or Property as a result of activity by Tenant, if Tenant fails to remove such lien within thirty (30) days of written notice from Landlord, Landlord may, but shall not be required to, pay the amount of the claim, and the amount so paid, together with attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord; provided, however, Tenant may contest any such lien as long as a foreclosure action has not commenced and Tenant causes such lien to be bonded over in a manner satisfactory to Landlord.

000040

4.5 Initial Improvements. All Initial Improvements that are fixtures, excluding Tenant's Property, shall, become the property of Landlord upon the expiration or earlier termination of this Lease.

5. SUBSEQUENT IMPROVEMENTS.

5.1 Other Tenant Improvements. Subsequent to the Tenant Work, Tenant shall not make or allow to be made any alterations, additions or improvements to the Leased Premises or any part thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Tenant shall have the right, with Landlord's prior written consent, to make interior alterations to the Leased Premises, so long as such alterations are (i) of a non-structural nature, (ii) do not require a permit or other approval of a Governmental Authority pursuant to Applicable Laws, (iii) do not affect any building systems, including fire-life safety systems, and (iv) are made in compliance with all

Applicable Laws (collectively, "Tenant Additional Alterations"). Any Tenant Additional Alterations shall be made solely by Tenant at Tenant's sole cost and expense

5.2 Title to Subsequent Improvements. All Tenant Additional Alterations that are fixtures, excluding Tenant's Property, shall, become the property of Landlord upon the expiration or earlier termination of this Lease.

6.POSSESSION AND SURRENDER OF LEASED PREMISES.

6.1 Limited Representations. Except as specifically provided in Section 17.1, Tenant acknowledges and agrees that neither Landlord nor any of Landlord's agents, employees, servants, or contractors have made any representations or promises concerning the Leased Premises, the furniture, fixtures and equipment contained therein, the expenses of operation or any other matter or things affecting or related to the Leased Premises or Tenant Operations, and no rights, easements or licenses shall be acquired by Tenant by implication or otherwise except as expressly set forth herein. Tenant acknowledges and agrees that it is leasing the Leased Premises "AS IS", except as specifically provided in Section 17.1.

6.2 Title to Property. Tenant may, at any time and at its sole cost and expense, remove from the Leased Premises all personal property and trade fixtures that Tenant has installed or placed in the Leased Premises (collectively, "Tenant's Property") and shall repair all damage thereto resulting from such removal. Upon expiration or termination of the Lease, Tenant shall surrender the Leased Premises in reasonable, broom clean condition, ordinary wear and tear excepted. Landlord hereby waives and releases any liens which Landlord may have against Tenant's owned or leased personal property, trade fixtures or equipment or against Tenant's merchandise, cash or accounts receivable, whether such lien is statutory, constitutional or contractual, or arises out of operation of law or otherwise.

000041

000041

7.USE AND MAINTENANCE OF LEASED PREMISES.

7.1 Use of Property. Tenant may use the Leased Premises for the purpose of conducting thereon the operation of a bar, lounge, restaurant and/or nightclub serving Mexican food and international food and that may feature live entertainment and/or pre-recorded music and disc jockeys, dancing, bottle service, live entertainment and private events. Tenant may also use the Leased Premises for other purposes with Landlord's prior written consent, which will not be unreasonably withheld, conditioned or delayed. Tenant agrees it shall not serve breakfast in the Leased Premises. Tenant agrees it shall not operate within the Leased Premises a Hawaiian-themed restaurant.

7.2 Compliance. Tenant shall not use the Leased Premises in any way which constitutes, or would constitute, a violation of any Applicable Laws, occupancy certificates or other Approvals in connection with the Leased Premises. Landlord represents and warrants to Tenant that, as of the date hereof, no existing requirement exists which would materially restrict the Tenant Operations.

7.3 Interior Displays. Tenant shall have the right, subject to Landlord's prior approval, which approval shall not be unreasonably withheld or delayed, to place upon the interior glass surface of any window or storefront such decals and decorations that are seasonal in nature, or that

000041

promote products offered for sale within the Leased Premises or promote other purposes related to Tenant Operations, including but not limited to advertising campaigns.

7.4 Hours of Operation. Subject to Applicable Laws, Tenant may operate within the Leased Premises between the hours of 10:00 AM – 6:00 AM Mondays-Sundays, unless business warrants otherwise. In the event any Applicable Laws operate to reduce such hours of operation, Landlord and Tenant shall reasonably cooperate, at Tenant's sole cost and expense, to seek waivers or other appropriate Approvals with respect to the variation of such Applicable Laws. If such waivers or Approvals are unable to be obtained, the parties will work together to establish mutually satisfactory hours to conduct Tenant Operations. Notwithstanding anything in the foregoing to the contrary, Tenant shall have the right to close the Leased Premises for renovations, remodeling, alterations or repairs due to casualty, other damage, and Force Majeure Events.

7.5 Exclusive Use. Landlord covenants and agrees that throughout the Lease Term Landlord shall not lease, rent or suffer or permit any portion of the Hotel Casino, other than the Leased Premises, to be used or occupied as or for a Mexican-themed restaurant or that is a party-themed competitor of Señor Frogs, including Coco Bongo, Cabo Wabo and Margaritaville.

7.6 Common Areas; Parking. "Common Areas" means all areas and facilities outside the Leased Premises and within the exterior property boundary line of the Property and interior utility raceways within the Leased Premises that are provided and designated by the Landlord for the general non-exclusive use of Landlord, Tenant and other tenants of the Property and their respective employees, suppliers, shippers, customers, contractors and invitees, including, without limitation, trash areas, roadways, sidewalks, walkways, landscaped areas, irrigation systems, lighting facilities, fences, gates, elevators, roof, common entrances, common areas within the Hotel Casino, common pipes, conduits, wires and appurtenant equipment serving the Leased Premises, exterior signs, directories, fire detection systems, sprinkler systems, security systems, and the parking facilities within the Property. Tenant, its agents, employees, servants, contractors, licensees, customers or business invitees shall have the non-exclusive right, in common with Landlord and others to whom Landlord has or may hereafter grant rights, to use the Common Areas, subject to commercially reasonable and non-discriminatory rules, regulations and ordinances promulgated by Landlord with respect thereto.

000042

000042

7.7 Trade Name. Tenant shall operate under the trade name "Señor Frogs" ("Trade Name") and the Parties shall mutually agree to any change of the Trade Name, provided that Landlord's consent to Tenant's request for change of the Trade Name shall not be unreasonably withheld, conditioned or delayed.

7.8 Trash. Tenant shall not allow trash or garbage to accumulate in the Leased Premises, and shall store all trash and garbage in compliance with Applicable Laws and in such containers as Landlord may designate from time to time (within reasonable proximity to the Leased Premises) so as not to be visible or create a nuisance to customers and business invitees in the Property or permit any health or fire hazard.

7.9 Gratuities. Tenant and Tenant's authorized representatives shall not pay any gratuity, commission or other form of compensation of any sort to any of Landlord's personnel without

000042

the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

8.WASTE AND PROHIBITED ACTIVITIES.

8.1 Waste. Tenant covenants that it shall neither commit nor permit any waste to exist in, on, or about the Leased Premises. Tenant, at its sole cost and expense, covenants to keep the Leased Premises in good repair and condition.

8.2 Prohibited Activities. Tenant shall not permit or suffer anything to be done or kept upon the Leased Premises in violation of this Lease which will materially obstruct or interfere with the rights of Landlord's tenants, Landlord or the patrons and customers or any of them, nor will Tenant commit or permit any nuisance on the Leased Premises. Additionally, Tenant shall not, without Landlord's prior written consent, operate or permit to be operated on the Leased Premises, any coin or token-operated vending machines, gambling game or device or similar devices, use the Leased Premises or any portion thereof as living quarters or sleeping quarters, or conduct a fire, bankruptcy or auction sale in, on or about the Leased Premises.

9.INTELLECTUAL PROPERTY.

9.1 Landlord Marks. Tenant shall have no right or license to use or employ, in any manner, any of those logos, trademarks, trade names – including the services marks or domain names owned or licensed by Landlord (collectively, "Landlord Marks") without the prior written consent of Landlord. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any expenses incurred by Landlord in connection with any use of the Landlord Marks by Tenant in violation of this Agreement. Notwithstanding the foregoing, Tenant may, without the prior written consent of Landlord refer to "Treasure Island" when identifying the location of the Leased Premises on its web site and in advertising and promotional materials.

000043

000043

9.2 Prohibitions. At all times during the Term, or any time thereafter, Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion:

9.2.1 contest or aid in contesting the validity of the Landlord Marks or Landlord's ownership of or licensed rights in the Landlord Marks; or

9.2.2 use any of the Landlord Marks as part of a corporate name or other business name of any Affiliate of Tenant, or adopt or use any confusingly similar logo, trademark, trade name, service mark or domain name.

9.3. Tenant Marks. Landlord shall have no right or license to use or employ, in any manner, any of those logos, trademarks, trade names – including the services marks or domain names owned or licensed by Tenant (collectively, "Tenant Marks") without the prior written consent of Landlord. Landlord agrees to indemnify, defend and hold Tenant harmless from and against any expenses incurred by Tenant in connection with any use of the Tenant Marks by Landlord other than as set forth in this Agreement. Landlord shall not contest or aid in contesting the validity of the Tenant Marks or Tenant's ownership of or licensed rights in the Tenant Marks, or use any of the Tenant Marks as part of a corporate name or other business name of any Affiliate of

000043

Landlord, or adopt or use any confusingly similar logo, trademark, trade name, service mark or domain name.

10. UTILITIES AND TAXES.

10.1 Personal Property Taxes. Tenant shall pay all taxes charged against trade fixtures, utility installations, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall use its best efforts to have its personal property taxed separately from the Leased Premises. If any of Tenant's personal property is taxed with the Leased Premises, Tenant shall pay Landlord the taxes for such personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes, together with reasonable supporting documentation.

10.2 Utilities. The parties acknowledge that, except as expressly provided in this Lease, Tenant shall be responsible for all repairs required to the Leased Premises and for the provision the following utilities and services at the Leased Premises: telephone, cable, security alarm, and janitorial services and cleaning of the Leased Premises. Landlord represents and warrants that utilities for electric, gas, sewer, water and heating, ventilation and air conditioning as well as chilled water are available to the Leased Premises and shall continue to be available throughout the Term, and at no additional expense to Tenant, and that such utilities shall be in compliance with all codes and sufficient for Tenant Operations. Landlord shall not take nor permit its agents, employees or contractors to take any action which shall interrupt or interfere with any utility services to the Leased Premises.

000044

000044

11.**INSURANCE.**

11.1 Liability Policy. Tenant shall, at all times during the Term, at its sole cost and expense, procure and maintain in full force and effect a policy or policies of commercial liability insurance insuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring in connection with the Leased Premises or Tenant's use thereof, including automobile liability insurance, as well as Worker's Compensation and occupational disease insurance, at statutory limits. Such liability insurance shall be issued pursuant to the requirements of Section 11.3 hereinafter and shall encompass the following coverage and be in amounts as shown:

COMMERCIAL GENERAL LIABILITY

General Aggregate (other than products)	$2,000,000
Products & Completed Operations	$1,000,000
Personal Injury & Advertising Injury	$1,000,000
Each Occurrence Limit	$1,000,000
Fire Damage Limit (any one fire)	$100,000

AUTOMOBILE

Minimum Combined Single Limit (including coverage for all owned, non-owned and hired automobiles brought on the Property)	$1,000,000

000044

UMBRELLA LIABILITY

$3,000,000	Per Occurrence
$1,000,000	Products/Completed Operations Aggregate

WORKER'S COMPENSATION – Coverage B – Employer's Liability

$1,000,000	Bodily Injury Each Accident
$1,000,000	Bodily Injury by Disease – Policy Limit
$1,000,000	Bodily Injury by Disease – Each Employee

All such insurance shall specifically insure the performance by Tenant of its indemnity obligations as to liability for injury to or death of persons and loss of or damage to property contained in Section 13 hereof.

11.2 Policy Requirements. All insurance required of Tenant shall be issued and underwritten by solvent companies licensed to transact business in the State of Nevada with a general policyholders' rating of not less than A-VII as rated in the most recent edition of Best's Insurance Reports or any successor reporting service. All insurance carried by Tenant shall include Landlord as additional insured (and at Landlord's option, any party holding a Mortgage on the Property, or any portion thereof, shall be named as an additional insured) (collectively, "Additional Insureds"). Any policies of insurance carried by Tenant in accordance with this Section 11 and any policies taken out in substitution or replacement of any such policies shall provide that if an insurer seeks to cancel such insurance for any reason whatsoever, except for non-payment of any premium due, or any material change is made in the coverage which affects the interests of the Additional Insureds, such cancellation or lapse or reduction shall not be effective as to Additional Insureds until after thirty (30) days following delivery to Landlord of written notice from such insurer of such cancellation, lapse or reduction. Written notice of cancellation of any policy affecting the interest of the Additional Insureds as a result of non-payment of any premium due shall be given to the Additional Insureds at least thirty (30) days prior to such cancellation. For each policy of insurance required to be maintained by Tenant under this Lease, including any policy renewals, upon request by Landlord, Tenant shall supply Landlord with either a copy of the insurance policy or a certificate of the insurance company issuing the insurance. In the event Tenant fails to obtain any such insurance, Landlord may obtain same and the cost thereof shall be paid by Tenant. Tenant's insurance shall be primary without right of contribution from any other insurance which is carried by the Landlord or any Additional Insured. Landlord or Landlord's lender may reasonably require increases in the above-described coverage from time to time, in which Tenant shall obtain the same and pay the costs thereof.

000045

000045

11.3 Waiver of Subrogation. Notwithstanding anything to the contrary in this Lease, neither party nor its officers, directors, employees, agents or invitees shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, when such loss is caused by any of the perils that are or could be insured against under a standard policy of full replacement cost insurance for fire, theft, and special form coverage, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees.

000045

12.MAINTENANCE AND REPAIR.

12.1 Landlord's Obligations. Landlord agrees to keep in good structural order, condition and repair, and replace as necessary, the exterior walls, columns within the Leased Premises, foundations, structural floor and roof and structural areas of the Leased Premises, as well as all utility lines beyond the connection or stub to which Tenant connects its utilities, except for any damage thereto caused by any negligence or misuse of Tenant or its agents, employees or contractors, which Tenant shall repair at its sole cost and expense. Landlord shall use commercially reasonable efforts to not disrupt Tenant Operations during the performance of its obligations hereunder; provided, however, if despite Landlord's commercially reasonable efforts, Landlord materially disrupts Tenant Operations for more than twenty-four (24) consecutive hours, Tenant shall be entitled to an abatement of Minimum Rent during the full period of such disruption. Landlord agrees to keep the Common Areas in good order, condition and repair, reasonable wear and tear excepted, except for any damage thereto caused by any act or negligence of Tenant or its agents, employees or contractors, which Tenant shall repair at its sole cost and expense. Landlord shall, at its sole cost and expense, maintain and make or cause to be made any necessary repairs to the HVAC system, and electric, gas, sewer and water lines serving the Leased Premises promptly after receiving notice from Tenant, except for any damage thereto caused by any act or negligence of Tenant or its agents, employees, servants, contractors, licensees, customers or business invitees, which Tenant shall repair at its sole cost and expense, and provided Tenant provides Landlord with prompt written notice explaining the need for such repair.

000046

12.2 Tenant's Obligations. Except as provided for elsewhere herein, Tenant shall keep and maintain in good condition and repair the Leased Premises, all Tenant Improvements and any and all appurtenances thereto, including, without limitation, all doors, door checks, windows, window casements, plate glass, glazing, and all plumbing, electrical wiring and conduits, HVAC and sewage facilities solely within or exclusively serving the Leased Premises, fixtures, sprinkler system solely within or exclusively serving the Leased Premises, walls, floor coverings, ceilings and all interior lighting. Tenant shall also keep and maintain in good order, condition and repair, including, without limitation, any such replacement and restoration as is required for that purpose, any Improvements, special equipment, furnishings, fixtures or facilities installed by it on the Leased Premises.

13.INDEMNIFICATION.

13.1 Liability of Landlord. Landlord shall not be responsible to Tenant, or anyone claiming any right under Tenant for using the Leased Premises by virtue of any right or privilege granted by Tenant, or on account of any defects in the Leased Premises (other than resulting from the Landlord Work).

13.2 Indemnification of Landlord. Except to the extent of the negligence or willful misconduct of Landlord or Landlord's employees, agents or contractors, Tenant agrees to indemnify, defend and hold Landlord and its representatives, officers, managers, directors, shareholders, members, agents, servants and employees harmless from and against any and all claims, actions, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) allegedly or actually (i) arising from or out of any accident or occurrence on the Leased

000046

Premises, (ii) occasioned by any act or omission of Tenant or Tenant's employees, agents or contractors and are not covered by the commercial general liability insurance maintained by Tenant pursuant this Lease, or (iii) arising from Tenant's failure to comply with the provisions of this Lease.

13.3 Indemnification of Tenant. Except to the extent of the negligence or willful misconduct of Tenant or Tenant's employees, agents or contractors, Landlord agrees to indemnify, defend and hold Tenant and Tenant's and its representatives, officers, managers, directors, shareholders, members, agents, servants and employees harmless from and against any and all claims, actions, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) allegedly or actually (i) arising from Landlord's failure to comply with the provisions of this Lease, (ii) arising from or out of any accident or occurrence on the Common Areas or any part thereof, or (iii) occasioned by any act or omission of Landlord or Landlord's employees, agents or contractors and are not covered by the commercial general liability insurance maintained by Landlord pursuant this Lease. This provision shall **not** extend to worker's compensation claims brought against Tenant.

13.4 Insurance. The provisions of this Section 13 shall not in any way be affected by the absence in any case of any covering insurance or by the failure or refusal of any insurance company to perform any obligation on its part.

14.GOVERNMENTAL AUTHORITIES; HAZARDOUS MATERIALS.

000047

14.1 General. Tenant shall, at Tenant's sole cost and expense, comply with any and all orders, directives, notices and other requirements of all Governmental Authorities and in accordance with all Applicable Laws in relation to the use and occupancy of the Leased Premises and the conduct of the Tenant Operations. Under no circumstances shall Tenant Operations be conducted at any time during which Tenant does not have such valid and current Approvals that are necessary to conduct the Tenant Operations.

000047

14.2 Flammables. Tenant shall not, without the prior written consent of Landlord and fire officials, and all insurance companies which have issued any insurance of any kind with respect to the Leased Premises or the Property, sell, or suffer to be kept, used or sold in, upon or about the Leased Premises any gasoline, distillate or other petroleum product or any other substance or material of an explosive, flammable or radiological nature, in such quantities as may be prohibited by any such insurance policy, or by the building or fire officials or which may endanger any part of the Property or its occupants, business patrons or invitees; provided, however, the foregoing shall not prevent the use of flammables customarily used for food preparation purposes.

14.3 Hazardous Materials.

14.3.1 Prohibitions. Other than products used for ordinary restaurant cleaning and office supplies ("Permitted Hazardous Material"), Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Material upon or about the Leased Premises, nor permit Tenant's employees, agents, contractors, or other occupants of the Leased Premises to engage in such activities upon or about the Leased Premises; provided,

000047

however, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Leased Premises of the Permitted Hazardous Material; provided further, however (a) such substances shall be used and maintained only in such quantities as are reasonably necessary for use of the Leased Premises, in accordance with Environmental Laws and the manufacturer's instructions therefor, (b) such substances shall not be disposed of, released or discharged on the Leased Premises other than in compliance with all Environmental Laws, (c) if any Environmental Laws require that any such substances be disposed of separately from ordinary trash, Tenant shall make arrangements, at Tenant's sole cost and expense, for such disposal directly with a qualified and licensed disposal company at a lawful disposal site or arrange for other lawful disposal and shall ensure that disposal occurs frequently enough to prevent unnecessary storage of such substances in the Leased Premises, and (d) any remaining such substances shall be completely, properly and lawfully removed from the Leased Premises upon expiration or earlier termination of this Lease. For purposes of this Lease, "Hazardous Material" means, those materials that are regulated by or form the basis of liability under any Environmental Law, including: (a) any substance identified under any Environmental Law as a pollutant, contaminant, hazardous substance, liquid, industrial or solid or hazardous waste, hazardous material or toxic substance; (b) any petroleum or petroleum derived substance or waste; (c) any asbestos or asbestos-containing material; (d) any polychlorinated biphenyl (PCB) or PCB-containing or urea-formaldehyde-containing material or fluid; (e) any radioactive material or substance, including radon; (f) any lead or lead based paints or materials; and (g) any mold, fungi, yeast or other similar biological agents that may have an adverse effect on human health. "Environmental Laws" means, any Applicable Law, including requirements under Approvals, relating to pollution or protection of human health or the environment, including those that relate to emissions, discharges, releases or threatened releases, or the generation, manufacturing, processing, distribution, use, treatment, storage, disposal, transport, or handling, of Hazardous Materials.

000048

000048

14.3.2 Regulatory Action. Tenant shall promptly notify Landlord of (a) any enforcement, cleanup or other regulatory action taken or threatened by any Governmental Authority with respect to the presence of any Hazardous Material on the Leased Premises or the migration thereof from or to other property, (b) any demands or claims made or threatened by any Person against Tenant or the Leased Premises relating to any loss or injury resulting from any Hazardous Material, and (c) any release, discharge or improper or unlawful disposal or transportation of any Hazardous Material on or from the Leased Premises. At such times as Landlord may reasonably request, Tenant shall provide Landlord with a written list identifying any Hazardous Material then used, stored, or maintained upon the Leased Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet ("MSDS") issued by the manufacturer thereof, written information concerning the removal, transportation and disposal of the same, and such other information as may be required by Environmental Laws.

14.3.3 Landlord Obligations. Landlord shall indemnify, protect, hold harmless and defend Tenant from any and all claims, losses, liabilities, costs, expenses or damages, including reasonable attorney's fees in connection with: (i) the violation of any Environmental Laws by Landlord; (ii) the presence of any Hazardous Substances in the Leased Premises as of the Delivery Date, or thereafter under, in or upon any other portion of the Property (to the extent not caused by the Tenant Parties).

000048

15.DEFAULT.

15.1 Events of Default. Tenant shall be deemed to be in default of this Lease if any of the following events shall occur (each, an "Event of Default"):

15.1.1 Tenant shall fail to pay any installment of Rent or any other amount or charge required to be paid by Tenant to Landlord pursuant to the terms of this Lease, and such failure continues for ten (10) days from Landlord's written notice to Tenant that any such Rent installment or other amount or charge is due;

15.1.2 Tenant shall fail to perform any other agreement, obligation or covenant of Tenant contained in this Lease including, without limitation, (i) Tenant's failure to maintain the Leased Premises as provided in this Lease, (ii) Tenant's violation of any rules and regulations of Landlord, or (iii) Tenant's violation of any Applicable Law, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said thirty (30) day period, then such failure shall be deemed to be rectified or cured if Tenant shall, within said thirty (30) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence;

000049

15.1.3 Tenant files a petition, or if an involuntary petition is filed against Tenant, under Chapter 11 of the United States Code or any other state or federal bankruptcy, insolvency or similar law (whether presently in existence or enacted hereafter); Tenant is determined by a court to be insolvent; Tenant is placed in receivership or a receiver or trustee is appointed to operate or control Tenant; or Tenant is voluntarily or involuntary subject to a general assignment for the benefit of creditors;

000049

15.1.4any representation or warranty made by Tenant or a permitted subtenant or assignee in connection with this Lease shall have been materially false or misleading;

15.2 Remedies. Upon the occurrence of an Event of Default, in addition to any other rights or remedies provided for herein or at law or in equity, and without barring election of any other remedy, Landlord, at its sole option, shall have the following rights:

15.2.1 Landlord may terminate this Lease and Tenant's estate hereunder by written notice of such termination; provided, however that the mere giving by Landlord of a Notice to Pay (or perform) or a Notice to Quit shall not, of itself, constitute a notice of termination of this Lease, and Landlord shall recover from Tenant all damages incurred by Landlord by reason of the Event of Default including, but not limited to, (i) the worth at the time of the award of the unpaid Rent and other charges which had been earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Rent and other charges which would have been earned after termination until the time of the award exceeds the amount of such rental loss that, to the extent permitted by law, Tenant proves could have been reasonably avoided; and (iii) the worth at the time of the award of the amount by which the unpaid Rent and other charges which would have been paid for the balance of the Term after the time of award exceeds the amount of such rental loss that, to the extent permitted by law, Tenant proves could have been reasonably

avoided. As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the Lease Interest Rate, or such lesser amount as may then be the maximum lawful rate, accruing the date such payments are due until paid. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Bank of America, National Association at the time of the award, plus one percent (1%), and "Lease Interest Rate" means the lesser of (a) two percentage points (2%) over that fluctuating rate of interest announced from time to time by the Bank of America, National Association as its prime or reference commercial lending rate of interest (or in the event such bank is no longer announcing such rate, by such other federally regulated banking institution of comparable stature as Landlord shall reasonably determine), or (b) the maximum interest rate permitted by law, if any;

15.2.2without taking possession of the Leased Premises, Landlord may require strict performance of all of the agreements, obligations and covenants hereof as the same shall respectively accrue, and shall have the right of action therefor; and

15.2.3 Landlord may take possession of the Leased Premises through suit or termination of this Lease, for the purpose of re-letting them.

15.3 Right to Cure. Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, make any improvement or repair, or do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform within the time period herein required, which time period shall include the expiration of applicable notice and cure periods, Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of at the cost and for the account of Tenant. In such event, the amount thereof with interest thereon at the Default Rate commencing on the date paid by Landlord and until such time as paid in full by Tenant, shall be due and payable by Tenant with the next payment of Minimum Monthly Rent.

000050

000050

16.CASUALTY; CONDEMNATION.

16.1 Casualty.

16.1.1 Destruction. In the case of total destruction of the Leased Premises or the destruction of a material portion of the Leased Premises that substantially interferes with Tenant Operations, whether by fire or other casualty (collectively, "Casualty"), either party may terminate this Lease effective as of the date of such Casualty, by so notifying the other party in writing within thirty (30) days after the date of such Casualty. If Landlord desires to repair the Leased Premises, Landlord may revoke Tenant's termination by so notifying Tenant in writing within thirty (30) days after the date of such Casualty, which notice shall state the estimated time to complete such repairs ("Landlord's Repair Notice"). If the estimated time to complete such repairs is in excess one hundred eighty (180) days, Tenant shall have the right to terminate this Lease by so notifying Landlord in writing, within thirty (30) days after Tenant's receipt of Landlord's Repair Notice. If Landlord elects to repair, and Tenant does not, or is not entitled to, terminate this Lease, and if Landlord proceeds to and does repair the damage with reasonable dispatch, this Lease shall not terminate, but shall continue in full force and effect, except that Tenant shall be entitled to a reduction in the Minimum Rent to an amount equal to that proportion of the

000050

Minimum Rent that the number of square feet of floor space in the usable portion bears to the total number of square feet of floor space in the Leased Premises. Minimum Rent shall only be reduced until Landlord substantially completes the repair and restoration of the Leased Premises. If this Lease is terminated pursuant to this Section 16, Rent shall be prorated as of the date of Casualty.

16.1.2 Damage Repair by Landlord. If the Leased Premises, exclusive of Tenant's Property not affixed to the Leased Premises, shall be damaged by Casualty but the damage does not substantially interfere with Tenant Operations, Landlord agrees to repair such Leased Premises with reasonable promptness and diligence and in that case the Minimum Rent shall not be abated or reduced. Tenant shall immediately notify Landlord in case of damage due to Casualty or otherwise to the Leased Premises. Notwithstanding anything herein to the contrary, if Landlord is required to repair the Leased Premises or portion thereof pursuant to this Section 16.1.2 or elects to repair under Section 16.1.1, as a part of such work, Landlord shall not be required to repair and restore any permanent alterations made by Tenant including any Tenant Improvements or any of Tenant's Property, such excluded items being the sole responsibility of Tenant to repair or restore.

16.1.3 Damage to Hotel Casino. In the event the Hotel Casino, not limited to, or not including, the Leased Premises, is damaged such that (a) the building of which the Leased Premises are a part is damaged to the extent of twenty percent (20%) or more of the cost of replacement; or (b) the buildings (taken in the aggregate) of the Hotel Casino are damaged to the extent of more than twenty percent (20%) of the aggregate cost of replacement; and in either event Landlord decides (i) not to repair such damage; (ii) to demolish the Hotel Casino; (iii) in connection with repairing the damage, to discontinue the use of the Leased Premises as retail space for tenants; or (iv) any combination of the foregoing, then Landlord may elect to terminate this Lease upon giving written notice of such election to Tenant within ninety (90) days after the Casualty causing such damage.

