

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JSJBD CORP, D/B/A BLUE DOG'S  
PUB, A NEVADA CORPORATION;  
STUART VINCENT, AN  
INDIVIDUAL; JEFFREY B.  
VINCENT, AN INDIVIDUAL; AND  
JEFF WHITE, AN INDIVIDUAL,

Appellants/Cross-Respondents,

vs.

TROPICANA INVESTMENTS, LLC,  
A CALIFORNIA LIMITED  
LIABILITY COMPANY,

Respondent/Cross-Appellant.

No. 80849

Electronically Filed  
Apr 23 2020 10:04 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XI  
County Clark Judge Elizabeth Gonzalez  
District Ct. Case No. A-18-785311-B

2. **Attorney filing this docketing statement:**

Attorney Terry A. Moore, Esq. and Collin M. Jayne, Esq.  
Telephone 702-382-0711  
Firm Marquis Aurbach Coffing  
Address 10001 Park Run Drive, Las Vegas, Nevada 89145  
Client Respondent/Cross-Appellant, Tropicana Investments, LLC ("Tropicana")

3. **Attorney(s) representing respondent(s):**

Attorney Mario P. Lovato, Esq.  
Telephone 702-979-9047  
Firm Lovato Law Firm, P.C.  
Address 7465 W. Lake Mead Blvd., Ste. 100, Las Vegas, Nevada 89128  
Clients Appellants/Cross-Respondents, JSJBD Corp. d/b/a Blue Dog's Pub ("JSJBD"), Stuart Vincent; Jeffrey Vincent; and Jeff White

4. **Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal                                      |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of Jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify)                                |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input checked="" type="checkbox"/> Other disposition (specify)         |

(1) Findings of Fact and Conclusions of Law, which was filed on December 5, 2019 and is attached as **Exhibit E**;

(2) Order Denying Defendant's Motion to Alter or Amend Judgment, which was filed on February 24, 2020 and is attached as **Exhibit F**;

(3) Order Granting Plaintiff/Counterdefendants' Motion for Attorney

Fees and Costs, which was filed on February 24, 2020 and is attached as **Exhibit G**;

(4) Order Granting in Part Defendant's Motion for Attorneys' Fees and Costs, which was filed on February 13, 2020 and is attached as **Exhibit H**;

(5) Final Judgment, which was filed on February 25, 2020 and is attached as **Exhibit I**

5. **Does this appeal raise issues concerning any of the following:** N/A.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

District Court Case No. A-18-785311-B (*JSJBD, Corp. v. Tropicana Investments, LLC*)-case below giving rise to the instant appeal. Findings of Fact and Conclusions of Law filed on December 5, 2019 and Final Judgment filed on February 15, 2020.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

JSJBD rents a commercial property owned by Tropicana. The subject lease contained an option for JSJBD to extend the lease term under terms and conditions to be negotiated. At the conclusion of the lease term, the parties reached an agreement on the rental amount for the option term, and JSJBD began paying rent in the agreed upon amount. Approximately one (1) year later, after paying the amount of rent that had been agreed upon for that first option year, JSJBD retained new counsel and attempted to repudiate the

agreement that had been reached. Approximately one (1) year later, JSJBD filed suit against Tropicana seeking judicial declarations as to the enforceability of the option, a determination that the required rent for the option term should be based upon fair market rent, and seeking damages. *See Exhibit A.* Tropicana asserted counterclaims seeking judicial declarations that the option was enforceable under the agreed upon rental terms, and seeking damages for underpaid rent both from JSJBD, and Stuart Vincent, Jeffrey Vincent, and Jeff White as personal guarantors of JSJBD's lease obligations. *See Exhibit B.*

After a five-day bench trial, the District Court agreed with Tropicana's position as to the majority of issues; issued all but one declaration requested by Tropicana, including a declaration that the rental amount for the option period is the amount Tropicana asserted; issued one of the six declarations requested by JSJBD; and awarded monetary damages to both sides, with Tropicana receiving a larger award than JSJBD. *See Exhibit E.* The District Court subsequently concluded that both sides were prevailing parties, and granted JSJBD's motion for attorneys' fees on this basis, while also granting Tropicana's motion for attorneys' fees on this basis, as well as on the basis of an attorneys' fees provision in the governing lease document. *See Exhibits G and H.* The Court further denied Tropicana's motion to alter or amend the judgment as to the award of attorneys' fees to JSJBD as special damages, the calculation of underpaid rent owed to Tropicana, and the issue of clarifying the prevailing party as to the declaratory relief claims. *See Exhibit F.* Thus, the final judgment takes into account all monetary awards, resulting in an award in Tropicana's favor against JSJBD, Stuart Vincent, Jeffrey Vincent, and Jeff White for \$98,006.46. *See Exhibit I.*

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) Damages on a claim for breach of the implied covenant of good faith and fair dealing are limited to those which would be recoverable from a breach of the subject contract and which are not duplicative of other damages awarded. The District Court awarded JSJBD attorneys' fees as special damages on its breach of implied covenant of good faith and fair dealing claim, even though the contract between the parties contained no provision permitting such damages to be recoverable by JSJBD in any case. Did the District Court err by awarding JSJBD attorneys' fees as special damages for breach of the implied covenant of good faith and fair dealing?

- (2) In the rare circumstances where Nevada law allows a party to recover attorneys' fees as special damages, a plaintiff must plead and prove the amount of attorneys' fees at trial by competent evidence for an award of attorneys' fees to be proper. JSJBD failed to disclose or present at trial any evidence of attorneys' fees it had incurred as a result of Tropicana's alleged conduct. Did the District Court err by awarding JSJBD attorneys' fees as special damages without any evidentiary basis or support?
- (3) When a final judgment results in monetary damages being awarded to both sides, the prevailing party is the one who receives a net monetary judgment after offsetting all damages awarded. The District Court's order awarded JSJBD \$4,578, and awarded Tropicana \$13,000. Did the District Court err by concluding that JSJBD was a prevailing party?
- (4) Did the District Court erroneously calculate unpaid rent owed by JSJBD as \$13,000, when the District Court's findings of fact show that JSJBD underpaid rent by a total of \$16,780?

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Tropicana is not aware of any cases raising the same or similar issues.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues? N/A.

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

13. **Assignment to the Supreme Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Pursuant to NRAP 17(a)(9), this case should be retained by the Supreme Court because it originated in business court.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? 5  
Was it a bench or jury trial? Bench

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A.

### **TIMELINESS OF NOTICE OF APPEAL**

16. **Date of entry of written judgment or order appealed from:**

- (1) Findings of Fact and Conclusions of Law was filed on December 5, 2019 and is attached as **Exhibit E**;
- (2) Order Denying Defendant's Motion to Alter or Amend Judgment was filed on February 24, 2020 and is attached as **Exhibit F**;
- (3) Order Granting Plaintiff/Counterdefendants' Motion for Attorney Fees and Costs was filed on February 24, 2020 and is attached as **Exhibit G**;

- (4) Order Granting in Part Defendant's Motion for Attorneys' Fees and Costs was filed on February 13, 2020 and is attached as **Exhibit H**;
- (5) Final Judgment was filed on February 25, 2020 and is attached as **Exhibit I**.

**17. Date written notice of entry of judgment or order was served:**

- (1) Notice of Entry of Findings of Fact and Conclusions of Law was filed on December 27, 2019 and is attached as **Exhibit E**;
- (2) Notice of Entry of Order Denying Defendant's Motion to Alter or Amend Judgment was filed on February 25, 2020 and is attached as **Exhibit F**;
- (3) Notice of Entry of Order Granting Plaintiff/Counterdefendants' Motion for Attorney Fees and Costs was filed on February 25, 2020 and is attached as **Exhibit G**;
- (4) Notice of Entry of Order Granting in Part Defendant's Motion for Attorneys' Fees and Costs was filed on February 13, 2020 and is attached as **Exhibit H**;
- (5) Notice of Entry of Final Judgment was filed on February 25, 2020 and is attached as **Exhibit I**.

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

- (a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCP 50(b)     Date of filing
- ☐ NRCP 52(b)     Date of filing
- ☒ NRCP 59         Date of filing     December 27, 2019

**NOTE:** Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).

- (b) Date of entry of written order resolving tolling motion: February 24, 2020.

(c) Date written notice of entry of order resolving tolling motion was served February 25, 2020.

Was service by:

☐ Delivery

☒ Mail/Electronic/Fax

**19. Date notice of appeal filed:**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

JSJBD, Stuart Vincent, Jeffrey Vincent, and Jeff White filed their notice of appeal on March 16, 2020.

Tropicana filed its notice of cross-appeal on March 25, 2020.

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a).

