

THIRD AMENDMENT

8. Prime Landlord agrees that it shall not perform, or cause to be performed, any act that will negatively impact Tenant's ability to keep and maintain its licensing.

9. In the event the presence of [any] gaming devices in the Premises materially and adversely disrupts the operation of the business in the Premises, Prime Landlord agrees to meet with Tenant within ten (10) days to discuss the continued operation or possible removal of [any such] gaming devices. If, after meeting, the disruption is not resolved, Prime Landlord agrees to remove [any such] gaming devices, and restore the space to an operable condition.

10. Prime Landlord shall comply at its expense with all applicable Federal, State, or local laws, ordinances, or regulations that relate to the use of [any] gaming devices. Tenant agrees to cooperate with Prime Landlord and adjust its business practices when necessary to enable Prime Landlord to comply with its legal obligations as set forth herein, provided such adjustments do not materially interfere with or hamper the operation of Tenant's business as reasonably determined by Tenant.

11. Except as is attributable to Tenant's gross negligence or willful misconduct, Prime Landlord hereby covenants and agrees to indemnify, save, and hold Tenant, its parent, subsidiaries, subtenants, and affiliates, and their officers, directors, shareholders, and employees free, clear, and harmless from any and all liabilities, losses, costs, expenses (including attorney's fees), judgments, claims, liens, fines, penalties, and demands of any kind whatsoever in connection with, arising out of, or in any way relating to the installation, operation, and maintenance of [any Prime Landlord] gaming devices, or the presence of said devices within the Premises.

FIFTH AMENDMENT

5.1 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 Senor Frog's (which name and concept shall be approved by Landlord, but, for example, The Big Deck at Senor Frog's) ("Complementary Use").

7.1 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.

7.4 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."

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

17.1 The Parties agree Section 17.1 is amended to remove existing item (c), 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.

19.2 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.

19.6 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 Kukulcan 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.

20. [T]he 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 Prime Landlord in the exercise of any of its rights under the Lease or the obligations which it secures subject to Prime Landlord's right to demand a new leasing agreement with Subtenant as outlined below. To the extent the Lease Agreement is terminated by Prime Landlord due to a default by Tenant and Subtenant is not in default under the Sublease, Subtenant and Prime 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 Prime Landlord's discretion and in a form acceptable to Subtenant and Prime Landlord to replace the Sublease. Prime 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 Prime 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 Prime 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 Prime 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, Prime 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 PRIME 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.

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EXHIBIT E **PRIME LANDLORD CONTRIBUTION**

Treasure Island

Senior Progs Note Amortization

4/15/13

Loan Amount	\$2,200,000
Annual Interest Rate	6.96
Loan Term	50
First Payment Date	4/15/13
Monthly Payment (1-49)	\$50,000
Monthly Payment (50)	\$40,839

End Payment	Due Date	Payment	Interest	Principal	Balance
0					\$2,200,000
1	4/15/13	\$50,000	\$11,500	\$38,500	\$2,161,500
2	5/15/13	\$50,000	10,805	39,195	2,121,805
3	6/15/13	\$50,000	10,660	39,340	2,082,464
4	7/15/13	\$50,000	10,412	39,588	2,042,876
5	8/15/13	\$50,000	10,214	39,786	2,003,090
6	9/15/13	\$50,000	10,015	39,985	1,963,105
7	10/15/13	\$50,000	9,815	40,185	1,922,871
8	11/15/13	\$50,000	9,614	40,386	1,882,485
9	12/15/13	\$50,000	9,412	40,588	1,841,897
10	1/15/14	\$50,000	9,209	40,791	1,801,107
11	2/15/14	\$50,000	9,006	40,994	1,760,113
12	3/15/14	\$50,000	8,801	41,199	1,718,913
13	4/15/14	\$50,000	8,595	41,405	1,677,508
14	5/15/14	\$50,000	8,388	41,612	1,635,895
15	6/15/14	\$50,000	8,179	41,821	1,594,075
16	7/15/14	\$50,000	7,970	42,030	1,552,045
17	8/15/14	\$50,000	7,760	42,240	1,509,805
18	9/15/14	\$50,000	7,549	42,451	1,467,354
19	10/15/14	\$50,000	7,337	42,663	1,424,691
20	11/15/14	\$50,000	7,123	42,877	1,381,814
21	12/15/14	\$50,000	6,909	43,091	1,338,724
22	1/15/15	\$50,000	6,694	43,306	1,295,417
23	2/15/15	\$50,000	6,477	43,523	1,251,894
24	3/15/15	\$50,000	6,259	43,741	1,208,154
25	4/15/15	\$50,000	6,041	43,959	1,164,195
26	5/15/15	\$50,000	5,821	44,179	1,120,015
27	6/15/15	\$50,000	5,600	44,400	1,075,616
28	7/15/15	\$50,000	5,378	44,622	1,030,994
29	8/15/15	\$50,000	5,155	44,845	986,149
30	9/15/15	\$50,000	4,931	45,069	941,079
31	10/15/15	\$50,000	4,703	45,295	895,785
32	11/15/15	\$50,000	4,479	45,521	850,264
33	12/15/15	\$50,000	4,251	45,749	804,515
34	1/15/16	\$50,000	4,023	45,977	758,538
35	2/15/16	\$50,000	3,793	46,207	712,330
36	3/15/16	\$50,000	3,562	46,438	665,892
37	4/15/16	\$50,000	3,329	46,671	619,221
38	5/15/16	\$50,000	3,096	46,904	572,317
39	6/15/16	\$50,000	2,862	47,138	525,179
40	7/15/16	\$50,000	2,626	47,374	477,805
41	8/15/16	\$50,000	2,389	47,611	430,194
42	9/15/16	\$50,000	2,151	47,848	382,345
43	10/15/16	\$50,000	1,912	48,088	334,257
44	11/15/16	\$50,000	1,671	48,329	285,928
45	12/15/16	\$50,000	1,430	48,570	237,358
46	1/15/17	\$50,000	1,187	48,813	188,544
47	2/15/17	\$50,000	943	49,057	139,487
48	3/15/17	\$50,000	697	49,303	90,185
49	4/15/17	\$50,000	451	49,549	40,635
50	5/15/17	\$40,839	203	\$40,636	(0)
		\$2,200,000	\$200,839	\$2,200,000	

EXHIBIT 8

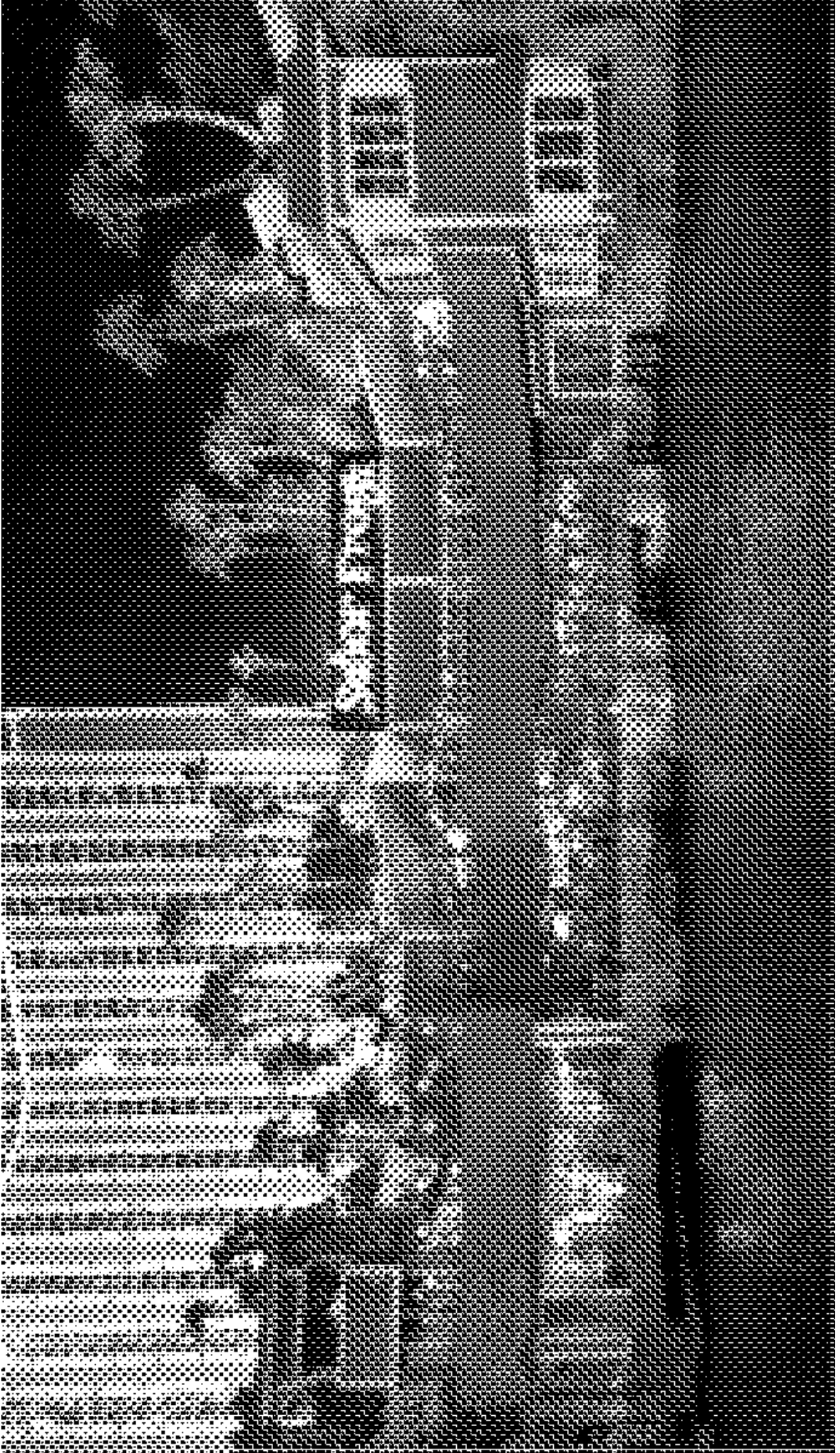




EXHIBIT 9

SHUMWAY.VAN

8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123

Telephone: (702) 478-7770 Facsimile: (702) 478-7779

AFFT

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

ROSE, LLC, a Nevada limited liability
company,

Counterclaimant

v.

TREASURE ISLAND, LLC, a Nevada
limited liability company,

Counterdefendant

Case No.: A-15-719105-B

Dept. No.: XI

AFFIDAVIT OF DAVID KROUHAM

1. I, David Krouham, am the President and CEO of Grupo Anderson's ("Anderson's") and owner of the same.

2. I have firsthand knowledge of the facts and circumstances set forth herein and, if called as a witness, could competently testify thereto.

1 3. I make this Affidavit in support of the Trial Brief submitted to the Court by Rose,
2 LLC ("Rose").

3 4. For reference, I have used the same definitions outlined in Rose's Trial Brief.

4 5. I joined Anderson's as a busboy in 1986 and in 1989, and at the time Anderson's
5 had just one Señor Frog's restaurant in Mazatlán, Mexico.

6 6. By 1995, I had secured control over the Señor Frog's name and became the
7 President and CEO of Anderson's which is based out of Cancun but currently owns over forty
8 restaurants in the United States and Latin America including many Señor Frog's restaurants.
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10 7. When Anderson's first started franchising Señor Frog's restaurants, Anderson's
11 handled the legal battles every time someone attempted to open a non-licensed Señor Frog's or
12 otherwise threaten the Señor Frog's branded asset.

13 8. This arrangement required the creation of an additional operating company to
14 oversee the restaurants and train management, *i.e.*, Operadora Anderson's ("Operadora").
15

16 9. Although Anderson's has regained control over each Señor Frog's that was once a
17 franchise, Operadora continues to oversee operations at all of the Señor Frog's restaurants.

18 10. Prior to the execution of the Lease, I met with Mr. Dragul to discuss the possibility
19 of Anderson's bringing Señor Frog's to Las Vegas, Nevada.

20 11. Shortly thereafter, Anderson's and Rose formed SFLV as a Joint Venture because
21 Anderson's did not have a strong presence in the United States at the time.

22 12. Anderson's, Operadora and SFLV now operate a Señor Frog's in a portion of the
23 Premises. The Premises is a two story space of over 18,000 square feet with a completely custom
24 Señor Frog's design, is located directly adjacent to the body of water where TI historically held its
25 famous pirate shows, and is prime real estate on the Las Vegas Strip. This location is one of the
26 most prominent Señor Frog's restaurants in the United States.
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SHUMWAY • VAN
8935 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

1 13. Although none of these entities other than Rose are parties to the Lease, I was
2 involved in Rose's side of the negotiations and bargained for notice and cure provisions that would
3 require TI to notify Operadora and SFLV's counsel of a breach on the part of Rose to allow for
4 direct cure payments by Operadora or SFLV. I strengthened those notice and cure rights over time
5 through amendments to the Lease to protect the interests of Anderson's, Operadora and SFLV.
6 My goal was to have numerous opportunities to understand and cure through direct payment any
7 alleged breach of the Lease. I could then work out any financial reconciliation needs with Rose in
8 the context of our ongoing business relationship. I made all of this clear to TI or its counsel during
9 negotiations over the Lease and the Sublease.

11 14. My understanding therefore was that Anderson's, Operadora and SFLV were
12 intended third-party beneficiaries of the Lease.

13 15. Not long after the Lease was executed and Señor Frog's was in operation, Rose and
14 Anderson's decided that it would be best to forego the Joint Venture so that Operadora could
15 operate the Señor Frog's alone in a portion of the Premises while Rose continued to act as SFLV's
16 landlord and utilized a portion of the Premises for other uses. The relationship is memorialized in
17 a Sublease and continues to this day.

18 16. However, Operadora continues to work directly with Rose to ensure the success of
19 Señor Frog's and both parties are heavily invested in that goal.

20 17. To date, my companies and investors have invested nearly \$8 Million in the Señor
21 Frog's restaurant located in the TI casino. I anticipate significant profits on that Señor Frog's
22 venture over the term of the Lease.

23 18. If I am forced to renegotiate the leasing relationship at the TI casino, my companies
24 and investors could face imposed terms or operating obligations that are much less favorable than
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1 those that Operadora and SFLV currently enjoy. For example, SFLV does not currently occupy
2 the entire Premises and would have to fill that space or absorb the related occupancy costs.

3 19. Shortly after May 28, 2015, I received a telephone call from Mr. Dragul and was
4 informed that Rose purportedly was in default under the Lease and that TI purportedly had
5 terminated the Lease.

6 20. Confused as to why I was just now learning of Rose's alleged default and the
7 purported termination, Mr. Dragul assured me that the Alleged Breach Notice and Alleged
8 Termination were both in violation of Section 19.6 of the Lease and Section 11 of the Fifth
9 Amendment.

10 21. It was always my understanding from the beginning of the Lease that Operadora
11 was to receive any breach or default notice sent to Rose to ensure that Anderson's and Operadora
12 would be able to protect their interests in the Premises should Rose breach or default on its
13 payments or other obligations to TI.

14 22. In fact, I bargained for Section 9.d of the Sublease to ensure that Operadora would
15 be able to step in and make any payments to TI directly should Rose be in breach or default.

16 23. If Operadora had received a copy of the Alleged Default Notice, it would have
17 cured the alleged breach or default immediately.

18 24. In the later parts of 2013 and early 2014, I learned that TI was under heavy
19 construction and remodeling around the Premises.

20 25. Considering that TI had ceased its pirate show on the body of water that lies
21 between Señor Frog's and the Las Vegas Strip, I became concerned that tourist traffic would
22 decrease and that TI eventually would build on top of the space where the pirate show was once
23 held, extend its footprint to Las Vegas Boulevard, and block the current view of Señor Frog's from
24 the Las Vegas Strip. I actually anticipated that TI might initiate some type of leasing dispute, to
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1 avoid the costs associated with exiting the Lease to pursue its larger business plans or just to
2 repurpose the Premises at a higher leasing rate.

3 26. As such, I discussed the matter with Mr. Dragul and requested that he amend the
4 Lease to add SFLV's Florida counsel in Section 11 of the Fifth Amendment to further protect its
5 interest in the Premises by requiring TI to notify SFLV's counsel in Florida of any alleged breach
6 or default on the part of Rose. If for some reason Rose or Operadora did not cure any alleged
7 breach or default, then SFLV's counsel would kick into gear and make sure the investment was
8 not at risk.
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10 27. If SFLV's counsel had received a copy of the Alleged Default Notice, it would have
11 cured the alleged breach or default immediately; forwarded the Alleged Default Notice to
12 Anderson's, Operadora and Rose or other involved counsel for a timely cure effort; or, contested
13 the Alleged Default Notice.
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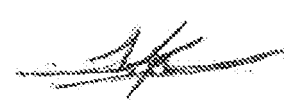
15 28. If I had to fly to Las Vegas personally to cure the alleged breach and default through
16 cash payments I would have, if TI had only timely notified Operadora or SFLV's counsel of the
17 Alleged Default Notice to allow for the exercise of related direct payment and cure rights.
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19 29. The fact that I also bargained for Rose to notify SFLV of any leasing problems in
20 the Sublease does not obviate the notice and cure terms of the Lease or TI's obligations to notify
21 Operadora and SFLV directly of any alleged Rose breach or default. I did not want to rely on Rose
22 for notice of any alleged breach or default and therefore took numerous steps to ensure that the
23 investments of Anderson's, Operadora and SFLV would not be at risk due to any communication
24 hiccups.

25 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
26 is true and correct; that I am physically located outside the geographic boundaries of the United
27 States, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject
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1 to the jurisdiction of the United States; and, that I am prepared to execute this Affidavit in the
2 presence of a notary the next time I visit the United States if necessary.

3 Executed on the 29th day of June, 2016, in Guadalajara, Mexico.

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5 
6 DAVID KROUHAM
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SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123

Telephone: (702) 478-7770 Facsimile: (702) 478-7779

EXHIBIT 10

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SHUMWAY.VAN

8985 South Eastern Avenue, Suite 100

Las Vegas, Nevada 89123

Telephone: (702) 478-7770 Facsimile: (702) 478-7779

AFFT

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

ROSE, LLC, a Nevada limited liability
company,

Counterclaimant

v.

TREASURE ISLAND, LLC, a Nevada
limited liability company,

Counterdefendant

Case No.: A-15-719105-B

Dept. No.: XI

AFFIDAVIT OF GARY DRAGUL

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...

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1 STATE OF COLORADO)
 2 : ss.
 3 COUNTY OF ARAPAHOE)

4 1. I, Gary Dragul, am the President of Rose Management, Inc., the Manager of Rose,
 5 LLC ("Rose"). Rose is the Defendant and Counterclaimant in the above referenced case.

6 2. I have firsthand knowledge of the facts and circumstances set forth herein and, if
 7 called as a witness, could competently testify thereto.

8 3. I make this Affidavit in support of the Trial Brief submitted to the Court by Rose.

9 4. For reference, I have used the same definitions outlined in Rose's Trial Brief.

10 5. Rose is based out of Greenwood Village, Colorado and deals primarily in the
 11 business of real estate.

12 6. Prior to the execution of the Lease, I met with David Krouham to discuss the
 13 possibility of Rose working with Grupo Anderson's ("Anderson's") to bring Señor Frog's to Las
 14 Vegas, Nevada.

15 7. Shortly thereafter, Anderson's and Rose formed SFLV as a Joint Venture because
 16 Anderson's did not have a strong presence in the United States at the tie.

17 8. Anderson's, Operadora and SFLV now operate a Señor Frog's in a portion of the
 18 Premises. The Premises is a two story space of over 18,000 square feet, is located directly adjacent
 19 to the body of water where TI historically held its famous pirate shows, and is prime real estate on
 20 the Las Vegas Strip.

21 9. I met with Phil Ruffin and at times his surrogates and negotiated the Lease for the
 22 Premises, including notice and cure provisions that would require TI to notify Operadora and
 23 SFLV's counsel of a breach on the part of Rose to allow for direct cure payments by Operadora or
 24 SFLV. Rose, Operadora and SFLV strengthened those notice and cure rights over time through
 25 amendments to the Lease to protect the interests of Anderson's, Operadora, SFLV and Rose. My
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1 goal was to have numerous backstop cure opportunities for Rose, by providing in the Lease for
2 TI's direct notice to Operadora and SFLV and for their direct payment rights for cure purposes. I
3 could then work out any financial reconciliation needs with Anderson's, Operadora or SFLV in
4 the context of our ongoing business relationship. I made all of this clear to TI and its counsel
5 during negotiations over the Lease and the Sublease.

6 10. My understanding was that Anderson's, Operadora and SFLV were intended third-
7 party beneficiaries of the Lease.
8

9 11. Not long after the Lease was executed and Señor Frog's was in operation, Rose and
10 Anderson's decided that it would be best to forego the Joint Venture so that Operadora could
11 operate Señor Frog's alone in a portion of the Premises while Rose continued to act as SFLV's
12 landlord and utilized a portion of the Premises for other uses. The relationship is memorialized in
13 a Sublease and continues to this day.
14

15 12. However, Rose continues to work directly with Operadora and SFLV to ensure the
16 success of Señor Frog's and all of the involved parties are heavily invested in that goal.

17 13. Indeed, the Lease itself is a substantial asset for Rose due to the terms therein.

18 14. To date, Rose and Rose's investors have invested approximately \$4 Million in the
19 Señor Frog's restaurant located in the TI casino. This includes substantial time and money
20 negotiating the Lease as amended. Rose anticipates significant profits related to that business
21 relationship or alternative options for the Premises over the term of the Lease.
22

23 15. If Operadora or SFLV were forced to renegotiate the leasing relationship at the TI
24 casino, Señor Frog's could face imposed terms or operating obligations that are much less
25 favorable. For example, Señor Frog's does not currently occupy the entire Premises and would
26 have to fill that space or absorb the related occupancy costs. Operadora and SFLV also would
27 have to do without Rose's commercial real estate expertise and resources.
28

1 16. In January 2014, Mr. Krouham and I discussed our mutual concerns regarding the
2 construction that TI was doing around the Premises. TI had ceased its pirate show on the body of
3 water that lies between Señor Frog's and the Las Vegas Strip, and we became concerned that the
4 tourist traffic would decrease and that TI eventually would build on top of the space where the
5 pirate show was once held, extend its footprint to Las Vegas Boulevard, and block the current view
6 of Señor Frog's from the Las Vegas Strip. I anticipated and warned Mr. Krouham that TI might
7 initiate some type of leasing dispute, to avoid the costs of exiting the Lease to pursue its larger
8 business plans or just to repurpose the Premises at a higher leasing rate.

9
10 17. Rose also recognized that TI's abandonment of the pirate show violated the existing
11 Lease and knew from Percentage Rent calculations that the loss of the pirate show or some other
12 causative event was significantly affecting the sales of Señor Frog's.

13 18. We therefore agreed that I should negotiate new rent, notice, cure, payment and
14 other terms in the Lease to protect our mutual investments in Señor Frog's.

15
16 19. As a result, in relevant part Rose and TI executed the Fifth Amendment to the Lease
17 which added an additional notice provision requiring TI to notify SFLV's counsel in Florida should
18 Rose allegedly breach or default on the Lease. If for some reason Rose or Operadora did not cure
19 any alleged breach or default, then SFLV's counsel would be on notice of the issue and proceed
20 accordingly.

21 20. Shortly thereafter, Rose and SFLV amended their Sublease to include language that
22 allowed SFLV to make any payment to TI on behalf of Rose should TI contend that Rose was in
23 breach of the Lease or in default

24
25 21. In the early months of 2014, my brother was extremely ill and in May of 2014 was
26 in the hospital undergoing surgery.