000051

000051

16.1.4 Insurance Proceeds. All insurance proceeds payable under any insurance policies carried by Landlord shall be payable solely to Landlord, and Tenant shall have no interest therein. Landlord shall not be liable, and Tenant shall in no case be entitled to compensation from Landlord, for damages on account of any loss of business, annoyance or inconvenience in making repairs under any provisions of this Lease. Except to the extent provided for in this Section 16, neither the Rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any damage to or destruction of the Leased Premises or any portion of the Leased Premises by any cause whatsoever.

16.1.5 Damage Near End of Term. If at any time during the last nine (9) months of the Term there is damage for which the cost to repair exceeds the average monthly Rent amount paid during the last twelve (12) months, either party may terminate this Lease by giving written termination notice to the other party within thirty (30) days from the occurrence of such damage. If this Lease is terminated pursuant to this Section 16.1.5, Rent shall be prorated as of the date of damage.

16.1.6 Express Agreement. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Leased Premises and/or the Hotel Casino by fire or other

000051

Casualty, and any present or future law the purpose of which is to govern the rights of Landlord and Tenant in such circumstances in the absence of express agreement, shall have no application.

16.2 Condemnation.

16.2.1 Complete and Partial Taking. If the whole of the Leased Premises is lawfully taken by condemnation, eminent domain or in any other manner for any public or quasi-public purpose (each a "Taking"), this Lease shall terminate as of the date of such Taking, and Rent shall be prorated to such date. The date of Taking shall be the date possession of the Leased Premises is granted to the applicable Governmental Authority or other Person. If less than the whole of the Leased Premises is subject to the Taking, this Lease shall be unaffected by such Taking; provided, however, that (a) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if ten percent (10%) or more of the Leased Premises is taken and the remaining area of the Leased Premises is not reasonably sufficient for Tenant to conduct Tenant Operations, and (b) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking if ten percent (10%) or more of the Leased Premises is taken; provided, further, however, Landlord shall not have the right to terminate this Lease unless Landlord also terminates the leases of any other tenants who have suffered the same extent of Taking as suffered by Tenant. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial Taking, the Minimum Rent shall be equitably adjusted according to the remaining rentable areas of the Leased Premises.

000052

000052

16.2.2 Proceeds. In the event of any Taking, partial or whole, all of the proceeds of any award, judgment or settlement payable by the condemning Governmental Authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord any and all of its right, title and interest in any award, judgment or settlement from the condemning Governmental Authority; provided, however, that Tenant shall have the right, to the extent that Landlord's award, judgment or settlement is not reduced or prejudiced, to claim from the condemning Governmental Authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's Property.

16.2.3 Landlord's Restoration Obligation. In the event of a partial Taking of the Leased Premises which does not result in a termination of this Lease, Landlord shall, at its sole cost and expense, undertake any restoration or repair to the remaining portion of the Leased Premises necessary for the Leased Premises to be as nearly as practicable to their condition prior to the Taking. Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of any Tenant's Property in connection with the same.

17.REPRESENTATIONS, WARRANTIES AND COVENANTS.

17.1 Landlord's Representations, Warranties and Covenants. Landlord hereby represents, warrants and covenants to Tenant, as of the Effective Date and at all times during the Term, that: (a) Landlord is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Nevada, and is duly qualified and in good standing as a foreign entity in the jurisdictions wherein the nature of the business transacted by it or property owned

000052

by it make such qualification necessary; (b) Landlord has the valid limited liability company power to enter into and perform all of its obligations under this Lease and this Lease has been authorized by all necessary limited liability company action; (c) there are no known actions, suits or proceedings pending or, to the best knowledge of Landlord, threatened against Landlord by any Governmental Authority which would prevent Landlord from completing the transaction provided for herein; (d) this Lease and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of Landlord, enforceable in accordance with their respective terms except to the extent such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally and general principles of equity; and (e) that Landlord shall conduct, or cause to be conducted, the live-entertainment show, known as the pirate show, in the same location adjacent to the Leased Premises, and in substantially the same form as it is conducted, as of March 2011.

17.2 Tenant's Representations, Warranties and Covenants. Tenant hereby represents, warrants and covenants to Landlord, as of the Effective Date and at all times during the Term, that: (a) Tenant is a limited liability company, duly organized, validly existing and in good standing under the laws of its organization, and is duly qualified and in good standing as a foreign entity in the jurisdictions wherein the nature of the business transacted by it or property owned by it make such qualification necessary; (b) Tenant has the valid limited liability company power to enter into and perform all of its obligations under this Lease and this Lease has been authorized by all necessary corporate action; and (c) this Lease and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of Tenant, enforceable in accordance with their respective terms except to the extent such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally and general principles of equity.

000053

000053

18.SUBORDINATION.

18.1 Subordination of Tenant's Interest. This Lease and Tenant's interest in the Leased Premises is subordinate to any lien, mortgage or deed of trust now or hereafter placed, charged or enforced against the Leased Premises or the Property (collectively, a "Mortgage"), provided that such subordination shall be conditioned upon Tenant's right to quiet possession of the Leased Premises during the Term not being disturbed. If a Mortgagee ("Mortgagee" means the mortgagee under a mortgage or beneficiary under a deed of trust holding a lien encumbering the Property or any part thereof) requests a reasonable subordination, non-disturbance and attornment agreement, Landlord shall pay Tenant's reasonable costs and expenses incurred in connection therewith, and Landlord agrees to obtain a subordination, non-disturbance and attornment agreement from any current and future Mortgagee in a form reasonably acceptable to Tenant and such Mortgagee. In the event Landlord is unable to obtain a subordination, non-disturbance and attornment agreement in a form reasonably acceptable to Tenant and executed by Landlord and the current Mortgagee within thirty (30) days after Tenant's request, Tenant shall have the right to terminate this Lease.

18.2 Attornment. Tenant shall, in the event any proceedings are brought for the foreclosure of the Leased Premises or in the event of exercise of the power of sale under any Mortgage covering the Leased Premises, attorn to the purchaser upon such foreclosure or sale, and recognize such purchaser as the Landlord under this Lease.

000053

19.MISCELLANEOUS.

19.1 Certificates. At any time, and from time to time, within thirty (30) days after notice of request by either party, the other party shall execute, acknowledge, and deliver to the requesting party or to such other recipient as the notice shall direct, a statement: (a) certifying that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that it is in full force and effect, as modified in the manner specified in the statement; (b) stating the date to which the Rent and any other charges have been paid in advance; (c) acknowledging that there are not, to the non-requesting party's knowledge, any uncured defaults on the party of the requesting party hereunder, or specifying such defaults if they are claimed; and (d) containing such other information regarding this Lease as the requesting party reasonably requests. The statement shall be such that it can be relied on by any auditor, creditor, commercial banker, or investment banker of either party and by any prospective encumbrancer of the Leased Premises, or of all or any part of Tenant's or Landlord's interests under this Lease. A party's failure to execute, acknowledge and deliver the certified statement described above within the specified time shall constitute acknowledgment by such party to all persons entitled to rely on the statements that the Lease is unmodified and in full force and effect, that the Rent and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request, that such information regarding this Lease set forth therein is true and complete, and shall constitute a waiver, with respect to all persons entitled to rely on the statement, of any defaults that may exist before the date of notice.

000054

19.2 Signage. Throughout the Term, Landlord shall, at no additional expense to Tenant: (a) provide directional signage from the Hotel Casino and within the Property to the Leased Premises, and (b) include Tenant on all digital marquees, including prominent exposure on the primary marquee. As part of Tenant's Work, Tenant shall have the right to install signage on the exterior wall of the Leased Premises, subject to the mutual agreement of the Parties. Without limiting the foregoing, Tenant shall be afforded an equal opportunity to advertise in all of Landlords' advertising featuring other restaurant or bar/lounge tenants at the Property and at equal cost to other tenants.

000054

19.3 Waiver of Rights. Failure to insist on compliance with any of the obligations and covenants hereof shall not be deemed a waiver of such agreements, obligations and covenants, nor shall any waiver or relinquishment of any right or power hereunder at any one or more time or times be deemed a waiver or relinquishment of such rights or powers at other times. Exercise of any right or remedy shall not impair Landlord's or Tenant's right to any other remedy.

19.4 Assignment; Sublease. Notwithstanding any references herein to successors, assigns, subtenants and licensees, Tenant shall not assign or in any manner transfer, sublease, mortgage, pledge, hypothecate or encumber this Lease or any right, option or interest of Tenant herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, in all cases, the proposed assignee, sublessee, transferee, mortgagor or pledgor must, at a minimum, be approved by Landlord's compliance committee. No assignment shall release Tenant of any of its obligations under this Lease or be construed as, or constitute a waiver of, any of Landlord's rights or remedies hereunder. Landlord will accept Rent and other amounts due and payable by Tenant pursuant to this Lease directly from a sublessee of Tenant. The acceptance of Rent by Landlord from any other person shall not

000054

be deemed to be a waiver of any provision of this Lease or consent to the assignment of Tenant's interest in this Lease. Absent a written agreement to the contrary which is executed by Landlord, no assignment, sublease, mortgage, pledge, hypothecation or encumbrance of this Lease by Tenant shall act as, or affect a release of, Tenant from any of the agreements, obligations and covenants of this Lease to be performed by Tenant hereunder. Without limiting the foregoing, it is understood and agreed that neither this Lease nor the leasehold interest created hereunder shall pass by operation of law under any state or federal insolvency, bankruptcy or inheritance act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, heirs, legatees, devisees, or any other Person whomsoever without the prior written consent of Landlord. Notwithstanding anything to the contrary contained herein, Tenant may, without Landlord's prior written consent, assign or sublease this Lease (i) Senor Frogs Las Vegas, LLC, a Nevada limited liability company, (ii) to a Tenant Affiliate, (iii) in connection with a sale of all or substantially all of the Tenant Operations, or (iv) the merger or consolidation of Tenant with another entity.

19.5 Quiet Enjoyment; Right of Access. Tenant shall lawfully, peaceably, and quietly have, hold, occupy and enjoy the Leased Premises during the Term without hindrance or ejection by Landlord or by any persons lawfully claiming under Landlord. Notwithstanding the foregoing, Landlord and its authorized agents and representatives shall be entitled to enter the Leased Premises with reasonable notice, or immediately in the case of emergency, for the purpose of (a) observing, posting or keeping posted thereon notices provided for hereunder or required by Applicable Laws, or such other notices as Landlord may reasonably deem necessary or appropriate, (b) reasonably inspecting the Leased Premises, (c) exhibiting the Leased Premises to prospective purchasers or tenants; provided, however, Landlord shall not exhibit the Leased Premises to tenants prior to the last twelve (12) months of the Term, and (d) making repairs to the Leased Premises required by Landlord hereunder and reasonably performing any work upon the Leased Premises in accordance with the terms hereof.

000055

000055

19.6 Notices. Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties (a) on the date of personal delivery, (b) on the date delivered by a nationally recognized overnight courier service when deposited for overnight delivery, (c) on the next Business Day following any facsimile transmission to a party at its facsimile number set forth below; provided, however, such delivery is concurrent with delivery pursuant to the provisions of clauses (a), (b) or (d) of this Section 19.6, or (d) three (3) Business Days after being placed in the United States mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address and/or contact person by giving notice as aforesaid):

If to Landlord: Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Najam Khan
Facsimile: 702-894-7680
E-mail: nkhan@treasureisland.com

With a copy via facsimile to:

000055

Brad Anthony, General Counsel
Facsimile: 702-894-7295
E-mail: banthony@treasureisland.com

If to Tenant: Rose, LLC
8301 E. Prentice Ave., Suite 210
Greenwood Village, CO 80111
Attn: Susan Markusch
Facsimile: 303-221-5501
E-mail: susan@gdare.com

With a copy to:

Operadora Andersons S.A. de C.V
Boulevard Kukulkan km 14.2
Cancun, Mexico
C.P. 77500 Zona Hotelera

19.7 Entire Agreement. This Lease constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

000056

19.8 Severability. If any part of this Lease is determined to be void, invalid or unenforceable, such void, invalid, or unenforceable portion shall be deemed to be separate and severable from the other portions of this Lease, and the other portions shall be given full force and effect, as though the void, invalid or unenforceable portions or provisions were never a part of the Lease.

000056

19.9 Amendment, Modification and Waiver. No supplement, modification, waiver or termination of this Lease shall be binding unless executed in writing by both parties. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

19.10 Headings. Section or Subsection headings are not to be considered part of this Lease and are included solely for convenience and reference and shall not be held to define, construe, govern or limit the meaning of any term or provision of this Lease. References in this Lease to a Section or Subsection shall be reference to a Section or Subsection of this Lease unless otherwise stated or the context otherwise requires.

19.11 Governing Law; Jurisdiction; Litigation. This Lease has been prepared, executed and delivered in, and shall be interpreted under, the internal laws of the State of Nevada, without giving effect to its conflict of law provisions. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Lease or the transactions contemplated hereby in (a) the courts of the State of Nevada, Clark County, or (b) the United States District Court for the District of Nevada, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in

an inconvenient forum. The parties hereto waive trial by jury in any action or proceeding brought in connection with this Lease.

19.12 Interpretation. This Lease is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but according to the application of rules of the interpretation of contracts, if such an uncertainty or ambiguity exists. Each party has had the availability of legal counsel with respect to its execution of this Lease.

19.13 Third Persons. Nothing in this Lease, expressed or implied, is intended to confer upon any Person other than the parties hereto any rights or remedies under or by reason of this Lease.

19.14 Attorneys' Fees. In the event any party incurs legal fees or other costs to enforce any of the terms of this Lease, to resolve any dispute with respect to its provisions, or to obtain damages for breach thereof, whether by prosecution or defense, the unsuccessful party to such action shall pay the prevailing party's reasonable expenses, including reasonable attorneys' fees and costs, incurred in such action.

19.15 Binding Effect. This Lease and the agreements set forth herein shall be binding upon the heirs, executors, successors and permitted assigns of the parties hereto.

19.16 Brokers. Landlord and Tenant hereby represent and warrant that they have no dealings with any broker or agent in connection with this Lease and covenant to pay, hold harmless and indemnify each other from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or the negotiation thereof.

19.17 Recording. Neither Landlord nor Tenant shall record this Lease. Landlord and Tenant agree to execute, acknowledge and deliver at any time after the date of this Lease, at the request of the other party, a short-form memorandum of this Lease suitable for recording, setting forth the Lease Term, the extension options and such other provisions of this Lease as Landlord and Tenant shall reasonably deem appropriate, and such short-form memorandum may be recorded at Landlord's or Tenant's option.

19.18 Counterparts. This Lease may be executed in any number of counterparts, each one of which so executed shall be deemed an original, and all of which shall together constitute one and the same agreement. A facsimile signature shall have the same effect as an original signature.

19.19 Force Majeure. Neither party shall be deemed in breach hereunder and neither shall be liable to the other if either fails to perform any of its obligations hereunder by reason of any fire, earthquake, flood, epidemic, accident, explosion, labor dispute, riot, civil disturbance, act of public enemy or terrorism, embargo, war, act of God, any municipal, county, state or national ordinance or law, any executive or judicial order, or similar event beyond such party's control (financial inability excepted) (each a "Force Majeure Event"); provided, however, that no party shall be entitled to relief under this Section 19.19 unless such party shall have given the other party reasonable notice of such Force Majeure Event.

000057
000057
000057

19.20 Landlord's Default. Landlord agrees that should it commit any default under this Lease, which default it fails to cure within thirty (30) days after written notice from Tenant specifying such failure (provided, however, that notice shall not be required in the event of an emergency, and that if it is impossible to cure such failure within said thirty (30) day period, Landlord shall not be deemed in default if Landlord commences the curing thereof within said thirty (30) day period and diligently pursues such cure to completion within ninety (90) days), Tenant may, at its election, without waiving any claim for breach of agreement, and without notice to Landlord, cure such default for the account of Landlord. In that event, Landlord will reimburse Tenant for all costs incurred by Tenant in curing such default, so far as the same are reasonable in amount. Such reimbursement to Tenant shall be due and payable by Landlord on demand. If not paid by Landlord on demand, Tenant shall have the right to set off all such costs, plus interest at the Lease Interest Rate, against all Minimum Monthly Rent, Percentage Rent or other amounts payable by Tenant hereunder next coming due and payable under the Lease until all such costs have been so set off.

19.21 Exclusion of Certain Parties. The parties acknowledge that neither Phil Ruffin nor any related enterprise apart from Licensor, individually or collectively, is a party to this Agreement or any exhibit or agreement attached hereto. Accordingly, the parties hereby agree that in the event (i) there is any alleged breach or default by any party under the Agreement or any exhibit or agreement attached thereto, or (ii) any party has any claim arising from or relating to any such agreement, no party, nor any party claiming through it (to the extent permitted by applicable law), shall commence any proceedings or otherwise seek to impose any liability whatsoever against Mr. Ruffin or any related enterprise by reason of such alleged breach, default, or claim.

000058

000058

000058

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the Effective Date.

LANDLORD:

TREASURE ISLAND, LLC,
a Nevada limited liability company

By: _____
Name: Phil Ruffin
Its: Owner

TENANT:

ROSE, LLC,
a Colorado limited liability company

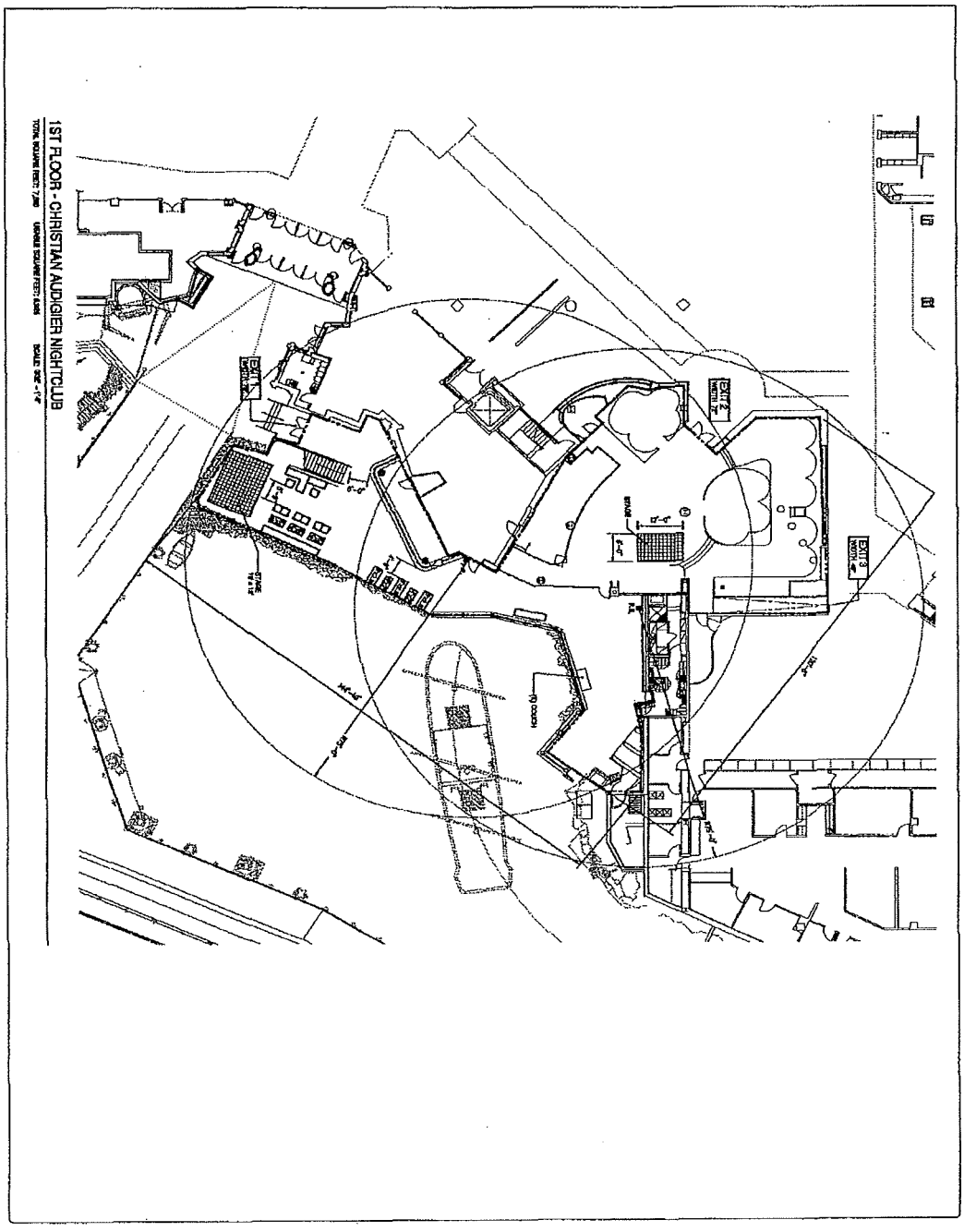
By: Rose Management, Inc.,
Its Manager

By: _____
Name: Elizabeth Gold
Its: Vice President

000059
000059
000059

EXHIBIT "A"

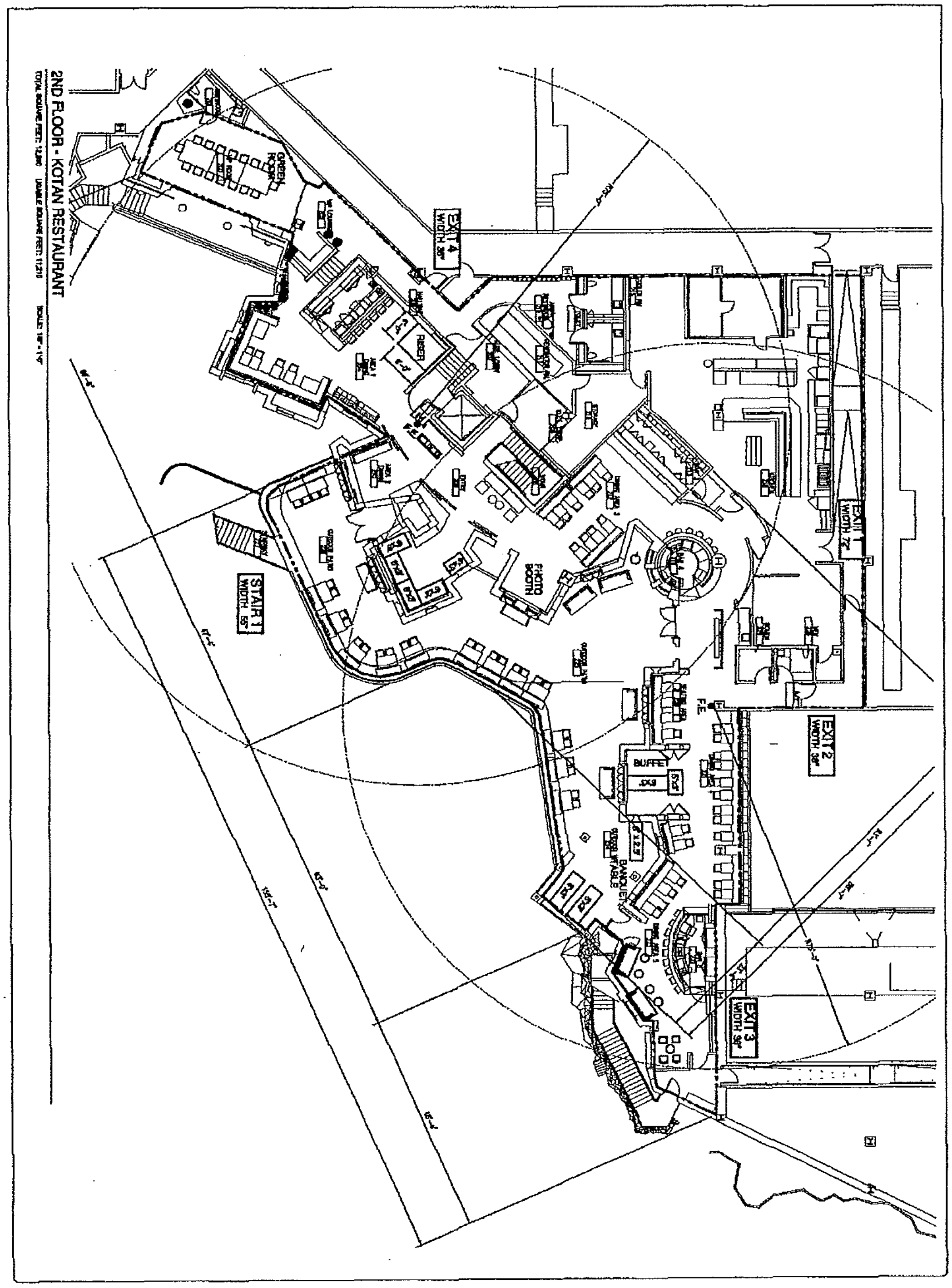
LEASED PREMISES



000060

000060

000060



000061

000061

EXITING INFORMATION:	WALL TYPE:	EVENT INFORMATION:	EVENT:	
REQUIRED: [illegible]	EXISTING WALL	EVENT DATE: 12-31-2010	NEW YEAR CELEBRATION	TREASURE ISLAND
AVAILABLE: [illegible]	PARTITION WALL	TYPE OF EVENT: -		
	DRAPERY			
SEATING / BOOTH INFORMATION:	EXTINGUISHER INFORMATION:	ATTENDANCE: [illegible]		
NUMBER OF TABLES: [illegible]	F.E. FIRE EXTINGUISHER	ROOM: Kotan Restaurant		
NUMBER OF CHAIRS: [illegible]	F.E.C. FIRE EXTINGUISHER CABINET	ROOM SIZE: [illegible]		
TOTAL BOOTHS: -	F.H.C. FIRE HOSE CABINET	SQUARE FEET: [illegible]		
TOTAL BOOTH S.F.: -		MAX OCCUPANCY LOAD: [illegible]		
		MOVE IN DATE: 12-30-2010		
		MOVE OUT DATE: 1-1-2011		
		USABLE SQUARE FEET: 11,2[illegible]		

EXHIBIT "B"

CERTIFICATE OF COMMENCEMENT

This Certificate of Commencement is entered into by and between Treasure Island, LLC and Rose, LLC, and is with respect to that certain Lease Agreement, dated _____, by and between Treasure Island, LLC and Rose, LLC, for premises located at 3300 Las Vegas Boulevard South, Las Vegas, NV 89109. This Certificate of Commencement is not in any way intended to modify any of the terms of the Lease. All capitalized terms not otherwise defined therein shall have the meaning ascribed to them in the Lease.

1. Acceptance of Premises. Tenant has accepted possession of the Leased Premises, is the actual occupant in possession of the Leased Premises and has not sublet, assigned or otherwise transferred its interest in the Leased Premises.

2. Lease Term. The Initial Term commenced on _____, is presently in force, and is scheduled to expire on _____.

3. Opening for Business. Tenant opened for business on _____.

4. Commencement Date. Tenant's obligation to pay Rent under the Lease commenced on _____, which shall be the Commencement Date.

5. Amendments. The Lease has not been modified, altered or amended in any respect, except for (indicate "None" if none) _____ _____.

LANDLORD:

TREASURE ISLAND, LLC,
a Nevada limited liability company

By: _____
Name: _____
Its: _____

TENANT:

ROSE, LLC,
a Colorado limited liability company

By: Rose Management, Inc.,
Its Manager

By: _____
Name: _____
Its: _____

EXHIBIT "C"

FURNITURE FIXTURES AND EQUIPMENT

All furniture, fixtures and equipment existing in the Leased Premises as of March 2011 shall be delivered to Tenant in good working order on the Delivery Date, except for the following items, which may be removed from the Leased Premises by Landlord prior to the Delivery Date:

- Double burner woks (2)
- Tempura deep fryer (three compartment)
- Cleveland double stack gas steamer
- Gas fired rice cookers (4)
- Lobster tank
- Berkel vacuum sealer
- All sushi equipment
- Traulsen Saki refrigerator

000063

000063

000063

000064

000064

EXHIBIT 2

FIFTH AMENDMENT TO LEASE AGREEMENT

WHEREAS Treasure Island, LLC ("Landlord") and Rose, LLC ("Tenant") (collectively the "Parties") entered into that certain Lease Agreement ("Agreement") dated April 13, 2011 and Amended by those certain documents entitled First Amendment to Lease Agreement ("Amendment 1") dated October 10, 2011, Second Amendment to Lease Agreement ("Amendment 2") dated December 22 2011, Third Amendment to Lease Agreement ("Amendment 3") dated April 20, 2012, and Fourth Amendment to Lease Agreement ("Amendment 4") dated April 18, 2013.