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRAP 3(b)(8)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) provides for an appeal from a final judgment. NRAP 3A(b)(8) provides for an appeal of a special order entered after final judgment, such as orders granting or denying a motion for fees and costs.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

**Appellants/Cross-Respondents:**

Plaintiff/Counterdefendant, JSJBD Corp. d/b/a Blue Dog's Pub,  
Counterdefendants, Stuart Vincent; Jeffrey Vincent; and Jeff White

**Respondent/Cross-Appellant:**

Defendant/Counterplaintiff, Tropicana Investments, LLC

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

JSJBD filed its complaint on November 30, 2018 with claims for declaratory relief, breach of contract, and breach of implied covenant of good faith and fair dealing against Tropicana. *See Exhibit A.*

Tropicana filed its counterclaim on January 31, 2019 with claims for declaratory relief, breach of lease agreement, breach of implied covenant of good faith and fair dealing, and for eviction and issuance of writ of restitution against all counterdefendants. *See Exhibit B.*

Tropicana filed a motion for partial summary judgment on its declaratory judgment counterclaim, and JSJBD filed a countermotion for partial summary adjudication on its declaratory judgment claim. The July 24, 2019 Order on partial summary judgment set forth the following determinations: (1) JSJBD has an enforceable option to renew/extend the lease for option period September 1, 2016 to August 31, 2021; (2) the parties have not been able to agree on an amount for the rent for the option period; and (3) the reasonable rental rate would be decided by the District Court via evidentiary hearing or trial. *See Exhibit D.*

The December 5, 2019 Findings of Fact and Conclusions of Law set forth the following conclusions: (1) the option was timely exercised; (2) the agreed upon rental rate for the first two years of the option was \$8,400 per month, which was

reasonable; (3) the rental rate was to increase by \$210 per month each year starting on September 1, 2018; (4) JSJBD breached the lease by underpaying rent due in the amount of \$13,000; and (5) Tropicana breached the lease by charging for reserves in the CAM charges in the amount of \$4,578. *See Exhibit E.*

Judgment was entered in favor of JSJBD on breach of contract in the amount of \$4,578 and breach of the implied covenant of good faith and fair dealing related to the CAM charges in the amount of attorney fees and costs related to the cam expense portion of the litigation only, and Judgment was entered in favor of Tropicana for all other claims for relief in the complaint. *Id.* Judgment was also entered in favor of Tropicana for breach of lease for the underpayment of rent in the amount of \$13,000 and for the counterdefendants on all other claims in the counterclaim. *Id.*

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered “No” to question 24, complete the following: N/A.**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

N/A.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

Exhibit	Document Description
A	Complaint (filed 11/30/18)
B	Answer and Counterclaim (filed 01/09/19)
C	Motion to Alter or Amend Judgment (filed 12/27/19)
D	Notice of Entry of Order [on Partial Summary Judgment Motions] (filed 07/24/19)
E	Notice of Entry of Findings of Fact and Conclusions of Law (filed 12/27/19)
F	Notice of Entry of Order Denying Defendant’s Motion to Alter or Amend Judgment (filed 02/25/20)
G	Notice of Entry Order Granting Plaintiff/Counterdefendants’ Motion for Attorney Fees and Costs (filed 02/25/20)
H	Notice of Entry of Order Granting in Part Defendant’s Motion for Attorneys’ Fees and Costs (filed 02/13/20)
I	Notice of Entry of Final Judgment (filed 02/25/20)

## VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Tropicana Investments, LLC

Name of appellant

Terry A. Moore, Esq. and  
Collin M. Jayne, Esq.

Name of counsel of record

April 23, 2020

Date

/s/ Terry A. Moore

Signature of counsel of record

Clark County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 23rd day of April, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☒ Via this Court's electronic filing system in accordance with the Master Service List; or

Mario Lovato  
Jay Young

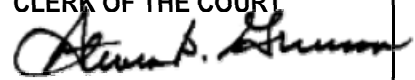
☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Dated this 23rd day of April, 2020.

/s/ Leah Dell

Signature

# Exhibit A



MARIO P. LOVATO, ESQ.  
Nevada Bar No. 7427  
LOVATO LAW FIRM, P.C.  
7465 W. Lake Mead Blvd. Ste. 100  
Las Vegas, Nevada 89128  
TEL: (702) 979-9047  
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Attorney for Plaintiff  
JSJBD Corp dba Blue Dog's Pub

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub,	)	
a Nevada corporation,	)	Case No. A-18-785311-B
	)	Dept. No. Department 11
Blue Dog's,	)	
	)	
v.	)	
	)	
TROPICANA INVESTMENTS, LLC, a	)	<b>BUSINESS COURT REQUESTED</b>
California limited liability company,	)	
	)	<b>Exempt from arbitration:</b>
Defendant.	)	<b>Declaratory &amp; Injunctive Relief</b>
	)	

**COMPLAINT**

Plaintiff JSJBD Corp, d/b/a Blue Dog's Pub ("Blue Dog's"), a Nevada corporation, as and for causes of action against Tropicana Investments Tropicana Investments, LLC, a California limited liability company, alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff JSJBD CORP ("Blue Dog's" or "JSJBD") is a Nevada corporation doing business in Clark County, Nevada.
2. JSJBD was formed on March 8, 2007. Its Director is Bruce Eisman. Its Treasurer is Bruno Mark. Its Secretary is Jeffrey Vincent. Its President is Stuart Vincent.
3. JSJBD was formerly an entity named J.S.J., LLC that filed Articles of Conversion under NRS 92A.205 with the Nevada Secretary of State on March 6, 2014, naming JSJBD Corp as the resulting entity.

4. JSJBD does business as Blue Dog's Pub ("Blue Dog's"), and owns and operates a tavern in Suites 27, 28, and 29 ("Subject Premises") in a shopping center called Tropicana Plaza.

5. Blue Dog's is the successor-in-interest and current tenant under the 1996 Lease, and subsequent Amendments / Addenda thereto, entered into on July 9, 1996 for the subject premises.

6. Tropicana Investments, LLC (“Tropicana Investments”) is a California limited liability company doing business in Clark County, Nevada.

7. Tropicana Investments owns the commercial shopping center commonly referred to as Tropicana Plaza located at 3430 East Tropicana Avenue, Las Vegas, Nevada, 89121.

8. Tropicana Investments is the successor-in-interest and current under the 1996 Lease, and subsequent Amendments / Addenda thereto, entered into on July 9, 1996 for the subject premises.

9. **Jurisdiction & Business Court.** The facts and circumstances and contracts set forth herein occurred in Clark County in the State of Nevada, thereby granting this Court jurisdiction over the parties and causes of action; and relates to the purchase and sale of commercial real estate and the option rights bargained for in regard to such purchase and sale of commercial real estate and further lease documents referencing the same, and would benefit from enhanced case management.

## GENERAL ALLEGATIONS

10. The Lease had a durational term of approximately five years, ending on August 31, 2001, with an option to renew the lease prior to its expiration for an additional five years.

11. Such option agreement was drafted and entered into at or about the same time as the Lease, refers directly to the “lease,” and is part of the same agreement as the Lease.

12. The rent for the option term was set “at a market rate and terms as agreed by Landlord and Tenant.”

1           13.     The Lease was a binding contract and lease, which intentionally left an open and  
2 ascertainable rental price term for the option period.

3           14.     The Lease obligated the Landlord “at his sole cost and expense, [to] keep and  
4 maintain in good repair, (excluding painting) of [sic] exterior wall and roof . . . .”

5           15.     The Lease contained provisions regarding “common facilities,” including that  
6 “tenant shall be given an accounting of expenses . . . .”

7  
8           16.     In 2001, the tenant and the landlord entered into an Amendment that changed the  
9 Commencement date in the Lease to September 1, 2001 and changed the Expiration Date to August  
10 31, 2006, and further stated that, “All of the terms, covenants, provisions, and agreements to the  
11 lease not conflicting with this Amendment shall remain in full force and effect.”

12           17.     In 2006, the tenant and the landlord entered into an Addendum that changed the  
13 Commencement date in the Lease to September 1, 2006 and changed the Expiration Date to August  
14 31, 2011, and further stated that, “all of the terms, covenants, provisions, and agreements to the  
15 lease not conflicting with this Amendment [sic] shall remain in full force and effect.”

16  
17           18.     Further, the Addendum confirmed that tenant possessed an option to extend for an  
18 additional five year term after the August 31, 2011 expiration date, again leaving an open and  
19 ascertainable price term, which was, further, “to be negotiated.”

20           19.     In 2007, Blue Dog’s purchased the gaming tavern from Mark S. Van Aken for  
21 \$500,000, with the consent and agreement of Landlord Tropicana Investments.

22           20.     In 2007, Blue Dog’s, Blue Dog’s predecessor-in-interest Mark S. Van Aken, and  
23 Tropicana Investments entered into a Lease Assignment & Modification.

24           21.     The Lease Assignment & Modification expressly incorporated and confirmed the  
25 Lease, the Amendment, and the Addendum, including that Blue Dog’s succeeds to all rights  
26 thereunder.  
27  
28

1           22. Further, the Lease Assignment & Modification granted to Blue Dog's three  
2 additional five year options to renew the term of the Lease, again leaving an open and ascertainable  
3 price term, which was, further, "to be negotiated."

4           23. The Lease Assignment & Modification stated that: (1) it assigned the all rights in  
5 the Lease, and, further, that it incorporated the rights and obligations of the 2006 Addendum; and  
6 (2) it granted three "additional" five years options to renew the terms of the Lease.  
7

8           a. As to the first item, the 2006 Addendum incorporated the original Lease  
9 (which contained an option to renew "at a market rental rate and terms as agreed"), stated rental  
10 amounts for the period of September 1, 2006 to August 31, 2011, and it granted an option to extend  
11 the lease term for five years "under terms and conditions to be negotiated."