27
28

22. Overlapping this family emergency from May 15, 2015 to May 22, 2015, I was in Las Vegas, Nevada with almost my entire staff for the largest International Council of Shopping Centers ("ICSC") Convention held in the United States that year. This ICSC convention is one of the most important annual events in the commercial real estate industry that Rose and I are focused on.

23. On May 16, 2015, I hosted a large dinner at Señor Frog's and spoke directly with Najam Khan, General Manager of TI. Mr. Khan never mentioned any alleged breach or default by Rose when we chatted on May 16, 2015.

24. Because of ICSC and the Memorial Day weekend, I did not return to my office in Colorado until Tuesday May 26, 2015.

25. On May 29, 2015, I received a letter from TI's counsel purporting to terminate Rose's Lease with TI and it was at this time that I first became aware of the Alleged Default Notice.

26. I immediately informed Mr. Krouham that Rose purportedly was in default under the Lease and that TI purportedly had terminated the Lease, but that TI had violated the notice and cure provisions in the Lease and Fifth Amendment.

27. Mr. Krouham told me in response that if TI had provided timely notice of the alleged breach or default, that Operadora or SFLV's counsel would have cured or contested the alleged breach or default immediately and then sent Rose a bill for any financial reconciliation needs. Mr. Krouham told me he would have gotten on a plane in Mexico and flown to Nevada himself for cure purposes if that had been necessary.

28. Rose immediately responded to TI's Alleged Termination letter, attempted to wire funds directly to TI many times, and even overnighted a cashier's check in an attempt to deliver the Percentage Rent payment. TI consistently refused properly tendered rent payments from that moment forward, until the presiding Court weighed in.

1 29. In my May 29, 2015 letter Rose addressed TI's many deficiencies with regard to
2 the issues of notice and cure in that TI had not sent a copy of the Alleged Breach Notice to
3 Operadora or counsel for SFLV; however, TI never responded to any of Rose's communications
4 regarding the Alleged Default Notice or TI's subsequent breaches of the Lease.

5 30. Rose issued a Notice of Default on September 11, 2015 to TI with respect to the
6 Lease, but TI never responded.

7 31. Rose also tendered a Second Notice of Default on November 18, 2015 to TI with
8 respect to the Lease, but again TI never responded.

9 32. Rose believes that TI's default efforts are part of a preconceived plan to avoid TI's
10 Lease obligations and that TI's failure to notice the appropriate parties adequately was an
11 intentional ploy to prevent Rose or Anderson's from curing the alleged payment default.

12 33. Rose believes that Mr. Ruffin is the ultimate decision-maker with respect to this
13 matter and is the only person with knowledge of TI's true intent and agenda.

14 34. Rose believes that Mr. Ruffin has engaged in a conscious plan to obviate the Lease
15 to piggyback off of Rose's subleasing efforts, renegotiate the economics associated with the
16 Premises, or use the Premises for other purposes.

17 35. Indeed, Rose believes that TI is using Rose's alleged breach as a pretext to remove
18 Rose and SFLV from the Premises so that TI can build out the Premises to extend past the body
19 of water where TI historically held the pirate show and bring TI's property all the way to the
20 sidewalk on the Las Vegas Strip.

21 36. If TI succeeds in terminating the Lease, Rose believes that TI actually could gain
22 tens of millions of dollars and obtain a windfall in the process.

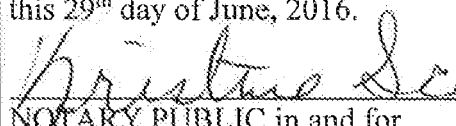
23 37. Rose has incurred in excess of \$90,000.00 in costs and fees defending TI's
24 affirmative claims in this litigation and prosecuting Rose's related counterclaims.
25
26
27
28

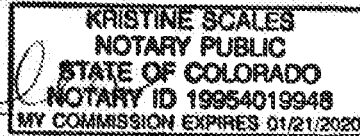
38. The fact that SFLV also bargained for Rose to notify SFLV of any leasing problems in the Sublease does not obviate the notice and cure terms of the Lease or TI's obligations to notify Operadora and SFLV directly of any alleged Rose breach or default. Mr. Krouham told me he did not want to rely on Rose for notice or cure of any alleged breach or default and wanted to ensure that the investments of Anderson's, Operadora and SFLV would not be at risk due to any communication failures with Rose.

I declare, under penalty of perjury, that the foregoing is true and correct.


GARY DRAGUL

SUBSCRIBED and SWORN to before me
this 29th day of June, 2016.


NOTARY PUBLIC in and for
said County and State. *my comm exp 1-21-2020*



000378

SHUMWAY • VAN

8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123

Telephone: (702) 478-7770 Facsimile: (702) 478-7779

000378

EXHIBIT 11

[REDACTED]

From: Anthony, Brad <[REDACTED]>
Sent: Wednesday, March 05, 2014 8:39 AM
To: Gary Dragul; Khan, Najam
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Gary,

To memorialize the voice message I just left – Mr. Ruffin instructed me to offer 100K/yr rent reduction for the entire initial term of the lease. Give me a call this afternoon to discuss.

Brad Anthony
 General Counsel
 Treasure Island Hotel & Casino
 3300 Las Vegas Blvd., South
 Las Vegas, NV 89109
 [REDACTED]

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From: Gary Dragul [REDACTED]
Sent: Monday, March 03, 2014 4:52 PM
To: Khan, Najam; Anthony, Brad
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Najam and Brad,

What's happening here? This is becoming a real problem.

Gary J. Dragul
 President
 GDA Real Estate Services, LLC
 [REDACTED]

From: Gary Dragul
Sent: Wednesday, February 26, 2014 4:28 PM
To: [REDACTED]; [REDACTED]
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: FW: Senor Frogs - Sales Comparison'

Najam and Brad,

Attached are the sales that we discussed. Call when it is good.

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

From: Susan Markusch
Sent: Wednesday, February 26, 2014 4:01 PM
To: Gary Dragul
Subject: Senor Frogs - Sales Comparison'

Dear Gary:

Please find attached the Senor Frogs Sales Comparison report.

Thank you,

Susan A. Markusch
Controller
GDA Real Estate Services, LLC
[REDACTED]

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[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Wednesday, March 12, 2014 4:24 PM
To: Elizabeth Gold
Subject: RE: Senor Frogs - Sales Comparison'

Elizabeth,

I just want to let you know that Mr. Ruffin was in Wichita today, so I was not able to go down and speak to him. I did forward him the draft last night, and spoke briefly to Mr. Khan about its contents. I plan on speaking to Mr. Ruffin about it tomorrow, upon his return to the office, and will let you know his response.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Elizabeth Gold [REDACTED]
Sent: Tuesday, March 11, 2014 4:00 PM
To: Gary Dragul; Anthony, Brad; Khan, Najam
Cc: Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Brad:

I hope you are doing well. As Gary mentioned, and per our conversation on Friday, I am forwarding Rose, LLC's proposed lease amendment. I appreciate the opportunity to work with you.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

From: Gary Dragul
Sent: Wednesday, March 05, 2014 4:54 PM
To: 'Anthony, Brad'; Khan, Najam
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Brad:

Thank you very much for your email. I appreciate your recognition, and Mr. Ruffin's recognition, that there is a serious problem. While I feel we are very far apart as to a potential resolution, I do appreciate your efforts. Instead of volleying back and forth, we will prepare an amendment to the lease that we will forward to you by Tuesday which will reflect a resolution that would be acceptable to Rose, LLC.

Kind regards,

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Wednesday, March 05, 2014 9:39 AM
To: Gary Dragul; Khan, Najam
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Gary,

To memorialize the voice message I just left – Mr. Ruffin instructed me to offer 100K/yr rent reduction for the entire initial term of the lease. Give me a call this afternoon to discuss.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Gary Dragul [REDACTED]
Sent: Monday, March 03, 2014 4:52 PM
To: Khan, Najam; Anthony, Brad
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Najam and Brad,

What's happening here? This is becoming a real problem.

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

[REDACTED]

From: Gary Dragul
Sent: Wednesday, February 26, 2014 4:28 PM
To: [REDACTED]; Anthony, Brad [REDACTED]
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: FW: Senor Frogs - Sales Comparison'

Najam and Brad,

Attached are the sales that we discussed. Call when it is good.

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

From: Susan Markusch
Sent: Wednesday, February 26, 2014 4:01 PM
To: Gary Dragul
Subject: Senor Frogs - Sales Comparison'

Dear Gary:

Please find attached the Senor Frogs Sales Comparison report.

Thank you,

Susan A. Markusch
Controller
GDA Real Estate Services, LLC
[REDACTED]

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Wednesday, March 19, 2014 10:23 AM
To: Elizabeth Gold
Subject: Re: Confirmation of outstanding note balance
Attachments: image001.jpg

Are you not calculating interest? Our accounting shows 1,847,897. I'm at a ppaca seminar this morning, so might not be able to speak to Mr r about my conversation with Gary until tomorrow morning.

I'll call thereafter.

Brad

Sent from my Verizon Wireless 4G LTE DROID

Elizabeth Gold [REDACTED] wrote:

Brad:

I received the email below from Reas Allen with Piercy Bowler Taylor & Kern. I wanted to make sure you are aware Rose, LLC understands the outstanding balance as of December 31, 2013 is \$1,800,000.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

From: Reas Allen [REDACTED]
Sent: Tuesday, March 18, 2014 4:30 PM
To: Elizabeth Gold
Cc: [REDACTED]
Subject: FW: Confirmation of outstanding note balance

Elizabeth,

I was asked by Richard to forward you our request to confirm the outstanding note balance for the Landlord Contributions made to Senor Frogs by Treasure Island, LLC. Attached is the request signed by Jerry Griffis, CFO at Treasure Island. Could you please complete the request and return to me at your earliest convenience? We appreciate your help.

Reas

REAS ALLEN, CPA
[REDACTED]



Piercy Bowler Taylor & Kern
[REDACTED]

IRS Circular 230 (Regulation) disclosure:

To ensure compliance with requirements imposed by the IRS, Piercy, Bowler, Taylor & Kern informs you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (I) avoiding tax related penalties under the Internal Revenue Code or (II) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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From: Richard B [REDACTED]
Sent: Tuesday, March 18, 2014 3:25 PM
To: Reas Allen
Subject: Re: Confirmation of outstanding note balance

Reas,

Please forward your request to Elizabeth Gold, [REDACTED] She will be your contact.

On Tue, Mar 18, 2014 at 1:07 PM, Reas Allen [REDACTED] wrote:
 Richard,

In conjunction with our audit of the financial statements of Treasure Island, LLC., we wish to confirm the balance owed to Treasure Island by you on the outstanding Landlord Contribution as of 12/31/2013. Attached is the confirmation request. At your earliest opportunity could you please complete the confirmation and return to me? We appreciate your assistance in this matter.

Thank you,

Reas

REAS ALLEN
[REDACTED]



Piercy Bowler Taylor & Kern
[REDACTED]

IRS Circular 230 (Regulation) disclosure:

To ensure compliance with requirements imposed by the IRS, Piercy, Bowler, Taylor & Kern informs you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (I) avoiding tax related penalties under the Internal Revenue Code or (II) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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--

Richard Barnaby
Controller
Senor Frogs Las Vegas



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[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Tuesday, March 25, 2014 8:55 AM
To: Gary Dragul; Elizabeth Gold
Cc: Khan, Najam; Griffis, Jerry; Sara Hall; Aaron Metz; Susan Markusch
Subject: RE: Response

Gary,

Thank you for the email. I spoke with Mr. Ruffin this morning about your offer. Najam will be calling you later to discuss, but I want to prepare you. Mr. Ruffin is agreeable to reducing your base rent to \$36,000.00 per month for the initial term of the Lease. This will represent an annual boost to your bottom line of \$196,000.00, and \$1,344,000 over the initial term.

As I have explained before, we believe that active construction is the primary driver behind any sales decrease you are experiencing, and since that will be over this autumn, we see no reason to address renewal terms, and are unwilling to renegotiate them at this juncture.

Najam should be in contact with you shortly, but if you still have questions after speaking with him, please feel free to contact me.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Gary Dragul [REDACTED]
Sent: Tuesday, March 25, 2014 7:38 AM
To: Anthony, Brad; Elizabeth Gold
Cc: Khan, Najam; Griffis, Jerry; [REDACTED]; Sara Hall; Aaron Metz; Susan Markusch
Subject: Re: Response

Forgot to copy a few folks.

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

From: Gary Dragul

Sent: Tuesday, March 25, 2014 08:37 AM

To: [REDACTED] > Elizabeth Gold

Cc: [REDACTED] <[REDACTED]> > [REDACTED]

Subject: Re: Response

Brad,

Thanks for Mr. Ruffins offer. We appreciate his interest in working with us to make this work for the next 28 years. Yesterday I sent to you our March sales which are down well over \$300k for the month. We cannot make this business work at the current rent levels taking into account your latest offer.

That said, I offer the following:

Base rent - \$36,000 per month with 5% rent increases through the option periods.

Percentage rent - 5.5% for the remainder of the lease including option periods.

Thanks for your continues efforts.

Gary J. Dragul

President

GDA Real Estate Services, LLC

[REDACTED]

From: Anthony, Brad [REDACTED]

Sent: Thursday, March 20, 2014 11:28 AM

To: Elizabeth Gold; Gary Dragul

Cc: Khan, Najam <[REDACTED]>; Griffis, Jerry [REDACTED]

Subject: Response

Gary,

Mr. Ruffin has decided to offer Senor Frogs a reduction in base rent to \$40,000.00 per month for the initial term of the Lease. This represents an annual savings to your operation of \$144,000.00. Treasure Island cannot offer anything in terms of a percentage rent reduction. As you are aware, we only accepted the low base rent proposal because of the potential for upside on percentage rent. We believe that \$144,000.00/year is a very generous proposal, and more than offsets any reduction in profits you may be experiencing as a result of the ongoing construction, which should be completed in the fall.

Please respond to this offer by close of business on March 24, 2014.

Brad Anthony

General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109



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[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Friday, April 04, 2014 12:04 PM
To: Elizabeth Gold
Subject: Offer

Liz,

I don't have Gary's email on my phone. I am happy to report that Mr Ruffin is on board with Gary's most recent offer of 7% percentage and 33,250/month flat. He's also willing to meet with Gary to formalize it on Monday.

Sent from my Verizon Wireless 4G LTE DROID

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[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Monday, April 07, 2014 3:54 PM
To: Elizabeth Gold
Cc: Gary Dragul
Subject: RE: draft amendment

Thank you, Elizabeth. You are correct with respect to this being the Fifth Amendment.

As drafted, I don't think we're going to agree to this. The agreement we worked so laboriously on was focused solely on rent reduction and the removal of the show language. Due to the dramatic reduction in rent, the use provision needed modified, so I added that to my proposed draft. All of this subleasing language is an entirely different discussion that needs to be had.

I'll still take this into Mr. R tomorrow, if that's what your folks want, but I strongly suspect that the inclusion of all of these different provisions is going to ruin the deal. As I told you before, I believe it is a big mistake to try to redraft the entire lease with this amendment, which you appear to be doing.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Elizabeth Gold [REDACTED]
Sent: Monday, April 07, 2014 3:38 PM
To: Anthony, Brad
Cc: Gary Dragul
Subject: RE: draft amendment

Brad:

I hope you are having a great day. We updated the draft amendment I forwarded previously, and it is attached to this email. I believe this should be the fifth amendment due to the fourth that was signed in April 2013. Sections 2 and 3 include the language you sent earlier today. I removed a credit provision that was in the prior version, and the remaining provisions are needed in order to address the partners' changes. Thank you for your assistance.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Monday, April 07, 2014 11:35 AM
To: Elizabeth Gold
Subject: draft amendment

Liz,

I just left a meeting with Gary. He says that you guys are working on a draft amendment. Here is what I did over the weekend to get things shored up on our end. Let me know your thoughts.

I hope all else is well.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Tuesday, April 15, 2014 9:04 AM
To: Elizabeth Gold
Subject: RE: update
Attachments: Fifth Amendment 4-15-14-redline.docx

Liz,

I hope you are well.

I've spoken with Najam. Let me preface this by reminding you that we need Mr. Ruffin's approval before we can move on this, irrespective of whether we are able to put these issues to bed. He is in the Bahamas, and will return late this week or early next week.

As you will see from the redlined version, attached, we are not going to agree to further restrictive covenants, and need some assurance that the reduced base rent will not be used to permit vacant space on our property. Neither of these requests is unreasonable, given the substantial reduction (nearly 40%) in base rent we are willing to give you.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Elizabeth Gold [REDACTED]
Sent: Monday, April 14, 2014 4:29 PM
To: Anthony, Brad
Cc: Gary Dragul
Subject: RE: update

Brad:

I hope you are doing well. I understand Gary and Najam have spoken regarding hours of operation and Gary plans to speak with Najam about the provision regarding construction of new structures between the premises and the street. In the meantime, I am forwarding updated versions of the amendment that reflect revision of the remaining items we discussed on Friday.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Companies
[REDACTED]

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Monday, April 14, 2014 2:44 PM
To: Elizabeth Gold
Subject: update

Liz,

I spoke to Najam, who says he and Gary spoke earlier and that the only outstanding issue is the hours of operation. Is this accurate? If so, we'd like to modify our proposal to say that the Leased Premises shall open at 11AM and remain open for a minimum of 12 hours, unless business needs dictate otherwise, in which instance Landlord and Tenant shall meet to determine mutually agreeable hours of operation.

I think this should mollify everyone?

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Friday, April 25, 2014 7:53 AM
To: Elizabeth Gold
Subject: RE: here's hoping...

Any word on your end? I don't want to take this in to Mr. R if we're spinning wheels.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Elizabeth Gold [REDACTED]
Sent: Thursday, April 24, 2014 5:43 PM
To: Anthony, Brad
Subject: Fwd: here's hoping...

Sure thing! Here it is.

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

Begin forwarded message:

From: "Anthony, Brad" [REDACTED]
Date: April 24, 2014 at 4:46:51 PM MDT
To: 'Elizabeth Gold' [REDACTED]
Subject: here's hoping...

Liz,

I hope this does it...

Brad Anthony
General Counsel

Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109

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[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Monday, April 21, 2014 9:44 AM
To: Gary Dragul; Elizabeth Gold
Cc: Khan, Najam
Subject: update

Gary,

I spoke with Mr. Ruffin this morning. His response to the latest draft is that we need a guarantee that the space will be operating (our only upside is the percentage rent). We started to discuss the restrictive covenant language, but he reiterated that he only wants to discuss removal of the pirate show clause and reduction of rent as a part of this amendment.

Thank you.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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[REDACTED]

From: Anthony, Brad [REDACTED] >
Sent: Thursday, April 24, 2014 10:41 AM
To: Elizabeth Gold
Subject: Amendment

Liz,

Mr. Ruffin wants 1 change to the proposed amendment. In Paragraph 3, he wants to limit "Complementary Use" to concepts that are consistent with the Mexican theme limitation that currently exists in the Lease Agreement. I hope this is not a big issue. He agreed to everything else.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Friday, April 25, 2014 8:51 AM
To: Elizabeth Gold
Cc: Gary Dragul
Subject: RE: here's hoping...
Attachments: Fifth Amendment 4-24-14 (2) - redlinew.docx

Liz – thank you. Mr. R is due back in the office in the next 30-40 minutes, and I'm hoping we get this done.

1 thing – paragraph 8 needs the assigns and subtenants clause deleted, as elsewhere. To that end, I've attached yet another redline version. If you could execute and return, I'll try to have Mr. R sign it upon his return.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Elizabeth Gold [REDACTED]
Sent: Friday, April 25, 2014 8:38 AM
To: Anthony, Brad
Cc: Gary Dragul
Subject: RE: here's hoping...

Brad:

Thank you again for your help with the amendment. A clean version of the document you sent yesterday has been signed by Rose and is attached.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

From: Elizabeth Gold
Sent: Thursday, April 24, 2014 5:55 PM
To: 'Anthony, Brad'
Subject: RE: here's hoping...

Brad:

Thank you for your help. This looks good to me. I just need to connect with Gary to confirm whether he agrees. I will follow up with you as soon as I know. Have a great night!

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Thursday, April 24, 2014 4:47 PM
To: Elizabeth Gold
Subject: here's hoping...

Liz,

I hope this does it...

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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Gabriela M

From: Anthony, Brad [REDACTED]
Sent: Friday, April 25, 2014 12:58 PM
To: Elizabeth Gold
Subject: Re: grrrrr

He won't be. I'm fine with your revision and will draft it in. I know Najam will see Mr r tomorrow morning...

Sent from my Verizon Wireless 4G LTE DROID

Elizabeth Gold [REDACTED] wrote:

Brad:

Will he be back? I know Gary needs this signed today. How can we make that happen? See the attached, marked plan. I thought you meant construction within any part of the cross-hatched area. Instead of "beyond," it would say "within any part of" the area marked on Exhibit D. If so, does the attached work as an exhibit?

Kind regards,

Elizabeth Gold
 Legal Counsel
 GDA Real Estate Services, LLC

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Friday, April 25, 2014 12:44 PM
To: Elizabeth Gold
Subject: grrrrr

I missed him...

Brad Anthony
 General Counsel
 Treasure Island Hotel & Casino
 3300 Las Vegas Blvd., South
 Las Vegas, NV 89109

[REDACTED]

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[REDACTED]

From: Elizabeth Gold [REDACTED]
Sent: Thursday, July 02, 2015 1:58 PM
To: Gary Dragul
Cc: Benjamin Kahn
Subject: FW: Rose Lease

Gary:

I delivered to Brad Anthony the message we discussed, that the group is committed to and invested in being in Treasure Island and on the strip, and is making money, so any buyout would have to be a lot more. Brad said Mr. Ruffin has been hard to reach in the Bahamas but that he recently heard that the sunset on TI's \$250,000 proposal is this Monday. I am still trying to connect with Pisanelli again to see if I can sway him. He is totally opposed to a smaller, staged retainer that we stay in front of for him. We need him engaged, he has to file an Answer by Monday.

Thanks,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

From: Benjamin Kahn [REDACTED]
Sent: Friday, June 26, 2015 12:16 PM
To: Aaron Metz
Cc: Elizabeth Gold; Gary Dragul
Subject: Re: Rose Lease

Short answer = yes. Problem = cost. If we are proving our case through documents and cross-examination of Brad Anthony, we are six figures into the fight and another six figures to get through related motions practice. Problem remains that winning on motion may require 180K-200K that could be better applied to an overall net business solution, or that we wind up in the soft spot of competing facts that need to be resolved at trial by a fact-finder at an even greater cost. If we invest 500K to win at trial this case becomes about fee reimbursement rights or the net economics suck even in a win. This equals perpetuation of the fight and another year of investment. Our exit payoff expectation therefore should be tempered by and account for the cost to win.

Benjamin Kahn
The Conundrum Group, LLP
[REDACTED]

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On Jun 26, 2015, at 10:30 AM, Aaron Metz [REDACTED] wrote:

Ben:

Let us know your thoughts. This offer and, even better, their comment that "Essentially, we want to take your position" do not appear to be in the context of settling the dispute about late rent. Therefore, can't this be used to show a judge their underlying motive for their claim?

Aaron J. Metz
Director of Acquisitions
GDA Real Estate Services, LLC

[REDACTED]

From: Elizabeth Gold
Sent: Friday, June 26, 2015 9:49 AM
To: Gary Dragul; Benjamin A. Kahn; Aaron Metz
Subject: Fwd: Rose Lease

FYI. Brad's response below.