WHEREAS the Parties desire to further amend the Agreement as amended;

NOW, THEREFORE, in consideration of the terms, covenants, conditions, and provisions set forth in the Agreement as amended and herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties that:

1. The Parties agree Section 2.3 is amended and replaced as follows:

> "Tenant may extend the Term of this Lease for four (4) additional periods of five (5) years (each, an "Additional Term") by providing written notice to Landlord not later than one hundred eighty (180) days prior to the expiration date of the Initial Term or that Additional Term (each, an "Option"). Minimum Annual Rent for the Option terms is set forth in Section 3.1(A), herein. Minimum Annual Rent for the third and fourth Option terms shall be equal to 105% of the Minimum Annual Rent payable by Tenant during the period immediately preceding the applicable Option period."

2. The Parties agree Section 3.1(A) is amended, effective April 15, 2014, and replaced as follows:

> "Minimum annual rent in the amount of Three Hundred Ninety Nine Thousand Dollars ($399,000) per annum payable in monthly installments of Thirty Three Thousand Two Hundred Fifty Dollars ($33,250) in advance upon the first day May, 2014, and continuing thereafter through April, 2021 (such monthly installment being hereinafter called "Minimum Monthly Rent"). Upon the first (1st) date of the first Option Term, Minimum Monthly Rent shall be increased to Fifty Four Thousand Six Hundred Dollars ($54,600), and upon the first day of the second Option Term, Minimum Monthly Rent shall be increased to Fifty Seven Thousand Three Hundred Thirty Dollars ($57,330). Minimum Monthly Rent for further renewal terms shall be calculated pursuant to Section 2.3. If the Commencement Date is other than the first day of a month, Tenant shall pay on the Commencement Date a prorated partial Minimum Monthly Rent for the prior to the first day of the next calendar month."

000065
000065
000065

3. The Parties agree Section 5.1 is amended to include the following:

"Notwithstanding anything to the contrary contained herein, Landlord and Tenant agree Tenant Additional Alterations shall include without limitation such alterations, additions or improvements to the Leased Premises, at no cost to Landlord, as are necessary to accommodate within the Leased Premises the operation by Tenant of an additional Mexican-themed business complementary to, consistent with, and in conjunction with Señor Frog's (which name and concept shall be approved by Landlord, but, for example, The Big Deck at Señor Frog's) ("Complementary Use")."

4. The Parties agree Section 7.1 is amended to include the following:

"In addition to the foregoing, Tenant may use, upon receiving Landlord's consent, the Leased Premises as set forth herein for the Complementary Use. In no instance shall Tenant's Complementary Use operate as a sports bar, private club, separate nightlife venue, or permit any use not specifically permitted in this Section 7.1."

5. The Parties agree that Section 7.4 shall be modified to add the following phrase to the end of the first sentence of Section 7.4:

", provided that the main level of the Leased Premises shall be operated a minimum of 11 hours per day, unless business dictates otherwise, in which instance the Parties shall meet to determine the acceptable hours of operation."

6. The Parties agree Section 7.7 is amended to include the following:

"In addition, the Trade Name may include the approved operating name of a Complementary Use conducted by Tenant."

7. The Parties agree Section 17.1 is amended to remove existing item (e), which encompasses Landlord's representation, warranty and covenant to Tenant that, as of the Effective Date and at all times during the Term, Landlord shall conduct, or cause to be conducted, the live-entertainment show, known as the pirate show, in the same location adjacent to the Leased Premises, and in substantially the same form as it was conducted, as of March 2011.

8. The Parties agree Section 19.2 is amended to include the following:

"In addition, Tenant shall have the right to install signage on the exterior of the Leased Premises identifying its Complementary Use business, subject to Landlord's reasonable approval and Clark County approval as to such exterior signage. For purposes of this Section 19.2, all signage and advertising available to Tenant shall be available to be shared between Subtenant and the Complementary Use business."

990000
000066
000066

9. The Parties agree the Lease is amended to include the following new Section 20 for the benefit of Señor Frog's Las Vegas, LLC, a current subtenant of Tenant ("Subtenant"):

a. Provided there is a Sublease in full force and effect between Tenant and Subtenant ("Sublease"), and Subtenant is not in default under such Sublease (beyond any period given the Subtenant under the Sublease to cure any default) then:

i. Subtenant's right of possession to the subleased portion of the Leased Premises and Subtenant's other rights arising out of such Sublease as defined by Tenant and Subtenant as part of such Sublease shall not be affected or disturbed by the Landlord in the exercise of any of its rights under the Lease or the obligations which it secures subject to Landlord's right to demand a new leasing agreement with Subtenant as outlined below. To the extent the Lease Agreement is terminated by Landlord due to a default by Tenant and Subtenant is not in default under the Sublease, Subtenant and Landlord will enter into negotiations for a new leasing agreement for either the subleased portion of the Leased Premises or the entire Leased Premises in Landlord's discretion and in a form acceptable to Subtenant and Landlord to replace the Sublease. Landlord may require from Subtenant any of the financial assurances it has required from Tenant or might require from any other primary lessee for the purpose of any new leasing agreement.

ii. In the event any person acquires title to the subleased portion of the Leased Premises by conveyance or sale or any related proceeding, the Landlord covenants that any such transfer of the subleased portion of the Leased Premises shall be made subject to the Sublease and the rights of Subtenant under the Sublease. provided that in such event, Subtenant covenants and agrees to attorn to such person as its new landlord, and the Sublease shall continue in full force and effect as a direct lease between the new landlord and the Subtenant upon all of the terms, covenants, conditions, and agreements set forth in the Sublease and/or any additional amendments. However, in no event shall the new landlord be:

i) liable for any act or omission of Subtenant;

ii) bound by any payment of rent or additional rent made by Subtenant to the Tenant for more than one month in advance.

b. The Sublease shall be subject and subordinate to the rights of the Landlord or any new landlord under the Agreement, to the extent applicable.

c. Any notices required or permitted to be given under this Agreement shall be in writing and personally delivered, given by certified mail, postage prepaid, return receipt requested, or delivered by overnight courier, in each instance addressed to the parties at the addresses listed in the first paragraph of this Agreement or at such other addresses as the parties may designate in writing as provided herein for the purpose of receiving notices under this Agreement. Notices shall be deemed given when actually received by the recipient, or when the recipient thereof refuses receipt.

000067
000067
000067

d. This Agreement: (a) shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns; (b) may be executed in counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument; (c) constitutes the entire agreement of the parties hereto concerning its subject matter except as outlined herein; and, (d) may not be modified except in writing signed by both parties or by their respective successors in interest.

e. The above provisions shall be self-operative and effective without the execution of any further instruments on the part of either party. However, Subtenant shall execute and deliver to Landlord, or any such person to whom Subtenant agrees to attorn, such other instruments as either shall reasonably request in order to comply with these provisions. In addition, at Tenant's request, Landlord shall execute and deliver to Tenant and Subtenant a separate instrument confirming these provisions. In such event, the separate instrument shall include the following: THE PARTIES HERETO, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS INSTRUMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INSTRUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LANDLORD'S ACCEPTANCE OF THIS INSTRUMENT.

f. The provisions of this Section 20(c) shall inure to the benefit of and be binding upon the parties, their heirs, successors and assigns.

g. Except as outlined in this Section 20(c), nothing herein otherwise modifies the rights, obligations or the remedies of the parties where applicable with respect to the Agreement as amended or the Sublease.

10. Except as otherwise set forth herein or in any other applicable instruments as outlined in Section 20(c) of the Agreement as amended, the terms and conditions of the Agreement shall remain in full force and effect.

11. The Parties agree that for purposes of Section 19.6 of the Lease, Tenant's notice address is updated to 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, and that copies of notices sent to Tenant per the Lease shall also be sent to Subtenant addressed to: Operadora Andersons S.A. de C.V, Boulevard Kukulkan km 14.2, Cancun, Mexico, C.P. 77500 Zona Hotelera, and to Subtenant's counsel, addressed to: Ronald R. Fieldstone, Esq. and Susan Trench, Esq., Arnstein & Lehr LLP, 200 South Biscayne Boulevard, Suite 3600, Miami, Florida 33131.

890000 000068

WHEREAS, IN WITNESS WHEREOF, the Parties have signed this Fifth Amendment to Lease Agreement as of the dates set forth below.

Treasure Island, LLC

By: _____

Dated: 4/30/14

Rose, LLC

By: Rose Management, Inc., Manager

By: Elizabeth Gold
Elizabeth Gold, Vice President

Dated: 4-30-14

690000

000069

000070

000070

EXHIBIT 3

Rose, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111

NOTICE OF LEASE DEFAULT

September 11, 2015

Via overnight delivery and facsimile (702-894-7680):

Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Najam Khan

Via overnight delivery and facsimile (702-894-7295):

Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Brad Anthony

000071

000071

Re: Lease Agreement between Treasure Island, LLC and Rose, LLC (April 13, 2011), First Amendment to Lease Agreement (October 10, 2011), Second Amendment to Lease Agreement (December 22, 2011), Third Amendment to Lease Agreement (April 20, 2012), Fourth Amendment to Lease Agreement (April 18, 2013), and Fifth Amendment to Lease Agreement (April 30, 2014) (collectively, "Lease"); Sublease between Rose, LLC and Senor Frogs Las Vegas, LLC (June 2011), First Amendment to Sublease (October 4, 2011), Second Amendment to Sublease (April 20, 2012), and Amended Sublease (May 6, 2014) (collectively, "Sublease"); Subordination, Non-Disturbance and Attornment Agreement between Treasure Island, LLC, Rose LLC and Senor Frogs Las Vegas, LLC (May 6, 2014) ("Attornment Agreement"); Treasure Island Lease Notice (May 28, 2015) ("TI Lease Notice"); Treasure Island Payment Notice (June 3, 2015) ("TI Payment Notice").

Rose, LLC ("Rose") previously provided Treasure Island, LLC ("Treasure Island") with a TI Lease Notice. Although the Lease provides Treasure Island with only limited cure rights in the event of a breach of Treasure Island's obligations, Treasure Island has not taken any steps to cure its notice and enforcement breaches under the Lease and Attornment Agreement. Accordingly, Treasure Island is now in default under Sections 19.6 and 19.20 of the Lease and Section 3 of the Attornment Agreement.

Rose also previously provided Treasure Island with a TI Payment Notice. Section 3.1 of the Lease specifically addresses rental payment transmission and receipt obligations and requires Rose to pay Treasure Island rent "at Landlord's address for notice . . . ." To date, however, Treasure Island has refused rental payments tendered by Rose under the Lease to Treasure Island's address for notice pursuant to Section 19.6 of the Lease. Indeed, Treasure Island rejected rental payments tendered by Rose to Treasure Island's address for Lease notice purposes subsequent to the TI Payment Notice in July, August and September of 2015. And Treasure Island again has failed to cure its rental payment receipt breaches under the Lease. Accordingly, Treasure Island is now in default under Sections 3.1 and 19.20 of the Lease as well.

To the extent that Treasure Island believes it has discretion under the Lease with respect to rental payments or receipt, it has not acted in good-faith by rejecting rental payments for the Leased Premises during a period of uncontested occupancy pursuant to the other terms of the Lease and without advance leave from a presiding court to ignore or modify the existing unambiguous Lease terms regarding payment.

In short, Treasure Island cannot manufacture a breach of the Lease by ignoring the notice provisions in the Lease and unilaterally rejecting rental payments tendered by Rose and/or Treasure Island in accordance with the Lease. And in doing so, Treasure Island has breached the Lease itself.

000072

Rose remains concerned that Treasure Island is trying to prevent Rose performance under the Lease, interfere with Rose's quiet enjoyment of the Lease Premises, or otherwise meddle in Rose tenant or subtenant operations. It is unclear to Rose whether Treasure Island is breaching the Lease to circumvent or interfere with Rose's relationship with Senor Frogs Las Vegas, LLC ("Senor Frogs"), or if Treasure Island is breaching the Lease due to its own alternative business plans for the Lease Premises. In any case, Rose reserves all of its rights and remedies under the law, including but not limited to those outlined in Sections 19.14 and 19.20 of the Lease.

000072

Sincerely,

Rose Management, Inc., Manager

Gary J. Dragul
President

000072

6

Electronically Filed
09/21/2015 05:33:22 PM

CLERK OF THE COURT

MOT
FENNEMORE CRAIG, P.C.
Patrick J. Sheehan (NV Bar No. 3812)
John H. Mowbray (NV Bar No. 1140)
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Tel.: (702) 692-8000
Fax: (702) 692-8099
Email: psheehan@fclaw.com

Attorney for Plaintiff, Treasure Island, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff, vs. ROSE, LLC, a Nevada limited liability company, Defendant. ROSE, LLC, a Nevada limited liability company, Counterclaimant, vs. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant.	**CASE NO.: A-15-719105-B** **DEPT. NO.: XXIX** **REPLY IN SUPPORT OF MOTION FOR CONFIRMATION**

I. TO THE EXTENT DEFENDANT AGREES THAT PLAINTIFF CAN COLLECT RENT WITHOUT WAIVING ITS CLAIM THAT THE LEASE HAS BEEN TERMINATED, DEFENDANT IS RIGHT, THERE IS NO CONTROVERSY AND THUS NO NEED FOR THE MOTION

000073
000073
000073

Defendant Rose states in its opposition that it does not dispute that the Nevada Supreme Court's decision in *Davidsohn v. Doyle* is settled law. In that case, the Supreme Court held that one could accept rent during the pendency of litigation involving whether a lease termination was effective or not without a waiver of any claims. Out of an abundance of caution the Plaintiff filed a motion making sure that if it accepted the rent payments (see letter from Defendant Rose demanding that Plaintiff accept the rent payments attached as Exhibit A) Defendant could not claim that Plaintiff waived its claim that the Lease had been terminated.

Defendant Rose now claims that there is no controversy because the law is well settled. This presumably means that the law is well settled that Defendant Rose cannot claim that Plaintiff waived its right to declare that the Lease has been terminated, as a result of Rose's default (Rose claims that the Lease has not been terminated due to deficiencies in the notices), by accepting rent during the pendency of the litigation. Assuming this is the case and that Defendant agrees that it cannot claim Plaintiff waived its right to declare the Lease terminated by acceptance of rent during the pendency of litigation, there is no controversy and no need for the motion.

On the other hand, if Defendant is going to claim that the acceptance of the rent during the pendency of litigation was a waiver of Plaintiff's rights, then there is a controversy and Plaintiff has a right for the court to issue an order.

Dated this 24 day of September, 2015

FENNEMORE CRAIG, P.C.

Patrick J. Sheehan (NV Bar No. 3812
John H. Mowbray (NV Bar No. 1140)
300 South Fourth Street,, Suite 1400
Las Vegas, Nevada 89101
Email: psheehan@fclaw.com
Attorney for Plaintiff, Treasure Island, LLC

000074

000074

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on September 21, 2015, service of the REPLY IN SUPPORT OF MOTION FOR CONFIRMATION was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

James J. Pisanelli, Esq.
Jarrod L. Rickard, Esq.
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Rose, LLC

An Employee of Fennemore Craig, P.C.

000075

000075

7

Electronically Filed
09/22/2015 10:44:20 AM

CLERK OF THE COURT

FENNEMORE CRAIG, P.C.
Patrick J. Sheehan (NV Bar No. 3812)
John H. Mowbray (NV Bar No. 1140)
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Tel.: (702) 692-8000
Fax: (702) 692-8099
Email: psheehan@fclaw.com

Attorney for Plaintiff, Treasure Island, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff, vs. ROSE, LLC, a Nevada limited liability company, Defendant. ROSE, LLC, a Nevada limited liability company, Counterclaimant, vs. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant.	**CASE NO.: A-15-719105-B** **DEPT. NO.: XXIX** **ERRATA TO REPLY IN SUPPORT OF MOTION FOR CONFIRMATION**

Exhibit A (letter from Defendant Rose demanding that Plaintiff accept the rent payments) is now attached. It was inadvertently left off the original filed Reply in Support of Motion for Confirmation.

000076

000076

000076

Dated this 22 day of September, 2015

FENNEMORE CRAIG, P.C.

Patrick J. Sheehan (NV Bar No. 3812
John H. Mowbray (NV Bar No. 1140)
300 South Fourth Street,, Suite 1400
Las Vegas, Nevada 89101
Email: psheehan@fclaw.com
Attorney for Plaintiff, Treasure Island, LLC

000077

000077

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on September 22, 2015, service of the ERRATA REPLY IN SUPPORT OF MOTION FOR CONFIRMATION was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

James J. Pisanelli, Esq.
Jarrod L. Rickard, Esq.
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Rose, LLC

An Employee of Fennemore Craig, P.C.

000078

000078

EXHIBIT

A

000079

000079

000079

Rose, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111

NOTICE OF LEASE DEFAULT

September 11, 2015

Via overnight delivery and facsimile (702-894-7680):

Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Najam Khan

Via overnight delivery and facsimile (702-894-7295):

Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Brad Anthony

Re: Lease Agreement between Treasure Island, LLC and Rose, LLC (April 13, 2011), First Amendment to Lease Agreement (October 10, 2011), Second Amendment to Lease Agreement (December 22, 2011), Third Amendment to Lease Agreement (April 20, 2012), Fourth Amendment to Lease Agreement (April 18, 2013), and Fifth Amendment to Lease Agreement (April 30, 2014) (collectively, "Lease"); Sublease between Rose, LLC and Senor Frogs Las Vegas, LLC (June 2011), First Amendment to Sublease (October 4, 2011), Second Amendment to Sublease (April 20, 2012), and Amended Sublease (May 6, 2014) (collectively, "Sublease"); Subordination, Non-Disturbance and Attornment Agreement between Treasure Island, LLC, Rose LLC and Senor Frogs Las Vegas, LLC (May 6, 2014) ("Attornment Agreement"); Treasure Island Lease Notice (May 28, 2015) ("TI Lease Notice"); Treasure Island Payment Notice (June 3, 2015) ("TI Payment Notice").

Rose, LLC ("Rose") previously provided Treasure Island, LLC ("Treasure Island") with a TI Lease Notice. Although the Lease provides Treasure Island with only limited cure rights in the event of a breach of Treasure Island's obligations, Treasure Island has not taken any steps to cure its notice and enforcement breaches under the Lease and Attornment Agreement. Accordingly, Treasure Island is now in default under Sections 19.6 and 19.20 of the Lease and Section 3 of the Attornment Agreement.

000081

Rose also previously provided Treasure Island with a TI Payment Notice. Section 3.1 of the Lease specifically addresses rental payment transmission and receipt obligations and requires Rose to pay Treasure Island rent "at Landlord's address for notice . . . ." To date, however, Treasure Island has refused rental payments tendered by Rose under the Lease to Treasure Island's address for notice pursuant to Section 19.6 of the Lease. Indeed, Treasure Island rejected rental payments tendered by Rose to Treasure Island's address for Lease notice purposes subsequent to the TI Payment Notice in July, August and September of 2015. And Treasure Island again has failed to cure its rental payment receipt breaches under the Lease. Accordingly, Treasure Island is now in default under Sections 3.1 and 19.20 of the Lease as well.

To the extent that Treasure Island believes it has discretion under the Lease with respect to rental payments or receipt, it has not acted in good-faith by rejecting rental payments for the Leased Premises during a period of uncontested occupancy pursuant to the other terms of the Lease and without advance leave from a presiding court to ignore or modify the existing unambiguous Lease terms regarding payment.

In short, Treasure Island cannot manufacture a breach of the Lease by ignoring the notice provisions in the Lease and unilaterally rejecting rental payments tendered by Rose and/or Treasure Island in accordance with the Lease. And in doing so, Treasure Island has breached the Lease itself.

000081

Rose remains concerned that Treasure Island is trying to prevent Rose performance under the Lease, interfere with Rose's quiet enjoyment of the Lease Premises, or otherwise meddle in Rose tenant or subtenant operations. It is unclear to Rose whether Treasure Island is breaching the Lease to circumvent or interfere with Rose's relationship with Senor Frogs Las Vegas, LLC ("Senor Frogs"), or if Treasure Island is breaching the Lease due to its own alternative business plans for the Lease Premises. In any case, Rose reserves all of its rights and remedies under the law, including but not limited to those outlined in Sections 19.14 and 19.20 of the Lease.

000081

Sincerely,

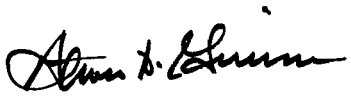
Rose Management, Inc., Manager

Gary J. Dragul
President

000081

8

Electronically Filed
03/16/2017 03:14:22 PM



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

TREASURE ISLAND LLC	.	
	.	
Plaintiff	.	CASE NO. A-719105
	.	
vs.	.	
	.	DEPT. NO. XI
ROSE LLC	.	
	.	**Transcript of**
Defendant	.	**Proceedings**
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION RE PAYMENT/ACCEPTANCE OF RENTS

THURSDAY, OCTOBER 15, 2015

APPEARANCES:

FOR THE PLAINTIFF:	PATRICK J. SHEEHAN, ESQ.
FOR THE DEFENDANTS:	JARROD L. RICKARD, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

000082

000082

LAS VEGAS, NEVADA, THURSDAY, OCTOBER 15, 2015, 8:56 A.M.

(Court was called to order)

THE COURT: -- Senor Frog's or somebody; right?

MR. SHEEHAN: Rose LLC.

MR. RICKARD: Rose LLC, Your Honor.

THE COURT: Okay.

MR. SHEEHAN: Pat Sheehan on behalf of --

THE COURT: This is odd, Mr. Sheehan.

MR. SHEEHAN: Understood, Your Honor. But it's -- Pat Sheehan on behalf of Treasure Island.

MR. RICKARD: Jarrod Rickard on behalf of the defendants, Your Honor.

MR. SHEEHAN: Here's the thing, Your Honor. As we cited in our brief, we have a case that says that while parties are disputing whether or not a lease has been terminated it's okay to accept rent.

THE COURT: As long as they're continuing to occupy the premises.

MR. SHEEHAN: As long as they're continuing to occupy the premises. And so out of an abundance of caution w want to make sure that that's okay, because we don't want them to argue later, hey, by accepting the rent you've waived the termination. And so --

THE COURT: Well, but they say your termination was bad.

000083

000083

000083

MR. SHEEHAN: They say our termination was bad. And so we say, okay, you know, we're fine to argue about whether the termination is bad or good, but we don't want you to come back to us later and say, by accepting the rent you've waived the claim that the termination --

THE COURT: I understand.

MR. SHEEHAN: And they have filed a lawsuit against us for not accepting the rent, so we're kind of stuck in a quagmire. So we just asked them to stipulate, okay, stipulate --

THE COURT: Usually when they send you a wire with money in, you don't reject it. But --

MR. SHEEHAN: Well, understood. But then we don't want them to say, by accepting you've waived your claim that the lease is terminated.

THE COURT: I know what you're trying to do.

MR. SHEEHAN: And so all we ask them is to stipulate that by accepting -- by us accepting the rent we haven't waived our right to termination and we can leave. But if they're not going to do that and they're going to argue differently, then we've got an issue for the Court.

THE COURT: So I've done it two ways. I've when occupancy continues had it go to the landlord, because you're actually continuing to use the property. Some people who have had more of a fight over other issues about the amounts I put

000084

000084

000084

portions of it that are still disputed in an escrow account. Do you guys care?

MR. RICKARD: My clients obviously don't care, Your Honor, because we've been tendering the rent to the landlord. Our preference would be that the landlord --

THE COURT: Okay.

MR. RICKARD: -- accepts the rent that we're tendering to it.

THE COURT: And I'm not going to say it's a waiver, but you guys can argue all you want about whether there's defaults, bad notice, what's going to happen, and some day we'll talk about it.

MR. SHEEHAN: I appreciate it, Your Honor.

THE COURT: So please continue to pay the rent during the period of occupancy.

MR. SHEEHAN: Okay. So the order should be that the Court orders them to continue to pay the rent during the pendency of occupancy and --

THE COURT: They may continue. You may accept the rent they tender. How's that?

MR. SHEEHAN: Perfect. Thank you, Your Honor.

THE COURT: I'm not ordering them to do anything.

MR. RICKARD: But the motion is denied; correct, Your Honor?

THE COURT: Well, the motion's granted in part.

000085

000085

000085

MR. RICKARD: What's granted?

THE COURT: They may accept the rent if you tender it.

MR. RICKARD: There's no basis for them to claim that we've stipulated anything or the Court's given an advisory opinion about --

THE COURT: Nobody's stipulated, nobody's given an advisory opinion, but they're not waiving any defenses as a result of accepting any tenders of rent you make.

MR. RICKARD: Okay.

THE COURT: 'Bye.

THE PROCEEDINGS CONCLUDED AT 8:59 A.M.

* * * * *

000086

000086

000086

CERTIFICATION

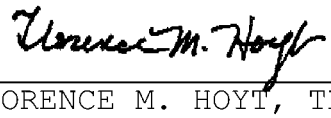
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

000087



FLORENCE M. HOYT, TRANSCRIBER

3/15/17

DATE

000087

9

Electronically Filed
11/04/2015 03:18:39 PM

CLERK OF THE COURT

NEOJ
FENNEMORE CRAIG, P.C.
Patrick J. Sheehan (Bar No. 3812)
John H. Mowbray (Bar No. 1140)
300 S. Fourth Street, Suite 1400
Las Vegas, NV 89101
Tel.: (702) 692-8011
Fax: (702) 692-8099
Email: psheehan@fclaw.com
Attorney for Treasure Island, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company;

Plaintiff,

vs.

ROSE, LLC, a Nevada limited liability company;

Defendant.

ROSE, LLC, a Nevada limited liability company,

Counterclaimant,

vs.

TREASURE ISLAND, LLC, a Nevada limited liability company,

Counterdefendant.

CASE NO.: A-15-719105-B

DEPT.: XI

NOTICE OF ENTRY OF ORDER GRANTING IN PART MOTION FOR CONFIRMATION THAT TREASURE ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **ORDER GRANTING IN PART MOTION FOR CONFIRMATION THAT TREASURE**

ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION was entered in the above-referenced matter on the 4th day of November, 2015, a copy of which is attached hereto.

Dated this 4th day of November, 2015.

FENNEMORE CRAIG, P.C.

By: /s/ Patrick J. Sheehan
Patrick J. Sheehan (Bar No. 3812)
John H. Mowbray (Bar No. 1140)
1400 Bank of America Plaza
300 South Fourth St. 14th Floor
Las Vegas, NV 89101
Attorneys for Treasure Island, LLC

680000
000089

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on November 4, 2015, service of the NOTICE OF ENTRY OF ORDER GRANTING IN PART MOTION FOR CONFIRMATION THAT TREASURE ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

James J. Pisanelli, Esq.
Jarrod L. Rickard, Esq.
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Rose, LLC

/s/ Adam Miller
An Employee of Fennemore Craig, P.C.

060000
000090

Electronically Filed
11/04/2015 02:16:30 PM

CLERK OF THE COURT

ORDR
FENNEMORE CRAIG, P.C.
Patrick J. Sheehan
Nevada Bar #3812
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Tel. (702) 692-8000
Fax: (702) 692-8099
Email: psheehan@fclaw.com
Attorney for Plaintiff, Treasure Island

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company,

Plaintiff,

vs.

ROSE, LLC, a Nevada limited liability company,

Defendant.

ROSE, LLC, a Nevada limited liability company,

Counterclaimant,

vs.

TREASURE ISLAND, LLC, a Nevada limited liability company,

Counterdefendant.