12           b. As to the second item, the 2011 Assignment granted "three additional five  
13 year options to renew the term of the Lease under terms and conditions, including but not limited  
14 to rental increases, to be negotiated."  
15

16           24. In 2011, Blue Dog's and Tropicana Investments entered into an Addendum II that  
17 changed the Commencement date in the Lease to September 1, 2011 and changed the Expiration  
18 Date to August 31, 2016, and further stated that, "All of the terms, covenants, provisions, and  
19 agreements of the Lease not conflicting with this Addendum shall remain in full force and effect."  
20

21           25. In 2016, Blue Dog's exercised a lease option for the next five-year durational term  
22 to August 31, 2021.

23           26. Over the several years preceding 2016, Blue Dog's had communicated its desire to  
24 decrease the amount of base rent on numerous occasions.

25           27. Tropicana Investments had stated that it was willing to negotiate and reduce the  
26 amount of base rent to reflect the market rent in the area.  
27  
28

1           28.     On June 15, 2016, Tropicana Investments, despite the options to renew, demanded  
2 an entirely new lease agreement document that would be designed to replace the original Lease  
3 and subsequent lease documents.

4           29.     In a letter dated August 2, 2016, Blue Dog's, through counsel, exercised one of its  
5 lease options to renew and, thus, extend the durational term of the Lease.

6           30.     In the same letter, Blue Dog's counsel proposed a rental amount that was not  
7 accepted by Landlord, but rather, Landlord countered with numerous differing terms and  
8 conditions, including different amounts for the amount of rent.

9           31.     In an e-mail dated August 3, 2016, Tropicana Investments, through its  
10 representative, countered that base rent would be among the terms that would be subsequently  
11 drafted as part of a new Lease Agreement to be drafted, with Tropicana Investments countering as  
12 to the amount of rent by proposing that annual rent increase by 3% on gross yearly rental amount.

13           32.     In an e-mail dated August 11, 2016, Blue Dog's then-counsel reiterated Blue Dog's  
14 exercise of its lease option.

15           33.     In an e-mail dated August 12, 2016, Tropicana Investments, through its  
16 representative, again countered with a demand that the parties draft and execute entirely new lease  
17 documents.

18           34.     Over the next year, Blue Dog's and Tropicana Investments discussed and  
19 exchanged multiple versions of the replacement lease documents proposed by Tropicana  
20 Investments, but did not agree on any replacement for the original Lease, and subsequent lease  
21 documents, that continue to govern the parties' rights and obligations.

22           35.     Since September 1, 2016, Blue Dog's, in good faith, has continued to pay base rent  
23 and additional expenses for common area maintenance ("CAM") in the same amount for the period  
24 of 2011 to 2016 even though there is not an agreement as to market rent / reasonable rent for the  
25 period after the option was exercised for the period after the exercise in 2016.

1           36.     Tropicana Investments recognized Blue Dog's exercise of an option in 2016 to  
2 renew and extend the durational term of the lease for five additional years.

3           37.     Tropicana Investments has accepted rent payments since the date the option was  
4 exercised in 2016.

5           38.     As recently as August 18, 2017, Tropicana Investment's counsel forwarded another  
6 edited version of the new Lease Agreement, and, on August 25, 2017, conveyed an offer to reduce  
7 base rent from \$2.00 per square foot per month to \$1.95 per square foot per month.  
8

9           39.     Blue Dog's countered Landlord's offer by, inter alia, proposing lower amounts of  
10 rent per square foot in light of the degradation of the area and the reduced rental market rates for  
11 the area.

12           40.     In September of 2017, Tropicana Investments, contrary to its prior statements,  
13 asserted that it could unilaterally set the amount of rent at an amount it had rejected over a year  
14 earlier (and to which it had responded by countering with different terms).  
15

16           41.     Tropicana Investments attempts to characterize its unilateral setting of rent as an  
17 alleged acceptance of 2016 communications that were long-since rejected by Landlord.

18           42.     Tropicana Investments has refused to negotiate, instead resorting to unilaterally  
19 setting an amount of rent that is in excess of reasonable / market rent.  
20

21           43.     In 2018, Blue Dog's proposed that the parties use a neutral and reasonable  
22 methodology for determining reasonable / market rent.

23           44.     Blue Dog's proposed that the parties hire a joint appraiser to determine market /  
24 reasonable rent.

25           45.     Tropicana Investments rejected the hiring and use of a joint appraiser.

26           46.     Blue Dog's also proposed other neutral and reasonable methods for determining  
27 rent, such as use of more than one appraiser and/or by using an appraiser in conjunction with an  
28 arbitrator.

1           47.     Tropicana Investments rejected these other neutral methods as well.

2           48.     Tropicana Investments then threatened to terminate the lease, contrary to the Lease  
3 and subsequent lease documents, which granted Blue Dog's a right to renew and extend the lease,  
4 which Blue Dog's exercised in 2016.

5           49.     Contrary to the Lease and related lease documents, Tropicana Investments served  
6 a "Thirty Day Notice to Quit the Premises" dated November 14, 2018.  
7

8           50.     On November 16, 2018, Blue Dog's responded by disagreeing with the "Third Day  
9 Notice to Quit the Premises" and reminding Tropicana Investments of Blue Dog's exercise of its  
10 option right to renew and thereby extend the durational term of the Lease.

11           51.     On November 16, 2018, Blue Dog's served a copy of an appraisal of market /  
12 reasonable rent, which shows a rental amount that is far less than what Blue Dog's has paid in  
13 good faith while negotiations as to the amount of rent continued since the date it exercised its  
14 option in 2016.  
15

16           52.     In addition, Tropicana Investments has failed to perform, and therefore has  
17 breached the Lease in other material respects.

18           53.     Tropicana Investments has charged amounts for the common area maintenance  
19 costs that are in excess of the actual common area maintenance costs and Blue Dog's proportionate  
20 share.  
21

22           54.     Blue Dog's has requested an accounting to which it is entitled under the Lease and  
23 related documents.

24           55.     Tropicana Investments has breached by failing and refusing to comply with the  
25 request for accounting.

26           56.     Tropicana Investments has obligations to maintain and repair the premises,  
27 including but not limited to the roof and HVAC system for the premises.

28           57.     Tropicana Investments has breached its obligation to maintain the premises by

1 removing an evaporative cooler, leaving a substantial opening in the roof, which further damages  
2 that functioning of the entire HVAC system for the premises and rendering a significant portion  
3 of the premises unusable.

4 58. Despite repeated requests and demands, Tropicana Investments has failed and  
5 refused to repair the damage to the roof and the related damage to the HVAC system and premises  
6 in breach of its obligations.

7  
8 59. Tropicana Investments possesses obligations to provide for security for the  
9 common areas of the shopping center, but has failed and refused to comply with such obligations,  
10 damaging Blue Dog's.

11 **FIRST CLAIM FOR RELIEF**  
12 **(DECLARATORY RELIEF)**  
13

14 60. Blue Dog's repeats and realleges the preceding paragraphs and incorporates the  
15 same herein.

16 61. Pursuant to various statutory provisions of NRS Chapter 30, as well as NRCP 57,  
17 the Court may construe contracts, agreements, lease, and the respective rights of parties to the  
18 same, entering declarations construing, interpreting, and determining the same.

19 62. In 2016, when Blue Dog's exercised its option to renew and extend the lease, all  
20 terms and conditions of the renewal of the Lease were already settled in the Lease and the related  
21 lease documents, leaving only the amount of market / reasonable rent to be determined.

22  
23 63. Blue Dog's option rights for renewal that it has exercised are part of the bargained  
24 for exchange between Landlord and Tenant in the Lease and the related documents, which refer to  
25 and incorporate one another.

26 64. At all times prior to 2016, and continuing, all terms and conditions of the option  
27 renewal were settled, leaving only the rental to later be determined.

28 65. The various clauses and options for renewal / extension constitute part of the

1 bargained-for exchange between the parties.

2 66. The parties intended for the options to have meaning and value, and to be effective.

3 67. The parties expressly stated that rent for option periods to be market rent.

4 68. Further, in additional lease provisions, the parties intended a reasonable rent for the  
5 extended period.

6 69. Further, where an option provides for the amount of rent for a future time period to  
7 be negotiated, and the parties thereafter fail to reach an agreement, the option is enforceable and a  
8 reasonable amount for rent is imposed.

9 70. The court should fix the amount of the monthly rent for the entire five year period  
10 of the option since economic conditions are ascertainable with sufficient certainty to make the  
11 option clause(s) capable of enforcement.

12 71. Under NRS 118C.200, as further supplemented by the Lease and related  
13 documents, a landlord cannot remove a material part of the roof, an evaporative cooler, and a  
14 material part of the HVAC system, and the portion of the premises served thereby, without  
15 promptly repairing and replacing the same.

16 72. Tropicana has failed to promptly repair and replace a material part of the roof, an  
17 evaporative cooler, and a material part of the HVAC system, and the portion of the premises served  
18 thereby in violation of Nevada law and the Lease.

19 73. A declaration is requested, and the Court should so determine and declare, that Blue  
20 Dog's possessed option rights that it exercised, with all terms settled.

21 74. A declaration is requested, and the Court should so determine and declare, that the  
22 parties agreed to reasonable / market rent for the periods included in options to extend / renew the  
23 Lease for successive five-year periods.