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC

[REDACTED]

Begin forwarded message:

From: "Anthony, Brad" [REDACTED] >
Date: June 26, 2015 at 9:29:23 AM MDT
To: 'Elizabeth Gold' [REDACTED]
Subject: RE: Rose Lease

Liz:

The feeling is mutual. Your understanding is generally correct. We do not know what your sublease deal is with Frog's, but we intend to fully honor our obligations in the 5th Amendment of the Lease between Rose and TI. Thus, Frog's leasehold interest would not terminate alongside of yours. Essentially, we want to take your position.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino

3300 Las Vegas Blvd., South
Las Vegas, NV 89109

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From: Elizabeth Gold [REDACTED]
Sent: Thursday, June 25, 2015 4:58 PM
To: Anthony, Brad
Subject: Rose Lease

Brad:

Thank you for your call yesterday. It is always nice to speak with you. I wanted to follow up to confirm the mechanics with respect to the proposal you conveyed. As I understand it, Treasure Island would like to take control of the space and is prepared to pay Rose \$250,000 to assume Rose's rights under the lease. Please confirm this, and also please confirm that Señor Frog's Las Vegas's leasehold interest would continue. I appreciate your help.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Friday, December 16, 2011 9:01 AM
To: Elizabeth Gold
Cc: Khan, Najam
Subject: Amendment 2

Elizabeth,

I spoke with Mr. Ruffin this morning. Neither of us understands why ¶ 3 would present a problem to your people (or the people in Cancun). As Mr. Ruffin reminded me this morning, Mr. Dragul stated during our meeting that he had no problem agreeing to the \$300,000.00 per quarter; that he'd take it out of his own pocket if necessary to ensure it was repaid. Mr. Dragul stated repeatedly that Rose was going to repay the loan. To balk at a simple written recitation of what was represented at the meeting where TI both rushed a \$1.5 million dollar wire out and agreed out of nothing more than courtesy to alter the maximum repayment amount to 80% of the Net Income instead of 100% is baffling.

Perhaps reminding Mr. Dragul of his personal representations while present at the meeting would put this to bed? I will be available on my cell for the remainder of the day if you would like to discuss this further [REDACTED]. Thank you, as always, for your assistance in resolving this matter.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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EXHIBIT 12

[REDACTED]

From: Anthony, Brad <[REDACTED]>
Sent: Wednesday, March 05, 2014 8:39 AM
To: Gary Dragul; Khan, Najam
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Gary,

To memorialize the voice message I just left – Mr. Ruffin instructed me to offer 100K/yr rent reduction for the entire initial term of the lease. Give me a call this afternoon to discuss.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Gary Dragul [REDACTED]
Sent: Monday, March 03, 2014 4:52 PM
To: Khan, Najam; Anthony, Brad
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Najam and Brad,

What's happening here? This is becoming a real problem.

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

From: Gary Dragul
Sent: Wednesday, February 26, 2014 4:28 PM
To: [REDACTED]; [REDACTED]
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: FW: Senor Frogs - Sales Comparison'

Najam and Brad,

Attached are the sales that we discussed. Call when it is good.

Gary J. Dragul
President
GDA Real Estate Services, LLC




From: Susan Markusch
Sent: Wednesday, February 26, 2014 4:01 PM
To: Gary Dragul
Subject: Senor Frogs - Sales Comparison'

Dear Gary:

Please find attached the Senor Frogs Sales Comparison report.

Thank you,

Susan A. Markusch
Controller
GDA Real Estate Services, LLC



000409

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Wednesday, March 12, 2014 4:24 PM
To: Elizabeth Gold
Subject: RE: Senor Frogs - Sales Comparison'

Elizabeth,

I just want to let you know that Mr. Ruffin was in Wichita today, so I was not able to go down and speak to him. I did forward him the draft last night, and spoke briefly to Mr. Khan about its contents. I plan on speaking to Mr. Ruffin about it tomorrow, upon his return to the office, and will let you know his response.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Elizabeth Gold [REDACTED]
Sent: Tuesday, March 11, 2014 4:00 PM
To: Gary Dragul; Anthony, Brad; Khan, Najam
Cc: Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Brad:

I hope you are doing well. As Gary mentioned, and per our conversation on Friday, I am forwarding Rose, LLC's proposed lease amendment. I appreciate the opportunity to work with you.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

From: Gary Dragul
Sent: Wednesday, March 05, 2014 4:54 PM
To: 'Anthony, Brad'; Khan, Najam
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Brad:

Thank you very much for your email. I appreciate your recognition, and Mr. Ruffin's recognition, that there is a serious problem. While I feel we are very far apart as to a potential resolution, I do appreciate your efforts. Instead of volleying back and forth, we will prepare an amendment to the lease that we will forward to you by Tuesday which will reflect a resolution that would be acceptable to Rose, LLC.

Kind regards,

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Wednesday, March 05, 2014 9:39 AM
To: Gary Dragul; Khan, Najam
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Gary,

To memorialize the voice message I just left – Mr. Ruffin instructed me to offer 100K/yr rent reduction for the entire initial term of the lease. Give me a call this afternoon to discuss.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Gary Dragul [REDACTED]
Sent: Monday, March 03, 2014 4:52 PM
To: Khan, Najam; Anthony, Brad
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: RE: Senor Frogs - Sales Comparison'

Najam and Brad,

What's happening here? This is becoming a real problem.

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

[REDACTED]

From: Gary Dragul
Sent: Wednesday, February 26, 2014 4:28 PM
To: [REDACTED]; Anthony, Brad [REDACTED]
Cc: Elizabeth Gold; Sara Hall; Aaron Metz
Subject: FW: Senor Frogs - Sales Comparison'

Najam and Brad,

Attached are the sales that we discussed. Call when it is good.

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

From: Susan Markusch
Sent: Wednesday, February 26, 2014 4:01 PM
To: Gary Dragul
Subject: Senor Frogs - Sales Comparison'

Dear Gary:

Please find attached the Senor Frogs Sales Comparison report.

Thank you,

Susan A. Markusch
Controller
GDA Real Estate Services, LLC
[REDACTED]

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Wednesday, March 19, 2014 10:23 AM
To: Elizabeth Gold
Subject: Re: Confirmation of outstanding note balance
Attachments: image001.jpg

Are you not calculating interest? Our accounting shows 1,847,897. I'm at a ppaca seminar this morning, so might not be able to speak to Mr r about my conversation with Gary until tomorrow morning.

I'll call thereafter.

Brad

Sent from my Verizon Wireless 4G LTE DROID

Elizabeth Gold [REDACTED] wrote:

Brad:

I received the email below from Reas Allen with Piercy Bowler Taylor & Kern. I wanted to make sure you are aware Rose, LLC understands the outstanding balance as of December 31, 2013 is \$1,800,000.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

From: Reas Allen [REDACTED]
Sent: Tuesday, March 18, 2014 4:30 PM
To: Elizabeth Gold
Cc: [REDACTED]
Subject: FW: Confirmation of outstanding note balance

Elizabeth,

I was asked by Richard to forward you our request to confirm the outstanding note balance for the Landlord Contributions made to Senor Frogs by Treasure Island, LLC. Attached is the request signed by Jerry Griffis, CFO at Treasure Island. Could you please complete the request and return to me at your earliest convenience? We appreciate your help.

Reas

REAS ALLEN, CPA
[REDACTED]



Piercy Bowler Taylor & Kern
[REDACTED]

IRS Circular 230 (Regulation) disclosure:

To ensure compliance with requirements imposed by the IRS, Piercy, Bowler, Taylor & Kern informs you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (I) avoiding tax related penalties under the Internal Revenue Code or (II) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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From: Richard B [REDACTED]
Sent: Tuesday, March 18, 2014 3:25 PM
To: Reas Allen
Subject: Re: Confirmation of outstanding note balance

Reas,

Please forward your request to Elizabeth Gold, [REDACTED] She will be your contact.

On Tue, Mar 18, 2014 at 1:07 PM, Reas Allen [REDACTED] wrote:
 Richard,

In conjunction with our audit of the financial statements of Treasure Island, LLC., we wish to confirm the balance owed to Treasure Island by you on the outstanding Landlord Contribution as of 12/31/2013. Attached is the confirmation request. At your earliest opportunity could you please complete the confirmation and return to me? We appreciate your assistance in this matter.

Thank you,

Reas

REAS ALLEN
[REDACTED]



Piercy Bowler Taylor & Kern
[REDACTED]

IRS Circular 230 (Regulation) disclosure:

To ensure compliance with requirements imposed by the IRS, Piercy, Bowler, Taylor & Kern informs you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (I) avoiding tax related penalties under the Internal Revenue Code or (II) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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--

Richard Barnaby
Controller
Senor Frogs Las Vegas



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000415

000415

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Tuesday, March 25, 2014 8:55 AM
To: Gary Dragul; Elizabeth Gold
Cc: Khan, Najam; Griffis, Jerry; Sara Hall; Aaron Metz; Susan Markusch
Subject: RE: Response

Gary,

Thank you for the email. I spoke with Mr. Ruffin this morning about your offer. Najam will be calling you later to discuss, but I want to prepare you. Mr. Ruffin is agreeable to reducing your base rent to \$36,000.00 per month for the initial term of the Lease. This will represent an annual boost to your bottom line of \$196,000.00, and \$1,344,000 over the initial term.

As I have explained before, we believe that active construction is the primary driver behind any sales decrease you are experiencing, and since that will be over this autumn, we see no reason to address renewal terms, and are unwilling to renegotiate them at this juncture.

Najam should be in contact with you shortly, but if you still have questions after speaking with him, please feel free to contact me.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Gary Dragul [REDACTED]
Sent: Tuesday, March 25, 2014 7:38 AM
To: Anthony, Brad; Elizabeth Gold
Cc: Khan, Najam; Griffis, Jerry; [REDACTED]; Sara Hall; Aaron Metz; Susan Markusch
Subject: Re: Response

Forgot to copy a few folks.

Gary J. Dragul
President
GDA Real Estate Services, LLC
[REDACTED]

From: Gary Dragul

Sent: Tuesday, March 25, 2014 08:37 AM

To: [REDACTED] > Elizabeth Gold

Cc: [REDACTED] <[REDACTED]> >

Subject: Re: Response

Brad,

Thanks for Mr. Ruffins offer. We appreciate his interest in working with us to make this work for the next 28 years. Yesterday I sent to you our March sales which are down well over \$300k for the month. We cannot make this business work at the current rent levels taking into account your latest offer.

That said, I offer the following:

Base rent - \$36,000 per month with 5% rent increases through the option periods.

Percentage rent - 5.5% for the remainder of the lease including option periods.

Thanks for your continues efforts.

Gary J. Dragul

President

GDA Real Estate Services, LLC

[REDACTED]

From: Anthony, Brad [REDACTED]

Sent: Thursday, March 20, 2014 11:28 AM

To: Elizabeth Gold; Gary Dragul

Cc: Khan, Najam <[REDACTED]>; Griffis, Jerry [REDACTED]

Subject: Response

Gary,

Mr. Ruffin has decided to offer Senor Frogs a reduction in base rent to \$40,000.00 per month for the initial term of the Lease. This represents an annual savings to your operation of \$144,000.00. Treasure Island cannot offer anything in terms of a percentage rent reduction. As you are aware, we only accepted the low base rent proposal because of the potential for upside on percentage rent. We believe that \$144,000.00/year is a very generous proposal, and more than offsets any reduction in profits you may be experiencing as a result of the ongoing construction, which should be completed in the fall.

Please respond to this offer by close of business on March 24, 2014.

Brad Anthony

General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109



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000418

000418

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Friday, April 04, 2014 12:04 PM
To: Elizabeth Gold
Subject: Offer

Liz,

I don't have Gary's email on my phone. I am happy to report that Mr Ruffin is on board with Gary's most recent offer of 7% percentage and 33,250/month flat. He's also willing to meet with Gary to formalize it on Monday.

Sent from my Verizon Wireless 4G LTE DROID

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000419

000419

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Monday, April 07, 2014 3:54 PM
To: Elizabeth Gold
Cc: Gary Dragul
Subject: RE: draft amendment

Thank you, Elizabeth. You are correct with respect to this being the Fifth Amendment.

As drafted, I don't think we're going to agree to this. The agreement we worked so laboriously on was focused solely on rent reduction and the removal of the show language. Due to the dramatic reduction in rent, the use provision needed modified, so I added that to my proposed draft. All of this subleasing language is an entirely different discussion that needs to be had.

I'll still take this into Mr. R tomorrow, if that's what your folks want, but I strongly suspect that the inclusion of all of these different provisions is going to ruin the deal. As I told you before, I believe it is a big mistake to try to redraft the entire lease with this amendment, which you appear to be doing.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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From: Elizabeth Gold [REDACTED]
Sent: Monday, April 07, 2014 3:38 PM
To: Anthony, Brad
Cc: Gary Dragul
Subject: RE: draft amendment

Brad:

I hope you are having a great day. We updated the draft amendment I forwarded previously, and it is attached to this email. I believe this should be the fifth amendment due to the fourth that was signed in April 2013. Sections 2 and 3 include the language you sent earlier today. I removed a credit provision that was in the prior version, and the remaining provisions are needed in order to address the partners' changes. Thank you for your assistance.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Real Estate Services, LLC
[REDACTED]

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Monday, April 07, 2014 11:35 AM
To: Elizabeth Gold
Subject: draft amendment

Liz,

I just left a meeting with Gary. He says that you guys are working on a draft amendment. Here is what I did over the weekend to get things shored up on our end. Let me know your thoughts.

I hope all else is well.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

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000421

000421

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Tuesday, April 15, 2014 9:04 AM
To: Elizabeth Gold
Subject: RE: update
Attachments: Fifth Amendment 4-15-14-redline.docx

Liz,

I hope you are well.

I've spoken with Najam. Let me preface this by reminding you that we need Mr. Ruffin's approval before we can move on this, irrespective of whether we are able to put these issues to bed. He is in the Bahamas, and will return late this week or early next week.

As you will see from the redlined version, attached, we are not going to agree to further restrictive covenants, and need some assurance that the reduced base rent will not be used to permit vacant space on our property. Neither of these requests is unreasonable, given the substantial reduction (nearly 40%) in base rent we are willing to give you.

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

CONFIDENTIALITY NOTICE: This message is intended to be viewed only by the listed recipient(s) and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. Any dissemination, distribution, or copying of this message is strictly prohibited without Treasure Island's prior permission. If you are not the intended recipient, or if you believe that you have received this communication in error, please notify us immediately by return e-mail and delete the original message and any copies.

From: Elizabeth Gold [REDACTED]
Sent: Monday, April 14, 2014 4:29 PM
To: Anthony, Brad
Cc: Gary Dragul
Subject: RE: update

Brad:

I hope you are doing well. I understand Gary and Najam have spoken regarding hours of operation and Gary plans to speak with Najam about the provision regarding construction of new structures between the premises and the street. In the meantime, I am forwarding updated versions of the amendment that reflect revision of the remaining items we discussed on Friday.

Kind regards,

Elizabeth Gold
Legal Counsel
GDA Companies
[REDACTED]

[REDACTED]

From: Anthony, Brad [REDACTED]
Sent: Monday, April 14, 2014 2:44 PM
To: Elizabeth Gold
Subject: update

Liz,

I spoke to Najam, who says he and Gary spoke earlier and that the only outstanding issue is the hours of operation. Is this accurate? If so, we'd like to modify our proposal to say that the Leased Premises shall open at 11AM and remain open for a minimum of 12 hours, unless business needs dictate otherwise, in which instance Landlord and Tenant shall meet to determine mutually agreeable hours of operation.

I think this should mollify everyone?

Brad Anthony
General Counsel
Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
[REDACTED]

CONFIDENTIALITY NOTICE: This message is intended to be viewed only by the listed recipient(s) and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. Any dissemination, distribution, or copying of this message is strictly prohibited without Treasure Island's prior permission. If you are not the intended recipient, or if you believe that you have received this communication in error, please notify us immediately by return e-mail and delete the original message and any copies.

EXHIBIT 13


CLERK OF THE COURT

1 **OPPS**
2 FENNEMORE CRAIG, P.C.
3 Patrick J. Sheehan (Bar No. 3812)
4 John H. Mowbray (Bar No. 1140)
5 300 S. Fourth Street, Suite 1400
6 Las Vegas, NV 89101
7 Tel.: (702) 692-8011
8 Fax: (702) 692-8099
9 Email: psheehan@fcclaw.com
10 *Attorney for Treasure Island, LLC*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 TREASURE ISLAND, LLC, a Nevada limited
11 liability company;

12 Plaintiff,

13 vs.

14 ROSE, LLC, a Nevada limited liability
15 company;

16 Defendant.

17 ROSE, LLC, a Nevada limited liability
18 company,

19 Counterclaimant,

20 vs.

21 TREASURE ISLAND, LLC, a Nevada limited
22 liability company,

23 Counterdefendant.
24

CASE NO.: A-15-719105-B

DEPT.: XI

OPPOSITION TO DEFENDANT'S
MOTION TO CONTINUE TRIAL AND
OPPOSITION TO MOTION TO TAKE
THE DEPOSITION OF PHIL RUFFIN
AND EXTEND DISCOVERY

25 **I. PLAINTIFF/COUNTERCLAIMANT HAS HAD NINE MONTHS TO CONDUCT**
26 **DISCOVERY AND THERE IS NO REASON TO CONTINUE THE TRIAL OR**
27 **EXTEND DISCOVERY TO TAKE THE DEPOSITION OF PHIL RUFFIN.**

28 The complaint in this matter was filed on May 28, 2015. The discovery period actually ended on February 5, 2016. Plaintiff/Counterclaimant Treasure Island was nice enough to extend

1 the discovery by two months as a result of new counsel coming into the case. When it did so
2 Plaintiffs/Counterdefendants counsel asked that the trial be continued.
3 Defendants/Counterclaimants made it clear they would not agree to a trial continuance. This was
4 reiterated at a status conference in front of the Court.

5 This is a very simple case. The only question is whether or not, because Treasure Island
6 did not carbon copy the subtenant on its notice of default to the tenant (because amongst other
7 reasons tenant had specifically asked Treasure Island not to carbon copy the subtenant), the notice
8 of default is unenforceable. That is a very simple issue. There is no need to continue the trial.

9 There are only going to be a couple witnesses. Those witnesses are Brad Anthony, the
10 General Counsel of Treasure Island who handled everything from Treasure Island's side and
11 maybe head of finance Jerry Griffiths. Defendant will have its principal Gary Dragul and possibly
12 his lawyer Elizabeth Gold. The trial will take one day. Defendant just took a very detailed
13 deposition of Mr. Anthony and knows all the facts and allegations.

14 **II. THERE IS NO REASON TO TAKE MR. RUFFIN'S DEPOSITION AND IT**
15 **CANNOT BE USED AS AN EXCUSE TO TRY AND CONTINUE THE TRIAL**
16 **AND DISCOVERY.**

17 Defendant already tried to take the deposition of Mr. Ruffin. Plaintiff/Counterdefendant
18 repeats all of its points and authorities in its motion for protective order which the Court granted
19 herein. It is clear that Defendant/Counterclaimant is trying to use Mr. Ruffin's deposition to try
20 and get a trial continuance since there is no other valid reason for the same. However, this trick
21 will not work since there is no reason to take Mr. Ruffin's deposition. First
22 Defendants/Counterclaimants could have taken Brad Anthony's deposition to get the issues
23 concerning Mr. Ruffin eight months ago but chose to wait until the last minute to take Mr.
24 Anthony's deposition. Second, the reason that Defendant/Counterclaimant claims it needs to take
25 Mr. Ruffin's deposition is totally irrelevant to the case.

26 Defendant claims it needs to take Mr. Ruffin's deposition to find out what Mr. Ruffin
27 plans to do with the space if tenant is evicted. It alleges that somehow Mr. Ruffin having a plan
28 for the space if tenant is evicted is relevant to whether or not Treasure Island not carbon copying
the subtenant defeats the notice of default. Clearly it is not. What Mr. Ruffin plans to do with the

1 space when tenant is evicted is totally irrelevant to the notice issues. Accordingly there is no
2 reason to take Mr. Ruffin's deposition.

3 **III. CONCLUSION.**

4 For the above and foregoing reasons Plaintiff/Counterdefendant requests the Court deny
5 the motion to continue the trial etc.

6 Dated this 11 day of April, 2016.

7 FENNEMORE CRAIG, P.C.

8
9 By: 

10 Patrick J. Sheehan (Bar No. 3812)
11 John H. Mowbray (Bar No. 1140)
12 1400 Bank of America Plaza
13 300 South Fourth St. 14th Floor
14 Las Vegas, NV 89101
15 *Attorneys for Treasure Island, LLC*
16
17
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on April 11, 2016, service of the OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE TRIAL AND OPPOSITION TO MOTION TO TAKE THE DEPOSITION OF PHIL RUFFIN AND EXTEND DISCOVERY 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

Patrick J. Sheehan

Email

psheehan@fcclaw.com

Fennemore Craig, P.C.

Contact

Adam Miller

Email

amiller@fcclaw.com

John H. Mowbray

jmowbray@fcclaw.com

Shumway Van

Contact

Brent

Email

brent@shumwayvan.com

Gabriela Mercado

Gabrielam@shumwayvan.com

Kamra Fuller

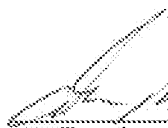
kamra@shumwayvan.com

Robin Cordova

robin@shumwayvan.com

Sam Marshall

samuel@shumwayvan.com



An Employee of Fennemore Craig, P.C.

EXHIBIT 14



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

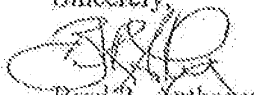
Re: Percentage Rent

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)

EXHIBIT 15

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
 bwirthli@fcflaw.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
 Kukulcan 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

EXHIBIT 16

SUMM

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@felaw.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.: XXIX****SUMMONS – CIVIL****NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW.****TO: ROSE, LLC (DEFENDANT):** A civil Complaint has been filed by the Plaintiff(s) against
you for the relief set forth in the Complaint.

- I. If you intend to defend this lawsuit, within 20 days after this Summons is served
on you, exclusive of the day of service, you must do the following:

- (a) File with the Clerk of this Court, whose address is shown below, a formal
written response to the Complaint in accordance with the rules of the
Court, with the appropriate filing fee.

(b) Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

STEVEN D. GRIERSON, CLERK OF COURT

JUN 01 2015

By:

Deputy Clerk

Date

ADELINE BELSEY

Submitted By:

FENNEMORE CRAIG, P.C.

Patrick J. Sheehy (Bar No. 003812)

John H. Mowbray (Bar No. 1140)

1400 Bank of America Plaza

300 South Fourth St. 14th Floor

Las Vegas, NV 89101

Attorneys for Plaintiffs

NOTE: When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure 4(b).

AFFIDAVIT OF SERVICE

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

_____, being duly sworn, says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received _____ copy(ies) of the Summons and Complaint, _____ on the _____ day of _____, 20____ and served the same on the _____ day of _____, 20____ by:

(Affiant must complete the appropriate paragraph)

1. Delivering and leaving a copy with the Defendant _____ at (state address) _____
2. Serving the Defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the Defendant's usual place of abode located at (state address) _____

[Use paragraph 3 for service upon agent, completing (a) or (b)]

3. Serving the Defendant _____ by personally delivering and leaving a copy at (state address) _____
 - (a) With _____ as _____, an agent lawfully designated by statute to accept service of process;
 - (b) With _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (Check appropriate method):

- ☐ Ordinary mail
☐ Certified mail, return receipt requested
☐ Registered mail, return receipt requested

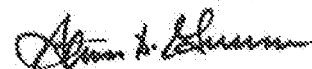
addressed to the Defendant _____ at Defendant's last known address which is
 (state address) _____

1 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
2 is true and correct.