CASE NO.: A-15-719105-B

DEPT. NO.: XI

ORDER GRANTING IN PART MOTION FOR CONFIRMATION THAT TREASURE ISLAND MAY COLLECT RENT DURING THE PENDENCY OF THE LITIGATION

Plaintiff's Motion for Confirmation that Treasure Island may collect rent during the pendency of the Litigation having come on for hearing on October 15, 2015; Treasure Island, LLC being represented by Patrick J. Sheehan of Fennemore Craig, P.C.; Rose, LLC having been

000091

represented by Jarod Rickard of Pisanelli Bice, PLLC; the Court having reviewed the motion, the opposition and entertained oral argument finds as follows: The Nevada Supreme Court has set forth in the case of *Davidsohn v. Doyle, 108 Nev 145 (1992)* that a landlord may accept rent during the pendency of litigation even after it alleges its lease has been terminated (as long as the tenant continues to occupy the premises) accordingly the motion is granted as far as Treasure Island, LLC can accept rent during the pendency of the litigation (as long as Rose continues to occupy the premises) without waiving its claim that the lease has been terminated. It is further noted that Rose, LLC has not waived any of its claims or defenses in this matter by tendering the rent either.

Dated this 28 day of October, 2015.

DISTRICT COURT JUDGE

Respectfully Submitted By:

FENNEMORE CRAIG, P.C.

By: _____
Patrick J. Sheehan (Bar No. 3812)
1400 Bank of America Plaza
300 South Fourth St. 14th Floor
Las Vegas, NV 89101
Attorneys for Plaintiffs

000092
000092
000092

10

Electronically Filed
11/16/2015 04:10:02 PM

CLERK OF THE COURT

ACTC
James J. Pisanelli, Esq., Bar No. 4027
jjp@pisanellibice.com
Jarrod L. Rickard, Esq., Bar No. 10203
jlr@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

Attorneys for Rose, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff, v. ROSE, LLC, a Nevada limited liability company, Defendant.	Case No.: A-15-719105-B Dept. No.: XI **DEFENDANT'S FIRST AMENDED COUNTERCLAIM**
ROSE, LLC, a Nevada limited liability company, Counterclaimant, v. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant.	

FIRST AMENDED COUNTERCLAIM

For its amended counterclaim, Rose, LLC ("Rose") alleges as follows:

PARTIES

1. Rose is a Nevada limited liability company.

2. Rose is informed and believes and thereon alleges that Counterdefendant Treasure Island, LLC ("Treasure Island") is a Nevada limited liability company.

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000093

000093

000093

GENERAL ALLEGATIONS

A. Under the Direction of its Owner, Treasure Island Enters Into a Lease With Rose.

3. On or about April 13, 2011, Rose, as the tenant, and Treasure Island, as the landlord, entered into a Lease Agreement (the "Lease") for premises located within the Treasure Island resort hotel casino, consisting of approximately 18,135 square feet (the "Premises").

4. The Lease identifies that the Premises are to be used for the operation of a bar, lounge, restaurant and/or nightclub.

5. Rose is informed and believes that the primary decision-maker for Treasure Island with respect to the Lease is the owner of Treasure Island, Phillip Ruffin ("Ruffin"). Rose is informed and believes that Ruffin directed leasing negotiations with Rose as well as leasing amendments in December, 2011, March through April, 2014 and June through July, 2015.

6. Rose is informed and believes that Ruffin conveyed his position on leasing issues through Treasure Island employees Brad Anthony ("Anthony"), Najam Khan ("Khan"), and/or Jerry Griffis ("Griffis"), all of whom were not authorized to take material actions with respect to the Lease without the advance approval of Ruffin. Indeed, leasing decisions by Treasure Island were often delayed or deferred in order to accommodate Ruffin's work and travel schedule.

B. The Lease's Notice Provisions Require Notice to Rose and its Subtenant.

7. On or about June 11, 2011, Rose entered into a sublease for a portion of the leased Premises with Senor Frog's Las Vegas, LLC ("Senor Frogs") as the subtenant.

8. Section 15 of the Lease identifies certain events of default whereby Rose may be deemed to be in default of the Lease ("Events of Default").

9. Such Events of Default include Rose's failure "to pay any installment of Rent or any other amount or charge required to be paid by Tenant to Landlord pursuant to the terms of this Lease, and such failure continues for ten (10) days from Landlord's written notice to Tenant . . . ."

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000094

000094

10. Section 19.6 of the Lease identifies the manner in which the parties are to provide "[a]ny notice or other communication required or permitted to be given by a party hereunder . . . ."

11. Pursuant to Section 19.6, any notice to Rose must be directed to the attention of Susan Markusch at the address identified. Additionally, a copy of any such notice must be provided to Senor Frogs.

12. Section 19.20 of the Lease governs the process by which the landlord shall remedy its default.

13. On or about April 30, 2014, the parties entered into a Fifth Amendment of the Lease which, among other things, updated certain contact information for notice purposes under the Lease with respect to both Rose and Senor Frogs and imposed an additional requirement that Senor Frog's counsel be copied on any notice.

C. Treasure Island Breaches the Lease by Failing to Provide Adequate Notice.

14. On or about May 14, 2015, Treasure Island sent correspondence purporting to provide Rose with notice of an alleged breach of the Lease ("Alleged Breach Notice").

15. However, despite the terms of Section 19.6, Treasure Island failed to deliver its Alleged Breach Notice to the attention of Susan Markusch. Additionally, Treasure Island failed to send a copy to Senor Frogs or counsel for Senor Frogs.

16. Having failed to comply with the Lease's express notice provisions, Treasure Island cannot claim that Rose is in default of the Lease.

17. Treasure Island's failure to comply with the Lease's express notice provision prevented Rose's performance of the Lease.

18. Despite this, Treasure Island sent correspondence to Rose on or about May 28, 2015, purporting to terminate the Lease ("Alleged Termination"). However, like the Alleged Breach Notice, the Alleged Termination failed to comply with the notice requirements of Section 19.6.

19. Treasure Island filed its Complaint against Rose that same day.

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000095

000095

20. Rose is informed and believes that Ruffin was the ultimate decision-maker behind the Alleged Breach Notice and the Alleged Termination. Rose is informed and believes that Ruffin was uninformed or otherwise failed to cross-check Treasure Island's notice practices and the terms of the Lease.

21. Rose is informed and believes that Ruffin directed his staff and/or agents to use this dispute as an opportunity to develop a direct relationship with Senor Frogs or otherwise eliminate any Rose leasing relationship in order to seize the Premises for other business purposes.

D. Treasure Island Commits Additional Breaches of the Lease.

22. Following the time that Treasure Island delivered the Alleged Termination, Rose has attempted, on numerous occasions, to tender rent under the Lease via both wire transfers and cashiers' checks. However, Treasure Island has refused to accept these tenders in violation of the unambiguous terms of the Lease, including Section 3.1's requirement that Rose pay Treasure Island rent "at Landlord's address for notice …."

23. In light of this, Rose sent Notices of Lease Default to Treasure Island representatives on September 11, 2015.

24. Treasure Island has failed to attempt to cure or otherwise respond after the receipt of the default notices.

25. Rose is informed and believes that Ruffin authorized the payment refusals or was uniformed and failed to direct Treasure Island's payment tender and acceptance practices or otherwise ensure compliance with the Lease.

FIRST CAUSE OF ACTION

(Breach of Contract)

26. Rose repeats and realleges the allegations set forth in paragraphs 1 through 25 above as though fully set forth herein.

27. The Lease sets forth certain notice requirements that Treasure Island must follow in order to provide Rose valid and sufficient notice.

28. Despite agreeing to these notice requirements, Treasure Island has breached them.

960000
PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

960000

000096

29. In light of its failure to provide sufficient notice, Treasure Island's Alleged Termination is invalid and a breach of the Lease.

30. Rose has continued to attempt tender of its rents under the Lease. However, Treasure Island continues to breach the Lease by rejecting Rose's attempts at tender.

31. Treasure Island's failure to provide notice pursuant to the Lease and refusal to accept Rose's attempts at tender prevents Rose's performance under the Lease.

32. Rose provided Notice of Default on September 11, 2015.

33. Rose has attempted to perform all of its obligations under the Lease.

34. Rose has been damaged by Treasure Island's breaches.

35. Rose has been forced to hire an attorney to prosecute this action and therefore seeks recovery of their attorney's fees and court costs.

SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

36. Rose repeats and realleges the allegations set forth in Paragraphs 1 through 35 above as though fully set forth herein.

37. Implied in every agreement under Nevada law is the obligation of good faith and fair dealing.

38. Rose believes that the notice and rent provisions of the Lease are clear and unambiguous; to the extent that Treasure Island has discretion under either provision, there is an implied covenant of good faith and fair dealing that prevents Treasure Island from exercising any discretion unfairly.

39. Treasure Island breached its duty of good faith and fair dealing by, among other things, delivering notices under the Lease in an unfair manner designed to prevent performance and attempting to contract directly with Senor Frogs. Treasure Island's actions were unfaithful to the purpose and intent of the Lease.

40. Treasure Island also breached its duty of good faith and fair dealing by failing to accept Rose's ongoing tender of rent.

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

41. As result of the acts and omissions of Treasure Island, Rose's justified expectations under the Lease have been denied.

42. Rose has been forced to hire an attorney to prosecute this action and therefore seeks recovery of their attorney's fees and court costs.

THIRD CAUSE OF ACTION

(Declaratory Judgment)

43. Rose repeats and realleges the allegations set forth in Paragraphs 1 through 42 above as though fully set forth herein.

44. A true and ripe controversy exists between Rose and Treasure Island as to their respective rights regarding the Lease.

45. As set forth in the Lease, Treasure Island must comply with certain notice requirements in order to provide Rose notice of any alleged breach.

46. However, in sending the Alleged Breach Notice and Alleged Termination, as well as rejecting Rose's tenders, Treasure Island failed to comply with these notice requirements.

47. Treasure Island has refused to accept properly tendered rent payments.

48. Declaratory relief pursuant to NRS 30.040 is necessary to declare the respective rights, responsibilities and obligations of Rose and Treasure Island under the Lease.

49. Rose seeks a declaratory judgment from this Court that Treasure Island failed to comply with the notice requirements of the Lease and, therefore, the Alleged Breach Notice and Alleged Termination are ineffective.

50. Rose also seeks a declaratory judgment from this Court that if Treasure Island failed to comply with its leasing obligations, Treasure Island is not entitled to the relief request in its Complaint.

51. Rose has been forced to hire an attorney to prosecute this action and therefore seeks recovery of their attorney's fees and court costs.

WHEREFORE, Rose prays for judgment as follows:

1. Direct, incidental and consequential damages against Treasure Island in an amount to be proven at trial but, in any event, in excess of $10,000.00;

860000
PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

860000

000098

2. For a declaratory judgment finding that:

(a) Treasure Island's Alleged Breach Notice and Alleged Termination are invalid;

(b) Rose has not defaulted under the Lease;

(c) The Lease between the parties' remains in effect.

3. For a temporary and permanent injunction precluding Treasure Island from moving forward with terminating the Lease and denying Rose its leasehold interests in the Premises.

4. An award of reasonable costs and attorneys' fees;

5. Prejudgment and post-judgment interest on the foregoing sums at the highest rate permitted by law; and

6. Any additional relief this Court deems to be just and proper on the evidence presented at trial.

DATED this 16th day of November, 2015.

PISANELLI BICE PLLC

By: /s/ Jarrod L. Rickard
James J. Pisanelli, Esq., Bar No. 4027
Jarrod L. Rickard, Esq., Bar No. 10203
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Rose, LLC

660000
PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

660000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 16th day of November, 2015, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **DEFENDANT'S FIRST AMENDED COUNTERCLAIM** to the following:

Patrick J. Sheehan, Esq.
John H. Mowbray, Esq.
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, NV 89101

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
400 S. 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89102
702.214.2100

000100

000100

11

Electronically Filed
11/30/2015 01:39:01 PM

CLERK OF THE COURT

CCAN
FENNEMORE CRAIG, P.C.
Patrick J. Sheehan
Nevada State Bar No.: 3812
John H. Mowbray
Nevada State Bar No.: 1140
300 S. Fourth Street, Suite 1400
Las Vegas, NV 89101
Tel.: (702) 692-8000
Fax: (702) 692-8099
Email: psheehan@fclaw.com
Attorney for Treasure Island, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company; Plaintiff, vs. ROSE, LLC, a Nevada limited liability company; Defendant.	**CASE NO.: A-15-719105-B** **DEPT.: XX1 X** **TREASURE ISLAND'S ANSWER TO FIRST AMENDED COUNTERCLAIM**
ROSE, LLC, a Nevada limited liability company, Counterclaimant, vs. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterdefendant.	

Treasure Island answers the counterclaim as follows:

1. Answering paragraphs 1, 6, 16-18, 20-22, 24, 28-31, 33-35, 39-42, 46, 47 and 51 Treasure Island denies the allegations contained therein.

2. Treasure Island admits the allegations contained in paragraphs 2, 19 and 37.

000101

000101

3. Answering paragraphs 3, 4, 8-15, 27, 32 and 45 Treasure Island states that the document referred to therein speaks for itself.

4. Answering paragraph 5 Treasure Island states that the statement is ambiguous. Without waiving same although legal counsel would have directed the leasing negotiations there is no doubt that Mr. Ruffin would be the ultimate decision maker involving the non-legal terms contained in the lease. Brad Anthony would be the final decision maker on the legal terms.

5. Answering paragraph 7, 23, 25, 26, 36, 38, 43, 44, 48-50 Treasure Island is without sufficient information as to form a belief as to the truth of the allegation contained therein.

AFFIRMATIVE DEFENSES

1. The counterclaim fails to state a claim upon which relief can be granted.

2. The counterclaims are barred under the doctrines of waiver laches and estoppel.

3. The claims are barred on the doctrine of unclean hands.

4. The counterclaims are barred due to the fact that it is in breach of the parties agreement.

WHEREFORE, Treasure Island prays that counterclaimant take nothing by reason of its amended counterclaim and that the counter defendant be awarded it's reasonable cost and attorney's fees.

Dated this 11 day of November, 2015.

FENNEMORE CRAIG, P.C.

By: _____

Patrick J. Sheehan (Bar No. 3812)
John H. Mowbray (Bar No. 1140)
1400 Bank of America Plaza
300 South Fourth St. 14th Floor
Las Vegas, NV 89101
Attorneys for Treasure Island

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on November 30, 2015, service of the TREASURE ISLAND'S ANSWER TO AMENDED COUNTERCLAIM was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

James J. Pisanelli, Esq.
Jarrod L. Rickard, Esq.
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Rose, LLC

An Employee of Fennemore Craig, P.C.

000103

000103

12

Electronically Filed
06/29/2016 05:42:06 PM

Patrick J. Sheehan (NV Bar No. 3812)
John H. Mowbray (NV Bar No. 1140)
FENNEMORE CRAIG, P.C.
300 S. 4th Street, Suite 1400
Las, Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
Email: psheehan@fclaw.com
Attorney for Plaintiff Treasure Island, LLC

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

TREASURE ISLAND, LLC, a Nevada limited liability company, Plaintiff, v. ROSE, LLC, a Nevada limited liability company, Defendant.	CASE NO.: A-15-719105-B DEPT. NO.: XXIX **TRIAL BRIEF**
ROSE, LLC, a Nevada limited liability company, Counterclaimant, v. TREASURE ISLAND, LLC, a Nevada limited liability company, Counterclaimant.	

000104

000104

I. STATEMENT OF FACTS

On or about April 13, 2011, Plaintiff, Treasure Island, entered into a Lease Agreement ("Lease") with Defendant, Rose, LLC ("Rose"). *Ex. 1.* Pursuant to the terms of the Lease, Treasure Island leased space to Rose inside the Treasure Island Hotel and Casino in Las Vegas, Nevada (the "Property"). One of Rose's most fundamental obligations under the Lease was to

timely pay rent. Per the Lease, this rent came in two forms: minimum monthly rent, and quarterly rent in an amount equal to 7% of modified gross sales.

Regarding the latter, the Lease provided that the rent for gross sales would be paid pursuant to a certain formula and that, within 30 days of the end of each quarter during the lease term, Rose would deliver to landlord a writing setting forth the amount of tenant's gross sales made during each month of the preceding calendar quarter and, concurrently therewith, pay the landlord the percentage rent due and payable for the preceding calendar quarter.

As part of the Lease, Treasure Island agreed to loan Rose $2,500,000.00 on an interest free basis to assist with construction costs associated with building the venue. *Id. at 5.* Originally, the parties negotiated that the construction loan would be paid back by paying Treasure Island the greater of $300,000.00 per quarter or 100% of net revenue. *Id.* That obligation was later modified to only require the greater of $300,000.00 or 80% of net revenue. In August, 2012, Treasure Island became aware that Rose was delinquent in paying several of its contractors. Due to concern that this failure to pay construction costs could result in a lien against the Property, Treasure Island, through its General Counsel, Brad Anthony ("Anthony"), sent Rose a letter reminding it that no liens were permitted under the Lease. *Ex. 2.* This letter was sent in strict compliance with the Lease's notice requirements. *Id.*

Shortly after that letter was sent, Gary Dragul, President of Rose ("Dragul"), called Mr. Anthony to discuss the letter that Rose received and to request further relief from the loan repayment obligation. *Exh. 3, Affidavit of Brad Anthony.* During that call, Dragul specifically requested that Anthony send all future correspondences dealing with the Treasure Island-Rose relationship directly to him and further requested that Operadora Andersons ("Operadora"), Rose's subtenant in the venture, not be copied in the future. *Id.*

On September 19, 2012, Anthony sent a letter following up on Dragul's request regarding the construction loan repayment. *Ex. 4, September 19 letter to Rose.* Mr. Anthony complied with Dragul's request for how notice should be provided and sent the letter directly to Dragul. Operadora was not carbon copied.

In the years that followed, Treasure Island had numerous communications with Rose. In

each instance, barring one[1], the communication was sent directly to Dragul and Operadora was not copied. *See, Exs. 5 & 6, letters to Rose.* In all of its communications with Treasure Island, Rose did not carbon copy its subtenant once.

In May, 2015, Rose breached the Lease when it failed to pay the 7% gross sales portion of the rent for the first quarter of 2015. As a result, on May 14, 2015, Treasure Island sent Rose a notice of default. *Ex. 7.* This is undisputed. Dragul even admitted as much in his deposition:

> Q. But you do admit that at the time of this May 14th letter, you were in - - had not met your rental obligations as set forth in this letter?
>
> A. I do admit that.

Ex. 8 at page 58.

It is also undisputed that between May 14 and May 28, Rose did not pay, or attempt to pay, the overdue rent even though the May 14, 2015 letter specifically warned that if Rose did not pay within ten (10) days, it would be placed in default. Therefore, as of May 28, 2015, Rose was in default pursuant to the terms of the Lease. *Ex. 1.*

As a result of this default, Treasure Island had the contractual right to terminate the Lease pursuant to Section 15.2, which states, "upon the occurrence of an Event of Default, in addition to any other rights or remedies provided for herein or at law or in equity, and without barring election of any other remedy, Landlord, at its sole option, shall have the following rights:

> "15.2.1 Landlord may terminate this lease and Tenant's estate hereunder by written notice of such of termination"

Ex. 1 at page 16.

Treasure Island exercised its right to terminate the lease by a letter dated May 28, 2015. Exh. 9. Rose disputed that Treasure Island had the ability to terminate the Lease, claiming that one or more notices were defective. As a result, this litigation was filed to confirm that the Lease was properly terminated.

II. ARGUMENT

A. The Default Notices Were Effectively Served On Rose.

Rose admits that it defaulted in the most fundamental of its obligations under the Lease

[1] The only exception to this was a letter from Jerry Griffis, Treasure Island's Chief Financial Officer, which did include notice to Operadora since the subject of that letter was Operadora itself not paying food charges owed to Treasure Island.

and failed to meet its rent obligations in a timely manner. Rose also does not dispute that once it failed to meet its rental obligations following the 10-day notice and right to cure, Treasure Island had the right to terminate the parties' Lease.

Rose is now asking the court to excuse its material default under the Lease because its subtenant, Operadora, was not carbon copied on the letter sent on May 14, 2015, and because that letter was addressed to Dragul instead of Susan Markusch. These arguments are flawed.

This was made clear by the Court in *Pierce v. Sentry Ins.*, 421 N.E. 2d 1252 (App. Ct. Mass. 1981). In that case, the Court noted that contractual provisions requiring notice to a third party have discrete purposes separate and apart from the notice to the first party. As a result, it is a separate obligation and failure to give notice to the third party does not defeat notice to the first party. The *Pierce* Court stated:

> Notice to the insured and notice to the mortgagee have discrete purposes, however, and it is difficult to see how, as to the party who receives notice, a failure to give notice to the other, can be anything but merely formal. . .. This quality of separate obligations has been noted particularly, where, as in the instant case, the insurance policy contains a so-called 'standard mortgage clause.' (Citations omitted.) Under that clause 'the result has been that the Courts have held that the agreement of the company with the mortgagee being separate and divisible from that with the mortgagor. . .

Id. at 125-127.[2]

[2] *See also, e.g., Ellegood v. Am. States Ins. Co.*, 638 N.E.2d 1193, 1195 (Ill. App. Ct. 1994) ("[P]laintiff, who admittedly received notice and failed to pay the premium, seeks to void defendant's purported cancellation based on the fortuitous fact that defendant is unable to establish that it notified the mortgagee. We agree . . . that this would result in an 'unjustified windfall' to the insured."); *Bradley v. Assocs. Disc. Corp.*, 58 So. 2d 857, 859 (Fla. 1952) (finding that a defect in the notice's content did not invalidate the notice where the defect was relevant only to a third party); *cf. Bryce v. St. Paul Fire & Marine Ins. Co.*, 783 P.2d 246, 247 (Ariz. App. 1989) ("Appellee's failure to give timely notice of the cancellation to the mortgagee [as required by statute] had no effect on the proper notice of cancellation given appellant by the premium finance company."); *Pawlick v. N.J. Auto. Full Ins. Underwriting Ass'n*, 666 A.2d 186, 189 (N.J. Super. Ct. App. Div. 1995) ("[W]here the insured has not denied receipt of the cancellation notice, strict compliance with the statute [requiring notice to mortgagees] is not required unless the insured can show that prejudice resulted from the insurer's noncompliance."); *Allstate Ins. Co. v. McCrae*, 384 S.E.2d 1, 2 (N.C. 1989) ("Only defective notification to the *insured* renders cancellation of the policy ineffective and extends the liability of the insurer.").

Thus, under the law, Rose only has a valid argument if it can show that the notice it received was, in itself, deficient, independent of the failure to carbon copy Operadora. It cannot.

When the notice sent to Rose is examined, the fact is that Treasure Island complied with the notice requirements as far as Rose is concerned. The notice was in writing. It was delivered by a nationally recognized overnight courier (Fed-Ex), and required the signature of someone at Rose upon delivery. It was sent to Rose, LLC, at the address specified in the Fifth Amendment to the Lease Agreement. *Ex. 10.* As such, Rose had actual notice that it would be placed in default if it did not pay the rent within the 10-day timeframe and chose not to do so. It cannot blame anyone but itself for the result of its choice. Rose certainly cannot viably claim that failing to carbon copy Operadora somehow affected whether Rose itself properly received the notice.

Rose's only argument regarding an inherent deficiency in the notice it received is that the letter was addressed to Dragul, not Susan Markusch. First, Ms. Markusch had been written out of the notice provision via the Fifth Amendment. *Ex. 10.* Second, Dragul specifically requested that notices be sent attention to him. *Ex. 3.* Third, and perhaps most importantly, Rose ***received the notice letter***. The notice to Rose was clearly effective and sufficient. This is consistent with case law which holds that, "where there is evidence of actual notice, a technical deviation from a contractual notice requirement will not bar the action for breach of contract brought against a party that had actual notice." *Stonehenge Land Co. v. Beazer Homes Investments, LLC*, 893 N.E.2d 855, 863 (Ohio Ct. App 2008).[3]

i. The notice defects identified by Rose are immaterial.

Both "defects" identified by Rose—failing to copy Operadora and sending the letter to Dragul—are immaterial deviations from the Lease's terms, and neither should invalidate the notice that Rose admittedly received. A defect is immaterial when it does not disadvantage the party receiving the notice. *See, Pierce*, 421 N.E. 2d 1252. In *Pierce*, an insurance policy

[3] *See also, e.g., Polizzotto v. D'Agostino*, 129 So. 534, 536 (La. 1930) ("[M]ere informalities do not violate notice so long as they do not mislead, and give the necessary information to the proper party."); *Bd. of Comm'rs v. Turner Marine Bulk, Inc.*, 629 So. 2d 1278, 1283 (La. Ct. App. 1993) ("Where adequate notice is in fact given and its receipt is not contested, technicalities of form may be overlooked.").

required the insurance company to give the insured parties *and any mortgagees* twenty days' written notice of cancellation. *Id.* at 1253 (emphasis added). The insured parties defaulted and received a cancellation notice, but argued that it was defective because the insurance company failed to notify the mortgagee. *Id.* The court noted the "general rule that conditions imposed with respect to giving notice of cancellation of insurance must be strictly followed," but clarified that the rule applies to those cases that combine "defects of form with [a] disadvantage *to the person who received the defective notice*." *Id.* at 1253–54 (emphasis added). The court found it "difficult to see how, as to the party who receives notice, a failure to give notice to the other, can be anything but merely formal." *Id.* at 1253. The insured parties speculated that if the insurance company had notified the mortgagee of the default, the mortgagee might have called it to their attention and motivated them to pay. *Id.* at 1254. The court, however, was not convinced that further notification would have prompted them to pay an obligation they had consciously ignored. *Id.* Though the notice was clearly defective as to the mortgagee, the court held that it was valid as to the insured parties. *Id.*

000109

The similarities between *Pierce* and the facts of this case are striking. It is undisputable that Rose, like the insured parties in *Pierce*, received notice. The letter sent by Treasure Island is only inadequate in that it did not carbon-copy Operadora. Like in *Pierce*, this failure is utterly immaterial to Rose's conscious choice not to pay the quarterly rent in a timely fashion. And while Operadora might have a claim for not having received the notice (even that claim would actually sound against Rose for their direct breach of the sublease), Rose in fact received the notice and therefore has no claim.

Similarly, the court in *Stonehenge Land, supra*, found that a deviation from a contractual notice provision was immaterial when it did not disadvantage a party that received actual notice. *Stonehenge Land,* 893 N.E.2d at 863. In that case, a contract between a land developer and a home builder provided that if the builder defaulted, the developer could terminate the contract after giving thirty days' notice with a chance to cure. *Id.* at 859. The contract required the developer to send the notice to a specific employee in the builder's office, but the developer sent it to the builder's attorney instead. *Id.* at 859–60. The court rejected the builder's argument that

failing to directly notify the specified employee put the builder at a disadvantage because that employee was the designated decision-maker on matters relating to the contract. *Id.* at 862–63. The court found this technical deviation insufficient to invalidate the notice because the builder (including the specified employee) received actual notice and sending the notice directly to the employee would not have put him in a better position to make a decision. *See id.* at 863–64. The court also noted that it would be unfair to allow the builder to require strict compliance with the notice provision. *Id.* at 864. Because the builder "repudiated the contract by failing and refusing to perform the obligations that went to the heart of the contract itself," the court held that it could not "now insist that [the developer] scrupulously adhere to every term of the contract." *Id.*

It is undisputed that Rose received the letter. The fact that it was sent to Dragul's attention instead of Markusch's is a technicality that is even more frivolous than the one identified in *Stonehenge Land* because Dragul **was** the decision-maker for Rose. It is simply disingenuous for Rose to pretend that Ms. Markusch receiving the letter instead of Mr. Dragul changes the outcome. The Court should not forgive Rose's material default because of such an immaterial fact.

000110

ii. *The Notice Letter Sent to Rose Substantially Complied With the Lease Requirements.*

Other cases have held that substantial compliance with a notice provision is sufficient, as long as there is no prejudice to the noticed party. In *Triangle Props., Inc. v. Homewood Corp.*, 3 N.E.3d 241, 257 (Ct. App. Ohio 2013), the court held that even though the parties' agreement required written notice, and instead the parties sent notice via a voice mail, there was substantial compliance. The trial court cited *Stonehenge Land, supra*, stating, "Where there is evidence of actual notice, a technical deviation from a contractual notice requirement will not bar the action for breach of contract brought against a party who had actual notice."

Here, Treasure Island actually complied with the written notice provisions in the Lease, but also sent a copy to Dragul's counsel, Ms. Elizabeth Gold[4], via email. Ms. Gold even contacted Treasure Island on Rose's behalf shortly after the May 14 notice was sent asking for

[4] Ms. Gold was the signatory for Rose on the Lease and all of its subsequent Amendments. *Ex. 1.*

more time to pay the quarterly rent because Mr. Dragul was traveling to take care of an ill brother, which evidences Rose's receipt of the notice. That extension was denied. Exh. 3.