24 75. A declaration is requested, and the Court should so determine and declare, the  
25 amount of reasonable / market monthly rent for the premises, which is ascertainable from the  
26  
27  
28

1 market conditions as of the date of the exercise of the option and the renewal / extension of the  
2 Lease.

3 76. A declaration is requested, and the Court should so determine and declare, whether  
4 Tropicana Investments acted unreasonably in unilaterally setting the amount of rent rather than  
5 negotiate the same or otherwise agree upon a neutral and reasonable methodology for determining  
6 rent.  
7

8 77. A declaration is requested, and the Court should so determine and declare, the  
9 amount of rent that should be paid and/or deposited with the Court, while the case remains pending  
10 before the Court.

11 78. A declaration is requested, and the Court should so determine and declare, the rights  
12 and obligations of the parties in regard to any and all other matters alleged and otherwise raised  
13 herein.  
14

15 79. Blue Dog's has been required to obtain the services of an attorney in order to  
16 enforce its rights, and is entitled to an award of attorney fees and costs.

17 **SECOND CLAIM FOR RELIEF**

18 **(BREACH OF CONTRACT)**

19 80. Blue Dog's repeats and restates the preceding allegations, and incorporates the  
20 same herein.  
21

22 81. Plaintiff and Defendant are parties to a Lease and Option Agreement, as well as  
23 subsequent lease documents incorporating the same, which set forth rights and obligations of the  
24 parties.

25 82. Rather than comply with Lease, as well as the related lease documents, Landlord  
26 has engaged in conduct contrary to the rights and obligations under the same, and has breached  
27 the Lease and related documents as a result of the conduct described above and herein.  
28

83. The parties are subject to a rent requirement that reasonable / market rent be paid,

1 which can be ascertained from market conditions for the premises and the surrounding area.

2 84. During the time since the date Blue Dog's exercised the option in 2016, Tropicana  
3 Investments has received amounts that exceed reasonable / market rent, for which restitution and  
4 reimbursement should be made to Blue Dog's.

5 85. Tropicana Investments has charged amounts in excess of the common area  
6 maintenance charges, for which restitution and reimbursement to should be made to Blue Dog's.

7 86. Tropicana Investments has breached its obligation to repair and maintain the  
8 premises, including the roof, the HVAC system, and other portions of the premises, which has  
9 damaged Blue Dog's.

10 87. As a result of Tropicana Investments' breaches, Blue Dog's has been damaged by  
11 Tropicana Investments in an amount in excess of \$10,000.00.

12 88. Blue Dog's has been required to obtain the services of an attorney in order to  
13 enforce its rights, and is entitled to an award of attorney fees and costs.

14 89. **Accounting:** Tropicana Investments has breached its obligation to provide an  
15 accounting and related accounting documents to Blue Dog's in regard to the common area  
16 maintenance charges, and this Court should order that an appropriate accounting take place.

17 90. **Injunctive relief:** The Lease and related lease documents pertain to an interest in  
18 land, which is unique, and Blue Dog's is entitled to both mandatory and prohibitory injunctive  
19 relief requiring Tropicana Investments to comply with, and to otherwise perform, each and all of  
20 the duties and obligations of landlord under the Lease and related lease documents described  
21 above.  
22  
23  
24

### 25 **THIRD CLAIM FOR RELIEF**

#### 26 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

27 91. Blue Dog's repeats and restates the preceding allegations, and incorporates the  
28 same herein.

1           92. In Nevada, parties to a contract, agreement or lease are subject to an implied  
2 covenant of good faith and fair dealing.

3           93. Tropicana Investments has breached the covenant and good faith and fair dealing  
4 as a result of the conduct it has engaged in, as described above and herein.

5           94. Tropicana Investments has refused to negotiate market / reasonable rent in good  
6 faith out of the knowledge that it is currently receiving an amount of rent that exceeds market /  
7 reasonable rent, thereby damaging Blue Dog's as the rental amount remains undetermined.

8           95. Further, Tropicana Investments has threatened the use and enjoyment of the  
9 premises via its improper and invalid Notice wherein it purports to terminate the lease despite the  
10 option rights that have been granted to Blue Dog's as part of the parties' bargained-for exchange,  
11 which has been exercised by Blue Dog's.

12           96. Further, Tropicana Investments has acted in bad faith by repeatedly taking  
13 diametrically opposed and inconsistent positions, despite its prior statements and positions, in  
14 order to damage Blue Dog's, including, but not limited to:  
15

16           97. Tropicana Investments has repeatedly recognized that Blue Dog's has exercised its  
17 option to renew / extend in 2016, but then subsequently states the contrary.

18           98. Tropicana Investments has repeatedly recognized the straightforward and simple  
19 contract rule that a counteroffer also acts as a rejection, but then ignores such contract rule despite  
20 its prior writings and counteroffers to the contrary.

21           99. On or about August 18, 2017, Tropicana Investments demanded assent to an  
22 entirely new Lease, and stated that any discussion of base rent was a "non-starter."  
23

24           100. In the same e-mail, Tropicana Investments stated, "As you know, Blue Dog's is  
25 currently a month to month holdover tenant," despite Blue Dog's exercise of its option rights.

26           101. Yet, on or about August 25, 2017, Tropicana Investments offered to reduce base  
27 rent to \$1.95 per square foot for the first year of the lease term, with annual increases of \$0.05 per  
28

1 square foot each year thereafter, but then, on or about September 6, 2017, Tropicana Investments  
2 reversed its position and claimed that Blue Dog's had already exercised its lease option in the  
3 August 2, 2016 letter from Blue Dog's former counsel.

4 102. Tropicana Investments has thereafter made impertinent claims regarding the  
5 amount of rent based on what has been paid, in continuation of the rent obligation prior to exercise  
6 of the option, despite the fact that Blue Dog's has been attempting to negotiate the amount of rent  
7 during the entire period in good faith without there being a negotiated agreement as to market /  
8 reasonable rent or otherwise.  
9

10 103. Tropicana Investments also breached the implied covenant of good faith and fair  
11 dealing by refusing to produce a proper accounting of its CAM costs.

12 104. As a result of Tropicana Investments' breaches, Blue Dog's has been damaged by  
13 Tropicana Investments in an amount in excess of \$10,000.00.  
14

15 105. Blue Dog's has been required to obtain the services of an attorney in order to  
16 enforce its rights, and is entitled to an award of attorney fees and costs.

17 106. **Accounting:** Tropicana Investments has breached its obligation to provide an  
18 accounting and related accounting documents to Blue Dog's in regard to the common area  
19 maintenance charges, and this Court should order that an appropriate accounting take place.  
20

21 107. **Injunctive relief:** The Lease and related lease documents pertain to an interest in  
22 land, which is unique, and Blue Dog's is entitled to both mandatory and prohibitory injunctive  
23 relief requiring Tropicana Investments to comply with, and to otherwise perform, each and all of  
24 the duties and obligations of landlord under the Lease and related lease documents described  
25 above.

26 WHEREFORE, Blue Dog's requests the following relief:

- 27 1. Judgment in favor of Blue Dog's and against Tropicana Investments;  
28 2. Declaratory relief, as requested above.

3. Restitution, expectation, and other damages in an amount in excess of \$10,000.00 as described above.

4. A constructive trust and/or equitable lien over monies owed to Blue Dog's.

5. Attorney fees, costs, and expenses.

6. An award of all applicable prejudgment and post-judgment interest;

7. Injunctive or other relief as described above.

8. An accounting of CAM and related costs, as described above.

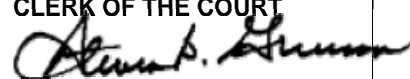
9. Statutory relief pursuant to NRS Chapter 118C, NRS Chapter 40, and any other chapters relating to landlord-tenant disputes, including disputes relating to commercial property.

10. An award of any and all additional relief that the Court finds just and proper.

LOVATO LAW FIRM, P.C.

/s/ Mario Lovato  
MARIO P. LOVATO, ESQ.  
Nevada Bar No. 7427  
Attorney for Blue Dog's

# Exhibit B

**Marquis Aurbach Coffing**Terry A. Moore, Esq.  
Nevada Bar No. 7831  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
tmoore@maclaw.com*Attorneys for Defendant/Counterclaimant,  
Tropicana Investments, LLC***DISTRICT COURT****CLARK COUNTY, NEVADA**JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation; STUART VINCENT, an individual;  
JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B  
Dept. No.: XI**ANSWER AND COUNTERCLAIM****Exempt from arbitration:  
Declaratory & Injunctive Relief**

**ANSWER**

Defendant, Tropicana Investments, LLC a California limited liability company (hereinafter "Defendant"), by and through its attorneys of record, the law firm of Marquis Aurbach Coffing, in answer to Plaintiff's Complaint on file herein, admits, denies and alleges as follows:

1. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraphs 1, 2 and 3 of the Complaint, and upon that basis generally and specifically denies the allegations contained in said Paragraphs.

2. Answering Paragraph 4 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4, and upon that basis generally and specifically denies each and every allegation stated therein, except that this answering Defendant admits that an entity or individuals is/are operating a business known as "Blue Dogs Pub" in Suites 27, 28 and 29 of the Shopping Center known as Tropicana Plaza.

3. This answering Defendant generally and specifically denies each and every allegation in Paragraphs 5 and 9 of the Complaint on file herein.