3 EXECUTED this _____ day of _____, 20_____.
4

5 _____
6 Signature of person making service
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05/28/2015 06:07:20 PM



CLERK OF THE COURT

1 **COMP**
2 FENNEMORE CRAIG, P.C.
3 Patrick J. Sheehan (Nevada Bar No. 3812)
4 John H. Mowbray (Nevada Bar No. 1140)
5 300 South Fourth Street, Suite 1400
6 Las Vegas, Nevada 89101
7 Telephone: (702) 692-8000
8 Facsimile: (702) 692-8099
9 Email: psheehan@fcclaw.com
10
11 *Attorneys for Plaintiff Treasure Island, LLC*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 TREASURE ISLAND, LLC, a Nevada limited
15 liability company;

16 Plaintiff,

17 v.

18 ROSE, LLC, a Nevada limited liability
19 company;

20 Defendant.

CASE NO.: A- 15- 719105- B

DEPT. NO.: XXI X

21 Plaintiff complains and alleges as follows:

22 **COMPLAINT**

23 **FIRST CLAIM FOR RELIEF**
24 **(Breach of Lease)**

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

27 2. Pursuant to the terms of the Lease, Treasure Island leased space to Rose inside the
28 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.

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000439

2

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

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

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

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

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

10 17. Accordingly, the Lease has been terminated.

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

13 WHEREFORE, Plaintiff prays for relief as follows:

- 14
- 15 1. For damages in an amount to be proven in excess of \$10,000.
 - 16 2. For an order of declaratory relief declaring the Lease terminated.
 - 17 3. For its reasonable costs and attorney's fees.
 - 18 4. For such other and further relief as the Court may allow.
- 19

20 Dated this 24 day of May, 2015.

21 FENNEMORE CRAIG, P.C.

22 By: 

23 Patrick J. Sheehan, Esq. (Bar No. 3812)
24 John H. Mowbray (Nevada Bar No. 1140)
25 1400 Bank of America Plaza
26 300 South Fourth St. 14th Floor
27 Las Vegas, NV 89101
28 Attorneys for Plaintiff

A- 15- 719105- B

BUSINESS COURT CIVIL COVER SHEET

XXI X

County, Nevada

Case No. _____

(Designed by Clark's Office)

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

Plaintiff(s) (name/address/phone):

Treasure Island, LLC

Defendant(s) (name/address/phone):

Ross, LLC

Attorney (name/address/phone):

Patrick J. Sheehan

Fennemore Craig, P.C.

300 South Fourth Street, Suite 1400

Las Vegas, NV 89101

Attorney (name/address/phone):

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		Business Court Filing Types
Real Property <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Other Landlord/Tenant <input type="checkbox"/> Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <input type="checkbox"/> Other Real Property <input type="checkbox"/> Condominium/Leasehold Domain <input type="checkbox"/> Other Real Property Construction Defect & Contract <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <input type="checkbox"/> Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract Judicial Review/Appeal/Other Civil Filing <input type="checkbox"/> Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Appeal Other <input type="checkbox"/> Appeal from Lower Court	Torts <input type="checkbox"/> Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <input type="checkbox"/> Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice <input type="checkbox"/> Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort Civil Writs <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	CLARK COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Business Case Management <input checked="" type="checkbox"/> Other Business Court Matters WASHINGTON COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art. 9) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters

May 20, 2015

Date

Signature of initiating party or representative

EXHIBIT 17

Rose, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111

TREASURE ISLAND LEASE NOTICE

May 29, 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, the "Lease"); Amended Sublease between Rose, LLC and Senor Frogs Las Vegas, LLC (May 6, 2014) (the "Sublease").

Treasure Island, LLC d/b/a Treasure Island Las Vegas ("Treasure Island") tendered an alleged notice to Rose, LLC ("Rose") dated May 14, 2015 pursuant to Section 15.1 of the Lease Agreement (the "Alleged Breach Notice"). Treasure Island addressed and overnighted for delivery on May 15, 2015 the Alleged Breach Notice to Gary Dragul on behalf of Rose and copied Elizabeth Gold via email.

Section 15.1 of the Lease governs Events of Default. Section 15.1.1. of the Lease provides for an Event of Default if a Tenant failure continues for ten (10) days "from Landlord's written notice to Tenant" Section 19.6 of the Lease governs "[a]ny notice or other communication required or permitted to be given by a party hereunder"

Section 19.6 of the Lease requires any notice to Rose from Treasure Island to be sent to the attention of Susan Markusch, with a copy to Operadora Andersons S.A. de C.V.

("Operadora") in Mexico. Section 11 of the Fifth Amendment to the Lease updated certain contact information for notice purposes under the Lease with respect to both Rose and Operadora and imposed an additional notice requirement for Operadora's counsel in Florida. The Parties drafted Section 19.4 of the Lease and Section 11 of the Fifth Amendment to provide Rose and Operadora with backstop cure rights in the event of an alleged breach by Rose of the Lease.

Treasure Island did not send its Alleged Breach Notice to the attention of Susan Markusch at Rose; did not copy Operadora; and, did not copy Operadora's counsel.

Treasure Island's Alleged Breach Notice did not comply with the Lease and Fifth Amendment to the Lease for notice purposes. Treasure Island subsequently tendered an alleged notice of termination to Rose dated May 28, 2015 that depended on the adequacy of the Alleged Breach Notice and Rose's failure to cure any alleged and properly noticed breach of the Lease (the "Alleged Termination Notice"). Treasure Island again did not send its Alleged Termination Notice to the attention of Susan Markusch at Rose.

The Alleged Termination Notice still does not fully comply with the Lease for Section 19.4 notice purposes, and is invalid and ineffective because it lacks the notice preconditions in Sections 15.1.1 and 15.2 of the Lease due to the notice failings associated with the Alleged Breach Notice.

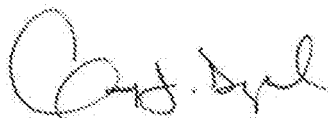
Treasure Island therefore has not properly noticed any alleged breach, Event of Default or exercise of termination rights under the Lease and there is no uncured breach of the Lease outstanding that could constitute an Event of Default or allow Treasure Island to exercise termination rights or other default remedies under the Lease.

Treasure Island nevertheless contacted Rose's subtenant directly on May 28, 2015, in an apparent attempt to circumvent or assume the benefits that inure to Rose under the Sublease.

Treasure Island failed to comply with the notice provisions in the Lease and Fifth Amendment to the Lease with respect to the Alleged Breach Notice and Alleged Termination Notice, and has interfered with Rose's subtenant relationship. Rose therefore reserves all of its rights and remedies under the law, including but not limited to those outlined in Sections 19.5, 19.14, and 19.20 of the Lease.

Sincerely,

Rose Management, Inc., Manager



Gary J. Dragul
President

ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Brad Anthony

NUMBER: 702-894-7295

FROM: Rose, LLC

DATE: May 29, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

Please contact us at the above number if you do not receive all pages or if the fax is illegible. Thank you.

The information contained in this facsimile message is privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

ROSE000055

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 3065
RECIPIENT ADDRESS 917028947295
DESTINATION ID
ST. TIME 05/29 12:35
TIME USE 00'38
PAGES SENT 3
RESULT OK

ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Brad Anthony

NUMBER: 702-894-7295

FROM: Rose, LLC

DATE: May 29, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

ROSE000056

Please contact us at the above number if you do not receive all pages or if the fax is illegible. Thank you.

000446

000446

000446

Origin ID: APAA

FedEx
Express

Rose, LLC
5690 DTC Boulevard
Suite 515
Greenwood Village, CO 80111

Ship Date: 29MAY15
ActWgt: 0.5 LB
CAD: 2932012/INET3610

Delivery Address Bar Code



SHIP TO: (702) 894-7444

BILL SENDER

Brad Anthony
Treasure Island, LLC
3300 Las Vegas Boulevard South

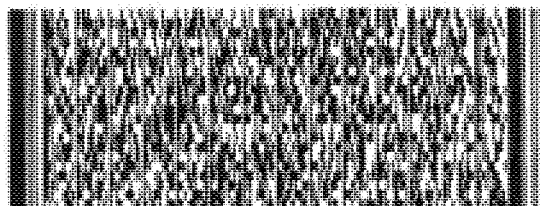
LAS VEGAS, NV 89109

Ref # Docs
Invoice #
PO #
Dept #

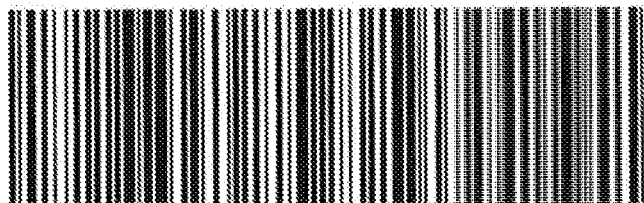
MON - 01 JUN 10:30A
PRIORITY OVERNIGHT

TRK# 7737 1381 2890

0201

**SE FLXA**

89109
NV-US
LAS



ESTJN0318EE48

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Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Najam Kahn

NUMBER: 702-894-7680

FROM: Rose, LLC

DATE: May 29, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

Please contact us at the above number if you do not receive all pages or if the fax is illegible. Thank you.

The information contained in this facsimile message is privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 3084
RECIPIENT ADDRESS 917028947680
DESTINATION ID
ST. TIME 05/29 12:34
TIME USE 00'42
PAGES SENT 3
RESULT OK

ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Najam Kahn

NUMBER: 702-894-7680

FROM: Rose, LLC

DATE: May 29, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

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ROSE000061

Origin ID: APAA



Rose, LLC
5690 DTC Boulevard
Suite 515
Greenwood Village, CO 80111

Ship Date: 29MAY15
ActWgt: 0.5 LB
CAD: 2932012/NET3810

Delivery Address Bar Code



SHIP TO: (782) 894-7444

BILL SENDER

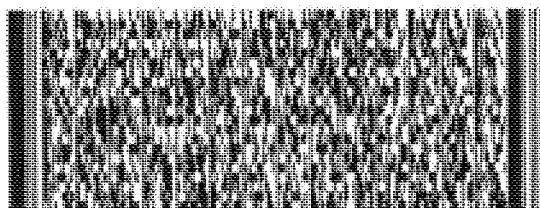
Najam Khan
Treasure Island, LLC
3300 Las Vegas Boulevard South

LAS VEGAS, NV 89109

Ref # Docs
Invoice #
PO #
Dept #

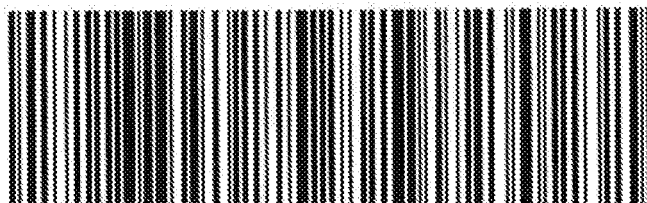
MON - 01 JUN 10:30A
PRIORITY OVERNIGHT

TRK# 7737 1378 8700
0281



SE FLXA

89109
NV-US
LAS



507 JSC0918/EE48

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EXHIBIT 18

Rose, LLC
 5690 DTC Boulevard, Suite 515
 Greenwood Village, CO 80111

TREASURE ISLAND PAYMENT NOTICE

June 3, 2015

Via overnight delivery and facsimile (702-894-7680):

Treasure Island, LLC
 3300 Las Vegas Blvd., South
 Las Vegas, NV 89109
 Attn: Najam Khan

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, the "Lease"); Amended Sublease between Rose, LLC and Senor Frogs Las Vegas, LLC (May 6, 2014) (the "Sublease").

Enclosed is a copy of Rose, LLC's cashier's check in the amount of \$119,229.00 to be delivered to Treasure Island, LLC ("Treasure Island") to the attention of Jerry Griffis on Thursday, June 4, 2015, by Federal Express via overnight delivery. A copy of the Federal Express transmittal label is also enclosed. This is Rose, LLC's third good faith attempt to tender its \$119,229.00 payment to Treasure Island.

Rose, LLC sent \$119,229.00 to Treasure Island on Friday, May 29, 2015 via wire transfer to Treasure Island, LLC's Bank of America account number 990086530, an account to which Rose, LLC had previously delivered via wire transfer funds payable to Treasure Island. Rose, LLC's tender of such payment is evidenced by Federal Reference Number 20150529B6B7HU2R015920 and is the first line item on Rose, LLC's Front Range Bank wire transmittal confirmation, a copy of which is enclosed herewith. On Tuesday, June 2, 2015, Rose, LLC discovered that the \$119,229.00 transferred to Treasure Island on Friday, May 29, 2015 had been returned to Rose, LLC's account.

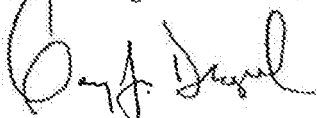
Rose, LLC sent \$119,229.00 to Treasure Island on Wednesday, May 3, 2015 via wire transfer to Treasure Island, LLC's Bank of America account number 990086548, an account to which Treasure Island directed Rose, LLC's subtenant to deliver certain reimbursable funds in January 2015. Rose, LLC's tender of such payment is evidenced by Federal Reference Number 20150603B6B7HU1R003826 and is the second line item on Rose, LLC's

Front Range Bank wire transmittal confirmation, a copy of which is enclosed herewith. This afternoon, Wednesday, May 3, 2015, Rose, LLC discovered that the \$119,229.00 transferred to Treasure Island today, June 3, 2015, had been returned to Rose, LLC's account.

As a result, Rose, LLC arranged today for a cashier's check to be delivered to Treasure Island on June 4, 2015. Kindly ensure that Rose, LLC's cashier's check is applied to Rose, LLC's account. Thank you for your assistance.

Sincerely,

Rose Management, Inc., Manager



Gary J. Dragul
President

Enclosures

cc: Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Brad Anthony (with enclosures)
Via overnight delivery and via facsimile (702-894-7295)

FRBFRONT RANGE BANK
Lakewood, CO 80228
303-989-1313

102952

REMITTER: ROSE LLC

DATE 6/03/15

PAY TO THE
ORDER OF

TREASURE ISLAND, LLC

EXACTLY **119,229 AND 00/100 DOLLARS

\$ 119,229.00

CASHIER'S CHECKTHE PURCHASE OF AN INDEMNITY BOND WILL BE REQUIRED BEFORE ANY
CASHIER'S CHECK OF THIS BANK WILL BE REPLACED OR REFUNDED IN THE
EVENT IT IS LOST, MISPLACED, OR STOLEN.

Valid After 90 Days

Kathy T...
Kristen M. R...

TWO SIGNATURES REQUIRED OVER \$10,000.00

⑈0000102952⑈ ⑆107006428⑆ 43⑈

102952

FRBFRONT RANGE BANK
Lakewood, CO 80228
303-989-1313

REMITTER: ROSE LLC

DATE 6/03/15

TREASURE ISLAND, LLC

EXACTLY **119,229 AND 00/100 DOLLARS

\$ 119,229.00

CUSTOMER - FILE COPY

CASHIER'S CHECK

AUTHORIZED SIGNATURE

NOT NEGOTIABLE

ROSE000065

From: (303) 221-5500
Inessa Osadchaya
GDA Real Estate Services, LLC
5580 DTC Blvd
Suite 515
Greenwood Village, CO 80111

Origin ID: APAA



JHS12US022300ay

SHIP TO: (303) 221-5500

BILL SENDER

Jerry Griffis
Treasure Island
3300 LAS VEGAS BLVD S

LAS VEGAS, NV 89109

Ship Date: 03JUN15
Act/Wgt: 0.5 LB
CAD: 2932012/NET3610

Delivery Address Bar Code



Ref #
Invoice #
PO #
Dept #

Docs

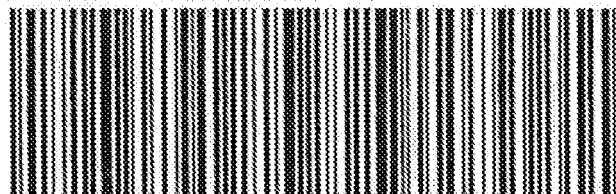
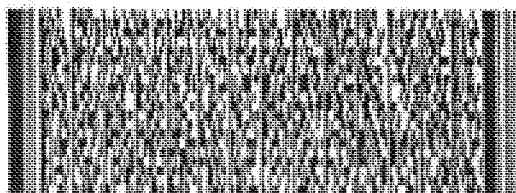
THU - 04 JUN AA
STANDARD OVERNIGHT

TRK# 7737 5241 5830

0201

XX FLXA

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NV-US
LAS



03JUN1500000000

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FRB

FRONT RANGE BANK

View Wire Activity for: ROSE LLC ☒

Wire Name:	Transmitted:	Amount:	Rep Code:	Receiving Account Number:	Receiving FI:	OM&D:	Search
Treasure Island	05/29/2015	\$119,229.00		990086530	BK AMER NYC	201505290857HJ2R01592005291814FT03	
Treasure Island	06/02/2015	\$119,229.00		990086548	BK AMER NYC	201506030857HJ1R00382606031023FT03	

From: (303) 221-5500

Origin ID: APAA

FedEx
Express

Rose, LLC
5690 DTC Boulevard
Suite 515
Greenwood Village, CO 80111



J15121902200000

Ship Date: 03JUN15
ActWgt: 0.5 LB
CAD: 2932012/NET3610

Delivery Address Bar Code



SHIP TO: (702) 894-7444

BILL SENDER

Najam Kahn
Treasure Island, LLC
3300 Las Vegas Boulevard South

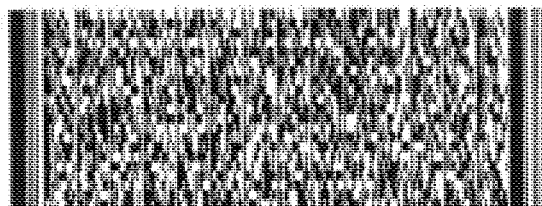
LAS VEGAS, NV 89109

Ref # Docs
Invoice #
PO #
Dept #

THU - 04 JUN 10:30A
PRIORITY OVERNIGHT

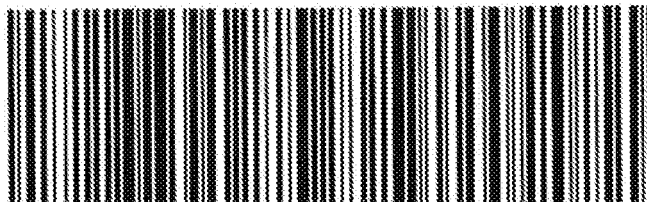
TRK# 7737 5287 1587

0201



XX FLXA

89109
NV-US
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5374104000000

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ROSE000068

ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
 Attn: Najam Kahn

NUMBER: 702-894-7680

FROM: Rose, LLC

DATE: June 3, 2015

NUMBER OF PAGES: 6 (including cover page)

Letter attached.

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TRANSMISSION OK

TX/RX NO 3070
RECIPIENT ADDRESS 917028947680
DESTINATION ID
ST. TIME 06/03 19:39
TIME USE 01'02
PAGES SENT 6
RESULT OK

ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Najam Kahn

NUMBER: 702-894-7680

FROM: Rose, LLC

DATE: June 3, 2015

NUMBER OF PAGES: 6 (including cover page)

Letter attached.

Please contact us at the above number if you do not receive all pages or if the fax is illegible. Thank you.

ROSE000070

000459

Rose, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111

TREASURE ISLAND PAYMENT NOTICE

June 3, 2015

Via overnight delivery and facsimile (702-894-7680):

Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Najam Khan

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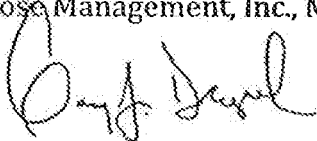
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Sincerely,

Rose Management, Inc., Manager



Gary J. Dragul
President

Enclosures

cc: Treasure Island, LLC
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
Attn: Brad Anthony (with enclosures)
Via overnight delivery and via facsimile (702-894-7295)

FRBFRONT RANGE BANK
Lakewood, CO 80228
303-989-1313

102952

REMITTER: ROSE LLC

DATE 6/03/15

PAY TO THE
ORDER OF

TREASURE ISLAND, LLC

EXACTLY **119,229 AND 00/100 DOLLARS

\$ 119,229.00

CASHIER'S CHECKTHE PURCHASE OF AN INDEMNITY BOND WILL BE REQUIRED BEFORE ANY
CASHIER'S CHECK OF THIS BANK WILL BE REPLACED OR REFUNDED IN THE
EVENT IT IS LOST, MISPLACED, OR STOLEN.

Valid After 90 Days

Kathy Turner
Kristen M. Rott

TWO SIGNATURES REQUIRED OVER \$10,000.00

⑈0000102952⑈ ⑆107006428⑆ 43⑈

102952

FRBFRONT RANGE BANK
Lakewood, CO 80228
303-989-1313

REMITTER: ROSE LLC

DATE 6/03/15

TREASURE ISLAND, LLC

EXACTLY **119,229 AND 00/100 DOLLARS

\$ 119,229.00

CUSTOMER - FILE COPY

CASHIER'S CHECK

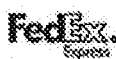
AUTHORIZED SIGNATURE

NOT NEGOTIABLE

ROSE000073

From: (303) 221-5500
 Inessa Osadchaya
 GDA Real Estate Services, LLC
 5680 DTC Blvd
 Suite 515
 Greenwood Village, CO 80111

Origin ID: APAA



JUN1215002300W

Ship Date: 03JUN15
 Act/Wgt: 0.5 LB
 CAD: 2932012/NET3610

Delivery Address Bar Code



SHIP TO: (303) 221-5500

BILL SENDER

Jerry Griffis
 Treasure Island
 3300 LAS VEGAS BLVD S

LAS VEGAS, NV 89109

Ref #
 Invoice #
 PO #
 Dept #

Docs

THU - 04 JUN AA
 STANDARD OVERNIGHT

TRK# 7737 5241 5830

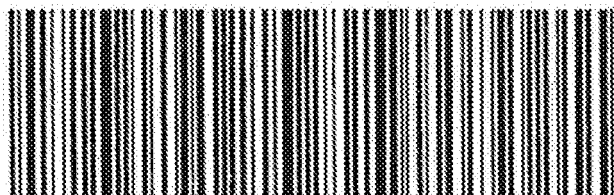
0201

89109

NV-US

LAS

XX FLXA



037JUN06000000

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View Wire Activity for: ROSE LLC ☒

Wire Name:	Transmitted:	Amount:	Rep Code:	Receiving Account Number:	Receiving FI:	OMAD:	Search
Treasure Island	05/29/2015	\$118,228.00		990086530	SK AMER NYC	20150529068716J2R01962005291814FT03	
Treasure Island	06/02/2015	\$118,228.00		990086548	SK AMER NYC	20150603068716J2R01962005291814FT03	

From: (303) 221-5500

Origin ID: APAA



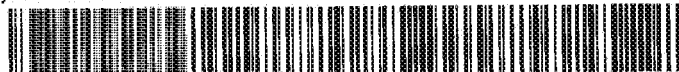
Rose, LLC
5690 DTC Boulevard
Suite 515
Greenwood Village, CO 80111



#5121592220304

Ship Date: 03JUN15
Act/Wgt: 0.5 LB
CAD: 2932012/INET3610

Delivery Address Bar Code



SHIP TO: (702) 894-7444

BILL SENDER

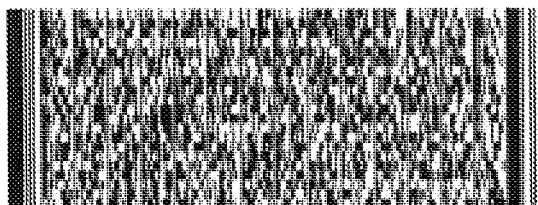
Brad Anthony
Treasure Island, LLC
3300 Las Vegas Boulevard South

LAS VEGAS, NV 89109

Ref # Docs
Invoice #
PO #
Dept #

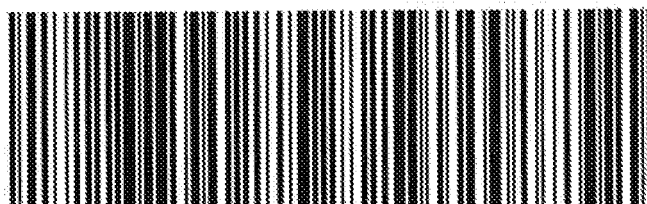
THU - 04 JUN 10:30A
PRIORITY OVERNIGHT

TRK# 7737 5287 4038
0201



XX FLXA

89109
NV-US
LAS



537 J18AGEEE48

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ROSE000076

ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
 Attn: Brad Anthony

NUMBER: 702-894-7295

FROM: Rose, LLC

DATE: June 3, 2015

NUMBER OF PAGES: 6 (including cover page)

Letter attached.