Treasure Island's failure to carbon copy Operadora, or the name of the party who received the notice, is immaterial to the claims between Treasure Island and Rose. Treasure Island complied with the provisions requiring notice to Rose, and Rose does not dispute that it received actual notice. Accordingly, Rose's default should stand and the court should determine that Treasure Island properly terminated the lease.

B. Rose Cannot Hijack Operadora's Claim.

Rose's claim that the notice was ineffective because it was not copied to Operadora is spurious for several reasons. First, Rose is attempting to hijack Operadora's claim. Operadora may have a complaint that it was not copied, but Operadora is notably absent from this lawsuit. Indeed, as will be shown, were Operadora to pursue such a claim, they would be better served by proceeding against Rose, who violated an affirmative obligation to send notices to Operadora instead of Treasure Island, who merely failed to copy Operadora on a letter warning Rose that it was about to be in default.

000111

Second, Rose is attempting to revise history by pretending that Operadora would have intervened and paid on Rose's behalf to prevent the default. When Operadora's counsel received notice of the breach, and this lawsuit, it merely contacted Treasure Island to make sure that if the Lease with Rose was terminated, the subtenant (Operadora) still had the right to negotiate its own direct lease with the Treasure Island. *Ex. 5, Affidavit of Brad Anthony.*

Further, when Operadora was advised of a subsequent breach (since the lawsuit was filed the parties have continued the Lease pending the Court's decision and Rose has defaulted several times since its original breach but cured within a 10-day period), Operadora, through its lawyers, sent a letter in response to being provided a copy of Treasure Island's default notice to Rose which stated:

> Mr. Fieldstone [another lawyer in the firm of the letter's author] and I are in receipt of your letter of December 17, 2015, purportedly advising the two of us that we owe money to Treasure Island under its Lease Agreement with Rose. We are somewhat at

> a loss as we did not borrow money from Treasure Island, are not parties to the referenced Lease Agreement, and do not represent Rose. We solely serve as counsel to Operadora and/or Andersons.
>
> We therefore are going to assume this letter was a mistake. If that is incorrect please contact me to explain.
>
> Sincerely Susan E. Trench.[5]

Ex. 11. This letter makes it clear that even if Operadora had been copied by way of its counsel, Ron Fieldstone and Susan Trench, they would not have taken any action to cure the default.

C. Rose is Barred From Arguing that Failing to Carbon Copy Operadora Renders the Notice Deficient Because Of Its Own Bad Acts.

It is axiomatic that Rose should not benefit from its own bad acts. In this matter, it was Rose itself who insisted that Treasure Island not include Operadora on any default notices in the phone call with Anthony after the August 31, 2012, letter. *Ex. 3.* Now, though, Rose is asking the Court to do just that, and to punish Treasure Island for complying with Rose's request concerning notice letters. This request gives rise to arguments that sound in estoppels, waiver, and unclean hands.

i. Rose Was Obligated to Send the Notice Itself, and Did Not.

Rose's sublease with Operadora specifically stated:

> [i]n the event that Prime Landlord [Treasure Island] notifies Landlord [Rose] of any default under the Prime Lease and does not provide simultaneous notice to subtenant [Operadora], Landlord [Rose] will provide subtenant with a copy of any Prime Landlord notice of default under the Prime Lease within twenty four (24) hours and an opportunity to cure same on behalf of Landlord and to the satisfaction of Prime Landlord.

See Sublease between Rose and Operadora/Señor Frogs at Page 7, Paragraph 9(d). Ex. 12.

Rose cannot complain that the notice of default sent to it was ineffective since it was not carbon-copied to Operadora when it defaulted on its affirmative obligation to send such notice to Operadora pursuant to its sublease. Rose's abject failure to send the default notice to Operadora only further exhibits that it did not want Operadora to know about its default and bolsters Mr.

[5] Mr. Fieldstone and Ms. Trench have since withdrawn as counsel for Operadora.

Anthony's testimony that Gary Dragul had specifically told him not to notice Operadora. It defies logic to allow Rose to request that Treasure Island not notice Operadora, fail to notice Operadora itself, though such notice was affirmatively required of it via its sublease, and then argue that Treasure Island's "failure" to send the notice invalidated the notice to the extent that Rose's original default of the Lease should be excused.

ii. Rose is Estopped From Arguing That Notice Was Defective.

"Equitable estoppel operates to prevent a party from asserting legal rights that, in equity and good conscience, they should not be allowed to assert because of their conduct." *Nev. State Bank v. Jamison P'ship*, 106 Nev. 792, 799, 801 P.2d 1377, 1382 (1990) As discussed above, Rose's conduct in this matter far outweighs Treasure Island's sin of relying on and accommodating a request from the president of one of its tenants.

To prevail on an argument of estoppel, the party asserting the defense must prove four elements:

> 1. The party to be estopped must be apprised of the true facts;
>
> 2. He must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended;
>
> 3. The party asserting the estoppel must be ignorant of the true state of facts;
>
> 4. He must have relied to his detriment on the conduct of the party to be estopped.
>
> Among other things, silence can raise an estoppel quite as effectively as can words.

Teriano v. Nev. State Bank, 121 Nev. 217, 223, 112 P.3d 1058, 1062 (2005).

Here, Rose was aware of Treasure Island's decision not to copy Operadora. After all, Dragul had specifically requested that exact action. Dragul's conduct in asking Anthony to change how notice was given under the Lease was relied upon and implemented by Anthony in that he began sending all communications directly to Dragul and stopped carbon-copying

Operadora following the August 31, 2012 letter and the phone call with Dragul. Treasure Island had no idea that Rose would now try to claim that its failure to carbon-copy Operadora somehow prevented Treasure Island from asserting its contractual rights against Rose. Treasure Island and Mr. Anthony clearly relied to their detriment on the conduct of Dragul (his request that Operadora not be copied).

In addition to the above-described acts, Rose also persistently failed to notify Treasure Island that it needed to copy Operadora on any notices following Anthony's change to only noticing Rose following the August 31, 2012, construction loan notice (and the phone call with Mr. Dragul shortly thereafter). This silence should be interpreted as approval, and raises the issue of estoppel by silence. *Cheqer, Inc. v. Painters and Decorators*, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982) ("This court has noted that silence can raise an estoppel quite as effectively as can words.")

Given that each of the factors of estoppel are met in this matter, Rose should be estopped from asserting that Treasure Island's failure to copy Operadora caused a fatal defect in the notice process.

000114

iii. Rose Expressly Waived Any Argument That Notice Was Defective.

The doctrine of waiver is also applicable in the case at bar. A waiver is the intentional relinquishment of a known right, and may be implied from conduct which evidences an intention to waive a right, or by conduct which is inconsistent with any other intention than to waive the right. *Mahban v. MGM Grand Hotels, Inc.*, 100 Nev. 593, 596, 691 P.2d 421, 423-24 (1984). Rose's told Treasure Island not to send a notice to Operadora. It never acted to correct Treasure Island when Treasure Island complied with its request. Despite its contractual obligation to do so, Rose did not notice Operadora itself. Each of these acts proves that Rose waived any right to now argue that Treasure Island's failure to copy Operadora on any default notices to Rose is material.

iv. Rose's Unclean Hands Bar It From Arguing That Notice Was Defective.

It is amply clear that Rose's conduct underpins this entire matter. Rose did not pay its rent in a timely fashion (after it had already received the same from Operadora). Rose told Treasure Island not to provide any default notices to Operadora but only to send the same to Rose. Rose did not abide by its own contractual obligation to its subtenant to send any Treasure Island default notices to Operadora. The unclean hands doctrine prevents Rose from now alleging that Treasure Island's failure to carbon copy Operadora somehow excuses Rose's default. *Park v. Park, 126 Nev. 745 (2010)* ("the District Court found a connection between Appellant's misconduct, breach of contract, and cause of action for unjust enrichment. ... substantial evidence supports the District Court's decision to bar Appellant's unjust enrichment claim under the unclean hands doctrine."). While unclean hands is generally regarded as an argument that sounds in equity, the Ninth Circuit has recognized that "[t]he unclean hands doctrine applies not only to equitable claims, but also to legal ones." *Adler v. Fed. Republic of Nigeria,* 219 F.3d 869 (9th Cir. 2000).

000115

Here, Rose's failure to pay the rent to begin with, coupled with its insistence that Treasure Island not provide Operadora notice, and, perhaps most importantly, failing to provide Operadora the default notice itself, despite its specific contractual obligation to do so, caused all the harm to occur. If notice to Operadora was so important to Rose, it should have sent the notice to Operadora itself. It follows logically that since Operadora had already paid Rose the rent necessary to cover the quarterly rent that was due, Rose did not want Operadora to know that Rose had not paid the rent to Treasure Island. In any event, pursuant to the unclean hands doctrine, Rose is prevented from relying upon the lack of notice to Operadora to excuse its default.

000115

D. Dragul's Testimony Undercuts Each of Rose's Expected Arguments.

Treasure Island expects Rose to make two arguments. First, that it did not receive the May 14 notice because, incredibly, its whole office was in Las Vegas for a shopping center conference. Second, that sending copies to Operadora was a material term to Rose. Even if the Court allows Rose's arguments to survive the battery of law and equity arrayed against them, the arguments fail. Dragul's own deposition testimony shows that each of these arguments is without

merit.

As previously discussed, there can be no question whether or not Rose received the May 14 notice letter. Not only was it sent via Fed-Ex, signature required, with a receipt showing delivery at 10:02 a.m. on Friday, May 15, but it was also sent via email to Elizabeth Gold, who called Mr. Anthony on Rose's behalf to request additional time to pay the delinquent quarterly rent. There is absolutely no question whether Rose received the notice and was aware of their obligation to pay the monies.

Rose cannot contest this since even though Mr. Dragul was extremely uncooperative, forgetful and used the 'I am not a lawyer' excuse for most of his deposition he specifically testified that although he did not know when he received the notice, he received it by at least May 26th. Mr. Dragul's testimony regarding the subject is as follows:

> Q. You do recall the notice coming in saying you were in default?
> A. I was told that we got a notice. I do not recall seeing a notice that came in just to be grammatically correct.
> P. 25 ll. 7-11.
>
> Q. So you were out of the office from when?
> A. The 14th was I think a Thursday and, you know, through the following week - - majority of the following week.
> Q. So when did you get back to the office?
> A. I don't know exactly, but I think, you know - - I might personally have been in at the end of the week, but the majority of the staff is not because of the ICSC.
> P. 29 ll. 19-25, Page 30 line 1.
>
> Q. How long was it before you found out that this default notice had been sent saying you were in default on rent and you tendered the rent?
> The Witness: I don't know the dates actually.
> Q. Was it a week? Two weeks?
> A. I am telling you I really don't know.
> P. 31 ll. 3-11.
>
> Q. Do you recall whether as of May 21st you knew about the notice being sent about the default and the rent?
> A. I don't recall.
> P. 39 ll. 4-7.
>
> Q. Have you seen this document before?
> A. Oh, May 14th [the default letter] there you go.
> Q. Have you seen this document before, sir?
> A. I have.
> Q. And when did you first see it?
> A. I have no idea.
> Q. Were you in Las Vegas when you saw it?
> A. I don't know.

000116

000116

Q. Do you recall the circumstances of when you saw it?
A. Circumstances? I mean, listen. We missed paying the rent. We got the - - during the time when this was sent we were all gone. And I believe that I didn't know about this until the 26th of May when we were all back in the office.
P. 55 ll. 6-20.

Q. And who is Elizabeth Gold?
A. My in-house attorney.
Q. Is she in your office, Elizabeth Gold?
A. She is.
Q. Do you speak with Elizabeth Gold most days?
A. Most days. Half days.
P. 81 ll. 6-11.

ICSC was from May 17 through May 20 in Las Vegas. Therefore, even if Mr. Dragul was at ICSC, he certainly would have received or been informed about the notice either before he left for the conference or after he returned. He stated that he was in the office during the last part of the week of the 17 and the letter was addressed directly to him. Additionally, Ms. Gold, whose office is right next to his, received the notice by email on May 14. Indeed, the above-quoted testimony shows that he was told about the notice. Given the call Mr. Anthony received from Ms. Gold, it is apparent that she spoke to Mr. Dragul about the notice shortly after she received it.

000117

At a minimum, that testimony eliminates any defense by Rose that it did not receive the notice since it admits it received the notice and does not know when. Therefore they cannot say now that they did not receive the notice by a certain date. Moreover, Dragul's testimony indicates that he personally should have seen the letter by May 22, since he was personally back in the office by that date, and, at a bare minimum he saw the notice by May 26. Even giving Mr. Dragul the benefit of every doubt—and there are many—Rose could have acted to pay the amount owed immediately and still not been in formal default. Instead of paying and defusing the whole issue, Rose decided to accuse Treasure Island of interfering with its relationship with its subtenant.

If Rose was in a position to pay its rent on time, then it could have paid the obligation off by May 27 or before the termination even if, in defiance of all facts, evidence, and logic, Mr. Dragul only became aware of the letter on May 26. Rose did not. Thus, the defense that Dragul did not receive the notice or have an opportunity to cure is completely frivolous.

Next, Dragul's testimony shows that Rose's argument concerning the failure to copy Operadora is a non-starter. First, as established earlier, Rose and Operadora were parties to a

sublease which contained a clear contractual provision requiring that **Rose** send all notices of default from Treasure Island directly to Operadora within 24 hours. Dragul testified that he had Operadora's President's phone number and that the two were good friends:

> Q. Could you have picked up the phone and called your friend David Krouhan [Operadora] and told him you got that notice?
> A. I do. I could have - - I mean, physically I can call him at any time. I can pick up the phone and call whoever I want in my contacts.
> Q. But you have Mr. Krouhan - - he's a friend of yours?
> A. Krouhan is his name.
> Q. He's a friend of yourself: correct?
> A. He is.
> Id at P. 94 ll. 24-25; P. 95 ll. 1-17.

Inexplicably, Dragul did not abide by the written terms of the sublease nor even do something as simple as picking up the phone and calling one of his contacts. Now, however, Rose wants to argue that carbon-copying Operadora on notices was a material term in the Lease between Rose and Treasure Island. This is laughable.

Dragul also admits in his deposition that Rose breached its own sublease and never sent the notice to Operadora:

000118

> Q. So you said that somebody told you at some point that there was a notice sent saying you were in default: correct?
> A. Sometime: correct.
> Q. When that happened, did you tell that person to send that notice directly to Senor Frogs?
> A. Did not.
> Id at P. 25 ll. 25; P. 26 ll. 1-6.

> Q. Did you have an obligation to send it to Senor Frogs yourself?
> A. No.
> ...
> Q. So Rose, LLC did not have any obligation to send that default notice to Senor Frogs.
> A. Correct. Well, I mean, I am not an attorney. You know, I don't know whats in the lease or not in the lease. I can just tell you what we did.
> Q. If that was in the lease would you have sent it to them.
> The Witness: I don't know.
> Q. So if it was in the lease, you don't know whether you would have sent it to them or not?
> A. Well I don't know. We didn't give them notice. I mean ---.
> Q. Ok.
> A. I didn't communicate any of this with Senor Frogs.
> P. 26 ll. 13-25; P. 27 ll. 1-9.

> Q. When that first notice came out just to Rose [the May 14th default notice] and lets –
> A. I did not speak to David. I didn't – we didn't have a conversation about it.
> P. 29 ll. 8-11.

As shown earlier, Rose cannot be permitted to argue that copying Operadora was a material term of its Lease with Treasure Island when it utterly and completely failed, by its President's own admission to abide by its own agreement with Operadora with respect to the notice it received.

E. Operadora Would Not Have Paid On Rose's Behalf.

Treasure Island anticipates that Rose may claim that the reason copying Operadora was so important is that Operadora would have paid Treasure Island on Rose's behalf. This is extremely unlikely.

According to the sublease between Rose and Operadora, Operadora paid Rose $80,000 per month. *Ex. 12.* It was then Rose's responsibility under the Lease between itself and Treasure Island to pay the monthly rent and the quarterly rent amounts. This means that Operadora paid $80,000 for January, February and March in 2015. Rose had paid Treasure Island $33,000 per month in that same time period. This left $141,000 in Rose's coffers with which to pay the quarterly 7% rent, which, for the first quarter of 2015, was $119,229.00. Rose's argument is essentially that if Treasure Island had copied Operadora on the May 14, 2015, letter to Rose, Operadora would have rushed to pay the $119,229.00. Of course, this argument ignores the fact that Rose was required to send Operadora such notice itself and also ignores the fact that Operadora had already paid enough to cover the entire amount. What is more likely—in fact, what actually happened—is that upon receiving the notice, Operadora would ensure that its rights to negotiate a lease directly with Treasure Island were still intact. *See Affidavit of Brad Anthony Exh. 5, last paragraph.*

Treasure Island anticipates that Dragul may try to submit an improper affidavit[6] from David Krouhan, his friend, to bolster Rose's failed argument. Attempts to revise history aside, Operadora's actions back in 2015 make it clear that Operadora was not interested in paying the rent on Rose's behalf. If Rose does submit an affidavit from Mr. Krouhan, Treasure Island reserves the right to submit additional evidence showing Operadora's actual position, which was

[6] Mr. Krouhan was never identified as a witness, and allowing his affidavit, which is tantamount to testimony, is unfair to Treasure Island. *Ex. 13.*

not previously submitted due to Mr. Krouhan's exclusion from Rose's witness list.

F. Rose's Counterclaim Contains No Cognizable Cause of Action.

Rose has filed a Counterclaim alleging the Treasure Island's refusal to accept Rose's tender of rents under the lease is a breach of the lease. Presumably, this Cause of Action is now moot because, pursuant to an earlier order of the Court, Treasure Island has accepted Rose's tender pending the outcome of this case. However, even if Rose had not accepted the rent, this would not be a breach.

Similarly, the Amended Counterclaim for Breach of the Implied Covenant of Good Faith and Fair Dealing is without merit. If anyone breached the Implied Covenant of Good Faith and Fair Dealing, it was Rose for failing to pay the rent when it was due. Mr. Dragul's above-quoted testimony states that he knew the rent was due and that Rose failed to pay it. Therefore, it was Rose who breached the Implied Covenant of Good Faith and Fair Dealing. Certainly, accepting the rent from its subtenant and not paying the landlord constitutes a breach of the Covenant of Good Faith and Fair Dealing by Rose, not Treasure Island. Similarly, Rose can offer no evidence proving its claim that Treasure Island interfered in its relationship with Operadora.

As to its Declaratory Relief claim, the above arguments show that it is Treasure Island who is entitled to win on the competing Declaratory Relief claims.

III. CONCLUSION

Treasure Island is entitled to Judgment because it complied with the Notice provisions to Rose. Rose's only argument concerning the notice to itself is that it was not sent to the attention of Susan Markusch. However, the Fifth Amendment took out the requirement that the notice be sent to Ms. Markusch. Even if the Fifth Amendment had not taken out that requirement, Treasure Island substantially complied with the notice by sending it to the attention the President (at the Preasident's own request) and e-mailing it to the in house counsel. There is no question that Rose received the notice; and, therefore, the notice to Rose was sufficient. When Rose failed to pay the rent, Treasure Island had the right to terminate the lease and the lease was terminated.

Rose's argument that the failure to carbon copy Operadora is without merit as that claim

belongs to Operadora, not Rose. Therefore, it is not relevant to the issues between Rose and Treasure Island. Moreover, even if Rose could raise the issue of not carbon copying Operadora under the law, it is precluded from doing so under the facts of this case. First, it waived the carbon copy to Operadora when Mr. Dragul asked Mr. Anthony not to send carbon copy to Operadora. Second, Rose is equitably estopped from arguing that the failure to carbon copy Operadora precludes termination since it was Rose itself that caused Treasure Island not to carbon copy Operadora through Mr. Dragul's actions and Rose's silence when numerous notices were made without carbon copying Operadora. Third, Rose is precluded from arguing that Treasure Island's failure to carbon copy Operadora makes the notice to Rose ineffective since Rose itself had the obligation to provide notice to Operadora and failed to do so. Thus, the Unclean Hands Doctrine is applicable since it was Rose's actions which caused all the issues, including failing to pay rent, asking Treasure Island not to copy Operadora, and failing to provide a Notice of Default to Operadora, as it was obligated to do so.

As a result, Treasure Island is entitled to an order holding that the lease was properly terminated.

Dated this 29 day of June, 2016.

FENNEMORE CRAIG, P.C.

By: _____

Patrick J. Sheehan (Bar No. 3812)
John H. Mowbray (Bar No. 1140)
1400 Bank of America Plaza
300 South Fourth St. 14th Floor
Las Vegas, NV 89101
Attorneys for Treasure Island, LLC

000121

000121

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on June 29, 2016, service of the TRIAL BRIEF was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet):

E-Service Master List
For Case
null - Treasure Island LLC, Plaintiff(s) vs. Rose LLC, Defendant(s)

Fennemore Craig Jones Vargas		
	Contact	**Email**
	Patrick J. Sheehan	psheehan@fclaw.com
Fennemore Craig, P.C.		
	Contact	**Email**
	Adam Miller	amiller@fclaw.com
	John H. Mowbray	jmowbray@fclaw.com
Shumway Van		
	Contact	**Email**
	Brent	brent@shumwayvan.com
	Gabriela Mercado	Gabrielam@shumwayvan.com
	Kamra Fuller	kamra@shumwayvan.com
	Rebekah Griffin	rebekah@shumwayvan.com
	Robin Cordova	robin@shumwayvan.com
	Sam Marshall	samuel@shumwayvan.com

An Employee of Fennemore Craig, P.C.

000122

000122

EXHIBIT

1

000123

000123

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), is made and entered into this 13th day of April, 2011 ("Effective Date"), by and between Treasure Island, LLC, a Nevada limited liability company ("Landlord"), and Rose, LLC, a Colorado limited liability company ("Tenant"). All capitalized terms used herein are defined, or listed for reference purposes, on the Index of Defined Terms attached hereto.

RECITALS

WHEREAS, Landlord is the owner of certain real property located at 3300 Las Vegas Boulevard South, Las Vegas, Nevada 89109 ("Property"), within which Landlord operates that certain resort hotel casino commonly known as Treasure Island ("Hotel Casino"); and

WHEREAS, Landlord desires to lease to Tenant the Leased Premises for the operation of a bar, lounge, restaurant and/or nightclub upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, it is hereby mutually agreed by and between Landlord and Tenant as follows:

000124

AGREEMENT

1. CONSIDERATION; RESERVATION.

1.1 Consideration. Landlord does hereby lease, demise and let unto Tenant, and Tenant does hereby take, hire and lease from Landlord, those certain commercial premises and improvements, fixtures and equipment thereon located in the Hotel Casino, consisting of approximately eighteen thousand one hundred thirty five (18,135) square feet including adjacent outdoor space located at the Hotel Casino (collectively, "Leased Premises"), and as more particularly depicted on Exhibit "A" attached hereto.

1.2 Reservation. Landlord reserves to itself the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and all other utility and structural elements now or in the future leading through the Leased Premises and which serve the Leased Premises or other parts of the Hotel Casino, provided that Landlord agrees to conceal any work performed by Landlord pursuant to this Section and repair any damage to the Leased Premises caused by or resulting from Landlord's performance of such work. Such rights may only be exercised after Landlord has given Tenant ten (10) days' prior written notice, and then such work shall be exercised after Tenant's business hours so as to not disrupt or disturb Tenant Operations; provided, however, if Landlord shall have reasonable ground to believe an Emergency (as defined below) exists or is threatened, Landlord shall be entitled to take all such actions and to proceed at all reasonable times as are appropriate. An "Emergency" shall mean a substantial threat to life or property.

1.3 Gaming Authorities. The Gaming Authorities require Landlord to complete background checks of Persons involved with Landlord and Landlord's business operations. "Gaming

Authorities" means those federal, state and local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities in any jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Commission, the Nevada State Gaming Control Board, together with those local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation, licensing or permit authority over the sale, distribution and possession of alcoholic beverage. On five (5) Business Days written request by Landlord to Tenant or as required by the Gaming Authorities, Tenant shall provide to Landlord written disclosure of all Associated Parties. "Business Day" means any day other than a Saturday, a Sunday, or any day when Federal Banks located in the State of Nevada are closed for a legal holiday or by government directive. "Associated Parties" means the managers, members, officers, employees, agents, designees, representatives, management personnel, consultants, suppliers, lenders, licensors, financial participants or permitted sublessees of any Person. Tenant or any of its Associated Parties shall provide all requested information, apply for and obtain all necessary Approvals required or requested of Tenant by Landlord or the Gaming Authorities. For purposes of this Lease, "Person" means a natural person, any form of business or social organization and any other legal entity including, but not limited to, a corporation, partnership, association, trust, unincorporated organization, estate or limited liability company and "Affiliate" means with respect to a specified Person, any other Person who or which is (a) directly or indirectly Controlling, Controlled by or under common Control with the specified Person, or (b) any member, stockholder, director, officer, manager, or comparable principal of, or relative or spouse of, the specified Person. "Approvals" means all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, waivers, exemptions and entitlements issued by any Governmental Authority, including any Gaming Authority, necessary for Tenant Operations or with respect to the operations of Hotel Casino, Landlord or any of Landlord's Affiliates. "Control", "Controlling", "Controlled" mean the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

000125

000125

1.4 Limitation on Remedies. All rights, powers and remedies provided in this Lease may be exercised only to the extent that the exercise thereof does not violate any applicable provision of the Gaming Laws, and all provisions of this Lease are intended to be subject to all applicable mandatory provisions of the Gaming Laws that may be controlling and to be limited to the extent necessary so that they will not render this Lease invalid or unenforceable, in whole or in part. "Gaming Laws" means all laws pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gaming within any applicable jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Control Act, as codified in NRS Chapter 463, the regulations of the Nevada Gaming Commission and the Nevada State Gaming Control Board promulgated thereunder and the Clark County Code.

2. TERM; HOLDING OVER.

2.1 Term. This Lease shall be for an initial term of ten (10) years commencing on the Commencement Date, unless earlier terminated as provided herein ("Initial Term" and, as may be extended by the Additional Term pursuant to Section 2.3, "Term"). "Commencement Date"

means the date that the Tenant opens the Leased Premises for business to the public for Tenant Operations. Within ten (10) days after Landlord's or Tenant's request therefore, Landlord and Tenant shall execute and deliver to the other, who shall execute within ten (10) days of receipt, a Certificate of Commencement, in the form attached hereto as Exhibit "B" setting forth the Commencement Date and the expiration date of the Initial Term of this Lease. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to terminate this Lease if Tenant is unable to obtain or maintain any permit, license or other consent necessary for Tenant to conduct Tenant Operations in the Leased Premises. In such event, this Lease shall terminate ten (10) days following Tenant's delivery to Landlord of written notice of Tenant's inability to obtain or maintain any permit, license or other consent necessary for Tenant to conduct Tenant Operations in the Leased Premises. For purposes of this Lease, "Lease Year" means, for the first Lease Year, the period beginning on the Commencement Date and ending twelve (12) months thereafter, except that if the Commencement Date is other than the first day of a calendar month, the first Lease Year shall end twelve (12) months from the last day of the calendar month during which the Commencement Date occurs. For the Lease Years after the first Lease Year, "Lease Year" means the twelve (12) month period beginning on the next day following the expiration of the preceding Lease Year. If the Term of this Lease shall end prior to the last day of a Lease Year, the final Lease Year under this Lease shall be deemed to end on the last day of the Term.

2.2 Landlord Delivery. Landlord will deliver the Leased Premises on a mutually acceptable date following Landlord's approval of Tenant's Final Plans, as set forth in Section 5.2.2.

000126

2.3 Additional Term. Tenant may extend the Term of this Lease for four (4) additional periods of five (5) years (each, an "Additional Term") by providing written notice to Landlord not later than one hundred eighty (180) days prior to the expiration date of the Initial Term or the first Additional Term (each, an "Option"). As set forth in Section 3.1.A of the Lease, Minimum annual rent during each Option Term shall be equal to 105% of the Minimum annual rent payable by Tenant during the period immediately preceding the applicable Option period.