4. This answering Defendant admits the allegations in Paragraphs 6, 7 and 8 of the Complaint on file herein.

**GENERAL ALLEGATIONS**

5. This answering Defendant denies the allegations of Paragraph 10 of the Complaint as stated, and admits only that a written Lease was entered into on July 9, 1996 between Walter L. Schwartz, as Lessor, and Mark S. Van Aken, as Tenant, and that the terms and provisions of said seven-page Lease are contained in the written agreement, which is the best evidence of the contents and provisions of the Lease. This Defendant further affirmatively alleges that the Lease does not contain an option to renew.

6. This answering Defendant denies the allegations of Paragraph 11, generally and specifically, as stated. This answering Defendant further affirmatively alleges that a separate

stand-alone Option Agreement was entered into by Landlord, Walter L. Schwartz, and Tenant, Mark S. Van Aken, but the date of said Option Agreement is unknown.

7. This answering Defendant generally and specifically denies the allegations of Paragraph 12 of the Complaint as stated. This answering Defendant further affirmatively alleges that the separate stand-alone Option Agreement specifically refers to only two (2) clearly identified option periods of five years each, commencing on September 1, 2001 and September 1, 2006 respectively, "at a market rental rate and terms as agreed by Landlord and Tenant."

8. This answering Defendant generally and specifically denies each and every allegation in Paragraph 13 of the Complaint.

9. This answering Defendant generally and specifically denies each and every allegation in Paragraphs 14 and 15 of the Complaint, and further affirmatively alleges that the Lease dated July 9, 1996 speaks for itself and is the best evidence of its contents, terms and provisions.

10. Answering Paragraph 16 of the Complaint, this answering Defendant generally and specifically denies each and every allegation stated therein. Further, this answering Defendant affirmatively alleges that an Amendment was entered into in April or May, 2001, to the Lease dated July 9, 1996 between Landlord, Tropicana Investments, LLC and Tenant, Mark S. Van Aken, and that the terms, provisions and contents of said Amendment, are the best evidence of its contents.

11. Answering Paragraphs 17 and 18 of the Complaint on file herein, this answering Defendant generally and specifically denies each and every allegation set forth therein. This answering Defendant further affirmatively alleges that the allegations in Paragraphs 17 and 18 recite incomplete provisions taken out of context, and that the terms and provisions of the 2006 written Addendum are the best evidence of its contents which speak for themselves.

12. Answering Paragraph 19 of the Complaint, this answering Defendant generally and specifically denies the allegations set forth therein. This answering Defendant further affirmatively alleges, upon information and belief, that an Asset Purchase Agreement was

1 entered into on or about March 1, 2007 between M.S.K.C. Inc. as Seller and Jeff White, an  
2 individual, and that the terms and provisions of said Asset Purchase Agreement are the best  
3 evidence of its contents.

4 13. Answering Paragraphs 20, 21, 22, 23(a) and 23(b) of the Complaint, this  
5 answering Defendant generally and specifically denies each and every allegation as set forth  
6 therein. This answering Defendant further affirmatively alleges that a Lease Assignment and  
7 Modification was executed by Tenant, Mark S. Van Aken, Landlord, Tropicana Investments,  
8 LLC, and Assignee, J.S.J., LLC, on various dates in June, 2007. Further, it is affirmatively  
9 alleged that the terms, contents and provisions of said Lease Assignment and Modification are  
10 set forth in the signed document, which speaks for itself, and is the best evidence of its contents.

11 14. Answering Paragraph 24 of the Complaint, this answering Defendant generally  
12 and specifically denies each and every allegation therein as stated, and affirmatively alleges that  
13 the terms and contents of Addendum II speak for themselves and are the best evidence of its  
14 contents.

15 15. Answering Paragraph 25 of the Complaint, this answering Defendant generally  
16 and specifically denies each and every allegation as set forth therein. This answering Defendant  
17 further affirmatively alleges that Plaintiff attempted to exercise its option, but that the attempts to  
18 exercise the option by Tenant are void or voidable, invalid and unenforceable.

19 16. Answering Paragraphs 26, 27 and 28 of the Complaint, this answering Defendant  
20 generally and specifically denies each and every allegation as set forth therein.

21 17. Answering 29, 30, 31, 32 and 33 of the Complaint, answering Defendant  
22 generally and specifically denies each and every allegation as set forth therein. This answering  
23 Defendant further affirmatively alleges that the written documents and emails referred to in said  
24 Paragraphs are the best evidence of the terms and provisions of said written documentation.

25 18. Answering Paragraphs 34, 35, 39, 40, 41, 42, 43, 46, 48, 49, 50, 51, 52, 53, 54,  
26 55, 56, 57, 58 and 59 of the Complaint, this answering Defendant generally and specifically  
27 denies each and every allegation as set forth therein.  
28

19. Answering Paragraphs 36, 37 and 38 of the Complaint, this answering Defendant generally and specifically denies each and every allegation as set forth therein. This answering Defendant further affirmatively alleges that Plaintiff attempted to exercise its option, but that the attempts to exercise the option by Tenant are void or voidable, invalid and unenforceable.

20. Answering Paragraphs 44, 45 and 47 of the Complaint, this answering Defendant admits the allegations as set forth therein. This answering Defendant further affirmatively alleges that Landlord has no contractual or legal obligation whatsoever to the proposals referred to in Paragraphs 44, 45 or 47.

### **FIRST CLAIM FOR RELIEF**

#### **(Declaratory Relief)**

21. This answering Defendant repeats and realleges and restates herein each of its responses to 1 through 60, inclusive of the Plaintiff's Complaint, as if set forth in full herein at this point.

22. Answering Paragraph 61 of the Complaint, this answering Defendant admits the same, and further affirmatively alleges that the provisions of NRS Chapter 30 and NRCP 57 speak for themselves.

23. Answering Paragraphs 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79 of the Complaint, this answering Defendant generally and specifically denies each and every allegation set forth therein.

24. Answering Paragraph 66 of the Complaint on file herein, this answering Defendant generally and specifically denies each and every allegation set forth therein. This answering Defendant further affirmatively alleges that the specific option language clearly states that the Tenant's option rights are conditional, and are to be based on terms, including rental increases, but not decreases, to be negotiated.

### **SECOND CLAIM FOR RELIEF**

#### **(Breach of Contract)**

25. This answering Defendant repeats, realleges and restates each and every one of its responses to 1 through 80 of the Plaintiff's Complaint, as if set forth in full herein at this point.

26. This answering Defendant generally and specifically denies each and every allegation set forth in Paragraphs 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90.

**THIRD CLAIM FOR RELIEF**

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

27. This answering Defendant repeats, realleges and restates each and every one of its responses to 1 through 91 of the Plaintiff's Complaint, as if set forth in full herein at this point.

28. Answering Paragraph 92 of the Complaint, this answering Defendant admits the same.

29. This answering Defendant generally and specifically denies each and every allegation set forth in Paragraphs 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 and 107. Further, in answer to Paragraphs 96 and 97, this Defendant affirmatively alleges that Defendant pointed out only that there are different and alternate but rational, coherent and logical legal conclusions which can be reached based upon the same set of operative facts.

Wherefore, this answering Defendant requests that Plaintiff receive no relief as prayed for in its Complaint, and that Plaintiff's claims be dismissed with prejudice, with an award of costs and attorney fees granted to Defendant/Counterclaimant.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's claims are barred by the doctrine of estoppel.
2. Plaintiff has waived any claims which it may have had against Defendant by virtue of its conduct.
3. Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.
4. Defendant fulfilled its duty to deal with Plaintiff in good faith.
5. Plaintiff's claim is barred as a result of the failure to satisfy conditions precedent.
6. Plaintiff's claims are barred by failure to satisfy conditions subsequent.
7. Plaintiff has failed to mitigate its damages.
8. Defendant acted consistent with the law and with reasonableness in dealing with Plaintiff.

1 9. Plaintiff's purported exercise of the option to extend is void or voidable.

2 10. Plaintiff's cause of action for breach of the covenant of good faith and fair dealing  
3 fails because Plaintiff breached its reciprocal covenant to deal with Defendant in good faith and  
4 with fair dealing.

5 11. Plaintiff's claims are barred for failure to satisfy the statute of frauds.

6 12. Plaintiff's claims are barred by the doctrine of ratification.

7 13. By virtue of Plaintiff's actions, voluntary conduct and performance, Defendant  
8 has been released from any and all claims of Plaintiff.

9 14. Pursuant to NRCP 11, as amended, all affirmative defenses may not have been  
10 alleged herein, insofar as sufficient facts were not available after reasonable inquiry, and,  
11 therefore, this Defendant reserves the right to amend its Answer to allege additional affirmative  
12 defenses.

13 Dated this 9th day of January, 2019.

14 MARQUIS AURBACH COFFING

15  
16 By /s/ Terry A. Moore  
17 Terry A. Moore, Esq.  
18 Nevada Bar No. 7831  
19 10001 Park Run Drive  
20 Las Vegas, Nevada 89145  
21 *Attorneys for Defendant/Counterclaimant,*  
22 *Tropicana Investments, LLC*

23 **COUNTERCLAIM**

24 Comes now, Tropicana Investments, LLC, a California limited liability company,  
25 Counterclaimant herein, and for its claims for relief against Plaintiff and Counterdefendants,  
26 alleges as follows:

27 **PARTIES**

28 1. Tropicana Investments, LLC, Counterclaimant herein, is a California limited liability company which is authorized to do business in the state of Nevada. Counterclaimant is

1 the owner of the Shopping Center commonly known as Tropicana Plaza, and generally located at  
2 3430 East Tropicana Avenue, Las Vegas, Nevada.