Please contact us at the above number if you do not receive all pages or if the fax is illegible. Thank you.

The information contained in this facsimile message is privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

ROSE000077

*** TX REPORT ***

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TX/RX NO 3069
RECIPIENT ADDRESS 917028947295
DESTINATION ID
ST. TIME 06/03 18:38
TIME USE 01'00
PAGES SENT 8
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ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

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NUMBER OF PAGES: 6 (including cover page)

Letter attached.

ROSE000078

Please contact us at the above number if you do not receive all pages or if the fax is illegible. Thank you.

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Express

Return To Sender

Extremely Urgent

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1500
0609
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From: (303) 221-5500
Inessa Oostchaya
GDA Real Estate Services, LLC
5890 DTC Blvd
Suite 515
Greenwood Village, CO 80111

Origin ID: APAA

FedEx
Express



SHIP TO: (303) 221-5500

Jerry Griffiths
Treasure Island
3300 LAS VEGAS BLVD S
LAS VEGAS, NV 89109

BILL SENDER

Ship Date: 03JUN15
ActWgt: 0.5 LB
CAD: 2932012INET3510

Delivery Address Bar Code

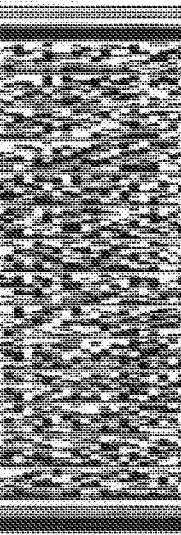


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Date

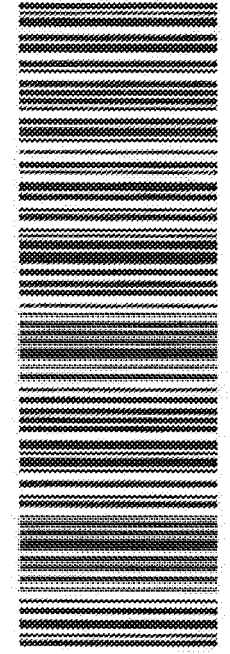
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LAS

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ToXpress **Return To Sender**

From: (303) 221-5500

Origin ID: APAA



Ship Date: 03 JUN 15

ActWgt: 8.5 LB

CAD: 2932312/NET3510

Rosa, LLC

5690 DTC Boulevard

Suite 515

Greenwood Village, CO 80111



SHIP TO: (702) 894-7444

Brad Anthony

Treasure Island, LLC

3300 Las Vegas Boulevard South

LAS VEGAS, NV 89109

BILL SENDER

Delivery Address Bar Code



Ref # Docs

Invoice #

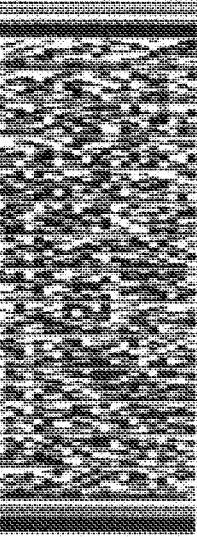
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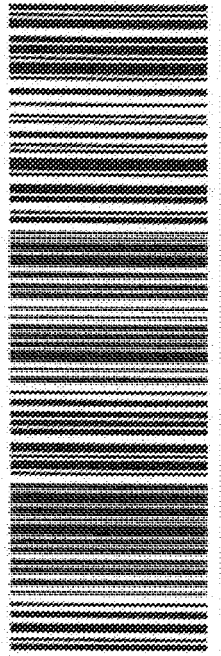
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PRIORITY OVERNIGHT

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NV US
LAS



Refused

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Return To

Extremely Urgent
Sender

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From: (303) 224-5500

Origin ID: APAA

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Rosa, LLC

5080 DTC Boulevard

Suite 515

Greenwood Village, CO 80111



SHIP TO: (702) 894-7444

Najam Kahn

Treasure Island, LLC

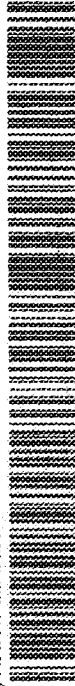
3300 Las Vegas Boulevard South

LAS VEGAS, NV 89109

BILL SENDER

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Ref # Docs

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PRIORITY OVERNIGHT

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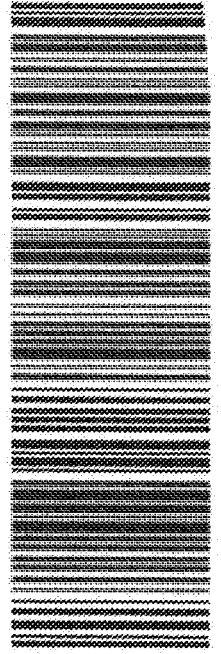
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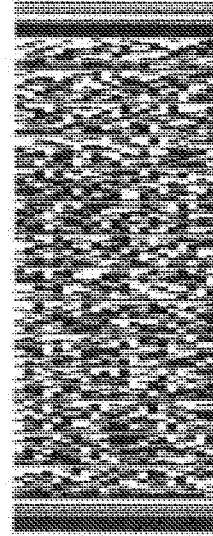
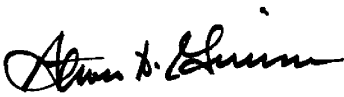


EXHIBIT 19


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.

ROSE, LLC, a Nevada limited liability company,

Counterclaimant,

v.

TREASURE ISLAND, LLC, a Nevada limited
liability company,

Counterclaimant.

CASE NO.: A-15-719105-B

DEPT. NO.: XXIX

**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

///

///

///

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

3
 4 FENNEMORE CRAIG, P.C.

5
 6 By: 

7 PATRICK J. SHEEHAN, ESQ.
 8 Nevada Bar #3812
 9 300 S. 4th Street, Suite 1400
 10 Las Vegas, Nevada 89101
 11 Attorney for Plaintiff
 12 Treasure Island, LLC

13 NOTICE OF MOTION

14 TO: ALL ATTORNEYS AND THEIR ATTORNEYS OF RECORD

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

21 Dated this 27 day of August, 2015.

22 FENNEMORE CRAIG, P.C.

23 By: 

24 PATRICK J. SHEEHAN, ESQ.
 25 Nevada Bar #3812
 26 300 S. 4th Street, Suite 1400
 27 Las Vegas, Nevada 89101
 28 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 were 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 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.

1 In the meantime, the question of rent has been the subject of ongoing discussions between
2 the parties. Despite those discussions no resolution to the issue has been reached.

3 As a result, Treasure Island hereby seeks an order confirming that it may demand the rent
4 (in fairness Rose has tendered rent but Treasure Island has, out of an abundance of caution, not
5 accepted that rent pending negotiations to try and put the rent into a court escrow) during the
6 pendency of the litigation.
7

8 Attached as Exhibit I is the case of *Davidsohn v. Doyle, id.* In that case, the Nevada
9 Supreme Court stated that the lessor has the right to accept rent after breach by lessee when lessor
10 timely expresses his/her intent to terminate the lease and the lessee nevertheless remains in
11 possession pending litigation. Plaintiff seeks confirmation by this Court that it does in fact, have
12 the right to collect the rent, and/or provide notice of default should Rose fall in arrears, during the
13 pendency of this litigation as set forth in the Nevada Supreme Court in the *Davidsohn* matter.

14 Dated this 27 day of August, 2015.

15 FENNEMORE CRAIG, P.C.

16
17 By: 

18 PATRICK J. SHEEHAN, ESQ.
19 Nevada Bar #3812
20 300 S. 4th Street, Suite 1400
21 Las Vegas, Nevada 89101
22 *Attorney for Plaintiff*
23 *Treasure Island, LLC*
24
25
26
27
28

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 27, 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

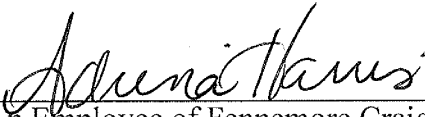

An Employee of Fennemore Craig, P.C.

EXHIBIT “I”

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EXHIBIT “I”

WV - WESTLAW

Davidsohn v. Doyle
Supreme Court of Nevada January 30, 1992 108 Nev. 145 825 P.2d 1227 (Appeal - 6 pages)[PDF 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

Continental 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 tenant.

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 Tiffney 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 estoppel.

[See More Secondary Sources](#)

Briefs

Brief for Petitioner.

1937 WL 46483
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 is...

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. 25-64506 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-11308-RWZ. In response to the ruling in Civil Action number 00-11295-RWZ, the plaintiffs in the above-captioned matter are that

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 presiding.

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 evidence.

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 Honorable Judge Susan H. Johnson presiding.

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*, 495 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.⁵ 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, / 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

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EXHIBIT 20

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.

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.

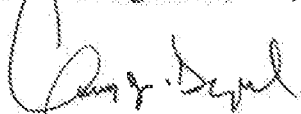
To the extent that Treasure Island believes it has discretion under the Lease with respect to rental payments or receipt, it has not acted in good-faith by rejecting rental payments for the Leased Premises during a period of uncontested occupancy pursuant to the other terms of the Lease and without advance 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.

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.

Sincerely,

Rose Management, Inc., Manager



Gary J. Dragul
President

ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Najam Kahn

NUMBER: 702-894-7680

FROM: Rose, LLC

DATE: September 11, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

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ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Najam Kahn

NUMBER: 702-894-7680

FROM: Rose, LLC

DATE: September 11, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

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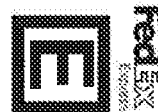
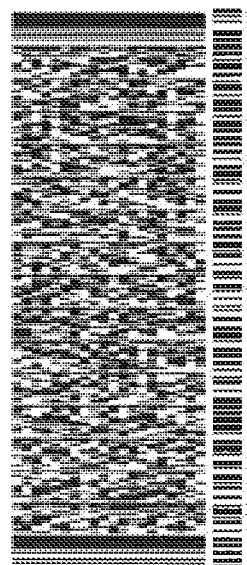
ORIGIN ID:APAA (303) 221-5500
 ELIZABETH GOLD
 ROSE, LLC
 3680 DTC PARKWAY
 SUITE 515
 GREENWOOD VILLAGE, CO 80111
 UNITED STATES US

SHIP DATE: 11SEP15
 ACT:RACET 8 501.8
 C&D: 25520 12MNET33670
 BILL SENDER

TO NAJAM KHAN
 TREASURE ISLAND, LLC
 3300 LAS VEGAS BOULEVARD SOUTH

LAS VEGAS NV 89109
 (303) 221-5500 REF: DOCS
 NV
 PO

02777



J142018552601uv

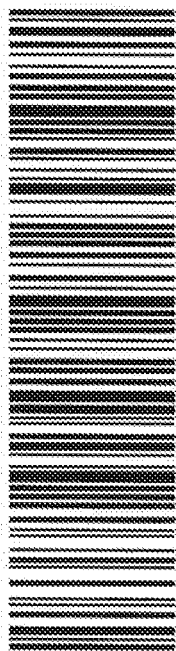
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ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Brad Anthony

NUMBER: 702-894-7295

FROM: Rose, LLC

DATE: September 11, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

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ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Brad Anthony

NUMBER: 702-894-7295

FROM: Rose, LLC

DATE: September 11, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

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TIME USE 00'00
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ROSE, LLC
5690 DTC BOULEVARD, SUITE 515
GREENWOOD VILLAGE, COLORADO 80111
PHONE- 303-221-5500
FAX- 303-221-5501

F A C S I M I L E T R A N S M I S S I O N

TO: Treasure Island, LLC
Attn: Brad Anthony

NUMBER: 702-894-7295

FROM: Rose, LLC

DATE: September 11, 2015

NUMBER OF PAGES: 3 (including cover page)

Letter attached.

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ORIGIN ID:APAA (303) 221-5500
ELIZABETH GOLD
ROSE LLC
5080 DTC PARKWAY
SUITE 515
GREENWOOD VILLAGE, CO 80111
UNITED STATES US

SHIP DATE: 11SEP15
ACTIVITY: 038118
CAD: 28120120MET 56170

BILL SENDER

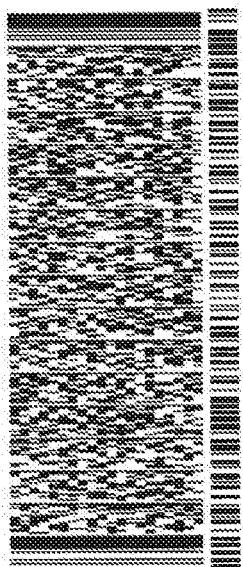
TO BRAD ANTHONY

TREASURE ISLAND, LLC
3300 LAS VEGAS BOULEVARD SOUTH

LAS VEGAS NV 89109

(303) 221-5500 NEF-DOCS

NO



21620120028010v

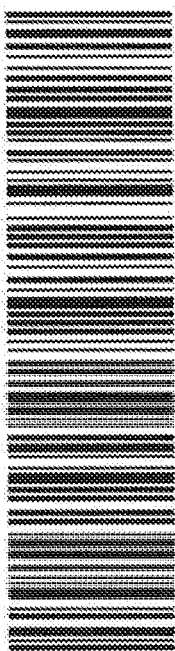
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EXHIBIT 21

Rose, LLC
 5690 DTC Boulevard, Suite 515
 Greenwood Village, CO 80111

SECOND NOTICE OF LEASE DEFAULT

November 18, 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"); escrow correspondence from Pisanelli Bice (August 26, 2015); TI Notice of Lease Default (September 11, 2015) ("TI Lease Default Notice"); rent payment correspondence from Treasure Island, LLC (November 5, 2015) ("Prior Rent Letter")

Rose, LLC ("Rose") previously provided Treasure Island, LLC ("Treasure Island") with a TI Lease Notice and a TI Lease Default Notice, because Treasure Island breached and defaulted under Sections 19.6 and 19.20 of the Lease and Section 3 of the Attornment Agreement with respect to its formal notice efforts.

Rose also previously provided Treasure Island with a TI Payment Notice and TI Lease Default Notice, because Treasure Island likewise breached and defaulted under Sections 3.1, 19.6 and

19.20 of the Lease with respect to its receipt of rental payments.

In the TI Lease Default Notice, Rose also put Treasure Island on notice that Treasure Island was not acting in good-faith with respect to any discretion it had under the Lease regarding the receipt of rental payments.

Rose further warned Treasure Island in the TI Lease Default Notice that it could not initiate, create or induce breaches of the Lease as part of an attempt to circumvent or interfere with Rose's relationship with Senor Frogs Las Vegas, LLC ("Senor Frogs") or to advance Treasure Island's alternative business plans for the Lease Premises.

Given Treasure Island's public admissions, it has come to the attention of Rose that Treasure Island willfully breached and violated the receipt of rental payment provisions outlined in the Lease and acted in bad-faith with respect to the receipt of rental payments. In particular, Treasure Island has now conceded that it always could and should have accepted Rose's tendered rental payments subject to an appropriate reservation:

- In its related Motion, Treasure Island acknowledged that Nevada law provides that a "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" (Motion for Confirmation at 4 (citing Davidsohn v. Doyle, 108 Nev. 145, 825 P.2d 1227 (1992).))
- In its proposed Order, Treasure Island conceded that "[t]he 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)" (Order at 2.)
- In its Prior Rent Letter, Treasure Island stipulated that "Treasure Island acknowledges that [Rose] attempted to remit that percentage rent, which was due on April 30, on May 18, 2015, but that it was rejected, as was the base rent, which was tendered on June 1, 2015." (Prior Rent Letter at 1.)
- In its related Motion, Treasure Island admitted that "in fairness Rose has tendered rent but Treasure Island has, out of an abundance of caution, not accepted that rent pending negotiations" (Motion at 4.)

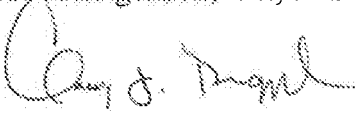
Based on Treasure Island's judicial admissions, it appears uncontested that Treasure Island rejected rental payments properly tendered by Rose pursuant to the Lease. Treasure Island concedes that it did not have the right to reject rental payments that Rose properly tendered pursuant to the Lease, based on Nevada law.

Accordingly, Rose is now providing Treasure Island with this Second Notice of Lease Default because based on these judicial admissions and additional facts Treasure Island has conceded and confirmed that it knowingly breached and defaulted under Sections 3.1, 19.6 and 19.20 of the Lease and Nevada law with respect to its receipt of rental payments.

In any case Rose continues to reserve 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.

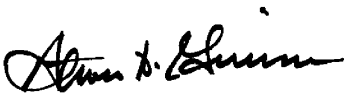
Sincerely,

Rose Management, Inc., Manager

A handwritten signature in dark ink, appearing to read "Gary J. Dragul". The signature is fluid and cursive, with the first name "Gary" being more prominent.

Gary J. Dragul
President

EXHIBIT 22


CLERK OF THE COURT

ORDR
FENNEMORE CRAIG, P.C.
Patrick J. Sheehan (Bar No. 3812)
John H. Mowbray (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

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,
TREASURE ISLAND, LLC'S MOTION
FOR PROTECTIVE ORDER**


Treasure Island's motion for protective order having come on for hearing November 12, 2015. The Plaintiff/Counterdefendant appearing by and through its counsel Patrick J. Sheehan of the law firm of Fennemore Craig, P.C. and the Defendant/Counterclaimant appearing by and through its counsel of Jarrod Rickard of the law firm of Pisanelli Bice, PLLC; the Court having

1 reviewed the papers and pleadings on file and entertained oral argument and good cause
2 appearing therefore: It is hereby ordered that Plaintiff's motion is granted, in part, and a
3 protective order is issued with respect to the deposition of Phil Ruffin. However, if Defendant
4 makes the determination it would still like to take Mr. Ruffin's deposition after deposing
5 Plaintiff's Rule 30(b)(6) witness, Defendant may ask the Court to do so and explain why.

6 ORDER

7 IT IS SO ORDERED.

8 Dated this 7th day of December, 2015.

9
10 
DISTRICT COURT JUDGE

11
12 Respectfully Submitted By:

13 FENNEMORE CRAIG, P.C.

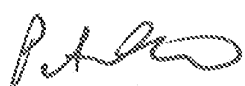
14
15 By: 
16 Patrick J. Sheehan (Bar No. 3812)
17 John H. Mowbray (Bar No. 1140)
18 1400 Bank of America Plaza
300 South Fourth St. 14th Floor
Las Vegas, NV 89101
Attorneys for Plaintiffs/Counterdefendants

EXHIBIT 23

Case No. 71941

In the Supreme Court of Nevada

ROSE, LLC,

Appellant,

vs.

TREASURE ISLAND, LLC,

Respondent.

Electronically Filed
Jul 24 2017 03:23 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 2
PAGES 251-500**

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

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

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01	Complaint	05/28/15	1	1–4
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03	Treasure Island’s Answer to Counter-claim	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 Counter-claim	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

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32	Amended Notice of Appeal	01/17/17	5	1058–1103
24	Case Appeal Statement	12/07/16	4	999–1000
			5	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	234–250
			2	251–500
			3	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 infractions notwithstanding proper notice by Rose and an opportunity to cure, so TI defaulted again
2 under the Lease.

3 Rose also has requested from this Court a declaratory judgment to declare Rose and TI's
4 respective rights, responsibilities, and obligations under the Lease and for a declaration that TI
5 failed to comply with its leasing obligations.⁸³ This Court's resolution of the declaratory judgment
6 claims will track its findings with respect to the parties' breach of Lease allegations.

7 All told, Rose alleges that TI both breached the explicit notice and payment acceptance
8 provisions of the Lease when it failed to properly notify Rose, Operadora and SFLV of any alleged
9 breach or default and when it refused to accept Rose's monetary payments. To the extent that TI
10 had any discretion with respect to these matters, TI also breached the implied covenant of good
11 faith and fair dealing in the Lease regarding notice and/or rent acceptance obligations.⁸⁴

12 **b. Standards of Review Applicable to Rose's Claims**

13 In contracts to TI's thin affirmative claims, Rose can establish all of the elements necessary
14 to support its counterclaims under the governing legal standards.

15 **(1) Rose's Breach of Lease Claims**

16 TI breached the Lease when it failed to comply with the notice requirements under the
17 Lease and the Fifth Amendment and when it refused to accept Rose's attempts to tender rent
18 payments. Again, to prevail on a claim for breach of contract in Nevada a plaintiff must prove: 1)
19 the existence of a valid contract; 2) a breach by the defendant; and, (3) damage as a result of the
20 breach.⁸⁵ As outlined above, neither party disputes the existence of a valid contract or the substance
21 of the notice, cure or rent payment acceptance obligations in the Lease or Fifth Amendment. The
22 only issues before this Court with respect to Rose's claims for breach of the Lease are whether TI
23 in fact failed to comply with the notice, cure and payment tender acceptance provisions in the
24 Lease after proper notice and opportunity to cure, and if so the amount of Rose's related damages.

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26
27 ⁸³ See Exhibit 25 at ¶ 27.

28 ⁸⁴ Id. at ¶ 37-41.

⁸⁵ Saini v. Int'l Game Tech., 434 F. Supp. 2d at 919-20 (D.Nev.2006).

1 TI had clear and unequivocal notice obligations under the Lease as amended that the parties
2 affirmatively bargained for, but totally failed to comply with the amended notice provisions and
3 did so by design and on purpose. Under Section 19.6 of the Lease, TI had to provide Rose with
4 written notice of any breach or default to the attention of Ms. Markusch and was required to send
5 a copy to Operadora in Cancun, Mexico.⁸⁶ Additionally, under Section 11 of the Fifth Amendment,
6 TI was required to send a copy of any default to SFLV's counsel in Florida.⁸⁷ TI does not dispute
7 the fact that it failed to provide Rose with proper notice, in fact, TI admits that its failure to comply
8 with the notice requirements under Section 19.6 and the Fifth Amendment was intentional.⁸⁸
9 Therefore, Rose can establish that TI breached the Lease when it failed to satisfy the notice
10 requirements under the Lease and Fifth Amendment.