000126

2.4 Holding Over. If Tenant holds over and continues to be in possession of the Leased Premises with Landlord's consent after expiration or termination of the Term, such holding over shall be considered to be a tenancy from month-to-month only, subject to all provisions of this Lease except those relating to the Term and any renewal option, and except that the Rent shall be adjusted on the first day of such holding over to be one hundred twenty-five percent (125%) of the Rent payable for the last month of the Term preceding the holding over, prorated for partial months. If Tenant holds over and continues to be in possession of the Leased Premises without Landlord's consent after the expiration or termination of the Term, such holding over shall be a tenancy from month-to-month only, subject to all provisions of this Lease except those relating to the Term and any renewal option and except that the Rent shall be adjusted on the first day of such holding over to be one hundred fifty (150%) of the Rent payable for the last month of the Term preceding the holding over, prorated for partial months; provided, however, the acceptance by Landlord of such Rent during such tenancy shall in no manner limit or preclude Landlord's exercise of any rights or remedies available to Landlord as a result of such holding over, as provided pursuant to the terms of this Lease, at law, or in equity.

3. RENT AND LANDLORD CONTRIBUTION.

3.1 Minimum and Percentage Rent. Tenant covenants and agrees to pay to Landlord, without notice or demand, at Landlord's address for notice, as rent for the Premises:

A. Minimum annual rent in the amount of Six Hundred Twenty Four Thousand Dollars ($624,000) per annum payable in monthly installments of Fifty Two Thousand Dollars ($52,000) in advance upon the first day of each and every month commencing upon the Commencement Date and continuing thereafter through and including the last month of the Lease Term (such monthly installment being hereinafter called "Minimum Monthly Rent"). Upon the first (1st) day of the first Option Term, Minimum Monthly Rent shall be increased to Fifty Four Thousand Six Hundred Dollars ($54,600), and upon the first (1st) day of the second Option Term, Minimum Monthly Rent shall be increased to Fifty Seven Thousand Three Hundred Thirty Dollars ($57,330). If the Commencement Date is other than the first day of a month, Tenant shall pay on the Commencement Date a prorated partial Minimum Monthly Rent for the prior to the first day of the next calendar month.

B. The amount of seven percent (7%) of "Gross Sales," provided that the amount of Minimum Monthly Rent due and payable by Tenant for each period shall be deducted from Gross Sales before determining seven percent (7%) of Gross Sales, payable in the manner, and under the terms, set forth in Section 3.1.C of this Lease (hereinafter called "Percentage Rent"). "Gross Sales" means, following the Commencement Date, the aggregate of all revenues derived from Tenant Operations, whether from cash or credit. Excluded from Gross Sales for purposes of this Lease shall be: (i) complimentary food or beverage provided to patrons by Tenant at the Leased Premises, (ii) gratuities paid by patrons, including, without, limitation, automatic gratuities charged to patrons and distributed to employees, (iii) returns to vendors or manufacturers, (iv) refunds to customers (but only to the extent included in Gross Sales), (v) sales of fixtures, machinery and equipment after use in Tenant's business in the Leased Premises, (vi) sales of trade fixtures, store equipment, furniture, or furnishings used in the operation of Tenant's business of the Premises, (vii) insurance proceeds, (viii) credit card fees, (ix) sales taxes, so called luxury or value added taxes, casino entertainment taxes or similar taxes now or hereafter imposed upon the sale of products, merchandise or services, whether such taxes are added separately to the selling price thereof and collected from customers or paid by Tenant and included in the retail selling price, (x) amounts collected from patrons for the account of, and for direct payment to, unrelated third parties providing services specifically for a patron's function which generate Gross Sales, such as flowers, music and entertainment, (xi) the amount of over-rings, refunds, rebates, discounts and credits given, paid or returned in the course of obtaining Gross Sales in connection with credit card transactions occurring with respect to obtaining Gross Sales, unless recovered by Tenant, (xii) the purchase of gift certificates, but not the redemption of gift certificates; and (xiii) the amount of all themed goods and merchandise (i.e., apparel, accessories and similar merchandise, including without limitation, t-shirts, hats, glassware, souvenirs, etc.) sold, in, upon or from the Leased Premises.

C. Within 30 days after the end of each calendar quarter during the Lease Term, Tenant shall deliver to Landlord a written statement setting forth the amount of Tenant's Gross Sales made during each month of the preceding calendar quarter and Tenant shall, concurrently therewith, pay Landlord the Percentage Rent due and payable for the preceding calendar quarter.

000127

000127

3.2 Default Interest. If Tenant shall fail to pay, when same is due and payable, Rent or any other amount or charge to be paid by Tenant to Landlord hereunder within ten (10) days of the due date, and the same continues for an additional ten (10) days after Tenant's receipt of written notice of such failure, then such unpaid amount shall bear interest from the date such payment is due at the rate of ten percent (10%) per annum, compounded monthly ("Default Rate"), payable upon demand; provided, however, that nothing contained herein shall give Tenant the right to pay any such installment of Rent or other amount or charge other than on the due date thereof and Landlord's collection of such Default Interest shall not waive any other rights which Landlord may have hereunder or at law or in equity in respect to such late payment.

3.3 Real Estate Taxes and Other Costs. Landlord shall pay or cause to be paid all Real Estate Taxes assessed or imposed upon the Hotel Casino which become due or payable during the Lease Term. As used in this Lease, "Real Estate Taxes" means all real estate taxes, public and governmental chargers and assessments, including extraordinary and special assessments, or assessments against any of Landlord's personal property now or hereafter located in the Hotel Casino, all costs, expenses and attorneys' fees incurred by Landlord in contesting or negotiating with public authorities as to any of the same, but shall not include taxes on Tenant's personal property or assets of Tenant, Tenant agreeing to pay, before delinquency, all taxes upon or attributable to such excluded items without apportionment. Landlord shall pay or cause to be paid all costs of any kind paid or incurred by Landlord in connection with the ownership, management, maintenance, repair, replacement, restoration or operation of the Property (including all Common Areas), including by way of illustration but not limitation, all Real Property Taxes, all costs, charges and surcharges for utilities, water, sewage, janitorial, waste disposal and refuse removal and all other utilities and services provided to the Property, and all insurance costs for the Property.

000128

000128

3.4 Landlord Contribution. Landlord shall provide to Tenant Two Million Five Hundred Thousand Dollars ($2,500,000) ("Landlord Contribution") with Five Hundred Thousand Dollars ($500,000.00) payable no later than ten (10) days following the full execution of this Lease, and the remainder due within ten (10) days following Tenant's acquisition of all permits required to commence construction. Commencing on the 15th day following the first full calendar quarter for which Rent is due and payable by Tenant, and continuing on the 15th day following each calendar quarter until such payments equal, in the aggregate, the amount of the Landlord Contribution, Tenant shall deliver to Landlord the Net Income attributable to Tenant Operations for the prior calendar quarter (and any partial calendar quarter, if applicable), if any, as repayment of the Landlord Contribution. "Net Income" means Gross Sales, less all costs and expenses reasonably incurred in the ordinary course of business with respect to all Tenant Operations, which costs and expenses shall include without limitation, the following: (a) all amounts paid by Tenant to Landlord pursuant to the Lease, including but not limited to Minimum Monthly Rent and Percentage Rent; (b) cost of food, beverages, merchandise and other goods sold as part of Tenant Operations; (c) payroll expenses for Tenant employees and reimbursement of payroll expenses, insurance, and union payments relating thereto; (d) credit card fees charged by credit card companies; (e) complimentary expenses; (f) general corporate overhead; (g) advertising and promotion expenses and decoration expenses; (h) dues and subscriptions; (i) cost of uniforms, linen and laundry; (j) cost of maintenance, repairs, refurbishment and replacement of the furniture and equipment; (k) cost of menus; (l) office expense and supplies; (m) cost of operating supplies; (n) cost of security services and

cleaning services; (o) cost of service contracts for the Leased Premises; (p) sales taxes not otherwise included in another component of operating expenses or previously deducted from Gross Sales; (q) accounting and other professional fees and cost of telephones, printing, stationary and postage; (r) cost of employee relations and training, including the cost of housing and transportation; (s) cash losses, including cash shortages, and theft not previously deducted from Gross Sales or required to be included in Gross Sales; (t) cost of outside entertainment; (u) cost, if any, of support functions, for Tenant Operations, including but not limited to, service bar and bar porters, stewards, cashiers and reservations; (v) income taxes; (w) interest and principal paid on indebtedness. In no instance shall this quarterly repayment amount be less than $300,000.00.

4. DELIVERY, INITIAL IMPROVEMENTS.

4.1 Landlord Delivery of Leased Premises. Landlord shall deliver to Tenant the Leased Premises on an "as-is" basis, including all existing furniture fixtures and equipment and personal property in the Leased Premises as of March 2011, which Tenant shall be permitted to utilize during the Term, except for the interior space furnishings, including artwork that is not owned by Landlord, and the items listed as excluded items in Exhibit "C" attached hereto, which Landlord may remove, promptly following the full execution of this Lease (the date of such delivery being the "Delivery Date"). Notwithstanding anything in the foregoing to the contrary, Landlord represents and warrants that as of the Delivery Date, the Leased Premises shall conform in all respects with all Applicable Laws and shall be free of Hazardous Materials (defined in Section 14.3.1). Landlord shall indemnify, defend and hold harmless Tenant and Tenant's Associated Parties from all claims, suits, liabilities, obligations, judgment, fees, costs and expenses, including reasonable attorney fees, incurred as a result of the foregoing representation being untrue in any material respect. For purposes of this Lease, "Applicable Laws" means those applicable existing and future statutes, laws, rules, regulations, orders, codes, permits, authorizations, building regulations, zoning laws and ordinances of any Governmental Authorities, as amended from time to time, now or hereinafter in effect, including, without limitation, Gaming Laws, having jurisdiction over Landlord or any Affiliate of Landlord, Tenant, this Lease, Tenant Operations or the Hotel Casino. For purposes of this Lease, "Governmental Authorities" means those federal, state and local governmental, quasi-governmental authorities, agencies, courts, departments, boards and officials, as amended from time to time, now or hereinafter in effect having jurisdiction over Landlord or any Affiliate of Landlord, Tenant, this Lease or Tenant Operations

4.2 Tenant Work. Tenant shall construct such improvements to the Leased Premises as Tenant deems necessary to open the Leased Premises for business to the public for Tenant Operations ("Tenant Work"). Tenant hereby agrees that (i) all plans, specifications and drawings for Tenant Work shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed and shall be deemed provided if Landlord fails to respond within seven (7) Business Days after Landlord's receipt of Tenant's request for approval of any plans, (ii) Tenant shall obtain all applicable Approvals of Governmental Authorities necessary for the completion of the Tenant Work, Tenant's occupancy of the Leased Premises, and Tenant's conducting of the Tenant Operations at the Leased Premises, and (iii) all Tenant Work shall comply with all Applicable Laws. Tenant Work may also be referred to herein as the "Initial Improvements". Tenant's use and occupancy of the Leased Premises prior to the

Commencement Date for purposes of constructing Tenant Work is subject to all of the terms, conditions and provisions of the Lease, except for Tenant's obligation to pay Rent, Minimum Monthly Rent, Percentage Rent or any other amounts to Landlord. Following construction of the Tenant Work, Tenant shall submit Adobe .PDF "As-Built" drawings to Landlord for its records, along with copies of all construction contracts, and proof of payment for all labor and materials, and copies of lien waivers of the Contractor. Tenant agrees to begin the permitting process expeditiously and shall commence construction at the earliest practical date thereafter. Tenant further agrees that construction will commence, at the latest, within 30 days after obtaining all required permits.

4.3 Contractor and Contract. Prior to Tenant's selection of the general contractor for the work contemplated by this Lease, Tenant will provide Landlord with the name of such general contractor, along with evidence of such contractor's insurance, and any other information that Landlord may reasonably request, for Landlord's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall cause its Contractor, subcontractors, vendors and/or suppliers to execute lien waivers in a form acceptable to Landlord contemporaneously with its receipt of payment, copies of which shall be immediately delivered to Landlord. Tenant shall also immediately repair or cause to be repaired, at its expense, all damage caused to the Leased Premises and/or the Property by Tenant's Contractor.

4.4 Liens. Tenant, at all times, shall keep the Landlord, the Property, the Leased Premises, the Improvements, the leasehold estate created by this Lease and all of Tenant's Property free and clear from any claim, lien or encumbrance, tax lien or levy, mechanic's lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Tenant whatsoever. In the event any lien is filed against the Leased Premises or Property as a result of activity by Tenant, if Tenant fails to remove such lien within thirty (30) days of written notice from Landlord, Landlord may, but shall not be required to, pay the amount of the claim, and the amount so paid, together with attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord; provided, however, Tenant may contest any such lien as long as a foreclosure action has not commenced and Tenant causes such lien to be bonded over in a manner satisfactory to Landlord.

000130

000130

4.5 Initial Improvements. All Initial Improvements that are fixtures, excluding Tenant's Property, shall, become the property of Landlord upon the expiration or earlier termination of this Lease.

5. SUBSEQUENT IMPROVEMENTS.

5.1 Other Tenant Improvements. Subsequent to the Tenant Work, Tenant shall not make or allow to be made any alterations, additions or improvements to the Leased Premises or any part thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Tenant shall have the right, with Landlord's prior written consent, to make interior alterations to the Leased Premises, so long as such alterations are (i) of a non-structural nature, (ii) do not require a permit or other approval of a Governmental Authority pursuant to Applicable Laws, (iii) do not affect any building systems, including fire-life safety systems, and (iv) are made in compliance with all

Applicable Laws (collectively, "Tenant Additional Alterations"). Any Tenant Additional Alterations shall be made solely by Tenant at Tenant's sole cost and expense

5.2Title to Subsequent Improvements. All Tenant Additional Alterations that are fixtures, excluding Tenant's Property, shall, become the property of Landlord upon the expiration or earlier termination of this Lease.

6.POSSESSION AND SURRENDER OF LEASED PREMISES.

6.1Limited Representations. Except as specifically provided in Section 17.1, Tenant acknowledges and agrees that neither Landlord nor any of Landlord's agents, employees, servants, or contractors have made any representations or promises concerning the Leased Premises, the furniture, fixtures and equipment contained therein, the expenses of operation or any other matter or things affecting or related to the Leased Premises or Tenant Operations, and no rights, easements or licenses shall be acquired by Tenant by implication or otherwise except as expressly set forth herein. Tenant acknowledges and agrees that it is leasing the Leased Premises "AS IS", except as specifically provided in Section 17.1.

6.2Title to Property. Tenant may, at any time and at its sole cost and expense, remove from the Leased Premises all personal property and trade fixtures that Tenant has installed or placed in the Leased Premises (collectively, "Tenant's Property") and shall repair all damage thereto resulting from such removal. Upon expiration or termination of the Lease, Tenant shall surrender the Leased Premises in reasonable, broom clean condition, ordinary wear and tear excepted. Landlord hereby waives and releases any liens which Landlord may have against Tenant's owned or leased personal property, trade fixtures or equipment or against Tenant's merchandise, cash or accounts receivable, whether such lien is statutory, constitutional or contractual, or arises out of operation of law or otherwise.

000131

000131

7.USE AND MAINTENANCE OF LEASED PREMISES.

7.1Use of Property. Tenant may use the Leased Premises for the purpose of conducting thereon the operation of a bar, lounge, restaurant and/or nightclub serving Mexican food and international food and that may feature live entertainment and/or pre-recorded music and disc jockeys, dancing, bottle service, live entertainment and private events. Tenant may also use the Leased Premises for other purposes with Landlord's prior written consent, which will not be unreasonably withheld, conditioned or delayed. Tenant agrees it shall not serve breakfast in the Leased Premises. Tenant agrees it shall not operate within the Leased Premises a Hawaiian-themed restaurant.

7.2Compliance. Tenant shall not use the Leased Premises in any way which constitutes, or would constitute, a violation of any Applicable Laws, occupancy certificates or other Approvals in connection with the Leased Premises. Landlord represents and warrants to Tenant that, as of the date hereof, no existing requirement exists which would materially restrict the Tenant Operations.

7.3Interior Displays. Tenant shall have the right, subject to Landlord's prior approval, which approval shall not be unreasonably withheld or delayed, to place upon the interior glass surface of any window or storefront such decals and decorations that are seasonal in nature, or that

promote products offered for sale within the Leased Premises or promote other purposes related to Tenant Operations, including but not limited to advertising campaigns.

7.4Hours of Operation. Subject to Applicable Laws, Tenant may operate within the Leased Premises between the hours of 10:00 AM – 6:00 AM Mondays-Sundays, unless business warrants otherwise. In the event any Applicable Laws operate to reduce such hours of operation, Landlord and Tenant shall reasonably cooperate, at Tenant's sole cost and expense, to seek waivers or other appropriate Approvals with respect to the variation of such Applicable Laws. If such waivers or Approvals are unable to be obtained, the parties will work together to establish mutually satisfactory hours to conduct Tenant Operations. Notwithstanding anything in the foregoing to the contrary, Tenant shall have the right to close the Leased Premises for renovations, remodeling, alterations or repairs due to casualty, other damage, and Force Majeure Events.

7.5Exclusive Use. Landlord covenants and agrees that throughout the Lease Term Landlord shall not lease, rent or suffer or permit any portion of the Hotel Casino, other than the Leased Premises, to be used or occupied as or for a Mexican-themed restaurant or that is a party-themed competitor of Señor Frogs, including Coco Bongo, Cabo Wabo and Margaritaville.

7.6Common Areas; Parking. "Common Areas" means all areas and facilities outside the Leased Premises and within the exterior property boundary line of the Property and interior utility raceways within the Leased Premises that are provided and designated by the Landlord for the general non-exclusive use of Landlord, Tenant and other tenants of the Property and their respective employees, suppliers, shippers, customers, contractors and invitees, including, without limitation, trash areas, roadways, sidewalks, walkways, landscaped areas, irrigation systems, lighting facilities, fences, gates, elevators, roof, common entrances, common areas within the Hotel Casino, common pipes, conduits, wires and appurtenant equipment serving the Leased Premises, exterior signs, directories, fire detection systems, sprinkler systems, security systems, and the parking facilities within the Property. Tenant, its agents, employees, servants, contractors, licensees, customers or business invitees shall have the non-exclusive right, in common with Landlord and others to whom Landlord has or may hereafter grant rights, to use the Common Areas, subject to commercially reasonable and non-discriminatory rules, regulations and ordinances promulgated by Landlord with respect thereto.

000132

000132

7.7Trade Name. Tenant shall operate under the trade name "Señor Frogs" ("Trade Name") and the Parties shall mutually agree to any change of the Trade Name, provided that Landlord's consent to Tenant's request for change of the Trade Name shall not be unreasonably withheld, conditioned or delayed.

7.8Trash. Tenant shall not allow trash or garbage to accumulate in the Leased Premises, and shall store all trash and garbage in compliance with Applicable Laws and in such containers as Landlord may designate from time to time (within reasonable proximity to the Leased Premises) so as not to be visible or create a nuisance to customers and business invitees in the Property or permit any health or fire hazard.

7.9Gratuities. Tenant and Tenant's authorized representatives shall not pay any gratuity, commission or other form of compensation of any sort to any of Landlord's personnel without

the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

8.WASTE AND PROHIBITED ACTIVITIES.

8.1Waste. Tenant covenants that it shall neither commit nor permit any waste to exist in, on, or about the Leased Premises. Tenant, at its sole cost and expense, covenants to keep the Leased Premises in good repair and condition.

8.2Prohibited Activities. Tenant shall not permit or suffer anything to be done or kept upon the Leased Premises in violation of this Lease which will materially obstruct or interfere with the rights of Landlord's tenants, Landlord or the patrons and customers or any of them, nor will Tenant commit or permit any nuisance on the Leased Premises. Additionally, Tenant shall not, without Landlord's prior written consent, operate or permit to be operated on the Leased Premises, any coin or token-operated vending machines, gambling game or device or similar devices, use the Leased Premises or any portion thereof as living quarters or sleeping quarters, or conduct a fire, bankruptcy or auction sale in, on or about the Leased Premises.

9.INTELLECTUAL PROPERTY.

9.1 Landlord Marks. Tenant shall have no right or license to use or employ, in any manner, any of those logos, trademarks, trade names – including the services marks or domain names owned or licensed by Landlord (collectively, "Landlord Marks") without the prior written consent of Landlord. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any expenses incurred by Landlord in connection with any use of the Landlord Marks by Tenant in violation of this Agreement. Notwithstanding the foregoing, Tenant may, without the prior written consent of Landlord refer to "Treasure Island" when identifying the location of the Leased Premises on its web site and in advertising and promotional materials.

000133

000133

9.2 Prohibitions. At all times during the Term, or any time thereafter, Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion:

9.2.1 contest or aid in contesting the validity of the Landlord Marks or Landlord's ownership of or licensed rights in the Landlord Marks; or

9.2.2 use any of the Landlord Marks as part of a corporate name or other business name of any Affiliate of Tenant, or adopt or use any confusingly similar logo, trademark, trade name, service mark or domain name.

9.3. Tenant Marks. Landlord shall have no right or license to use or employ, in any manner, any of those logos, trademarks, trade names – including the services marks or domain names owned or licensed by Tenant (collectively, "Tenant Marks") without the prior written consent of Landlord. Landlord agrees to indemnify, defend and hold Tenant harmless from and against any expenses incurred by Tenant in connection with any use of the Tenant Marks by Landlord other than as set forth in this Agreement. Landlord shall not contest or aid in contesting the validity of the Tenant Marks or Tenant's ownership of or licensed rights in the Tenant Marks, or use any of the Tenant Marks as part of a corporate name or other business name of any Affiliate of

Landlord, or adopt or use any confusingly similar logo, trademark, trade name, service mark or domain name.

10. UTILITIES AND TAXES.

10.1 Personal Property Taxes. Tenant shall pay all taxes charged against trade fixtures, utility installations, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall use its best efforts to have its personal property taxed separately from the Leased Premises. If any of Tenant's personal property is taxed with the Leased Premises, Tenant shall pay Landlord the taxes for such personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes, together with reasonable supporting documentation.

10.2 Utilities. The parties acknowledge that, except as expressly provided in this Lease, Tenant shall be responsible for all repairs required to the Leased Premises and for the provision the following utilities and services at the Leased Premises: telephone, cable, security alarm, and janitorial services and cleaning of the Leased Premises. Landlord represents and warrants that utilities for electric, gas, sewer, water and heating, ventilation and air conditioning as well as chilled water are available to the Leased Premises and shall continue to be available throughout the Term, and at no additional expense to Tenant, and that such utilities shall be in compliance with all codes and sufficient for Tenant Operations. Landlord shall not take nor permit its agents, employees or contractors to take any action which shall interrupt or interfere with any utility services to the Leased Premises.

000134

000134

11.INSURANCE.

11.1 Liability Policy. Tenant shall, at all times during the Term, at its sole cost and expense, procure and maintain in full force and effect a policy or policies of commercial liability insurance insuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring in connection with the Leased Premises or Tenant's use thereof, including automobile liability insurance, as well as Worker's Compensation and occupational disease insurance, at statutory limits. Such liability insurance shall be issued pursuant to the requirements of Section 11.3 hereinafter and shall encompass the following coverage and be in amounts as shown:

COMMERCIAL GENERAL LIABILITY

General Aggregate (other than products)	$2,000,000
Products & Completed Operations	$1,000,000
Personal Injury & Advertising Injury	$1,000,000
Each Occurrence Limit	$1,000,000
Fire Damage Limit (any one fire)	$100,000

AUTOMOBILE

Minimum Combined Single Limit (including coverage for all owned, non-owned and hired automobiles brought on the Property)	$1,000,000

UMBRELLA LIABILITY

$3,000,000	Per Occurrence
$1,000,000	Products/Completed Operations Aggregate

WORKER'S COMPENSATION – Coverage B – Employer's Liability

$1,000,000	Bodily Injury Each Accident
$1,000,000	Bodily Injury by Disease – Policy Limit
$1,000,000	Bodily Injury by Disease – Each Employee

All such insurance shall specifically insure the performance by Tenant of its indemnity obligations as to liability for injury to or death of persons and loss of or damage to property contained in Section 13 hereof.

11.2 Policy Requirements. All insurance required of Tenant shall be issued and underwritten by solvent companies licensed to transact business in the State of Nevada with a general policyholders' rating of not less than A-VII as rated in the most recent edition of Best's Insurance Reports or any successor reporting service. All insurance carried by Tenant shall include Landlord as additional insured (and at Landlord's option, any party holding a Mortgage on the Property, or any portion thereof, shall be named as an additional insured) (collectively, "Additional Insureds"). Any policies of insurance carried by Tenant in accordance with this Section 11 and any policies taken out in substitution or replacement of any such policies shall provide that if an insurer seeks to cancel such insurance for any reason whatsoever, except for non-payment of any premium due, or any material change is made in the coverage which affects the interests of the Additional Insureds, such cancellation or lapse or reduction shall not be effective as to Additional Insureds until after thirty (30) days following delivery to Landlord of written notice from such insurer of such cancellation, lapse or reduction. Written notice of cancellation of any policy affecting the interest of the Additional Insureds as a result of non-payment of any premium due shall be given to the Additional Insureds at least thirty (30) days prior to such cancellation. For each policy of insurance required to be maintained by Tenant under this Lease, including any policy renewals, upon request by Landlord, Tenant shall supply Landlord with either a copy of the insurance policy or a certificate of the insurance company issuing the insurance. In the event Tenant fails to obtain any such insurance, Landlord may obtain same and the cost thereof shall be paid by Tenant. Tenant's insurance shall be primary without right of contribution from any other insurance which is carried by the Landlord or any Additional Insured. Landlord or Landlord's lender may reasonably require increases in the above-described coverage from time to time, in which Tenant shall obtain the same and pay the costs thereof.

000135

000135

11.3 Waiver of Subrogation. Notwithstanding anything to the contrary in this Lease, neither party nor its officers, directors, employees, agents or invitees shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, when such loss is caused by any of the perils that are or could be insured against under a standard policy of full replacement cost insurance for fire, theft, and special form coverage, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees.

12.MAINTENANCE AND REPAIR.

12.1Landlord's Obligations. Landlord agrees to keep in good structural order, condition and repair, and replace as necessary, the exterior walls, columns within the Leased Premises, foundations, structural floor and roof and structural areas of the Leased Premises, as well as all utility lines beyond the connection or stub to which Tenant connects its utilities, except for any damage thereto caused by any negligence or misuse of Tenant or its agents, employees or contractors, which Tenant shall repair at its sole cost and expense. Landlord shall use commercially reasonable efforts to not disrupt Tenant Operations during the performance of its obligations hereunder; provided, however, if despite Landlord's commercially reasonable efforts, Landlord materially disrupts Tenant Operations for more than twenty-four (24) consecutive hours, Tenant shall be entitled to an abatement of Minimum Rent during the full period of such disruption. Landlord agrees to keep the Common Areas in good order, condition and repair, reasonable wear and tear excepted, except for any damage thereto caused by any act or negligence of Tenant or its agents, employees or contractors, which Tenant shall repair at its sole cost and expense. Landlord shall, at its sole cost and expense, maintain and make or cause to be made any necessary repairs to the HVAC system, and electric, gas, sewer and water lines serving the Leased Premises promptly after receiving notice from Tenant, except for any damage thereto caused by any act or negligence of Tenant or its agents, employees, servants, contractors, licensees, customers or business invitees, which Tenant shall repair at its sole cost and expense, and provided Tenant provides Landlord with prompt written notice explaining the need for such repair.

000136

12.2Tenant's Obligations. Except as provided for elsewhere herein, Tenant shall keep and maintain in good condition and repair the Leased Premises, all Tenant Improvements and any and all appurtenances thereto, including, without limitation, all doors, door checks, windows, window casements, plate glass, glazing, and all plumbing, electrical wiring and conduits, HVAC and sewage facilities solely within or exclusively serving the Leased Premises, fixtures, sprinkler system solely within or exclusively serving the Leased Premises, walls, floor coverings, ceilings and all interior lighting. Tenant shall also keep and maintain in good order, condition and repair, including, without limitation, any such replacement and restoration as is required for that purpose, any Improvements, special equipment, furnishings, fixtures or facilities installed by it on the Leased Premises.

000136

13.INDEMNIFICATION.

13.1Liability of Landlord. Landlord shall not be responsible to Tenant, or anyone claiming any right under Tenant for using the Leased Premises by virtue of any right or privilege granted by Tenant, or on account of any defects in the Leased Premises (other than resulting from the Landlord Work).