3 2. JSJ, LLC was a Nevada limited liability company which was the original  
4 Assignee and party to a Lease Assignment and Modification dated June, 2007.

5 3. JSJBD Corp, Counterdefendant, is a Nevada corporation which was formed by  
6 Articles of Incorporation and Articles of Conversion on March 6, 2014, filed with the Nevada  
7 Secretary of State.

8 4. Upon information and belief, Counterdefendant Jeff White is a resident of Clark  
9 County, Nevada.

10 5. Upon information and belief, Counterdefendant Stuart Vincent is a resident of  
11 Clark County, Nevada.

12 6. Upon information and belief, Counterdefendant Jeffrey Vincent is a resident of  
13 Clark County, Nevada.

#### 14 GENERAL FACTUAL ALLEGATIONS

15 7. On or about July 9, 1996, Lessor, Walter L. Schwartz, and Tenant, Mark S. Van  
16 Aken, entered into a written Lease (hereinafter the "Lease") for the premises located at 3430 East  
17 Tropicana Avenue, Las Vegas, Nevada, Units 27, 28 and 29, comprising a space of  
18 approximately 4,200 square feet, for a term of five (5) years and five (5) months, commencing  
19 April 1, 1996 and terminating on August 31, 2001. A true and accurate copy of the Lease dated  
20 July 9, 1996 is attached to this counterclaim as **Exhibit 1** and is incorporated herein by this  
21 reference.

22 8. The Lease did not include a provision for options to extend the term of the Lease.

23 9. A separate and distinct, undated and stand-alone "Option Agreement" was  
24 executed by the original Landlord and Tenant of the Lease. The Option Agreement is attached to  
25 this Counterclaim as **Exhibit 2** and is incorporated herein by this reference.

26 10. The Option Agreement specifically refers to only two (2) discrete five (5) year  
27 option periods commencing in 2001 and 2006, "at a market rental rate and terms as agreed by  
28 Landlord and Tenant." By its own plain language, it is evident that the Option Agreement was

1 not indefinite and was restricted to the two (2) defined five (5) year terms referred to on the face  
2 of the document.

3 11. During the initial term of the Lease, from April 1, 1996 to August 31, 2001, every  
4 minimum base monthly rent increase was in the amount of \$210.00 per month.

5 12. On or about April 16, 2001, Counterclaimant, Tropicana Investments, LLC, as  
6 Landlord, and Mark S. Van Aken, as Tenant entered into an Amendment to Retail Building  
7 Lease dated July 9, 1996 (the "Amendment"). The Amendment is attached hereto as **Exhibit 3**.  
8 The Amendment extended the Lease term for five (5) years, from September 1, 2001 through  
9 August 31, 2006. During the extended term, the base rent increased for each annual period in the  
10 amount of \$210.00 per month for each year.

11 13. On or about March 7, 2006, Counterclaimant, Tropicana Investments, LLC, and  
12 Mark S. Van Aken, as Tenant, entered into an Addendum to Retail Building Lease dated July 9,  
13 1996 (the "Addendum"). The Addendum is attached hereto as **Exhibit 4**. Said Addendum  
14 establishes the extension term from September 1, 2006 through August 31, 2011. For each  
15 annual period during said extension term, minimum base rent increased in the amount of \$210.00  
16 per month per annum.

17 14. During the term of the Lease, extended by virtue of the Addendum attached as  
18 **Exhibit 4**, Tropicana Investments, LLC, as Landlord, and Mark S. Van Aken, as Tenant, and  
19 JSJ, LLC, as Assignee, entered into a Lease Assignment and Modification agreement dated June,  
20 2007. A true and accurate copy of the Lease Assignment and Modification is attached hereto  
21 and marked as **Exhibit 5** and is incorporated in full by this reference.

22 15. The Lease Assignment and Modification clearly states that it is the desire of all  
23 parties to allow Tenant to assign the Lease (**Exhibit 1**), the Lease Amendment (**Exhibit 3**) and  
24 Lease Addendum (**Exhibit 4**) to the Assignee, JSJ, LLC, under terms and conditions set forth in  
25 the Lease Assignment and Modification.

26 16. The Lease Assignment and Modification did not refer to or incorporate an  
27 assignment of the stand-alone and separate Option Agreement attached as **Exhibit 2**.  
28

1           17. With respect to the Lease Assignment and Modification, said agreement provided  
2 as follows at Paragraph 8 thereof:

3           “...Landlord agrees to conditionally grant Assignee, J.S.J., LLC, three (3)  
4 additional five (5) year options to renew the term of the Lease under terms and  
5 conditions, including but not limited to rental increases to be negotiated. The  
6 conditional options shall commence after August 31, 2016, provided Assignee has  
7 timely complied with all terms and conditions of the Lease.”

8           18. By its own terms, the three (3), five (5) year options were not absolute. The  
9 options to renew were expressly and unambiguously made conditional upon terms and  
10 conditions, including but not limited to rental increases to be negotiated.

11           19. The operative language regarding the three (3), five (5) year options does not refer  
12 to nor does it contemplate decreases in the minimum base rental to be paid by Tenant.

13           20. Likewise, the operative language of the three (3), five (5) year options  
14 unmistakably does not include as a component, the consideration of “market rental rate”.

15           21. Concurrent with the execution of the Lease Assignment and Modification referred  
16 to hereinabove, and as attached as **Exhibit 5**, Counterdefendant Stuart Vincent executed and  
17 delivered a personal guaranty, dated June 26, 2007, a true and accurate copy is attached hereto as  
18 **Exhibit 6**.

19           22. Concurrent with the execution of the Lease Assignment and Modification referred  
20 to hereinabove, and as attached as **Exhibit 5**, Counterdefendant Jeff White executed and  
21 delivered a personal guaranty, dated June 26, 2007, a true and accurate copy is attached hereto as  
22 **Exhibit 7**.

23           23. Concurrent with the execution of the Lease Assignment and Modification referred  
24 to hereinabove, and as attached as **Exhibit 5**, Counterdefendant Jeffrey Vincent executed and  
25 delivered a personal guaranty, dated June 26, 2007, a true and accurate copy is attached hereto as  
26 **Exhibit 8**.

27           24. On or about February 22, 2011, Counterdefendant and Counterclaimant entered  
28 into a written Addendum II which changed the Commencement date of the Term to September 1,

1 2011 and the Expiration Date of the Term to August 31, 2016. A true and accurate copy of said  
2 Addendum II is attached as **Exhibit 9**.

3 25. According to Addendum II, each monthly rental increase was in the amount of  
4 \$210.00 per month during the five (5) year term from September 1, 2011, through August 31,  
5 2016.

6 **TENANT'S ATTEMPT TO EXERCISE THE FIRST FIVE YEAR OPTION**

7 26. On or about February 26, 2016, approximately six months prior to the expiration  
8 of the Lease term on August 31, 2016, Counterdefendant JSJBD Corp, through Stuart Vincent,  
9 purported to exercise the first five (5) year option to commence on September 1, 2016. A true  
10 and accurate copy of the written notice to Counterclaimant is attached as **Exhibit 10**.

11 27. The purported exercise of the first, five (5) year option on February 26, 2016  
12 ignored the express condition of the option language in the Lease Assignment and Modification  
13 (**Exhibit 5**) which was conditionally effective only with rental increases to be negotiated.  
14 Contrary to the express terms of the option, which definitively and concisely required rental  
15 increases, Counterdefendant JSJBD Corp demanded a \$2,500 reduction in rent.

16 28. Although no legal obligation existed to do so, in an attempt to mollify  
17 Counterdefendant JSJBD Corp's demand for a reduction in rent, Counterclaimant offered a  
18 compromise reduction in rent to Counterdefendant JSJBD Corp, which was summarily rejected  
19 by Counterdefendant.

20 **TENANT'S EXERCISE OF THE FIRST, FIVE YEAR OPTION THROUGH ITS**  
21 **COUNSEL, AND COUNTERDEFENDANT'S PERFORMANCE THEREUNDER**

22 29. On or about June 15, 2016, Counterclaimant's authorized agent, Commercial  
23 Investment Real Estate Services, on behalf of Counterclaimant, extended an offer in writing that,  
24 among other terms, proposed the amount of base rental for the initial year of the lease extension  
25 to remain the same as the previous year (September 1, 2015—August 31, 2016) which amounted  
26 to \$8,190.00 per month. A true and accurate copy is attached hereto as **Exhibit 11**.

27 30. On or about August 2, 2016, Lesley B. Miller, Esq. of the law firm of Kaempfer  
28 Crowell, notified Counterclaimant of its representation as counsel for Counterdefendant JSJBD

1 Corp. A true and accurate copy of said law firm's written notification of its representation of  
2 Counterdefendant JSJBD Corp is attached hereto and marked as **Exhibit 12**.