11 When Rose learned of TI's breach of the notice provisions in the Lease, Rose immediately
12 notified TI of the breach and provided TI with an opportunity to cure its notice errors as evidenced
13 by Rose's May 29, 2015 Notice of Breach. But TI never cured the noticed breach and Rose
14 therefore put TI in default by issuing Notices of Default on September 11, 2015 and November
15 18, 2015. Rose has incurred damages as a result of TI's breach of the notice provisions in the
16 Lease and can submit evidence of its incurred costs and fees for the purpose of resolving the
17 damages component of Rose's claim for Breach of Lease.

18 Likewise, TI had clear and unequivocal rent payment acceptance responsibilities under the
19 amended Lease but again ignored its contractual obligations. Under Section 3.1 of the Lease, TI
20 was required to accept properly tendered rent payments from Rose yet TI refused to comply with
21 the Lease and accept Rose's payments or allow for cure efforts and even refused to respond to
22 Rose's related Notices of Breach and Default dated September 11, 2015 and November 18, 2015.
23 Rose had to incur defense and prosecution costs and fees with respect to the issues and again can
24 provide the Court with a tabulation of same for damages purposes.

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27 ⁸⁶ See Exhibit 1 at Section 19.6.

28 ⁸⁷ See Exhibit 6 at Section 11.

⁸⁸ See Exhibit 23 at 26:9-25 and 48:12-22.

Because TI does not deny that its notice was improper under the Lease or that it was obligated to accept properly tendered rent payments from Rose, the only remaining issue before this Court apart from damages is whether TI's breaches of the Lease were material. It is a well-established principle of contract law that "materiality [can] be judged as a matter of law in cases where the parties' contract stipulated that certain facts were to be considered material; however, where materiality must be shown by matters outside the terms of the contract, it is a question of fact." Here, Rose and Anderson's bargained for Section 19.6 of the Lease and Section 11 of the Fifth Amendment to protect their interests in SFLV and the Premises. TI was well aware of the notice provisions and the relationship between Rose and SFLV when it sent the Alleged Notice of Default but decided not to notify Operadora or SFLV's counsel or even Rose's actual designated notice contact. Mr. Anthony even admitted in his deposition testimony that TI's failure to notify the appropriate parties was intentional. TI's notice failings were material under any analysis, as they are dispositive of TI's claims and a portion of Rose's counterclaims and implicate huge business financials.

The notice requirements under the Lease and Fifth Amendment were not for the benefit of Rose and TI alone. Anderson's, Operadora and SFLV have been third-party beneficiaries of the Lease since its inception. The notice provisions under the Lease and Fifth Amendment even include requirements for TI to send copies of any notices under the Lease to Anderson's operating company Operadora as well as its subsidiary SFLV's counsel for cure purposes⁸⁹, and the Amended Sublease also allows SFLV to make direct rent payments to TI for cure purposes.⁹⁰ The notice provisions in the Lease and Fifth Amendment were material under any analysis and TI should not be excused for its intentional and exploitive breaches of the Lease.

c. Rose's Breach of the Implied Covenant of Good Faith and Fair Dealing Claim

TI also breached the implied covenants of good faith and fair dealing in the Lease, by failing to act in good faith with respect to any discretionary notice or rent payment acceptance

⁸⁹ See Exhibit 1 at Section 19.6 and Exhibit 6 at Section 11.

⁹⁰ See Exhibit 7 at Section 9.d.

1 provisions in the Lease. Nevada law recognizes the existence of an implied covenant of good faith
2 and fair dealing in every contract.⁹¹ Furthermore, “when one party performs a contract in a manner
3 that is unfaithful to the purpose of the contract and the justified expectations of the other party are
4 thus denied, damages may be awarded against the party who does not act in good faith.”⁹²

5 TI has not claimed in defense of Rose’s implied covenant counterclaims that the notice and
6 rent payment acceptance terms of the Lease allow for any discretion on the part of TI, or that TI
7 exercised any such discretion appropriately. Instead, the parties appear to agree that the notice and
8 rent payment acceptance terms of the Lease are unambiguous and do not provide TI with any
9 discretionary rights. But if the Lease allows TI any such discretion, TI has breached the implied
10 covenant of good faith and fair dealing by trying to circumvent party intent and fairness with
11 respect to the long-term nature of the Lease and related notice and cure opportunities. Rose and
12 Anderson’s justified expectations were that TI would follow the notice, cure and rent payment
13 acceptance provisions of the Lease and Fifth Amendment; however, their justified expectations
14 were denied when TI deliberately breached Section 19.6 of the Lease and Section 11 of the Fifth
15 Amendment as part of an effort to hamper any cure efforts, and then refused properly tendered rent
16 payments in violation of Section 3.1 of the Lease to further disrupt any cure rights. TI cannot just
17 force a shorter Rose leasing term, expel a longstanding tenant like Rose, negotiate a direct
18 contractual relationship with SFLV, or use the Premises for other purposes – by simply ignoring
19 its contractual leasing obligations or the involved parties’ obvious expectations. Rose therefore
20 has established its entitlement to damages for TI’s failure to act in good faith. And since TI’s
21 actions in this case were intentionally calculated to remove Rose from the Premises and further
22 TI’s ulterior motives for use of the Premises, the record is sufficient to support a strong message
23 to TI in the form of an affirmative damages award to Rose for all of its incurred costs and fees.

24 Considering the amount of construction TI has been doing directly adjacent to the
25 Premises, it is Rose and SFLV’s belief that TI is using Rose’s alleged breach as a pretext to remove
26 Rose and SFLV from the Premises so that TI can build out the Premises to extend past the body

27 ⁹¹ Pemberton v. Farmers Ins. Exchange, 858 P.2d 380, 109 Nev. 789 (1993).

28 ⁹² Hilton Hotels Corp. v. Butch Lewis Prods., Inc., 107 Nev. 226, 808 P.2d 919, 923 (1991).

1 of water where TI historically held the pirate show and bring TI's property all the way to the
 2 sidewalk on the Las Vegas Strip – but then again only Mr. Ruffin knows TI's true motives. In any
 3 case, this Court should not allow TI to accomplish a free takeover and expansion as its actions
 4 have been in bad faith and are contrary to the bargained for terms of the Lease and involved party
 5 intent.

6 **c. Rose's Equitable Claim for a Declaratory Judgment**

7 For the reasons outlined above, Rose's counterclaim for declaratory relief also raises a
 8 justifiable controversy with TI regarding respective rights pursuant to the Lease and Rose's rights
 9 under the Lease deserve protection from this Court. Again, to establish an equitable claim for
 10 declaratory relief in Nevada, the party seeking such relief must prove: 1) a justifiable controversy
 11 exists between the parties regarding their respective rights pursuant to a contract such that the party
 12 seeking such relief asserts a claim of a legally protected right; 2) the issue is ripe for judicial
 13 determination; and, 3) the party seeking relief asks the court to determine the parties' relative rights
 14 under the contract.⁹³ Here, there is a justiciable controversy based on the parties' dispute over TI's
 15 compliance with the notice, cure and payment acceptance obligations in the Lease, and Rose,
 16 Operadora and SFLV have legally protected interests in the contractual Lease. The issue is ripe
 17 for determination as the events have occurred and remain in dispute, and to excuse TI's lack of
 18 performance under the Lease would render the notice, cure and rent provisions in the Lease
 19 superfluous and effectively allow TI to exit its long-term contractual commitment at will.

20 The Lease specifically states who is to receive notice under the Lease for cure purposes,
 21 and for good reason. TI's interpretation of the Lease would be unconscionable and result in an
 22 injustice to Rose, Operadora and SFLV considering that the notice provisions were heavily
 23 bargained for by both Rose and Anderson's. Even if Rose somehow is deemed to have received
 24 constructive notice, neither Operadora nor SFLV's counsel received *any* notice from TI or
 25 opportunity to cure the alleged default. From a liability standpoint, Rose has established the
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 27

28 ⁹³ See NRCP 57; NRS Chapter 30; and, Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948).

elements necessary to obtain a Declaratory Judgment because TI failed to comply with the notice and cure requirements of the Lease and Fifth Amendment.

The Lease also clearly states that TI must accept properly tendered rent payments, so that TI cannot prompt a breach by refusing to accept tendered rent. TI's interpretation of the Lease again would be unconscionable as TI could simply reject rent and declare breach and default on a whim, and irrespective of the actual Lease term or payments tendered. Rose therefore is entitled to a Declaratory Judgment confirming that TI failed to comply with the rent payment acceptance provisions of the Lease as amended.

B. TI BREACHED THE LEASE AND ITS BREACHES WERE MATERIAL

This Court should grant judgment in favor of Rose on its claims and counterclaims. 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.⁹⁴ As outlined above, neither party disputes the existence of a valid contract or Rose's failure to timely tender its Percentage Rent payment for the first quarter of 2015; therefore, the issues before this Court with respect to TI's claim for breach of the Lease boil down to the adequacy of TI's notice efforts and the materiality of Rose's alleged breach. Similarly, the issues before the Court with respect to Rose's Counterclaims are simply whether TI breached the Lease, whether those breaches were material, and whether Rose suffered damages as a result of same.

1. **TI's Claims for Breach of Lease and Declaratory Relief are Invalid and Immaterial.**

This Court must reject TI's claims for breach of the Lease and its request for declaratory judgment as a matter of law. While Rose failed to timely make its Percentage Rent payment for the first quarter of 2015, TI did not notify any alleged breach or default properly; Rose promptly attempted to tender the payment in full to TI upon learning of the alleged breach; and, Rose is current on its payments to TI under the Lease. TI actually refused Rose's attempts to tender payment until this Court issued an Order permitting TI to accept rent for the Premises. As such,

⁹⁴ Saini v. Int'l Game Tech., 434 F. Supp. 2d at 919-20 (D.Nev.2006).

Rose has made TI whole and TI has suffered no damages under the Lease. And, this Court therefore should deny TI's claim for breach of Lease based on both substance and materiality.

Considering that this Court should deny TI's claim for breach of the Lease, it should similarly deny TI's request for declaratory relief as Rose's alleged default has been cured and TI has no grounds for terminating the Lease. 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.⁹⁵

In this case, this Court should deny TI's request for equitable relief as TI's claim for breach of the Lease is based not on any actual rights but on TI's failure to comply with the notice and cure requirements under the Lease and Fifth Amendment. Because TI did not properly notify Rose, Operadora, and SFLV's counsel in Florida, the cure period was not triggered until after Rose had made many attempts to satisfy any alleged breach or default. Therefore, this Court also should deny TI's equitable claim for Declaratory Relief.

2. **Rose's Claims for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, and Declaratory Relief are Valid and Material.**

a. **Rose's Claims for Breach of Contract**

As a corollary to rejecting TI's affirmative claims, this Court should grant Rose judgment as a matter of law with respect to the pending Counterclaims. Using the same elements for breach of contract above⁹⁶, TI breached the Lease when it failed to comply with the notice requirements under the Lease and its Fifth Amendment and when it refused to accept Rose's many attempts to tender payments.

⁹⁵ See NRCP 57; NRS Chapter 30; and, Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948).

⁹⁶ Saini v. Int'l Game Tech., 434 F. Supp. 2d at 919-20 (D.Nev.2006).

Under Section 19.6 of the Lease, TI must provide Rose with written notice of any default directed to the attention of Ms. Markusch and send a copy to Operadora in Cancun, Mexico.⁹⁷ Additionally, under Section 11 of the Fifth Amendment, TI must send a copy of any default to SFLV's counsel in Florida. TI does not dispute that it failed to provide Rose and Operadora and SFLV with proper notice; in fact, TI boldly concedes that its failure to comply with the notice requirements under Section 19.6 and the Fifth Amendment was intentional.⁹⁸ Therefore, TI breached the Lease when it failed to satisfy the notice and cure requirements under the Lease.

When Rose learned of the alleged breach and default and became aware of TI's breach of the notice and cure provisions in the Lease, Rose immediately contacted TI and attempted to tender the Percentage Rent payment at issue to TI.⁹⁹ But even though Rose properly noticed TI as evidenced by Mr. Dragul's May 29, 2015 letter, TI refused to comply with the Lease and accept Rose's payment and good faith effort to cure any alleged breach or default and even refused to respond to Rose's related Notices of Default.¹⁰⁰ Therefore, TI also breached the Lease when it failed to comply with the payment acceptance terms therein.

Because TI does not deny that its notice and cure exercise was improper under the Lease, the real issue before this Court is that of materiality. It is a well-established principle of contract law that "materiality [can] be judged as a matter of law in cases where the parties' contract stipulated that certain facts were to be considered material; however, where materiality must be shown by matters outside the terms of the contract, it is a question of fact."¹⁰¹ Therefore, because the parties in this case have not stipulated that certain facts are material, this Court must look at the facts to determine whether the notice and cure and payment provisions found in the Lease and Fifth Amendment were material.

The related facts in this case are simple. Rose and Anderson's bargained for Section 19.6 of the Lease and Section 11 of the Fifth Amendment to protect their interests in SFLV. TI was

⁹⁷ See **Exhibit 1** at Section 19.6.

⁹⁸ See **Exhibit 23** at 26:9-25 and 48:12-22.

⁹⁹ See generally **Exhibit 17**.

¹⁰⁰ See **Exhibit 10** at ¶ 28-29 and **Exhibit 18** from ROSE000079-81.

¹⁰¹ Powers v. United, 962 P.2d 596, 114 Nev. 690 (1998) quoting Smith v. N.A.A.I. Co., 46 Nev. 30, 43, 205 P. 801, 805 (1922).

1 well aware of the relevant notice provisions when it sent the Alleged Notice of Default as Mr.
 2 Anthony was intimately involved in the drafting of the Lease and all amendments thereto, yet Mr.
 3 Anthony sent the Alleged Notice of Default that failed to notify Operadora, SFLV's counsel in
 4 Florida, and Rose's notice contact person Ms. Markusch. In fact, Mr. Anthony admitted in his
 5 deposition testimony that his failure to notify the appropriate parties was by design and
 6 intentional.¹⁰²

7 The notice requirements under the Lease and Fifth Amendment were not for the benefit of
 8 Rose and TI alone. Anderson's, Operadora and SFLV have been third-party beneficiaries of the
 9 Lease since its inception and the notice provisions under the Lease and Fifth Amendment include
 10 requirements for TI to send copies of any notices under the Lease to Anderson's operating
 11 company, Operadora, as well as its subsidiary SFLV's counsel. The notice, cure and payment
 12 provisions in the Lease and Fifth Amendment were material and TI should not be excused of its
 13 intentional breaches of the Lease and Fifth Amendment.

14 **b. Rose's Claims for Breach of the Covenant of Good Faith and**
 15 **Fair Dealing are Valid and Material**

16 This Court also should grant Rose's claims for breach of the implied covenant of good faith
 17 and fair dealing in the Lease. Nevada law recognizes the existence of an implied covenant of good
 18 faith and fair dealing in every contract.¹⁰³ Furthermore, "when one party performs a contract in a
 19 manner that is unfaithful to the purpose of the contract and the justified expectations of the other
 20 party are thus denied, damages may be awarded against the party who does not act in good
 21 faith."¹⁰⁴

22 Rose and Anderson's justified expectations were that TI would follow the notice and cure
 23 provisions of the Lease and Fifth Amendment; however, their justified expectations were denied
 24 when TI deliberately breached Section 19.6 of the Lease and Section 11 of the Fifth Amendment.
 25 Furthermore, TI's actions in this case were intentionally calculated to remove Rose from the
 26

27 ¹⁰² See Exhibit 23 at 26:9-25 and 48:12-22.

¹⁰³ *Pemberton v. Farmers Ins. Exchange*, 858 P.2d 380, 109 Nev. 789 (1993).

¹⁰⁴ *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 808 P.2d 919, 923 (1991).

Premises and further TI's ulterior motives for the Premises. As evidenced above, Rose has satisfied all amounts outstanding and made TI whole; however, TI continues to pursue this case aggressively and is intent on attempting to box Rose out of the leasing relationship. Therefore, this Court should award Rose damages for TI's failure to act in good faith.

Rose and Anderson's started SFLV together and maintain a healthy business relationship that they wish to keep intact. Anderson's has spent substantial time and money negotiating a favorable Amended Sublease with Rose, and Rose has spent a substantial amount of time and money negotiating a favorable Lease with TI. In the event Rose is removed from the equation, TI may try to unwind the terms of the Amended Sublease and propose unfavorable terms in subsequent direct leasing negotiations with Anderson's.

Considering the amount of construction TI has been doing directly adjacent to the Premises, it is Rose and SFLV's understanding that TI is using Rose's breach as a pretext to remove Rose and SFLV from the Premises so that TI can build out the Premises to extend past the body of water where TI has historically held the pirate show and bring TI's property all the way to the sidewalk on the Las Vegas Strip. However, this Court should not allow TI to accomplish such a design by bulldozing over Rose and SFLV as TI's actions have been in bad faith and are contrary to the bargained for terms of the Lease. All of these valid concerns of Rose regarding the implied covenants in the Lease are material, as they profoundly impact the leasing relationships involved and related economics.

c. Rose's Equitable Claim for a Declaratory Judgment

This Court also should provide Rose with declaratory relief. Using the same elements for declaratory relief above¹⁰⁵, Rose's Counterclaim raises a justifiable controversy with TI regarding its respective rights pursuant to the Lease and the rights of Rose and its business affiliates under the Lease should be protected by this Court. To excuse TI's lack of performance under the Lease and only require a notice under the Lease to be in writing to anyone acceptable to TI would render terms regarding the addresses for notice and the parties to be notified superfluous and unnecessary.

¹⁰⁵ See NRCP 57; NRS Chapter 30; and, Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948).

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Under this analysis, TI could have sent Rose's Alleged Breach Notice to Rose's secretary or some other purported agent or representative or business associate and satisfied its requirements under the Lease. The fact that TI sent the Alleged Breach Notice to Rose's President is irrelevant since the Lease specifically states who is to receive notice under the Lease. TI's interpretation of the Lease would be unconscionable and result in an injustice to Rose, Anderson's, Operadora and SFLV considering that the notice provisions were heavily bargained for by both Rose and Anderson's. Even if Rose is deemed to have received constructive notice, neither Anderson's nor SFLV's counsel received notice from TI in any form. Therefore, this Court should grant Rose's claim for a Declaratory Judgment in that TI failed to comply with the notice, cure and payment requirements of the Lease and Fifth Amendment.

C. UPHOLDING TI'S TERMINATION OF THE LEASE WOULD BE UNJUST CONSIDERING THE EQUITIES

Even if this Court were to look past TI's failure to honor the notice provisions of the Lease and Fifth Amendment or ignore TI's related attempts to thwart Rose's performance and cure rights, the law abhors a forfeiture.¹⁰⁶ In addition to determining materiality, this Court therefore must balance the equities as well when considering TI's claims to prevent any injustice.

Nevada does not look favorably on those who attempt to create leasing disputes and prevent the performance of leasing duties. In *Moore v. Prindle* for example, Moore had contracted to purchase a rooming house from Prindle and in addition to paying Prindle \$15,000.00 she assumed a loan secured by the rooming house as part of the sales transaction.¹⁰⁷ Moore was afforded a grace period of thirty-five (35) days on the secured loan and there was a ten (10) day cure period in the event of default upon proper notice.¹⁰⁸ About three and a half years later, Moore became delinquent on her monthly payments to Prindle on the secured loan and Prindle transmitted a notice of default on August 15, 1961.¹⁰⁹ Moore attempted to cure the default on October 16, 1961, but Prindle

¹⁰⁶ *Humphrey v. Sagouspe*, 50 Nev. 157, 171, 254 P. 1074, 1079 (1927).

¹⁰⁷ *Moore v. Prindle*, 394 P.2d 352, 80 Nev. 369 (1964).

¹⁰⁸ *Id.* at 353.

¹⁰⁹ *Id.* at 354.

1 refused her payment.¹¹⁰ Moore attempted a second time to cure and Prindle again refused her
 2 payment.¹¹¹ The trial court found “that plaintiff was continually in default under the terms and
 3 conditions of the original agreement because of her admitted failure to pay real estate taxes,
 4 assessments, and monthly payments on time” and denied equitable relief.¹¹² The trial court’s
 5 ruling was overturned on appeal, however.

6 The Supreme Court overruled the trial court’s default determination based purely on the
 7 equities. Although the Supreme Court found no default on the part of Moore, it assumed a default
 8 for purposes of analysis and reiterated the holding in *Mosso v. Lee* wherein the Court held:

9 there can be no doubt in this age, even where time is of the essence of a contract to
 10 convey real estate, coupled with a provision of forfeiture, but that a court of equity
 11 will grant relief from a default and a declaration of forfeiture if the condition be
 12 subsequently performed, or tendered, without unreasonable delay, where no
 circumstances have intervened that would render it unjust or inequitable to give
 such relief.¹¹³

13 The Moore Court also held:

14 The case at bar presents a typical situation which illustrates how inadequate a five
 15 days’ notice can be. The letter sent on October 11th was not received until
 16 Thursday, October 12th. October 16th, 1961, fell on a Monday, thus Saturday and
 17 Sunday were unavailable to the buyer and the five days was in reality two days’
 notice. It is not unreasonable to assume that a buyer who is behind in her payments
 may reasonably need more than two days in which to raise the amount of money
 needed to cure the delinquency.¹¹⁴

18 Although this case does not involve an action for forfeiture, it is analogous to Moore. Both Moore
 19 and Rose: 1) had long-term contracts; 2) attempted to cure an alleged default without unreasonable
 20 delay; 3) made attempts to cure that were refused; and, 3) the opposing parties in both cases offered
 21 no events that happened after the termination/forfeiture that would render it unjust or inequitable
 22 to set aside the termination/forfeiture. The only substantive difference between the two cases is
 23 that the enforcing party in Moore properly noticed its claims and provided the contractual right to
 24 cure, whereas here TI neither properly noticed the alleged breach nor provided Rose, Operadora
 25

26 ¹¹⁰ Id.

27 ¹¹¹ Id.

28 ¹¹² Id.

¹¹³ Id. at 357.

¹¹⁴ Id.

1 and SFLV with their contractual cure opportunities. And unlike the borrower in Moore who waited
2 months to cure the default, Rose attempted to cure quickly after it became aware of the Alleged
3 Notice of Default and Alleged Termination.

4 Like the Moore case, this case “[cries] out for equitable relief.”¹¹⁵ There are two tenants
5 who will be significantly impacted if the Lease is terminated, but a landlord who stands to lose
6 almost nothing if the Lease is enforced. Both Rose and Anderson’s have invested millions of
7 dollars in SFLV and have enjoyed the use of the Premises for many years. TI has already been
8 made whole by Rose and will not lose anything if the Lease is maintained. The very purpose of
9 Section 19.6 of the Lease and Section 11 of the Fifth Amendment was to avoid the exact scenario
10 that led TI to burden this Court with these claims. Together, Section 19.6 of the Lease and Section
11 11 of the Fifth Amendment specifically state that TI is to copy Operadora and SFLV’s counsel on
12 any notice sent to Rose with attention to Ms. Markusch so that Rose and Operadora and SFLV had
13 belt and suspender cure rights. Neither the Alleged Breach Notice nor the Alleged Termination
14 were in harmony with either the Lease or the Fifth Amendment as the Alleged Breach Notice was
15 sent to Rose with attention to Mr. Dragul and neither Operadora nor SFLV’s counsel received
16 copies, and the Alleged Breach Notice was not sent to Rose with attention to Ms. Markusch as its
17 designated “contact person.” As such, TI breached the notice requirements under the Lease and
18 Fifth Amendment and it would be unjust for this Court to uphold TI’s termination of the Lease
19 considering that TI has nothing to lose apart from nominal fee exposure whereas Rose and
20 Anderson’s are guaranteed to lose millions of dollars in the event of an adverse determination.
21 Further, TI actually could gain tens of millions by terminating the Lease and should not be allowed
22 to usurp the equities for inequitable gains or obtain a windfall.