13.2Indemnification of Landlord. Except to the extent of the negligence or willful misconduct of Landlord or Landlord's employees, agents or contractors, Tenant agrees to indemnify, defend and hold Landlord and its representatives, officers, managers, directors, shareholders, members, agents, servants and employees harmless from and against any and all claims, actions, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) allegedly or actually (i) arising from or out of any accident or occurrence on the Leased

Premises, (ii) occasioned by any act or omission of Tenant or Tenant's employees, agents or contractors and are not covered by the commercial general liability insurance maintained by Tenant pursuant this Lease, or (iii) arising from Tenant's failure to comply with the provisions of this Lease.

13.3 Indemnification of Tenant. Except to the extent of the negligence or willful misconduct of Tenant or Tenant's employees, agents or contractors, Landlord agrees to indemnify, defend and hold Tenant and Tenant's and its representatives, officers, managers, directors, shareholders, members, agents, servants and employees harmless from and against any and all claims, actions, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) allegedly or actually (i) arising from Landlord's failure to comply with the provisions of this Lease, (ii) arising from or out of any accident or occurrence on the Common Areas or any part thereof, or (iii) occasioned by any act or omission of Landlord or Landlord's employees, agents or contractors and are not covered by the commercial general liability insurance maintained by Landlord pursuant this Lease. This provision shall **not** extend to worker's compensation claims brought against Tenant.

13.4 Insurance. The provisions of this Section 13 shall not in any way be affected by the absence in any case of any covering insurance or by the failure or refusal of any insurance company to perform any obligation on its part.

14.GOVERNMENTAL AUTHORITIES; HAZARDOUS MATERIALS.

000137

14.1 General. Tenant shall, at Tenant's sole cost and expense, comply with any and all orders, directives, notices and other requirements of all Governmental Authorities and in accordance with all Applicable Laws in relation to the use and occupancy of the Leased Premises and the conduct of the Tenant Operations. Under no circumstances shall Tenant Operations be conducted at any time during which Tenant does not have such valid and current Approvals that are necessary to conduct the Tenant Operations.

000137

14.2 Flammables. Tenant shall not, without the prior written consent of Landlord and fire officials, and all insurance companies which have issued any insurance of any kind with respect to the Leased Premises or the Property, sell, or suffer to be kept, used or sold in, upon or about the Leased Premises any gasoline, distillate or other petroleum product or any other substance or material of an explosive, flammable or radiological nature, in such quantities as may be prohibited by any such insurance policy, or by the building or fire officials or which may endanger any part of the Property or its occupants, business patrons or invitees; provided, however, the foregoing shall not prevent the use of flammables customarily used for food preparation purposes.

14.3 Hazardous Materials.

14.3.1 Prohibitions. Other than products used for ordinary restaurant cleaning and office supplies ("Permitted Hazardous Material"), Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Material upon or about the Leased Premises, nor permit Tenant's employees, agents, contractors, or other occupants of the Leased Premises to engage in such activities upon or about the Leased Premises; provided,

however, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Leased Premises of the Permitted Hazardous Material; provided further, however (a) such substances shall be used and maintained only in such quantities as are reasonably necessary for use of the Leased Premises, in accordance with Environmental Laws and the manufacturer's instructions therefor, (b) such substances shall not be disposed of, released or discharged on the Leased Premises other than in compliance with all Environmental Laws, (c) if any Environmental Laws require that any such substances be disposed of separately from ordinary trash, Tenant shall make arrangements, at Tenant's sole cost and expense, for such disposal directly with a qualified and licensed disposal company at a lawful disposal site or arrange for other lawful disposal and shall ensure that disposal occurs frequently enough to prevent unnecessary storage of such substances in the Leased Premises, and (d) any remaining such substances shall be completely, properly and lawfully removed from the Leased Premises upon expiration or earlier termination of this Lease. For purposes of this Lease, "Hazardous Material" means, those materials that are regulated by or form the basis of liability under any Environmental Law, including: (a) any substance identified under any Environmental Law as a pollutant, contaminant, hazardous substance, liquid, industrial or solid or hazardous waste, hazardous material or toxic substance; (b) any petroleum or petroleum derived substance or waste; (c) any asbestos or asbestos-containing material; (d) any polychlorinated biphenyl (PCB) or PCB-containing or urea-formaldehyde-containing material or fluid; (e) any radioactive material or substance, including radon; (f) any lead or lead based paints or materials; and (g) any mold, fungi, yeast or other similar biological agents that may have an adverse effect on human health. "Environmental Laws" means, any Applicable Law, including requirements under Approvals, relating to pollution or protection of human health or the environment, including those that relate to emissions, discharges, releases or threatened releases, or the generation, manufacturing, processing, distribution, use, treatment, storage, disposal, transport, or handling, of Hazardous Materials.

000138

000138

14.3.2 Regulatory Action. Tenant shall promptly notify Landlord of (a) any enforcement, cleanup or other regulatory action taken or threatened by any Governmental Authority with respect to the presence of any Hazardous Material on the Leased Premises or the migration thereof from or to other property, (b) any demands or claims made or threatened by any Person against Tenant or the Leased Premises relating to any loss or injury resulting from any Hazardous Material, and (c) any release, discharge or improper or unlawful disposal or transportation of any Hazardous Material on or from the Leased Premises. At such times as Landlord may reasonably request, Tenant shall provide Landlord with a written list identifying any Hazardous Material then used, stored, or maintained upon the Leased Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet ("MSDS") issued by the manufacturer thereof, written information concerning the removal, transportation and disposal of the same, and such other information as may be required by Environmental Laws.

14.3.3 Landlord Obligations. Landlord shall indemnify, protect, hold harmless and defend Tenant from any and all claims, losses, liabilities, costs, expenses or damages, including reasonable attorney's fees in connection with: (i) the violation of any Environmental Laws by Landlord; (ii) the presence of any Hazardous Substances in the Leased Premises as of the Delivery Date, or thereafter under, in or upon any other portion of the Property (to the extent not caused by the Tenant Parties).

15.DEFAULT.

15.1 Events of Default. Tenant shall be deemed to be in default of this Lease if any of the following events shall occur (each, an "Event of Default"):

15.1.1 Tenant shall fail to pay any installment of Rent or any other amount or charge required to be paid by Tenant to Landlord pursuant to the terms of this Lease, and such failure continues for ten (10) days from Landlord's written notice to Tenant that any such Rent installment or other amount or charge is due;

15.1.2 Tenant shall fail to perform any other agreement, obligation or covenant of Tenant contained in this Lease including, without limitation, (i) Tenant's failure to maintain the Leased Premises as provided in this Lease, (ii) Tenant's violation of any rules and regulations of Landlord, or (iii) Tenant's violation of any Applicable Law, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said thirty (30) day period, then such failure shall be deemed to be rectified or cured if Tenant shall, within said thirty (30) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence;

000139

15.1.3 Tenant files a petition, or if an involuntary petition is filed against Tenant, under Chapter 11 of the United States Code or any other state or federal bankruptcy, insolvency or similar law (whether presently in existence or enacted hereafter); Tenant is determined by a court to be insolvent; Tenant is placed in receivership or a receiver or trustee is appointed to operate or control Tenant; or Tenant is voluntarily or involuntary subject to a general assignment for the benefit of creditors;

000139

15.1.4any representation or warranty made by Tenant or a permitted subtenant or assignee in connection with this Lease shall have been materially false or misleading;

15.2 Remedies. Upon the occurrence of an Event of Default, in addition to any other rights or remedies provided for herein or at law or in equity, and without barring election of any other remedy, Landlord, at its sole option, shall have the following rights:

15.2.1 Landlord may terminate this Lease and Tenant's estate hereunder by written notice of such termination; provided, however that the mere giving by Landlord of a Notice to Pay (or perform) or a Notice to Quit shall not, of itself, constitute a notice of termination of this Lease, and Landlord shall recover from Tenant all damages incurred by Landlord by reason of the Event of Default including, but not limited to, (i) the worth at the time of the award of the unpaid Rent and other charges which had been earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Rent and other charges which would have been earned after termination until the time of the award exceeds the amount of such rental loss that, to the extent permitted by law, Tenant proves could have been reasonably avoided; and (iii) the worth at the time of the award of the amount by which the unpaid Rent and other charges which would have been paid for the balance of the Term after the time of award exceeds the amount of such rental loss that, to the extent permitted by law, Tenant proves could have been reasonably

avoided. As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the Lease Interest Rate, or such lesser amount as may then be the maximum lawful rate, accruing the date such payments are due until paid. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Bank of America, National Association at the time of the award, plus one percent (1%), and "Lease Interest Rate" means the lesser of (a) two percentage points (2%) over that fluctuating rate of interest announced from time to time by the Bank of America, National Association as its prime or reference commercial lending rate of interest (or in the event such bank is no longer announcing such rate, by such other federally regulated banking institution of comparable stature as Landlord shall reasonably determine), or (b) the maximum interest rate permitted by law, if any;

15.2.2without taking possession of the Leased Premises, Landlord may require strict performance of all of the agreements, obligations and covenants hereof as the same shall respectively accrue, and shall have the right of action therefor; and

15.2.3 Landlord may take possession of the Leased Premises through suit or termination of this Lease, for the purpose of re-letting them.

15.3 Right to Cure. Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, make any improvement or repair, or do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform within the time period herein required, which time period shall include the expiration of applicable notice and cure periods, Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of at the cost and for the account of Tenant. In such event, the amount thereof with interest thereon at the Default Rate commencing on the date paid by Landlord and until such time as paid in full by Tenant, shall be due and payable by Tenant with the next payment of Minimum Monthly Rent.

000140

000140

16.CASUALTY; CONDEMNATION.

16.1 Casualty.

16.1.1 Destruction. In the case of total destruction of the Leased Premises or the destruction of a material portion of the Leased Premises that substantially interferes with Tenant Operations, whether by fire or other casualty (collectively, "Casualty"), either party may terminate this Lease effective as of the date of such Casualty, by so notifying the other party in writing within thirty (30) days after the date of such Casualty. If Landlord desires to repair the Leased Premises, Landlord may revoke Tenant's termination by so notifying Tenant in writing within thirty (30) days after the date of such Casualty, which notice shall state the estimated time to complete such repairs ("Landlord's Repair Notice"). If the estimated time to complete such repairs is in excess one hundred eighty (180) days, Tenant shall have the right to terminate this Lease by so notifying Landlord in writing, within thirty (30) days after Tenant's receipt of Landlord's Repair Notice. If Landlord elects to repair, and Tenant does not, or is not entitled to, terminate this Lease, and if Landlord proceeds to and does repair the damage with reasonable dispatch, this Lease shall not terminate, but shall continue in full force and effect, except that Tenant shall be entitled to a reduction in the Minimum Rent to an amount equal to that proportion of the

Minimum Rent that the number of square feet of floor space in the usable portion bears to the total number of square feet of floor space in the Leased Premises. Minimum Rent shall only be reduced until Landlord substantially completes the repair and restoration of the Leased Premises. If this Lease is terminated pursuant to this Section 16, Rent shall be prorated as of the date of Casualty.

16.1.2 Damage Repair by Landlord. If the Leased Premises, exclusive of Tenant's Property not affixed to the Leased Premises, shall be damaged by Casualty but the damage does not substantially interfere with Tenant Operations, Landlord agrees to repair such Leased Premises with reasonable promptness and diligence and in that case the Minimum Rent shall not be abated or reduced. Tenant shall immediately notify Landlord in case of damage due to Casualty or otherwise to the Leased Premises. Notwithstanding anything herein to the contrary, if Landlord is required to repair the Leased Premises or portion thereof pursuant to this Section 16.1.2 or elects to repair under Section 16.1.1, as a part of such work, Landlord shall not be required to repair and restore any permanent alterations made by Tenant including any Tenant Improvements or any of Tenant's Property, such excluded items being the sole responsibility of Tenant to repair or restore.

16.1.3 Damage to Hotel Casino. In the event the Hotel Casino, not limited to, or not including, the Leased Premises, is damaged such that (a) the building of which the Leased Premises are a part is damaged to the extent of twenty percent (20%) or more of the cost of replacement; or (b) the buildings (taken in the aggregate) of the Hotel Casino are damaged to the extent of more than twenty percent (20%) of the aggregate cost of replacement; and in either event Landlord decides (i) not to repair such damage; (ii) to demolish the Hotel Casino; (iii) in connection with repairing the damage, to discontinue the use of the Leased Premises as retail space for tenants; or (iv) any combination of the foregoing, then Landlord may elect to terminate this Lease upon giving written notice of such election to Tenant within ninety (90) days after the Casualty causing such damage.

000141

000141

16.1.4 Insurance Proceeds. All insurance proceeds payable under any insurance policies carried by Landlord shall be payable solely to Landlord, and Tenant shall have no interest therein. Landlord shall not be liable, and Tenant shall in no case be entitled to compensation from Landlord, for damages on account of any loss of business, annoyance or inconvenience in making repairs under any provisions of this Lease. Except to the extent provided for in this Section 16, neither the Rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any damage to or destruction of the Leased Premises or any portion of the Leased Premises by any cause whatsoever.

16.1.5 Damage Near End of Term. If at any time during the last nine (9) months of the Term there is damage for which the cost to repair exceeds the average monthly Rent amount paid during the last twelve (12) months, either party may terminate this Lease by giving written termination notice to the other party within thirty (30) days from the occurrence of such damage. If this Lease is terminated pursuant to this Section 16.1.5, Rent shall be prorated as of the date of damage.

16.1.6 Express Agreement. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Leased Premises and/or the Hotel Casino by fire or other

Casualty, and any present or future law the purpose of which is to govern the rights of Landlord and Tenant in such circumstances in the absence of express agreement, shall have no application.

16.2 Condemnation.

16.2.1 Complete and Partial Taking. If the whole of the Leased Premises is lawfully taken by condemnation, eminent domain or in any other manner for any public or quasi-public purpose (each a "Taking"), this Lease shall terminate as of the date of such Taking, and Rent shall be prorated to such date. The date of Taking shall be the date possession of the Leased Premises is granted to the applicable Governmental Authority or other Person. If less than the whole of the Leased Premises is subject to the Taking, this Lease shall be unaffected by such Taking; provided, however, that (a) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if ten percent (10%) or more of the Leased Premises is taken and the remaining area of the Leased Premises is not reasonably sufficient for Tenant to conduct Tenant Operations, and (b) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking if ten percent (10%) or more of the Leased Premises is taken; provided, further, however, Landlord shall not have the right to terminate this Lease unless Landlord also terminates the leases of any other tenants who have suffered the same extent of Taking as suffered by Tenant. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial Taking, the Minimum Rent shall be equitably adjusted according to the remaining rentable areas of the Leased Premises.

000142

000142

16.2.2 Proceeds. In the event of any Taking, partial or whole, all of the proceeds of any award, judgment or settlement payable by the condemning Governmental Authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord any and all of its right, title and interest in any award, judgment or settlement from the condemning Governmental Authority; provided, however, that Tenant shall have the right, to the extent that Landlord's award, judgment or settlement is not reduced or prejudiced, to claim from the condemning Governmental Authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's Property.

16.2.3 Landlord's Restoration Obligation. In the event of a partial Taking of the Leased Premises which does not result in a termination of this Lease, Landlord shall, at its sole cost and expense, undertake any restoration or repair to the remaining portion of the Leased Premises necessary for the Leased Premises to be as nearly as practicable to their condition prior to the Taking. Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of any Tenant's Property in connection with the same.

17.REPRESENTATIONS, WARRANTIES AND COVENANTS.

17.1 Landlord's Representations, Warranties and Covenants. Landlord hereby represents, warrants and covenants to Tenant, as of the Effective Date and at all times during the Term, that: (a) Landlord is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Nevada, and is duly qualified and in good standing as a foreign entity in the jurisdictions wherein the nature of the business transacted by it or property owned

by it make such qualification necessary; (b) Landlord has the valid limited liability company power to enter into and perform all of its obligations under this Lease and this Lease has been authorized by all necessary limited liability company action; (c) there are no known actions, suits or proceedings pending or, to the best knowledge of Landlord, threatened against Landlord by any Governmental Authority which would prevent Landlord from completing the transaction provided for herein; (d) this Lease and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of Landlord, enforceable in accordance with their respective terms except to the extent such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally and general principles of equity; and (e) that Landlord shall conduct, or cause to be conducted, the live-entertainment show, known as the pirate show, in the same location adjacent to the Leased Premises, and in substantially the same form as it is conducted, as of March 2011.

17.2 Tenant's Representations, Warranties and Covenants. Tenant hereby represents, warrants and covenants to Landlord, as of the Effective Date and at all times during the Term, that: (a) Tenant is a limited liability company, duly organized, validly existing and in good standing under the laws of its organization, and is duly qualified and in good standing as a foreign entity in the jurisdictions wherein the nature of the business transacted by it or property owned by it make such qualification necessary; (b) Tenant has the valid limited liability company power to enter into and perform all of its obligations under this Lease and this Lease has been authorized by all necessary corporate action; and (c) this Lease and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of Tenant, enforceable in accordance with their respective terms except to the extent such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally and general principles of equity.

000143

000143

18.SUBORDINATION.

18.1 Subordination of Tenant's Interest. This Lease and Tenant's interest in the Leased Premises is subordinate to any lien, mortgage or deed of trust now or hereafter placed, charged or enforced against the Leased Premises or the Property (collectively, a "Mortgage"), provided that such subordination shall be conditioned upon Tenant's right to quiet possession of the Leased Premises during the Term not being disturbed. If a Mortgagee ("Mortgagee" means the mortgagee under a mortgage or beneficiary under a deed of trust holding a lien encumbering the Property or any part thereof) requests a reasonable subordination, non-disturbance and attornment agreement, Landlord shall pay Tenant's reasonable costs and expenses incurred in connection therewith, and Landlord agrees to obtain a subordination, non-disturbance and attornment agreement from any current and future Mortgagee in a form reasonably acceptable to Tenant and such Mortgagee. In the event Landlord is unable to obtain a subordination, non-disturbance and attornment agreement in a form reasonably acceptable to Tenant and executed by Landlord and the current Mortgagee within thirty (30) days after Tenant's request, Tenant shall have the right to terminate this Lease.

18.2 Attornment. Tenant shall, in the event any proceedings are brought for the foreclosure of the Leased Premises or in the event of exercise of the power of sale under any Mortgage covering the Leased Premises, attorn to the purchaser upon such foreclosure or sale, and recognize such purchaser as the Landlord under this Lease.

19.MISCELLANEOUS.

19.1 Certificates. At any time, and from time to time, within thirty (30) days after notice of request by either party, the other party shall execute, acknowledge, and deliver to the requesting party or to such other recipient as the notice shall direct, a statement: (a) certifying that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that it is in full force and effect, as modified in the manner specified in the statement; (b) stating the date to which the Rent and any other charges have been paid in advance; (c) acknowledging that there are not, to the non-requesting party's knowledge, any uncured defaults on the party of the requesting party hereunder, or specifying such defaults if they are claimed; and (d) containing such other information regarding this Lease as the requesting party reasonably requests. The statement shall be such that it can be relied on by any auditor, creditor, commercial banker, or investment banker of either party and by any prospective encumbrancer of the Leased Premises, or of all or any part of Tenant's or Landlord's interests under this Lease. A party's failure to execute, acknowledge and deliver the certified statement described above within the specified time shall constitute acknowledgment by such party to all persons entitled to rely on the statements that the Lease is unmodified and in full force and effect, that the Rent and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request, that such information regarding this Lease set forth therein is true and complete, and shall constitute a waiver, with respect to all persons entitled to rely on the statement, of any defaults that may exist before the date of notice.

000144

19.2 Signage. Throughout the Term, Landlord shall, at no additional expense to Tenant: (a) provide directional signage from the Hotel Casino and within the Property to the Leased Premises, and (b) include Tenant on all digital marquees, including prominent exposure on the primary marquee. As part of Tenant's Work, Tenant shall have the right to install signage on the exterior wall of the Leased Premises, subject to the mutual agreement of the Parties. Without limiting the foregoing, Tenant shall be afforded an equal opportunity to advertise in all of Landlords' advertising featuring other restaurant or bar/lounge tenants at the Property and at equal cost to other tenants.

000144

19.3 Waiver of Rights. Failure to insist on compliance with any of the obligations and covenants hereof shall not be deemed a waiver of such agreements, obligations and covenants, nor shall any waiver or relinquishment of any right or power hereunder at any one or more time or times be deemed a waiver or relinquishment of such rights or powers at other times. Exercise of any right or remedy shall not impair Landlord's or Tenant's right to any other remedy.

19.4 Assignment; Sublease. Notwithstanding any references herein to successors, assigns, subtenants and licensees, Tenant shall not assign or in any manner transfer, sublease, mortgage, pledge, hypothecate or encumber this Lease or any right, option or interest of Tenant herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, in all cases, the proposed assignee, sublessee, transferee, mortgagor or pledgor must, at a minimum, be approved by Landlord's compliance committee. No assignment shall release Tenant of any of its obligations under this Lease or be construed as, or constitute a waiver of, any of Landlord's rights or remedies hereunder. Landlord will accept Rent and other amounts due and payable by Tenant pursuant to this Lease directly from a sublessee of Tenant. The acceptance of Rent by Landlord from any other person shall not

be deemed to be a waiver of any provision of this Lease or consent to the assignment of Tenant's interest in this Lease. Absent a written agreement to the contrary which is executed by Landlord, no assignment, sublease, mortgage, pledge, hypothecation or encumbrance of this Lease by Tenant shall act as, or affect a release of, Tenant from any of the agreements, obligations and covenants of this Lease to be performed by Tenant hereunder. Without limiting the foregoing, it is understood and agreed that neither this Lease nor the leasehold interest created hereunder shall pass by operation of law under any state or federal insolvency, bankruptcy or inheritance act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, heirs, legatees, devisees, or any other Person whomsoever without the prior written consent of Landlord. Notwithstanding anything to the contrary contained herein, Tenant may, without Landlord's prior written consent, assign or sublease this Lease (i) Senor Frogs Las Vegas, LLC, a Nevada limited liability company, (ii) to a Tenant Affiliate, (iii) in connection with a sale of all or substantially all of the Tenant Operations, or (iv) the merger or consolidation of Tenant with another entity.

19.5 Quiet Enjoyment; Right of Access. Tenant shall lawfully, peaceably, and quietly have, hold, occupy and enjoy the Leased Premises during the Term without hindrance or ejection by Landlord or by any persons lawfully claiming under Landlord. Notwithstanding the foregoing, Landlord and its authorized agents and representatives shall be entitled to enter the Leased Premises with reasonable notice, or immediately in the case of emergency, for the purpose of (a) observing, posting or keeping posted thereon notices provided for hereunder or required by Applicable Laws, or such other notices as Landlord may reasonably deem necessary or appropriate, (b) reasonably inspecting the Leased Premises, (c) exhibiting the Leased Premises to prospective purchasers or tenants; provided, however, Landlord shall not exhibit the Leased Premises to tenants prior to the last twelve (12) months of the Term, and (d) making repairs to the Leased Premises required by Landlord hereunder and reasonably performing any work upon the Leased Premises in accordance with the terms hereof.

000145

000145

19.6 Notices. Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties (a) on the date of personal delivery, (b) on the date delivered by a nationally recognized overnight courier service when deposited for overnight delivery, (c) on the next Business Day following any facsimile transmission to a party at its facsimile number set forth below; provided, however, such delivery is concurrent with delivery pursuant to the provisions of clauses (a), (b) or (d) of this Section 19.6, or (d) three (3) Business Days after being placed in the United States mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address and/or contact person by giving notice as aforesaid):

If to Landlord: Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Najam Khan
Facsimile: 702-894-7680
E-mail: nkhan@treasureisland.com

With a copy via facsimile to:

Brad Anthony, General Counsel
Facsimile: 702-894-7295
E-mail: banthony@treasureisland.com

If to Tenant: Rose, LLC
8301 E. Prentice Ave., Suite 210
Greenwood Village, CO 80111
Attn: Susan Markusch
Facsimile: 303-221-5501
E-mail: susan@gdare.com

With a copy to:

Operadora Andersons S.A. de C.V
Boulevard Kukulkan km 14.2
Cancun, Mexico
C.P. 77500 Zona Hotelera

19.7 Entire Agreement. This Lease constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

000146

19.8 Severability. If any part of this Lease is determined to be void, invalid or unenforceable, such void, invalid, or unenforceable portion shall be deemed to be separate and severable from the other portions of this Lease, and the other portions shall be given full force and effect, as though the void, invalid or unenforceable portions or provisions were never a part of the Lease.

000146

19.9 Amendment, Modification and Waiver. No supplement, modification, waiver or termination of this Lease shall be binding unless executed in writing by both parties. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

19.10 Headings. Section or Subsection headings are not to be considered part of this Lease and are included solely for convenience and reference and shall not be held to define, construe, govern or limit the meaning of any term or provision of this Lease. References in this Lease to a Section or Subsection shall be reference to a Section or Subsection of this Lease unless otherwise stated or the context otherwise requires.

19.11 Governing Law; Jurisdiction; Litigation. This Lease has been prepared, executed and delivered in, and shall be interpreted under, the internal laws of the State of Nevada, without giving effect to its conflict of law provisions. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Lease or the transactions contemplated hereby in (a) the courts of the State of Nevada, Clark County, or (b) the United States District Court for the District of Nevada, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in

an inconvenient forum. The parties hereto waive trial by jury in any action or proceeding brought in connection with this Lease.

19.12 Interpretation. This Lease is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but according to the application of rules of the interpretation of contracts, if such an uncertainty or ambiguity exists. Each party has had the availability of legal counsel with respect to its execution of this Lease.

19.13 Third Persons. Nothing in this Lease, expressed or implied, is intended to confer upon any Person other than the parties hereto any rights or remedies under or by reason of this Lease.

19.14 Attorneys' Fees. In the event any party incurs legal fees or other costs to enforce any of the terms of this Lease, to resolve any dispute with respect to its provisions, or to obtain damages for breach thereof, whether by prosecution or defense, the unsuccessful party to such action shall pay the prevailing party's reasonable expenses, including reasonable attorneys' fees and costs, incurred in such action.

19.15 Binding Effect. This Lease and the agreements set forth herein shall be binding upon the heirs, executors, successors and permitted assigns of the parties hereto.

000147

19.16 Brokers. Landlord and Tenant hereby represent and warrant that they have no dealings with any broker or agent in connection with this Lease and covenant to pay, hold harmless and indemnify each other from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or the negotiation thereof.

000147

19.17 Recording. Neither Landlord nor Tenant shall record this Lease. Landlord and Tenant agree to execute, acknowledge and deliver at any time after the date of this Lease, at the request of the other party, a short-form memorandum of this Lease suitable for recording, setting forth the Lease Term, the extension options and such other provisions of this Lease as Landlord and Tenant shall reasonably deem appropriate, and such short-form memorandum may be recorded at Landlord's or Tenant's option.

19.18 Counterparts. This Lease may be executed in any number of counterparts, each one of which so executed shall be deemed an original, and all of which shall together constitute one and the same agreement. A facsimile signature shall have the same effect as an original signature.

19.19 Force Majeure. Neither party shall be deemed in breach hereunder and neither shall be liable to the other if either fails to perform any of its obligations hereunder by reason of any fire, earthquake, flood, epidemic, accident, explosion, labor dispute, riot, civil disturbance, act of public enemy or terrorism, embargo, war, act of God, any municipal, county, state or national ordinance or law, any executive or judicial order, or similar event beyond such party's control (financial inability excepted) (each a "Force Majeure Event"); provided, however, that no party shall be entitled to relief under this Section 19.19 unless such party shall have given the other party reasonable notice of such Force Majeure Event.

19.20 Landlord's Default. Landlord agrees that should it commit any default under this Lease, which default it fails to cure within thirty (30) days after written notice from Tenant specifying such failure (provided, however, that notice shall not be required in the event of an emergency, and that if it is impossible to cure such failure within said thirty (30) day period, Landlord shall not be deemed in default if Landlord commences the curing thereof within said thirty (30) day period and diligently pursues such cure to completion within ninety (90) days), Tenant may, at its election, without waiving any claim for breach of agreement, and without notice to Landlord, cure such default for the account of Landlord. In that event, Landlord will reimburse Tenant for all costs incurred by Tenant in curing such default, so far as the same are reasonable in amount. Such reimbursement to Tenant shall be due and payable by Landlord on demand. If not paid by Landlord on demand, Tenant shall have the right to set off all such costs, plus interest at the Lease Interest Rate, against all Minimum Monthly Rent, Percentage Rent or other amounts payable by Tenant hereunder next coming due and payable under the Lease until all such costs have been so set off.