3 31. In said correspondence, Ms. Miller states in pertinent part as follows: "JSJBD  
4 hereby exercises its option to renew the Lease pursuant to Section 8 of the Lease Assignment and  
5 Modification, dated June 26, 2007." Said letter also accepted the payment of base rent for the  
6 first year of the five (5) year renewal term to remain the same as the previous year (9/1/2015–  
7 8/31/2016), exactly as had been proposed and offered by Counterclaimant's authorized agent in  
8 the letter proposal dated June 15, 2016 (**Exhibit 11**).

9 32. Lesley B. Miller and the law firm of Kaempfer Crowell was the duly authorized  
10 agent and attorney of Counterdefendant JSJBD Corp.

11 33. For each and every monthly rental increase from the commencement of the initial  
12 Lease term, on April 1, 1996, through and including August, 2016, which amounted to more than  
13 20 years, the minimum base rent always increased, and never decreased, in the amount of  
14 \$210.00 per month for every base rent increase.

15 34. The foregoing pattern, and the contractual obligation to negotiate rental increases  
16 as set forth in Section 8 of the Lease Assignment and Modification dated June 26, 2007 was  
17 recognized, acknowledged and agreed to by Counterdefendant JSJBD Corp's attorney and agent,  
18 who requested an increase in base rent for each subsequent year during the extended option term  
19 equal to the rate increase of \$210.00 per month, all as had been set forth in Addendum II to the  
20 Lease dated February 22, 2011 (**Exhibit 9**).

21 35. On August 31, 2016, the attorney and agent for Counterdefendant JSJBD Corp  
22 again reiterated the exercise of the option rights under the Lease to renew for an additional five  
23 year term. A true and accurate copy of correspondence dated August 31, 2016 from Kaempfer  
24 Crowell is attached hereto as **Exhibit 13**.

25 36. Although Counterdefendant's counsel had agreed that the initial year of the option  
26 period continue with the same base rent as the previous year (September 1, 2015 through  
27 August 31, 2016, which was the sum of \$8,190.00 per month), Counterdefendant JSJBD Corp  
28 inexplicably, voluntarily and without demand commenced the payment of \$8,400.00 per month

1 (\$8,190.00 plus \$210.00 base rental increase per month), which sum was paid through August,  
2 2017.

3 37. The monthly base rental payment amount of \$8,400.00 per month was paid  
4 voluntarily and continuously by Counterdefendant JSJBD Corp, for twelve (12) months from  
5 September 1, 2016, through August, 2017, without protest or reservation of rights by  
6 Counterdefendant.

7 38. Said monthly rental payments, as voluntarily made by Counterdefendant JSJBD  
8 Corp, were accepted by the Landlord/Counterclaimant, while Counterdefendant JSJBD Corp  
9 remained in possession of the premises.

10 39. Notwithstanding the reiteration of the attempt to exercise the option rights as set  
11 forth in the letter of August 31, 2016 and Counterdefendant JSJBD Corp's declination to go  
12 forward with a new Lease as proposed, Counterdefendant JSJBD Corp and Counterclaimant,  
13 through their respective counsel, spent the next twelve months, September 1, 2016 through  
14 August, 2017, negotiating a proposed new Lease, and exchanged drafts of said proposed Lease  
15 during such negotiations.

16 40. At no time during the foregoing twelve month period, was there ever an objection  
17 made to the amount of base rent being paid by the Tenant, to wit, \$8,400.00 per month, and at no  
18 time was the payment of increased rent made a disputed issue.

19 41. On or about August 7, 2017, counsel for Counterclaimant received  
20 correspondence from Lucas A. Grower, Esq., advising that Kaempfer Crowell had been relieved  
21 of its representation of Counterdefendant JSJBD Corp, and that in place and stead Lucas Grower,  
22 Esq. would be representing Counterdefendant JSJBD Corp. A true and accurate copy of  
23 correspondence dated August 7, 2017 from Lucas A. Grower is attached hereto as **Exhibit 14**.

24 42. On August 31, 2017, by letter from Lucas A. Grower, Esq., and for the first time,  
25 notwithstanding the prior twelve month period, the Tenant, through its new counsel, demanded  
26 that Lease negotiations continue for the base rent on the basis of "market rental rate and terms".  
27 During the entire, prior twelve month period, not once was such a position advanced or brought  
28

up by Counterdefendant JSJBD Corp's first counsel. A true and accurate copy of such correspondence is attached as **Exhibit 15**.

43. Instead, Counterdefendant JSJBD Corp paid \$8,400.00 a month in base rent, without objection, for the entire prior twelve months.

44. The demand by the Counterdefendant's second attorney, Lucas A. Grower, Esq., that rent be set at "market rental rate" is in direct violation of the clear-cut terms required to exercise the conditional option in Section 8 of the Lease Assignment and Modification, which required the negotiation of a rental increase, all of which was duly recognized and acknowledged by Counterdefendant JSJBD Corp's initial counsel, Kaempfer Crowell.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment)**

45. Counterclaimant repeats and realleges Paragraphs 1–48 inclusive, as set forth hereinabove.

46. Nevada Revised Statutes Chapter 30 provides that courts of record have the power to declare the rights, status and other legal relations of parties. Further, declarations by the court may either be affirmative or negative in form and effect and shall have the force and effect of a final judgment or decree. Counterclaimant requests that this honorable Court enter a declaration regarding the legal relations, rights and status of the parties hereto as set forth hereinbelow.

47. This Court should declare that the purpose and effect of the Option Agreement marked as **Exhibit 2** extended only to the distinct two (2) option periods for 2001 and 2006 at a market rental rate, and that the effect thereof did not extend beyond such two (2) option periods.

48. The Court should further declare that the subsequent Amendments, Addendums, and the Lease Assignment and Modification agreement superseded said Option Agreement, marked as **Exhibit 2**, and that the Lease Assignment and Modification provides for three (3) conditional options, and that these three (3) conditional options were, among other things, dependent upon negotiation of rental increases.

1           49.     That the Court should further declare that the Lease Assignment and Modification  
2 agreement and the conditional options therein did not contemplate or intend to allow for base  
3 rental decreases, or negotiation of rental increases or decreases based on “market rate”.

4           50.     The Court should further declare that the Counterdefendant’s insistence upon  
5 negotiation or renegotiation of (1) a reduced base rental, and (2) a base rental to be determined  
6 by “market rental”, is contrary to the operative and express language of the Lease Assignment  
7 and Modification, and constitutes an improper attempt to unilaterally rewrite, change and modify  
8 the plain and clear language of the conditional options with the improper purpose of  
9 superimposing the Counterdefendant’s unjustifiable demands for reduced rental rates.

10          51.     This honorable Court should further declare that the foregoing conduct and the  
11 attempts to change the plain and operative language of the Lease Assignment and Modification is  
12 a failure to satisfy the conditional nature of the options, which thereby renders any attempt at  
13 exercising the option void or voidable, and accordingly, Counterdefendant’s legal status is that of  
14 a holdover and month-to-month Tenant.

15          52.     The Court should further declare that in addition to the foregoing, and despite the  
16 February 26, 2016 attempt to exercise the option, Counterdefendant failed to negotiate in good  
17 faith a rental increase, as expressly provided for, is a failure to timely comply with the terms of  
18 the Lease Assignment Modification, and accordingly, the status of Counterdefendant is that of  
19 holdover Tenant on a month-to-month basis.

20          53.     Further, said uncured default demonstrates Counterdefendant JSJBD Corp’s  
21 failure to comply with all terms and conditions of the Lease (**Exhibit 1**) which renders any  
22 attempt to exercise the option as void or voidable, resulting in Counterdefendant JSJBD Corp  
23 holding the status of a holdover Tenant on a month-to-month basis.

24          54.     In the alternative, in the event that this honorable Court does not rule that  
25 Counterdefendant JSJBD Corp’s legal status is that of a holdover and month-to-month Tenant,  
26 then Counterclaimant requests that the Court rule and determine that Counterdefendant’s  
27 authorized agent and attorney, Lesley B. Miller, Esq. of the law firm of Kaempfer Crowell,  
28 exercised the option to renew the Lease pursuant to Section 8 of the Lease Assignment and

1 Modification, upon the terms of payment of the base rental as set forth in the written proposal of  
2 Commercial Investment Real Estate Services dated June 15, 2016. Further, that said exercise of  
3 the option by Lesley B. Miller was confirmed and ratified in all respects, including the payment  
4 of rental increases at the rate of \$210.00 per month by Counterdefendant, which payments were  
5 made voluntarily, continuously and consistently, without protest or reservation, in the amount of  
6 \$8,400.00 per month base rent from September 1, 2016 through the August base rent of 2017.

7 55. That in addition to the above, Counterclaimant asks the Court to rule and  
8 determine that there is no further need to negotiate the base monthly rent as claimed by  
9 Counterdefendant, and that for the first option period, Counterdefendant is required to pay the  
10 sum of base rental as agreed by Counterdefendant's agent and attorney, with annual monthly  
11 increases in the amount of \$210.00 per month.

12 **SECOND CLAIM FOR RELIEF**  
13 **(Breach of Lease Agreement)**

14 56. Counterclaimant repeats and realleges Paragraphs 1–59 inclusive, as set forth  
15 hereinabove.

16 57. Counterclaimant and Counterdefendant's predecessor are parties to a Lease  
17 Assignment and Modification agreement dated on or about June, 2007.

18 58. Counterdefendant has failed and refused to pay the ongoing rental increases, and  
19 remains in possession of the premises.