23 As a result of TI’s failure to notice the appropriate parties of Rose’s alleged breach of the
24 Lease, the filing of its subsequent Complaint, and TI’s failure to accept rent payments in
25 accordance with the Lease, Rose has been forced to retain counsel and has incurred substantial
26 fees and costs in an amount not less than \$90,000.00. TI’s alleged termination of Rose’s Lease

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28 ¹¹⁵ Id.

1 should be set aside and TI should be responsible for paying Rose's associated fees and costs to
 2 prevent yet another injustice and blatant manipulation of the justice system by TI.

3 **D. THIS COURT MUST HOLD AN EVIDENTIARY HEARING IF IT IS**
 4 **UNABLE TO FIND IN FAVOR OF ROSE AS A MATTER OF LAW**

5 If this Court is unable to find in favor for Rose it must hold an evidentiary hearing to
 6 address any outstanding factual issues pursuant to the Stipulation. For example, it already has been
 7 established by Mr. Anthony that TI's failure to comply with the notice requirements under the
 8 Lease was intentional; however, the parties must confirm whether Mr. Ruffin consciously chose
 9 to force Rose's default to invoke a breach for the purpose of seizing possession of the Premises,
 10 renegotiating leasing terms directly with SFLV, or expanding the casino footprint. And although
 11 Anderson's is heavily invested in the Premises and is a third party beneficiary to the Lease, this
 12 Court has heard very little from Anderson's or Operadora or SFLV with the exception of Mr.
 13 Krouham's Affidavit submitted as an Exhibit hereto. In the event this this Court is unable to find
 14 in favor of Rose as a matter of law, this Court should hear testimony from Anderson's regarding
 15 the willingness of Operadora and SFLV to have cured Rose's default if they had received proper
 16 notice and the reasons that Anderson's bargained for direct notice and cure rights from TI.

17 Additionally, if this Court is able to find in favor of Rose as a matter of law, an evidentiary
 18 hearing must be held with respect to damages or, in the alternative, the parties must submit
 19 additional briefing. Section 13.3 of the Lease specifically states that "Landlord agrees to
 20 indemnify, defend and hold Tenant and Tenant's and its representatives, officers, managers,
 21 directors, shareholders, members, agents, servants and employees harmless from and against any
 22 and all claims, actions, damages, liabilities and expenses (including, without limitation, reasonable
 23 attorneys' fees and expenses) allegedly or actually... arising from Landlord's failure to comply
 24 with the provisions of this Lease."¹¹⁶ Furthermore, Section 19.14 states, "In the event any party
 25 incurs legal fees or other costs to enforce any of the terms of this Lease, to resolve any dispute
 26 with respect to its provisions, or to obtain damages for breach thereof, whether by prosecution or

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 28 ¹¹⁶ See Exhibit 1 at Section 13.3.

1 defense, the unsuccessful party to such action shall pay the prevailing party's reasonable expenses,
 2 including reasonable attorneys' fees and costs, incurred in such action."¹¹⁷ Accordingly, Rose is
 3 entitled to a damages award if it prevails here and this Court will need more information from the
 4 parties on incurred costs and fees to finalize its ruling.

5 **IV. CONCLUSION**

6 TI filed its Complaint on the very same day it sent its Alleged Termination to Rose,
 7 Operadora, and SFLV's counsel in Florida. Although Rose made many attempts to cure the alleged
 8 default and tender any rent owed, TI refused to accept properly tendered payments. TI's failures
 9 to comply with the notice, cure and payment acceptance requirements under the Lease were
 10 intentional and were not the result of Rose's actions. In addition to setting aside TI's Alleged
 11 Termination of the Lease, this Court therefore should award Rose the fees and costs it has incurred
 12 in defending baseless claims and in prosecuting related counterclaims that revolve around TI's
 13 invalid notice efforts.

14 Given the high stakes involved for Rose and SFLV, it would be unjust for this Court to
 15 permit TI to breach material notice provisions of the Lease and Fifth Amendment intentionally
 16 that were so relentlessly bargained for by Rose and Anderson's. TI's actions were part of an effort
 17 to escape Rose's favorable Lease terms for the Premises, were in breach of the Lease and TI's
 18 covenant of good faith and fair dealing, and were in bad faith. Therefore, TI's purported
 19 termination of the Lease should be set aside and TI should be liable for any and all damages Rose
 20 has suffered due to TI's breaches of the Lease.

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24 ...

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26 ...

27 ¹¹⁷ Id. at Section 19.14.

28

SHUMWAY • VAN

8985 South Eastern Avenue, Suite 100


Las Vegas, Nevada 89123

Telephone: (702) 478-7770 Facsimile: (702) 478-7779

1 In the event this Court is unable to find in Rose's favor as a matter of law, this Court must
2 hold the evidentiary hearing stipulated to by parties to address remaining factual issues that would
3 require the presentation of additional evidence beyond the questions of law and stipulated factual
4 record currently before the Court.

5 DATED this 29th day of June, 2016.

SHUMWAY VAN

6
7
8 By: 
9 MICHAEL C. VAN, ESQ.
10 Nevada Bar No. 3876
11 SAMUEL A. MARSHALL, ESQ.
12 Nevada Bar No. 13718
13 8985 S. Eastern Ave. Suite 100
14 Las Vegas, Nevada 89123
15 *Attorneys for Defendant/Counterclaimant*
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SHUMWAY • VAN

8985 South Eastern Avenue, Suite 100

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Telephone: (702) 478-7770 Facsimile: (702) 478-7779

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:

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.

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.

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.

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.

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.

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.

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.

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.

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.

8.1 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.

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.

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
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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.

11.2Policy 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.

11.3Waiver 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.

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.

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.

13.3Indemnification 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.

13.4Insurance. 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.

14.1General. 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.

14.2Flammables. 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.

14.3Hazardous Materials.

14.3.1Prohibitions. 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.

14.3.2Regulatory 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.

14.3.3Landlord 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.

15.1Events 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"):

15.1.1Tenant 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;

15.1.2Tenant 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;

15.1.3Tenant 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;

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;

15.2Remedies. 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:

15.2.1Landlord 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;

15.2.2 without 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.

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.

16.1.2Damage 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.

16.1.3Damage 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.

16.1.4Insurance 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.

16.1.5Damage 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.

16.1.6Express 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.

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.

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.

19.1Certificates. 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.

19.2Signage. 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.

19.3Waiver 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.

19.4Assignment; 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.

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 Kukulcan 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.

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.

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.

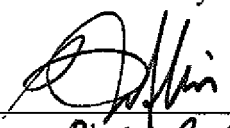
19.20 Landlord's Default. Landlord agrees that should it commit any default under this Lease, which default it fails to cure within thirty (30) days after written notice from Tenant specifying such failure (provided, however, that notice shall not be required in the event of an emergency, and that if 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.

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:

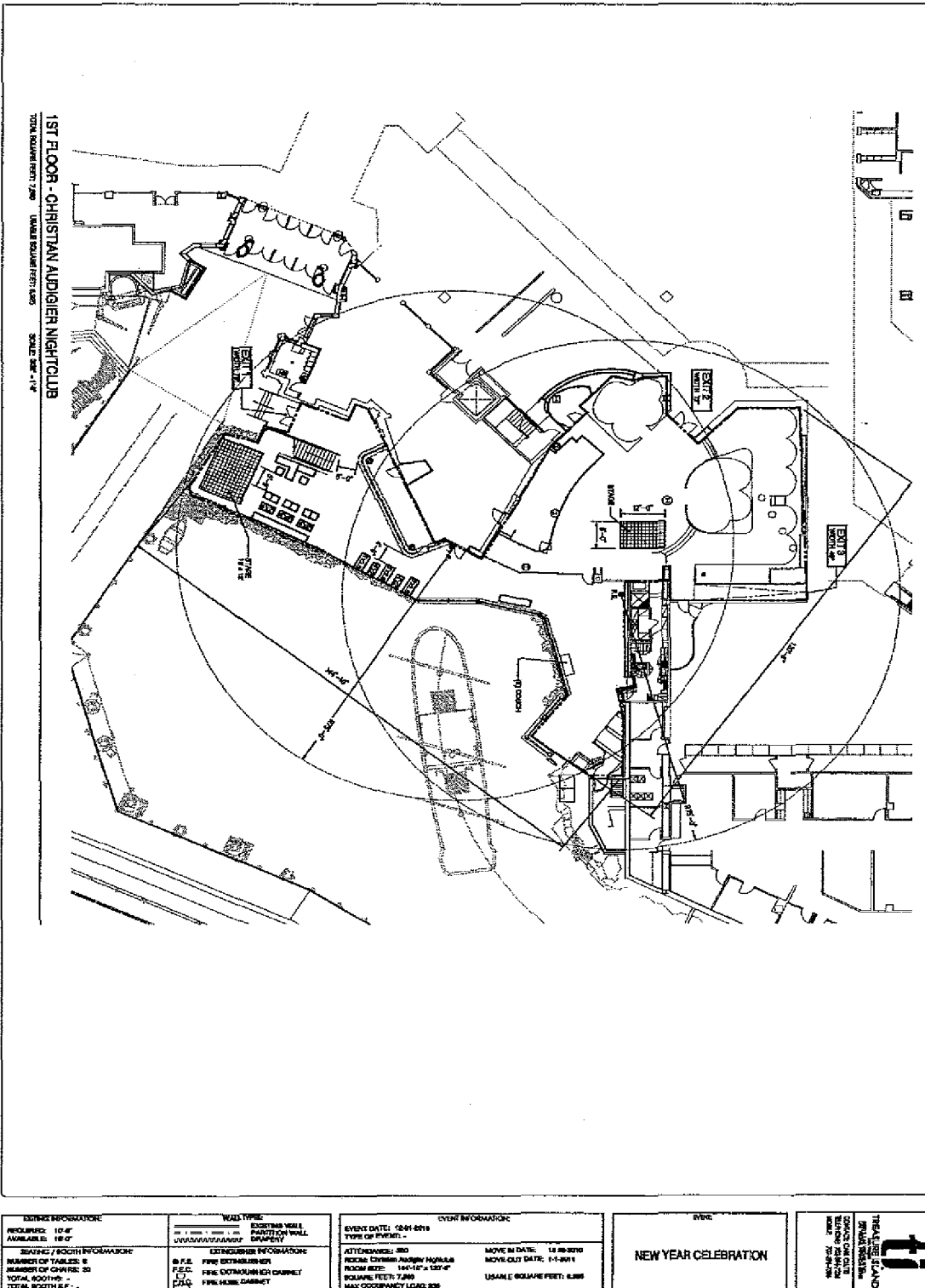
ROSE, LLC,
a Colorado limited liability company

By: Rose Management, Inc.,
Its Manager

By: Elizabeth Gold
Name: Elizabeth Gold
Its: Vice President

EXHIBIT "A"

LEASED PREMISES



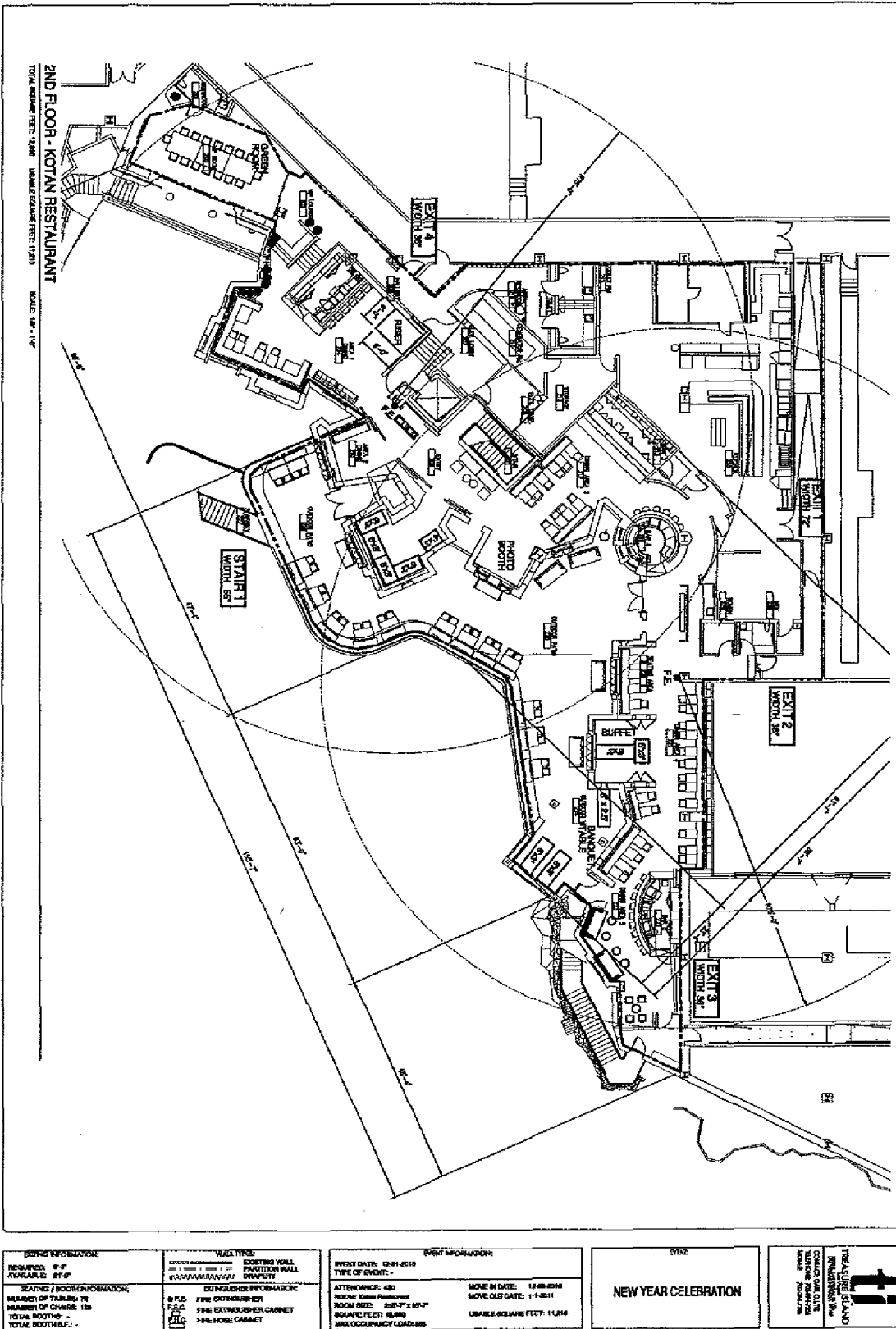


EXHIBIT "B"

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

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EXHIBIT 2

FIRST AMENDMENT TO LEASE AGREEMENT

This Lease Amendment ("Amendment") is made and entered into as of this 10th day of Oct. 2011, by and between **TREASURE ISLAND, LLC**, a Nevada limited liability company ("Landlord"), and **ROSE, LLC**, a Colorado limited liability company ("Tenant").

WHEREAS the Parties entered into a Lease effective April 13, 2011; and

WHEREAS Tenant desires to modify the Lease to reserve a portion of the Leased Premises for the purpose of retail sales; and

WHEREAS Landlord is agreeable to that use;

NOW THEREFORE for the consideration set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Landlord agrees that Tenant may conduct retail operations on the Leased Premises. Therefore, Section 7.1 of the Lease Agreement shall be modified to read as follows:

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; 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 services. 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.

2. The Parties shall include retail sales in the calculation of Gross Sales for the purposes of rent calculation. Therefore, Section 3.1 of the Lease Agreement shall be modified as follows:

Section 3.1(B)(xiii) shall be eliminated in its entirety.

3. The Parties agree that Landlord shall have the right to offer complimentary meals/admission to its customers or employees. Therefore, Section 7 of the Lease Agreement shall be modified as follows:

Section 7.10 shall be added with the following text:

Landlord shall have the right to offer complimentary meals and admission to its patrons and employees. Tenant shall bill such meals to Landlord with a forty percent (40%) discount applied. Any such bill shall be paid within thirty (30) days.

4. The Parties agree that maintenance of an "A" health code rating is vital to operation of the Leased Premises. Therefore, Section 7 of the Lease Agreement shall be modified as follows:

Section 7.11 shall be added with the following text:

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Tenant hereby acknowledges that the Clark County Health District ("Health District") inspects restaurants located in Clark County, Nevada, for the purpose of noting violations of the Health District's codes, standards and/or rules relative to the sanitary operation of restaurants ("Violation"). As a result of such inspections, the Health District issues ratings of A, B, C, D, and F (with A being the highest rating and F being the lowest, each a "Rating"). Landlord and Tenant hereby agree that restaurants located in first class resort/hotel facilities must meet all of the Health District's codes, standards and/or rules and operate in the safest, most sanitary way possible. As a result, Landlord and Tenant hereby agree that an "A" Rating is necessary for Tenant's Restaurant to be operating in accordance with the operation of a first class resort/hotel facility. Therefore, if Tenant's Rating relative to Tenant's Restaurant is downgraded below an "A," and without limiting any other provision of this Lease Agreement, the following shall apply:

A) For the first instance of a rating downgrade, Tenant shall have 48 hours from such downgrading to commence correction of each Violation and to request the Health District to reinspect the Leased Premises. Such request shall be in writing with a copy forwarded to Landlord. All such violations must be fully cured within 30 days. Should a violation prove impossible to cure within 30 days, Tenant must submit to Landlord a written statement as soon as possible explaining the reasons why such cure is impossible and how long is necessary to effect a cure. If, after attempting to cure all violations, the Health District does not reinstate the requisite "A" rating, Tenant shall be considered in material breach of this Agreement.

B) Should Tenant's rating be downgraded a second time within 1 calendar year of the first downgrade, or should Tenant ever receive a third downgrade, irrespective of how much time has passed, Tenant shall be considered in material breach of this Agreement.

5. Except as otherwise set forth herein, the terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this Amendment of Lease as of the date first written above.

Landlord:

Treasure Island, LLC

By: 

Tenant:

Rose, LLC

By: Rose Management, Inc., Manager

By: 

Elizabeth Gold, Vice President

EXHIBIT 3

SECOND 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 that certain document entitled First Amendment to Leas Agreement ("Amendment") dated October 10, 2011;

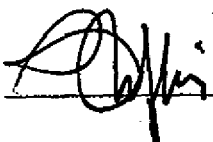
WHEREAS the Parties desire to further amend the Agreement;

NOW, THEREFORE, in consideration of the terms, covenants, conditions, and provisions set forth in that Agreement, 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. Pursuant to Section 3.4 of the Agreement, Landlord has provided Tenant with a total of \$2.5 Million (the "Landlord Contribution").
2. The Parties agree that lines 8 and 9 in Section 3.4 shall be modified so that instead of "the Net Income" Tenant shall deliver to Landlord eighty percent (80%) of Net Income on a quarterly basis, provided that, as set forth in the last sentence of Section 3.4, in no instance shall this quarterly repayment amount be less than \$300,000.00.
3. Tenant acknowledges and agrees that this repayment obligation is in no way preconditioned upon the success of Tenant's venture.
4. Except as otherwise set forth herein, the terms and conditions of the Lease Agreement shall remain in full force and effect.

WHEREAS, IN WITNESS WHEREOF, the Parties have signed this Acknowledgement as of the date first written above.

Treasure Island, LLC

By: 

Rose, LLC

By: Rose Management, Inc., Manager

By: 
Elizabeth Gold, Vice President

EXHIBIT 4

THIRD AMENDMENT TO LEASE AGREEMENT

WHEREAS Treasure Island, LLC ("Landlord") and Rose, LLC ("Tenant") (collectively the "Parties") entered into that certain Lease Agreement ("Lease") dated April 13, 2011, which was first Amended by that certain document entitled First Amendment to Lease Agreement ("First Amendment") dated October 10, 2011, and which was further Amended by that certain document entitled Second Amendment to Lease Agreement ("Second Amendment") dated December 22, 2011;

WHEREAS the Parties desire to further amend the Agreement; and

WHEREAS Landlord desires to reserve a portion of the leased premises ("Premises") for the installation of gaming devices and surveillance equipment; and

WHEREAS Tenant is agreeable to the installation, operation, and maintenance of the gaming devices by Landlord;

NOW, THEREFORE, in consideration of the terms, covenants, conditions, and provisions set forth in that Agreement, 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. Landlord hereby reduces the space leased to Tenant as necessary for the installation, operation, and maintenance of ten (10) gaming devices to be located in the main bar adjacent to the casino. The location of such reserved space is depicted in Exhibit "A" attached hereto.
2. Landlord and Tenant agree to jointly occupy a portion of the Premises as defined in the Lease for the installation, operation, and maintenance of surveillance equipment as depicted in Exhibit "B" attached hereto.
3. Tenant grants to Landlord a non-exclusive right of access to the Premises for installation, operation, and maintenance of the gaming devices and related surveillance equipment in a manner so as not to interfere with Tenant's Use of the Premises as set forth in Section 7 of the Lease.
4. Landlord, at its sole cost and expense, shall be responsible for the installation, operation, and maintenance of the gaming devices. Landlord shall be responsible for the costs and expense of installing, operating, and maintaining the surveillance equipment involved in monitoring the gaming devices.
5. Tenant's employees shall be responsible for providing change when requested by customers to enable the customers to play the gaming devices, taking appropriate steps to prevent minors from playing or loitering near the gaming devices, and contacting Landlord's slot personnel in the event of any equipment malfunctions, problems, or disputes relating to the operation of the gaming device as soon as commercially reasonable upon discovering or being notified by a customer of an equipment failure or dispute. The provision of these services by Tenant is not a violation of Section 7 of the Lease.

6. Tenant shall permit the installation of signage as reasonably determined by Landlord or required by governmental agencies for the operation of the gaming devices provided such signage does not materially interfere with or hamper the operation of Tenant's business as reasonably determined by Tenant.
7. Tenant shall not provide complimentary food and beverage to customers which in any manner is related to the playing of the gaming devices by the customers.
8. Landlord agrees that it shall not perform, or cause to be performed, any act that will negatively impact Tenant's ability to keep and maintain its licensing.
9. In the event the presence of the gaming devices in the Premises materially and adversely disrupts the operation of the business in the Premises, Landlord agrees to meet with Tenant within ten (10) days to discuss the continued operation or possible removal of the gaming devices. If, after meeting, the disruption is not resolved, Landlord agrees to remove the gaming devices, and restore the space to an operable condition.
10. Landlord shall comply at its expense with all applicable Federal, State, or local laws, ordinances, or regulations that relate to the use of the gaming devices. Tenant agrees to cooperate with Landlord and adjust its business practices when necessary to enable Landlord to comply with its legal obligations as set forth herein, provided such adjustments do not materially interfere with or hamper the operation of Tenant's business as reasonably determined by Tenant.
11. Except as is attributable to Tenant's gross negligence or willful misconduct, Landlord hereby covenants and agrees to indemnify, save, and hold Tenant, its parent, subsidiaries, subtenants, and affiliates, and their officers, directors, shareholders, and employees free, clear, and harmless from any and all liabilities, losses, costs, expenses (including attorney's fees), judgments, claims, liens, fines, penalties, and demands of any kind whatsoever in connection with, arising out of, or in any way relating to the installation, operation, and maintenance of Landlord's gaming devices, or the presence of said devices within the premises.
12. Except as set forth herein, the terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have signed this Third Amendment as of this ____ day of April, 2012.