19.21 Exclusion of Certain Parties. The parties acknowledge that neither Phil Ruffin nor any related enterprise apart from Licensor, individually or collectively, is a party to this Agreement or any exhibit or agreement attached hereto. Accordingly, the parties hereby agree that in the event (i) there is any alleged breach or default by any party under the Agreement or any exhibit or agreement attached thereto, or (ii) any party has any claim arising from or relating to any such agreement, no party, nor any party claiming through it (to the extent permitted by applicable law), shall commence any proceedings or otherwise seek to impose any liability whatsoever against Mr. Ruffin or any related enterprise by reason of such alleged breach, default, or claim.

000148

000148

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the Effective Date.

LANDLORD:

TREASURE ISLAND, LLC,
a Nevada limited liability company

By: _____
Name: Phil Ruffin
Its: Manager

TENANT:

ROSE, LLC,
a Colorado limited liability company

By: Rose Management, Inc.,
Its Manager

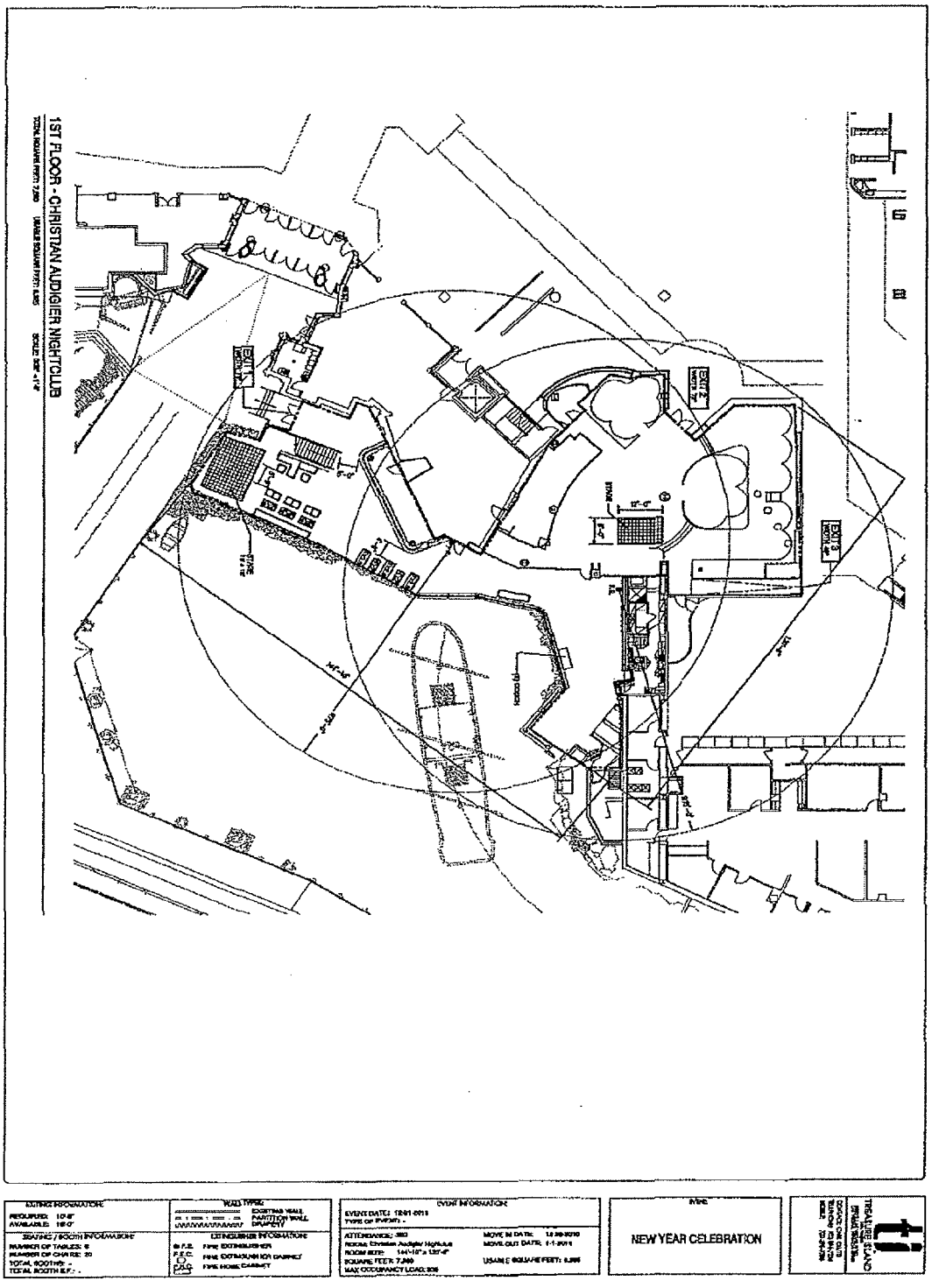
By: _____
Name: Elizabeth Gold
Its: Vice President

000149

000149

EXHIBIT "A"

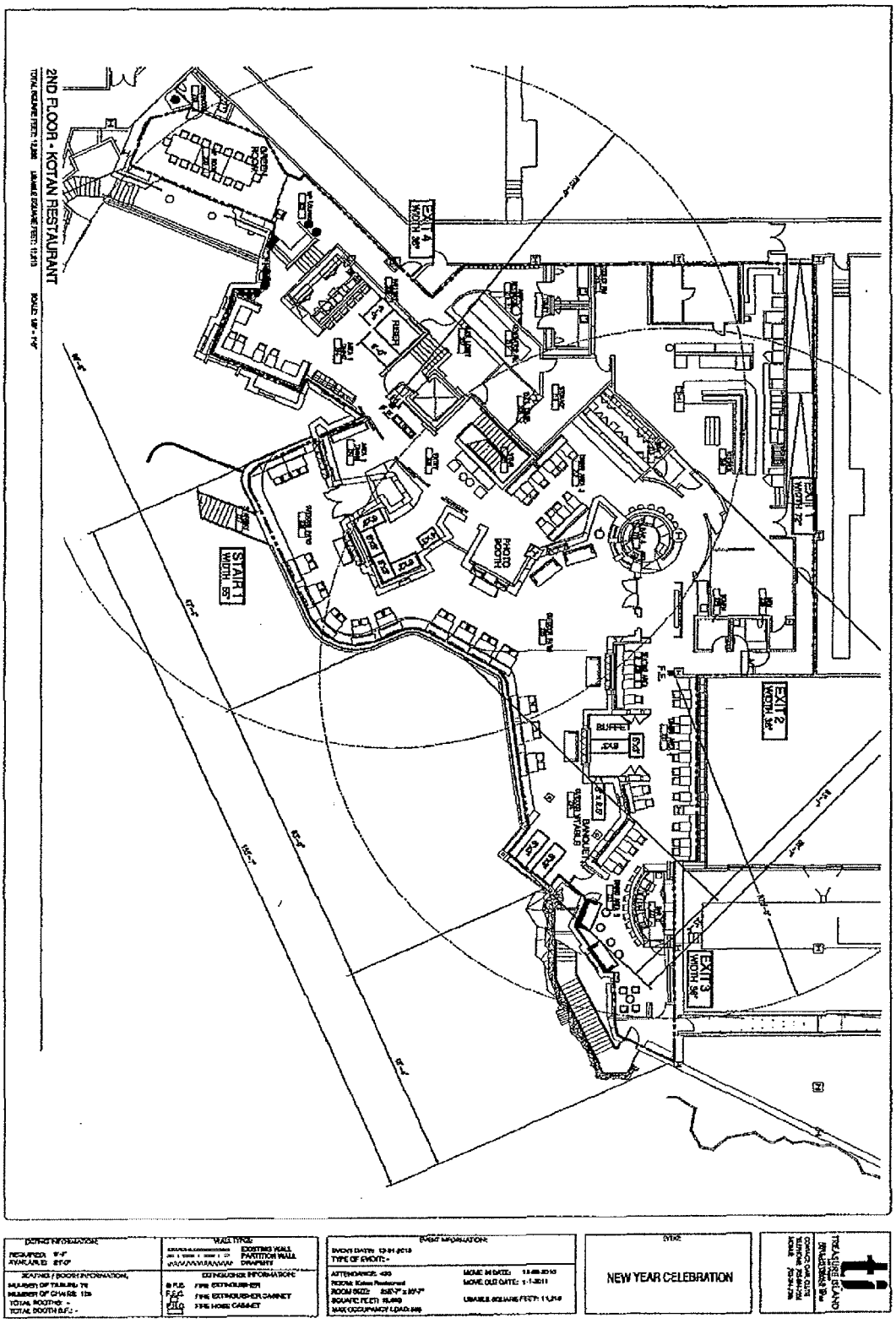
LEASED PREMISES



000150

000150

000150



000151

000151

EXHIBIT "B"

CERTIFICATE OF COMMENCEMENT

This Certificate of Commencement is entered into by and between Treasure Island, LLC and Rose, LLC, and is with respect to that certain Lease Agreement, dated _____, by and between Treasure Island, LLC and Rose, LLC, for premises located at 3300 Las Vegas Boulevard South, Las Vegas, NV 89109. This Certificate of Commencement is not in any way intended to modify any of the terms of the Lease. All capitalized terms not otherwise defined therein shall have the meaning ascribed to them in the Lease.

1. Acceptance of Premises. Tenant has accepted possession of the Leased Premises, is the actual occupant in possession of the Leased Premises and has not sublet, assigned or otherwise transferred its interest in the Leased Premises.

2. Lease Term. The Initial Term commenced on _____, is presently in force, and is scheduled to expire on _____.

3. Opening for Business. Tenant opened for business on _____.

4. Commencement Date. Tenant's obligation to pay Rent under the Lease commenced on _____, which shall be the Commencement Date.

5. Amendments. The Lease has not been modified, altered or amended in any respect, except for (indicate "None" if none) _____ _____.

000152

000152

LANDLORD:

TREASURE ISLAND, LLC,
a Nevada limited liability company

By: _____
Name: _____
Its: _____

TENANT:

ROSE, LLC,
a Colorado limited liability company

By: Rose Management, Inc.,
Its Manager

By: _____
Name: _____
Its: _____

000152

EXHIBIT "C"

FURNITURE FIXTURES AND EQUIPMENT

All furniture, fixtures and equipment existing in the Leased Premises as of March 2011 shall be delivered to Tenant in good working order on the Delivery Date, except for the following items, which may be removed from the Leased Premises by Landlord prior to the Delivery Date:

- Double burner woks (2)
- Tempura deep fryer (three compartment)
- Cleveland double stack gas steamer
- Gas fired rice cookers (4)
- Lobster tank
- Berkel vacuum sealer
- All sushi equipment
- Traulsen Saki refrigerator

000153

000153

000153

EXHIBIT

2

000154

000154

000154

TREASURE ISLAND
Las Vegas

Brad R. Anthony
General Counsel

7009 1410 0000 5456 4847

August 31, 2012

8/31/12

Rose, LLC
8301 Prentice Ave., Ste. 210
Greenwood Village, CO 80111
Attn: Susan Markusch

Re: Construction Liens

Ms. Markusch:

It has come to Treasure Island's attention that you owe $1,100,640.00 in construction costs that you incurred on the Señor Frog's project. Due to your delinquency, subcontractors are beginning to threaten to lien the Treasure Island. This is unacceptable.

It is vital to our mutual ongoing business relationship that you do not allow liens to be established on property. Treasure Island will not sit idly by and allow our business and property to be dragged into this dispute, and will view the establishment of any lien on property as a direct violation of your obligation under the Lease. Simply put, pay your bills or face eviction.

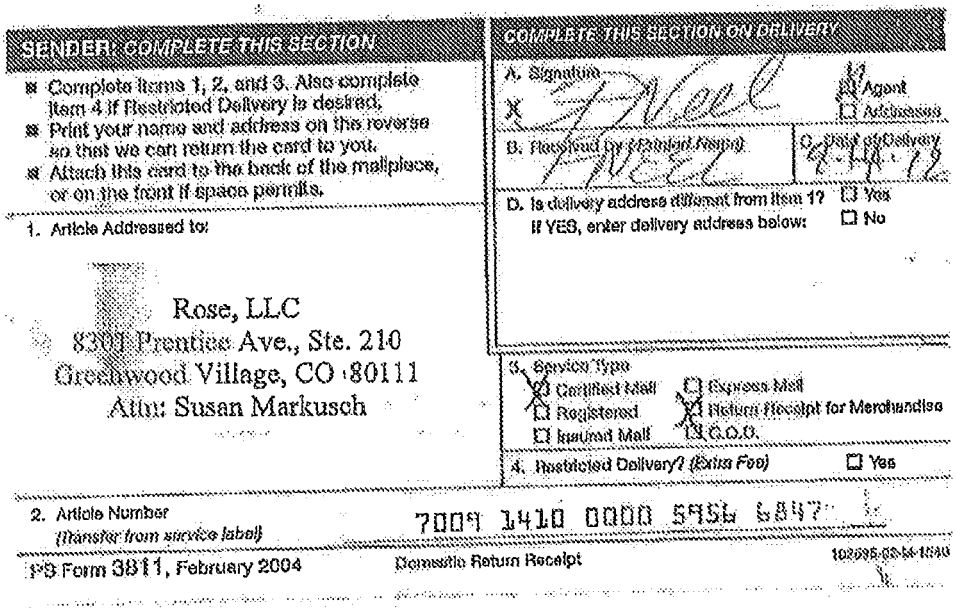
Pursuant to § 4.4 of the Lease Agreement dated April 13, 2011, you have an affirmative obligation to keep us and our property "free and clear from any claim, lien, encumbrance, tax lien or levy, mechanic's lien, attachment, garnishment," or etc. In case this is not clear, your failure to comply with this basic obligation will be deemed a material default of this Agreement under section 15.

Contact us immediately with your plan of action.

Thank you.

Brad Anthony
General Counsel

cc: Operadora Andersons S.A. de C.V.
Boulevard Kukulkan km 14.2
Cancun, Mexico
C.P. 77500 Zona Hotelera



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rose, LLC
8301 Prentice Ave., Ste. 210
Greenwood Village, CO 80111
Attn: Susan Markusch

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 9-14-12

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 1410 0000 5956 6847

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

000156

000156

TILLC000006

EXHIBIT

3

000157

000157

AFFIDAVIT OF BRAD ANTHONY

STATE OF NEVADA]
] S.S.
COUNTY OF CLARK]

1. I Brad Anthony state the following under penalty of perjury and state that it is all true and correct to the best of my knowledge.

2. I am General Counsel to the Treasure Island Hotel owned by Treasure Island, LLC ("Treasure Island").

3. On August 31, 2012, I drafted a letter to Rose, LLC, ("Rose") concerning Rose's failure to pay certain construction costs. I addressed that letter to Rose, LLC, attention Susan Markusch with a carbon copy to, "Operadora Andersons S.A. de CV Boulevard Kukulan km 14.2 Cancun, Mexico C.P. 77500 Zona Hotelera."

4. After I sent that letter, I spoke on the phone with Gary Dragul, who I knew to be the President of Rose. Mr. Dragul asked if Treasure Island would postpone the payment obligations concerning the construction loan and briefly discussed the then-ongoing issue between Rose and its contractors. He also asked me to send all further notices directly to his attention and to not include Operadora (commonly known as Señor Frogs) on any future correspondence dealing with issues pertaining to Rose.

5. As a result, on all future notices pertaining to Rose's defaults I sent the letters to the attention of Gary Dragul and did not carbon copy Operadora. For example, in the very next letter dated September 19, 2012 where I addressed the phone conversation I had with Mr. Dragul, the letter was sent to Rose, LLC attention Gary Dragul without a carbon copy to Operadora. The same is true with numerous other letters regarding Rose's defaults and operations thereafter.

000158
000158

6. Neither Mr. Dragul nor anyone from Rose ever advised me that the September 19, 2012, letter sent to Gary Dragul without carbon copying Operadora should have been sent attention to someone else or carbon copied to Operadora or was in any other way defective.

7. To the contrary Mr. Dragul had expressly told me to send the letters attention to him and not to copy Operadora and I abided by that request.

8. I can definitely attest that Rose received my May 14, 2015, default letter. This is because in addition to sending the letter attention Gary Dragul I sent it via email to Elizabeth Gold. Ms. Gold was Vice President and in-house counsel for Rose. She was the one that took part in the negotiations for various amendments to the lease and wrote on behalf of Mr. Dragul with respect to the lien issue which was addressed back in 2012.

9. I am certain that Ms. Gold received the email since she called me shortly after I sent the May 14th default notice. During that conversation she asked for additional time to make the overdue payment and even mentioned that Mr. Dragul was out of the office attending to his sick brother. I told her I could not grant any extension.

10. At no time has Operadora ever complained about not being carbon copied on the default notice to Rose. To the contrary, the only communication to Treasure Island that I am aware of (which occurred between counsels) was a communication from Operadora confirming that the lawsuit against Rose would not act to also evict Operadora (which it would not pursuant to the express terms of the Fifth Amendment to the Lease Agreement which states that Treasure Island must negotiate a direct lease with Operadora in good faith if the Rose lease were terminated) and that if Treasure Island prevailed in terminating Rose's lease Treasure Island would then negotiate a lease directly with Operadora pursuant to section 9 of the Fifth Amendment.

11. Further Affiant Sayeth Naught.

Brad Anthony

SWORN TO AND SUBSCRIBED
To before me this 28th day of
June, 2016.

Notary Public, State of Nevada
My Commission expires: Feb. 20, 2017

CINDY L. CANNELLA
Notary Public State of Nevada
No. 96-6121-1
My appt. exp. Feb. 20, 2017

000160

000160

EXHIBIT

4

000161

000161

TREASURE ISLAND
Las Vegas

Brad R. Anthony
General Counsel

7011 3500 0002 0495 9196

9/19/12

September 19, 2012

Rose, LLC
8301 Prentice Ave., Ste. 210
Greenwood Village, CO 80111
Attn: Gary Dragul

Re: Construction Loan Repayment

Dear Mr. Dragul:

Several days ago, you requested that Treasure Island postpone your repayment obligations on the $2,500,000.00 interest free loan granted to you in accordance with section 3.4 of the Lease Agreement between Rose, LLC and Treasure Island. This letter serves as Treasure Island's response to that request.

As you are aware, the original Lease Agreement contemplated that, beginning after the first full calendar quarter when Rent became due, Rose, LLC, would pay to Treasure Island the greater of 100% of the Net Income generated by the Leased Premises or $300,000.00, as repayment for the above-referenced loan. This obligation was changed on, or around, December 22, 2011, to only require the greater of 80% of the Net Income or $300,000.00.

Since the Leased Premises opened for business in April, 2012, your first payment on the loan would have been due on October 15, 2012. As a courtesy, Treasure Island agrees to grant you a grace period of an additional quarter. Therefore, your first payment will be due no later than January 15, 2013. In exchange, Treasure Island requests that you provide us with monthly financial records contemplated by section 3 of the Agreement until your repayment commences.

Your failure to begin repayments on January 15, 2013, will trigger section 15.1.1 of the Lease Agreement, and you will, at that time, be considered in default. All other terms and conditions not mentioned herein shall remain in full force and effect.

If you have any questions, or would like to discuss this further, please contact me.

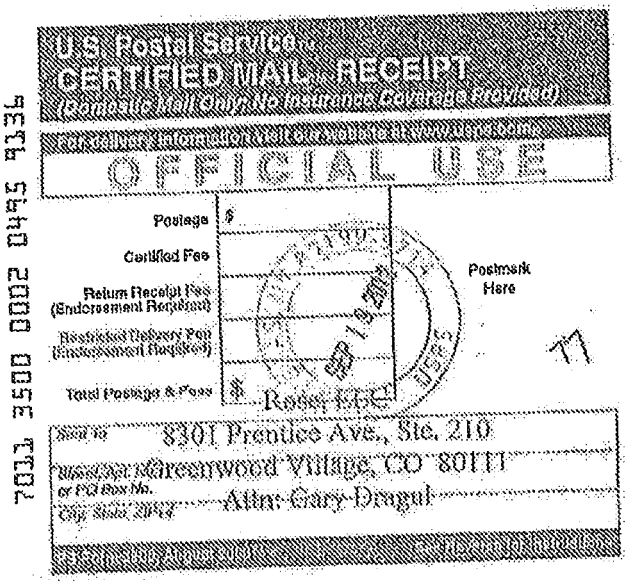
Sincerely,

Brad R. Anthony
General Counsel

000162

000162

000162



U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $ Rose, LLC

Postmark Here

SEP 19 2012

7011 3500 0002 0495 9136

Sent To 8301 Prentice Ave., Ste. 210
Street, Apt. No. or PO Box No. Greenwood Village, CO 80111
City, State, ZIP+4 Attn: Gary Dragul

PS Form 3800, August 2006 See Reverse for Instructions

000163

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rose, LLC
8301 Prentice Ave., Ste. 210
Greenwood Village, CO 80111
Attn: Gary Dragul

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 9.21.12

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7011 3500 0002 0495 9136

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

000163

TILLC000008

EXHIBIT

5

000164

000164

TREASURE ISLAND
Las Vegas

Brad R. Anthony
General Counsel

7012 0470 0001 9251 2305
5/10/13

May 10, 2013

Rose, LLC
8301 Prentice Ave., Ste. 210
Greenwood Village, CO 80111
Attn: Gary Dragul

Re: Security Issues

Dear Mr. Dragul:

As you are aware, Treasure Island has concerns regarding your security force at Señor Frogs. Specifically, the venue is consistently generating reportable issues for our security force on Saturday evenings (Latin Nights). Several fights have been started by guests exiting your establishment. These incidents have spilled onto the casino floor and involved Treasure Island patrons and employees.

More recently, we have heard several disturbing reports of abuse by your security officers. One is accused of using a taser on patrons to the club. A separate incident involved your security team taking an individual to TI's holding area, asking our officer to turn around so that your team could physically attack the restrained individual, and then abandoning the area, leaving the individual handcuffed in Treasure Island's care.

These incidents cannot continue. Treasure Island has requested, in the past, that you provide better security on Latin Nights. While we appreciate the changes you have made, they are insufficient. We receive at least one report of misconduct from inside your club every week on Latin Night. In the end, your failure to adequately control that environment can cause fines to be issued to Treasure Island and may eventually impact our gaming license. Other clubs in town have Metro on duty on their theme nights. While Latin night is not necessarily as volatile (from a gun violence perspective) as hip-hop nights are, the number of incidents is beginning to advocate for a stronger formal police presence.

Second, given your officer conduct (tasering, physical contact, lack of professionalism), Treasure Island has decided not to be party to your arrests. As such, we will no longer permit Señor Frogs security to utilize our holding area. If you plan on arresting patrons

000165
000165
000165

in your club, we recommend that you renovate a space to use as a holding area until Metro can arrive, and properly train your security team.

If you have any questions, or would like to discuss this further, please contact me.

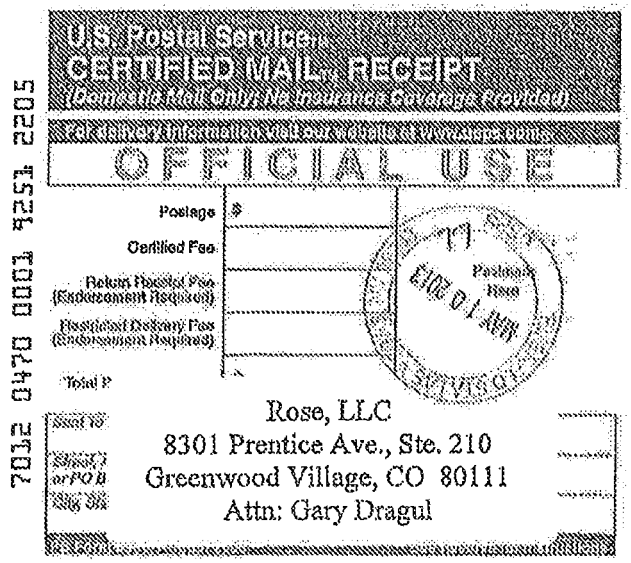
Sincerely,

Brad R. Anthony
General Counsel

000166

000166

000166



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total P

Postmark Here
AUG 01 2013
DENVER CO

7012 0470 0001 4251 2205

Sent To
Street, Apt. No., or PO Box No.

Rose, LLC
8301 Prentice Ave., Ste. 210
Greenwood Village, CO 80111
Attn: Gary Dragul

PS Form 3800, August 2006 See Reverse for Instructions

000167

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rose, LLC
8301 Prentice Ave., Ste. 210
Greenwood Village, CO 80111
Attn: Gary Dragul

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
[illegible] 8-14-13

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7012 0470 0001 4251 2205

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

000167

TILLC000014

EXHIBIT

6

000168

000168

TREASURE ISLAND
Las Vegas

Brad R. Anthony
General Counsel

January 15, 2015

7012 2920 0000 9265 4771
1/16/15

Rose, LLC
5690 DTC Blvd., Ste. 515
Greenwood Village, CO 80111
Attn: Gary Dragul

Re: Construction Loan Repayment

Dear Mr. Dragul:

Treasure Island hereby informs you that you are either in default or about to be in default under the Lease Agreement.

1) Treasure Island has not received the Fifty Thousand Dollar ($50,000.00) payment due to it by or before January 15 pursuant to Section 3.4 of the Lease Agreement and specifically guaranteed by Amendments 2 and 4 to the Lease Agreement.

2) Treasure Island has not been paid $75,307.43 in Live Entertainment Tax for taxable events that were held in the Leased Premises.

3) Treasure Island has received your response to your letter of January 2, 2015, and would like to remind you that you agreed to indemnify Treasure Island against all expenses arising out of occurrences in the Leased Premises. Ordering food through Treasure Island is an occurrence that has caused Treasure Island to incur substantial expense. In fact, the $211,514.95 that you were notified of 13 days ago remains unpaid, and has since increased to $301,405.76 as October's obligations came due.

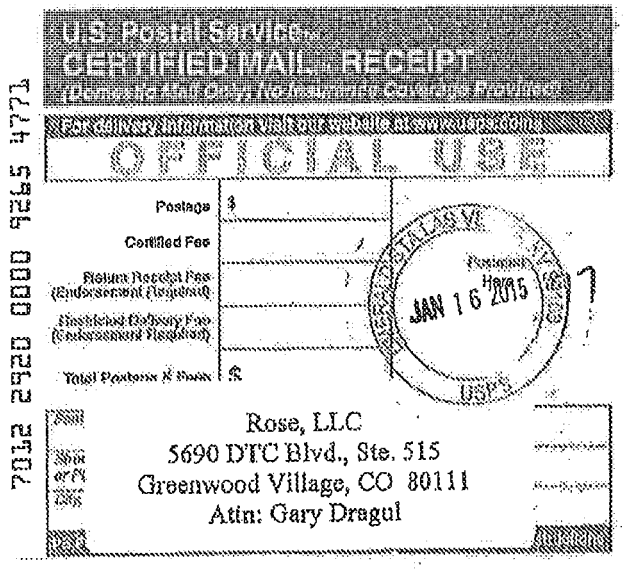
Treasure Island hereby demands payment in full of each of the items set forth above.

We would also like you to note that Señor Frogs attempted to pay the $106,534.87 that was due for August's reimbursement obligation with a check that was returned for having insufficient funds available. This is a violation of NRS 205.132 and NRS 205.765, and Treasure Island is weighing its options with regards to these statutes.

Nothing in this letter shall be deemed a waiver of Treasure Island's rights under Section 15 of the Lease.

Sincerely,

Brad R. Anthony
General Counsel



U.S. Postal Service
CERTIFIED MAIL® RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

Postmark Here
JAN 16 2015
GREENWOOD VILLAGE CO
USPS

7012 2920 0000 9265 4771

Rose, LLC
5690 DTC Blvd., Ste. 515
Greenwood Village, CO 80111
Attn: Gary Dragul

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rose, LLC
5690 DTC Blvd., Ste. 515
Greenwood Village, CO 80111
Attn: Gary Dragul

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7012 2920 0000 9265 4771

PS Form 3811, July 2013 Domestic Return Receipt

000170

000170

TILLC000028