Treasure Island, LLC

Rose, LLC

By: 

By: Rose Management, Inc., Manager

By: 

Elizabeth Gold, Vice President

EXHIBIT 5

FOURTH 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, and Third Amendment to Lease Agreement ("Amendment 3") dated April 20, 2012;

WHEREAS said Agreement imposes certain obligations upon the Parties with respect to funding initial improvements to the Leased Property and repayment of said funds;

WHEREAS Tenant has partially repaid certain monies lent to it pursuant to Section 3.4 of the Agreement; and

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 that Agreement, 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. Pursuant to Section 3.4 of the Agreement, Tenant secured all required construction permits, Landlord provided Tenant with a total of \$2.5 Million (the "Landlord Contribution"), and Tenant is obligated to repay the Landlord Contribution irrespective of the success of its venture.
2. The Parties now desire to further alter Section 3.4 of the Agreement, to require that 6% interest apply to the remainder balance of the Landlord Contribution, as set forth in Exhibit A attached hereto. This balance, at the time of this writing, is Two Million One Hundred Fifty Thousand dollars (\$2,150,000.00).
3. Landlord and Tenant hereby amend Section 3.4 of the Agreement to provide that instead of repaying to Landlord the Landlord Contribution on a quarterly basis in an amount equal to the greater of a) all Net Income (as defined in the Agreement), or b) \$300,000.00 per quarter until the Landlord Contribution has been fully repaid, Tenant shall instead repay to Landlord the Landlord Contribution on a monthly basis in an amount equal to \$50,000, with interest as set forth in Section 2 above, until the Landlord Contribution has been fully repaid, specifically via forty nine (49) payments of Fifty Thousand dollars (\$50,000.00) and one (1) payment of Forty Thousand Eight Hundred and Thirty Nine dollars (\$40,839), payable on or before the fifteenth day of each month from April, 2013, through May, 2017. The Parties acknowledge the first \$50,000 payment has been made.

4. The Parties agree that any further missed payments under Section 3.4 will result in default per the terms of the Lease.
5. Except as otherwise set forth herein, the terms and conditions of the Lease Agreement shall remain in full force and effect.

WHEREAS, IN WITNESS WHEREOF, the Parties have signed this Acknowledgement as of the date first written above.

Treasure Island, LLC

By: 

April 18, 2013

Rose, LLC

By: Rose Management, Inc., Manager

By: 

Elizabeth Gold, Vice President

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EXHIBIT A

Treasure Island
Senior Frogs Note Amortization
4/15/13

Loan Amount \$2,200,000
 Annual Interest Rate 0.06
 Loan Term 50
 First Payment Date 4/15/13
 Monthly Payment (1-49) \$50,000
 Monthly Payment (50) \$40,839

# of Payment	Due Date	Payment	Interest	Principal	Balance
0					\$2,200,000
1	4/15/13	\$50,000	\$11,000	\$39,000	\$2,161,000
2	5/15/13	50,000	10,805	39,195	2,121,805
3	6/15/13	50,000	10,609	39,391	2,082,414
4	7/15/13	50,000	10,412	39,588	2,042,826
5	8/15/13	50,000	10,214	39,786	2,003,040
6	9/15/13	50,000	10,015	39,985	1,963,055
7	10/15/13	50,000	9,815	40,185	1,922,871
8	11/15/13	50,000	9,614	40,386	1,882,485
9	12/15/13	50,000	9,412	40,588	1,841,897
10	1/15/14	50,000	9,209	40,791	1,801,107
11	2/15/14	50,000	9,006	40,994	1,760,113
12	3/15/14	50,000	8,801	41,199	1,718,913
13	4/15/14	50,000	8,595	41,405	1,677,508
14	5/15/14	50,000	8,388	41,612	1,635,895
15	6/15/14	50,000	8,179	41,821	1,594,075
16	7/15/14	50,000	7,970	42,030	1,552,045
17	8/15/14	50,000	7,760	42,240	1,509,805
18	9/15/14	50,000	7,549	42,451	1,467,354
19	10/15/14	50,000	7,337	42,663	1,424,691
20	11/15/14	50,000	7,123	42,877	1,381,814
21	12/15/14	50,000	6,909	43,091	1,338,724
22	1/15/15	50,000	6,694	43,306	1,295,417
23	2/15/15	50,000	6,477	43,523	1,251,894
24	3/15/15	50,000	6,259	43,741	1,208,154
25	4/15/15	50,000	6,041	43,959	1,164,195
26	5/15/15	50,000	5,821	44,179	1,120,015
27	6/15/15	50,000	5,600	44,400	1,075,616
28	7/15/15	50,000	5,378	44,622	1,030,994
29	8/15/15	50,000	5,155	44,845	986,149
30	9/15/15	50,000	4,931	45,069	941,079
31	10/15/15	50,000	4,705	45,295	895,785
32	11/15/15	50,000	4,479	45,521	850,264
33	12/15/15	50,000	4,251	45,749	804,515
34	1/15/16	50,000	4,023	45,977	758,538
35	2/15/16	50,000	3,793	46,207	712,330
36	3/15/16	50,000	3,562	46,438	665,892
37	4/15/16	50,000	3,329	46,671	619,221
38	5/15/16	50,000	3,096	46,904	572,317
39	6/15/16	50,000	2,862	47,138	525,179
40	7/15/16	50,000	2,626	47,374	477,805
41	8/15/16	50,000	2,389	47,611	430,194
42	9/15/16	50,000	2,151	47,849	382,345
43	10/15/16	50,000	1,912	48,088	334,257
44	11/15/16	50,000	1,671	48,329	285,928
45	12/15/16	50,000	1,430	48,570	237,358
46	1/15/17	50,000	1,187	48,813	188,544
47	2/15/17	50,000	943	49,057	139,487
48	3/15/17	50,000	697	49,303	90,185
49	4/15/17	50,000	451	49,549	40,635
50	5/15/17	40,839	203	40,636	(0)
		<u>\$2,490,839</u>	<u>\$290,839</u>	<u>\$2,200,000</u>	

EXHIBIT 6

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."

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:

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" , 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."

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 Kukulcan 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.

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

EXHIBIT 7

AMENDED SUBLEASE

This Amended Sublease ("Sublease") is entered into by and between Rose, LLC, a Colorado limited liability company ("Landlord"), and Senior Frogs Las Vegas, LLC, a Nevada limited liability company ("Subtenant"), as of the 2nd 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.

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.

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.

- 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.

- 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.
- 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

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.

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,

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 central 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.

- 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

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.
- 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.
- 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.

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.

- 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:

- 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 fulfill 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.

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.

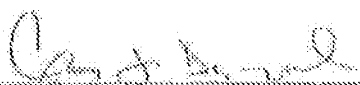
IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed as of the date first written above.

[SIGNATURE PAGES FOLLOW]

Landlord:

Rose, LLC,
a Colorado limited liability company

By: Rose Management, Inc.,
Its Manager

By: 
Name: Gary Bergal
Its: President

Subtenant:

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

By: Our People USA, LLC,
Its Manager

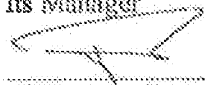
By:  05/06/2014
Name: Jorge Lizarraza F.
Its: Manager

EXHIBIT A**NOTICE OF SUBLEASE EFFECTIVE DATE**

Rose, LLC hereby provides this Notice of Sublease Effective Date to Senor Frogs Las Vegas, LLC pursuant to Section 1 of the Sublease dated May 6th, 2014. The parties have satisfied any and all of their obligations under their Settlement Agreement, Release and Covenant Not to Sue, dated May 6th, 2014, and the Effective Date of this Sublease therefore is May 6th, 2014.

EXHIBIT B
PRIME LEASE OBLIGATIONS OF LANDLORD BINDING ON SUBTENANT

1.2 Reservation. Prime 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 Prime Landlord agrees to conceal any work performed by Prime Landlord pursuant to this Section and repair any damage to the Leased Premises caused by or resulting from Prime Landlord's performance of such work. Such rights may only be exercised after Prime 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 Prime Landlord shall have reasonable ground to believe an Emergency (as defined below) exists or is threatened, Prime 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 Prime Landlord to complete background checks of Persons involved with Prime Landlord and Prime 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 Prime Landlord to Tenant or as required by the Gaming Authorities, Tenant shall provide to Prime 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 Subtenants 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 Prime 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, Prime Landlord or any of Prime 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.

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.

3.1(B) Gross Sales. . . . "Gross Sales" means . . . the aggregate of all revenues derived from Tenant Operations, whether 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, [and] (xii) the purchase of gift certificates, but not the redemption of gift certificates.

3.1(C) Gross Sales Reporting. Within 30 days after the end of each calendar quarter during the Lease Term, Tenant shall deliver to Prime Landlord a written statement setting forth the amount of Tenant's Gross Sales made during each month of the preceding calendar quarter

3.3 Real Estate Taxes and Other Costs. . . . Tenant agreeing to pay, before delinquency, all taxes upon or attributable to [Subtenant's personal property or assets of Tenant] without apportionment

4.1 Prime Landlord Delivery of Leased Premises. . . . 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 Prime Landlord or any Affiliate of Prime 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 Prime Landlord or any Affiliate of Prime Landlord, Tenant, this Lease or Tenant Operations.

4.3 Contractor and Contract. . . . Tenant shall cause its Contractor, subcontractors, vendors and/or suppliers to execute lien waivers in a form acceptable to Prime Landlord contemporaneously with its receipt of payment, copies of which shall be immediately delivered to Prime 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 Prime 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 Prime Landlord, Prime 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 Prime 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 Prime Landlord.

5.1 Other Tenant Improvements. 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 Prime Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Tenant shall have the right, with Prime 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 Prime Landlord upon the expiration or earlier termination of this Lease.

6.1 Limited Representations. Except as specifically provided in Section 17.1, Tenant acknowledges and agrees that neither Prime Landlord nor any of Prime 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".

7.1 Use of Property. . . . 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. Prime 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 Prime 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.

7.4 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, Prime 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.

7.6 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 Prime Landlord for the general non-exclusive use of Prime 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 Prime Landlord and others to whom Prime 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 Prime Landlord with respect thereto.

7.7 Trade Name. Tenant shall operate under the trade name "Senor Frogs" ("Trade Name") [unless consent for a Trade Name change is approved by the Prime Landlord and Landlord.]

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 Prime 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 Prime Landlord's personnel without the prior written consent of Prime Landlord, which consent may be withheld in Prime Landlord's sole and absolute discretion.

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 Prime Landlord's tenants, Prime 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 Prime 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.

9.1 Prime 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 Prime Landlord (collectively, "Prime Landlord Marks") without the prior written consent of Prime Landlord. Tenant agrees to indemnify, defend and hold Prime Landlord harmless from and against any expenses incurred by Prime Landlord in connection with any use of the Prime Landlord Marks by Tenant in violation of this Agreement. Notwithstanding the foregoing, Tenant may, without the prior written consent of Prime Landlord refer to "Treasure Island" when identifying the location of the Leased Premises on its web site and in advertising and promotional materials.

9.2 Prohibitions. At all times during the Term, or any time thereafter, Tenant shall not, without the prior written consent of Prime Landlord, which consent may be withheld in Prime Landlord's sole and absolute discretion:

9.2.1 contest or aid in contesting the validity of the Prime Landlord Marks or Prime Landlord's ownership of or licensed rights in the Prime Landlord Marks; or

9.2.2 use any of the Prime 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.

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 Prime Landlord the taxes for such personal property within fifteen (15) days after Tenant receives a written statement from Prime Landlord for such personal property taxes, together with reasonable supporting documentation [applicable only to Subtenant's property and excepting any Existing FF&E utilized by Landlord].

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. Prime 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. Prime 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.

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
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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 herein

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 Prime Landlord as additional insured (and at Prime 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 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 Prime 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 Prime Landlord, Tenant shall supply Prime 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, Prime 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 Prime Landlord or any Additional Insured. Prime Landlord or Prime 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.

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.

12.1 Prime Landlord's Obligations. . . . [A]ny damage [to the exterior walls, columns within the Leased Premises, foundations, structural floor and roof and structural areas of the Leased Premises, as well as any utility lines beyond the connection or stub to which Tenant connects its utilities, the HVAC system, and electric, gas, sewer and water lines serving the Leased Premises] caused by any negligence or misuse of Tenant or its agents, employees or contractors, [] Tenant shall repair at its sole cost and expense.

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.

13.1 Liability of Prime Landlord. Prime 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 Prime Landlord Work).

13.2 Indemnification of Prime Landlord. Except to the extent of the negligence or willful misconduct of Prime Landlord or Prime Landlord's employees, agents or contractors, Tenant agrees to indemnify, defend and hold Prime 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.

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.

14.2 Flammables. Tenant shall not, without the prior written consent of Prime 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.

14.3.1 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.

14.3.2 Regulatory Action. Tenant shall promptly notify Prime 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 Prime Landlord may reasonably request, Tenant shall provide Prime 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.

15.1.3 Events of Default. [Tenant shall be deemed in default of this Lease if] 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 involuntarily subject to a general assignment for the benefit of creditors;

15.1.4 Events of Default. [Tenant shall be deemed in default of this Lease if] any representation or warranty made by Tenant or a permitted subtenant or assignee in connection with this Lease shall have been materially false or misleading;

16.1.4 Insurance Proceeds. All insurance proceeds payable under any insurance policies carried by Prime Landlord shall be payable solely to Landlord, and Tenant shall have no interest therein. Prime Landlord shall not be liable, and Tenant shall in no case be entitled to compensation from Prime Landlord, for damages on account of any loss of business, annoyance or inconvenience in making repairs under any provisions of this Lease. . . . [N]either 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.

17.2 Tenant's Representations, Warranties and Covenants. Tenant hereby represents, warrants and covenants to Prime 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.

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 ("Mortgages" 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, Prime Landlord shall pay Tenant's reasonable costs and expenses incurred in connection therewith, and Prime 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 Prime Landlord is unable to obtain a subordination, non-disturbance and attornment agreement in a form reasonably acceptable to Tenant and executed by Prime 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 Prime Landlord under this Lease.

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 part 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 Prime 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.

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 [except in accordance with the terms contained herein and consistent with the Amended Sublease].

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.

19.9 Amendment, Modification and Waiver. No supplement, modification [or] waiver . . . 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.

19.13. 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.

19.7 Recording. Neither Prime Landlord nor Tenant shall record this Lease. . . .

19.21 Exclusion of Certain Parties. The parties acknowledge that neither Phil Ruffin nor any related enterprise [apart from Prime Landlord], individually or collectively, is a party to this [Lease]. Accordingly, the parties hereby agree that in the event (i) there is any alleged breach or default by any party under the [Lease], 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.

First Amendment

7.10 Prime Landlord shall have the right to offer complimentary meals and admission to its patrons and employees. Tenant shall bill such meals to Prime Landlord with a forty percent (40%) discount applied. Any such bill shall be paid within thirty (30) days.

7.11 Tenant hereby acknowledges that the Clark County Health District ("Health District") inspects restaurants located in Clark County, Nevada, for the purpose of noting violations of the Health District's codes, standards and/or rules relative to the sanitary operation of restaurants ("Violation"). As a result of such inspections, the Health District issues ratings of A, B, C, D, and F (with A being the highest rating and F being the lowest, each a "Rating"). Prime Landlord and Tenant hereby agree that restaurants located in first class resort/hotel facilities must meet all of the Health District's codes, standards and/or rules and operate in the safest, most sanitary way possible. As a result, Prime Landlord and Tenant hereby agree that an "A" Rating is necessary for Tenant's Restaurant to be operating in accordance with the operation of a first class resort/hotel facility. Therefore, if Tenant's Rating relative to Tenant's Restaurant is downgraded below an "A," and without limiting any other provision of this Lease Agreement, the following shall apply:

- a. For the first instance of a rating downgrade, Tenant shall have 48 hours from such downgrading to commence correction of each Violation and to request the Health District to reinspect the Leased Premises. Such request shall be in writing with a copy forwarded to Prime Landlord. All such violations must be fully cured within 30 days. Should a violation prove impossible to cure within 30 days, Tenant must submit to Prime Landlord a written statement as soon as possible explaining the reasons why such cure is impossible and how long is necessary to effect a cure. If, after attempting to cure all violations, the Health District does not reinstate the requisite "A" rating, Tenant shall be considered in material breach of this Agreement.
- b. Should Tenant's rating be downgraded a second time within 1 calendar year of the first downgrade, or should Tenant ever receive a third downgrade, irrespective of how much time has passed, Tenant shall be considered in material breach of this Agreement.

Fifth Amendment

5.1 Notwithstanding anything to the contrary contained herein, Prime Landlord and Tenant agree Tenant Additional Alterations shall include without limitation such alterations, additions or improvements to the Leased Premises, at no cost to Prime 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 Senor Frog's (which name and concept shall be approved by Prime Landlord, but, for example, The Big Deck at Senor Frog's) ("Complementary Use").

7.1 In addition to the foregoing, Tenant may use, upon receiving Prime 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.

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

19.2 In addition, Tenant shall have the right to install signage on the exterior of the Leased Premises identifying its Complementary Use business, subject to Prime 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.

19.6 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 Kukulcan 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.

20. [T]he 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 Prime Landlord in the exercise of any of its rights under the Lease or the obligations which it secures subject to Prime Landlord's right to demand a new leasing agreement with Subtenant as outlined below. To the extent the Lease Agreement is terminated by Prime Landlord due to a default by Tenant and Subtenant is not in default under the Sublease, Subtenant and Prime 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 Prime Landlord's discretion and in a form acceptable to Subtenant and Prime Landlord to replace the Sublease. Prime 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 Prime 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 Prime 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 Prime 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, Prime 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 PRIME 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.

EXHIBIT C
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

000347

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EXHIBIT D
PRIME LANDLORD OBLIGATIONS APPLICABLE TO SUBTENANT

1.2 Reservation. . . . Prime Landlord agrees to conceal any work performed by Prime Landlord pursuant to this Section and repair any damage to the Leased Premises caused by or resulting from Prime Landlord's performance of such work. Such rights may only be exercised after Prime 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 Prime Landlord shall have reasonable ground to believe an Emergency (as defined below) exists or is threatened, Prime 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.

2.1 Term. . . . 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 Prime 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.

3.3 Real Estate Taxes and Other Costs. Prime 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 charges and assessments, including extraordinary and special assessments, or assessments against any of Prime Landlord's personal property now or hereafter located in the Hotel Casino, all costs, expenses and attorneys' fees incurred by Prime 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. Prime Landlord shall pay or cause to be paid all costs of any kind paid or incurred by Prime 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.

4.1 Prime Landlord Delivery of Leased Premises. . . . Notwithstanding anything in the foregoing to the contrary, Prime Landlord represents and warrants that as of the Delivery Date [to Tenant], 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). Prime 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 Prime Landlord or any Affiliate of Prime 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 Prime Landlord or any Affiliate of Prime Landlord, Tenant, this Lease or Tenant Operations.

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. Prime Landlord hereby waives and releases any liens which Prime 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.

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. . . .

7.3 Interior Displays. Tenant shall have the right, subject to Prime 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.

7.4 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, Prime 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. Prime Landlord covenants and agrees that throughout the Lease Term Prime 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 Prime Landlord for the general non-exclusive use of Prime 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 Prime Landlord and others to whom Prime 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 Prime Landlord with respect thereto.

7.7 Trade Name. Tenant shall operate under the trade name "Senor Frogs" ("Trade Name").

9.3 Tenant Marks. Prime 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 Tenant. Prime 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 Prime Landlord other than as set forth in this Agreement. Prime 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 Prime Landlord, or adopt or use any confusingly similar logo, trademark, trade name, service mark or domain name.

10.2 Utilities. . . . Prime 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. Prime 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.

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.

12.1 Prime Landlord's Obligations. Prime 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. Prime Landlord shall use commercially reasonable efforts to not disrupt Tenant Operations during the performance of its obligations hereunder; provided, however, if despite Prime Landlord's commercially reasonable efforts, Prime 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. Prime 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. Prime 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 Prime Landlord with prompt written notice explaining the need for such repair.

13.3 Indemnification of Tenant. Except to the extent of the negligence or willful misconduct of Tenant or Tenant's employees, agents or contractors, Prime 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 Prime Landlord's failure to comply with the [applicable] 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 Prime Landlord or Prime Landlord's employees, agents or contractors and are not covered by the commercial general liability insurance maintained by Prime Landlord pursuant to this Lease. This provision shall not extend to worker's compensation claims brought against Tenant.

14.3.3 Prime Landlord Obligations. Prime 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 Prime 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).

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"), [Prime Landlord or Tenant] 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 Prime Landlord desires to repair the Leased Premises, Prime 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 ("Prime 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 Prime Landlord in writing, within thirty (30) days after Tenant's receipt of Prime Landlord's Repair Notice. If Prime Landlord elects to repair, and

Tenant does not, or is not entitled to, terminate this Lease, and if Prime 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 Prime 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 Prime 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, Prime 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 Prime Landlord in case of damage due to Casualty or otherwise to the Leased Premises. Notwithstanding anything herein to the contrary, if Prime 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, Prime 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.

16.1.5 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.

16.2.1 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 Prime 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) Prime 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, Prime Landlord shall not have the right to terminate this Lease unless Prime Landlord also terminates the leases of any other tenants who have suffered the same extent of Taking as suffered by Tenant. If either Prime 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.

17.1 Prime Landlord's Representations, Warranties and Covenants. Prime Landlord hereby represents, warrants and covenants to Tenant, as of the Effective Date and at all times during the Term, that: (a) Prime 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) Prime 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 Prime Landlord, threatened against Prime Landlord by any Governmental Authority which would prevent Prime 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 Prime 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

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 ("Mortgages" 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, Prime Landlord shall pay Tenant's reasonable costs and expenses incurred in connection therewith, and Prime 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 Prime Landlord is unable to obtain a subordination, non-disturbance and attornment agreement in a form reasonably acceptable to Tenant and executed by Prime Landlord and the current Mortgagee within thirty (30) days after Tenant's request, Tenant shall have the right to terminate this Lease.

19.1 Certificates. At any time, and from time to time, within thirty (30) days after notice of request by [Prime Landlord or Tenant], 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 part 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 Prime 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.

19.2 Signage. Throughout the Term, Prime Landlord shall, at no additional expense to Tenant: (a) provide directional signage from the Hotel Casino and within the Property to the Leased Premises Without limiting the foregoing, Tenant shall be afforded an equal opportunity to advertise in all of Prime Landlords' advertising featuring other restaurant or bar/lounge tenants at the Property and at equal cost to other tenants.

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 Prime Landlord's or Tenant's right to any other remedy.

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 Prime Landlord or by any persons lawfully claiming under Prime Landlord. Notwithstanding the foregoing, Prime 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 Prime 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, Prime 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 Prime Landlord hereunder and reasonably performing any work upon the Leased Premises in accordance with the terms hereof.

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 Prime 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 Kukulcan km 14.2
 Cancun, Mexico
 C.P. 77500 Zona Hotelera

[and

Arnstein & Lehr LLP
 200 South Biscayne Boulevard
 Suite 3600
 Miami, Florida 33131
 Attention: Ronald R. Fieldstone, Esq. and
 Susan Trench, Esq.
 Facsimile: 305.374.4744
 E-Mail: rrfieldstone@arnstein.com]

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.