20 59. That Counterdefendant has breached the Lease Assignment and Modification, and  
21 therefore, the underlying Lease, by virtue of its insistence that negotiations remain ongoing,  
22 based upon its claim that it is entitled to rental decreases based on "market rental", all of which is  
23 contrary to the express and clear-cut language of the Lease Assignment and Modification  
24 agreement.

25 60. By virtue of the above-referenced breaches and defaults, Counterclaimant has  
26 been damaged in an amount in excess of \$15,000.00, and Counterdefendant JSJBD Corp, and  
27 each Guarantor, Counterdefendants Jeff White, Jeffrey B. Vincent, and Stuart Vincent, are  
28 jointly and severally liable for Counterclaimant's losses and damages.

61. The Lease (**Exhibit 1**) provides in Paragraph 24 that in the event the Landlord, Counterclaimant herein, finds it necessary to retain an attorney in connection with the default of Tenant, Counterdefendants herein, with respect to any of the agreements or covenants contained in the Lease, then Landlord shall be entitled to and Tenant shall pay reasonable attorney fees for Counterclaimant's counsel. Accordingly, Counterclaimant is entitled to an award of attorney fees and costs as provided for in the underlying Lease, and in accordance with Nevada statutes.

**THIRD CLAIM FOR RELIEF**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

62. Counterclaimant repeats and realleges Paragraphs 1–65 inclusive, as set forth hereinabove.

63. Pursuant to Nevada law, parties to a contract, agreement or a lease are subject to an implied covenant of good faith and fair dealing.

64. By virtue of its conduct and position, Counterdefendant has breached the covenant of good faith and fair dealing.

65. As a result of Counterdefendant's breaches and defaults, Counterclaimant has been damaged in an amount in excess of \$10,000.00.

**FOURTH CAUSE OF ACTION**  
**(Eviction and Issuance of Writ of Restitution)**

66. Counterclaimant repeats and realleges Paragraphs 1–69 inclusive, as set forth hereinabove.

67. On or about November 15, 2018, Counterdefendant was served with a Thirty Day Notice to Quit the Premises pursuant to NRS 40.251. A true and accurate copy is attached hereto as **Exhibit 16**.

68. Notwithstanding the foregoing Notice to Quit the Premises, Counterdefendant remains in possession and occupation of the premises and continues to hold the same, notwithstanding its status as a holdover Tenant.

69. Counterdefendant has refused to surrender possession of the premises.

70. Counterdefendant unlawfully holds over and continues in possession of the premises by virtue of the foregoing defaults and breaches, and remains in possession without the permission of Counterclaimant.

71. Counterclaimant prays that the Court enter an order requiring restitution of the premises.

**PRAYER FOR RELIEF**

WHEREFORE, Counterclaimant prays for judgment against Counterdefendants for the following:

1. For restitution of the premises;
2. For damages against Counterdefendants, and each of them in an amount in excess of \$10,000.00 according to proof;
3. For declaratory relief as prayed for in the Counterclaim; and
4. For an award of Court costs, according to law, and attorney fees as provided in the underlying Lease between the parties.

Dated this 9th day of January, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore  
Terry A. Moore, Esq.  
Nevada Bar No. 7831  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
*Attorneys for Defendant/Counterclaimant,  
Tropicana Investments, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **ANSWER AND COUNTERCLAIM** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of January, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Mario Lovato                      mpl@lovatolaw.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A.

/s/ Cally Hatfield  
An employee of Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

# Exhibit 1

This Lease is made and entered into this 9th day of July 1996 between Walter L. Schwatz, Lessor and Mark S. Van Aken., Tenant,

1. USE: The landlord lease to Tenant and Tenant hires from Landlord the premises for use only as a bar and tavern the premises set forth. No other use shall be permitted.

2. PREMISES: The premises are 3430 East Tropicana, Las Vegas, Nevada Units 27, 28, and 29 in the Tropicana Pecos Shopping Center a space of approximately 4200 square feet.

3. TERM; The term of the leases shall be for five years commencing April 1, 1996 and ending March 30, 2001.

4. RENT: The minimum rent shall be payable in advance on the 1st day of each and every month as follows.

April 1, 1996 to August 31, 1996 \$3150.00 per month.  
September 1, 1996 to August 31, 1997 \$3360.00 per month  
September 1, 1997 to August 31, 1998 \$3570.00 per month  
September 1, 1998 to August 31, 1999 \$3780.00 per month  
September 1, 1999 to August 31, 2000 \$3990.00 per month  
September 1, 2000 to August 31, 2001 \$4200.00 per month

Tenant shall be deemed in default of said lease after the 10th day of each month and will be assessed a late charge equal to ten percent of the monthly rent.

5. REAL ESTATE TAXES: Tenant agrees to pay all real estate taxes on the premises on a pro rata basis.

6. PERSONAL PROPERTY TAXES: Tenant shall pay personal property taxes levied on his personal property.

7. PARKING AND COMMON FACILITIES: Landlord shall keep automobile and common areas in a neat, clean, and orderly condition. properly lighted and landscaped, and shall improve and repair any damage to the facilities thereof, but all expenses in connection with said automobile parking and common areas shall be charged and prorated in the manner herein after set forth. It is understood and agreed that the phrase "expenses in connection with said automobile parking and common areas" as used herein shall be construed to include but not limited to all upgrading, general maintenance and repairs, resurfacing, rubbish removal, painting, restripping, cleaning, sweeping and janitorial services, personel to implement such services including property management fees for the entire parcel and to police the automobile parking and common areas: real and personal property taxes and assessments thereon, Water. Insurance, including but not limited to General Liability and Property Damages, Fire Hazard on Demised Premises, Buildings. Common Areas and Parking Lot. A reasonable allowance to Landlord for Landlord's administrative expenses of said automobile parking and common areas no to exceed in any

calendar year fifteen percent of the total of the aforementioned expenses for said calendar year. Landlord may, however, cause any or all services to be performed by an independent contractor or contractors.

Throughout the term hereof, Tenant will pay to Landlord monthly in advance, in addition to minimum rent, that portion of expenses as herein defined. Tenant's pro rata share of total expenses shall be that portion of all such expenses which is equal to the proportion thereof which the number of square feet of gross floor area in the demised premises bears to the total number of square feet of gross floor area of all buildings in the shopping center (115,671 square feet) Measurements to be made from the outside of exterior walls and from the center of interior partitions. Quarterly tenant shall be given an accounting of expenses and the balance of the account shall be paid within 10 days. This estimated common area maintenance charge shall start at \$500.00 per month.

The tenant, in the use of said common and parking areas, agrees to comply with such rules and regulations as the Landlord may adopt from time to time for the orderly and proper operation of said common and parking areas. Such rules may include but are not limited to the following:

1. The restricting of employees to a limited designated areas; and
2. The regulation of the removal, storage, and disposal of Tenant's refuse and other rubbish at the sole cost and expense of tenant.

8. USES PROHIBITED: Tenant shall not use or permit said premises or any part thereof to be used for any purpose or purposes other than the purchase or purposes for which said premises are hereby leased and no use shall be made or permitted to be made of said premises nor acts done which will increase the existing rate of insurance upon the building of which said premises may be located (once said rate is established) or cause a cancellation of any insurance policy covering said building or any part thereof nor shall Tenant sell or permit to be kept, used, or sold in or about said premises any article which may be prohibited by standard form of insurance policies. Tenant shall, at his sole cost, comply with any and all requirements pertaining to the use of said premises, of any insurance organization to company necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances, In the event Tenant's use of the premises, recited in Article 1. hereof, results in a rate increase for the building of which the demised premises are a part, Tenant shall pay annually on the anniversary date of this lease, as additional rent, a sum equal to that of the additional premium occasioned by said rate increase.

Tenant shall not do, permit or suffer anything to be done, or kept upon the Leased Property which will obstruct or interfere with the rights of other Tenants. Landlord or the patrons and customers of any of them, or which will annoy any of them or their patrons or customers by reason of unreasonable noise or otherwise, nor will Tenant commit or permit any nuisance on the Leased Property or commit or suffer any immoral or illegal act to be committed thereon.

9. MAINTENANCE AND REPAIR: Tenant shall at all times during the term hereof, and at Tenant's sole cost and expense, keep, maintain, and repair the building and other improvements upon the demised premises in good and sanitary order and condition (except as herein provided with respect to Landlord's obligation) including without limitation the maintenance and repair of any store front, doors, window casements, glazing, heating and air-conditioning system (if any), plumbing, pipes, electrical wiring and conduits. Tenant hereby waives all rights to repair at expense of Landlord as provided for in Civil Code of the State of Nevada and Tenant hereby waives all rights as provided by Civil Code. By entering into the demised premises Tenant shall be deemed to have accepted the demised premises as being in good and sanitary order, condition, and repair and Tenant agrees on the last day of said term or sooner termination of this lease to surrender the demised premises with appurtenances, in the same condition as when received, reasonable use and wear thereof and damage by fire, act of God, or by the elements excepted. Tenant shall sweep and clean the sidewalks adjacent to the demised premises, as and when needed.

Landlord shall at his sole cost and expense, keep and maintain in good repair, (excluding painting) of exterior walls and roof repairs provided, however, that anything to the contrary notwithstanding contained in this lease, the Landlord shall not be required to make any repairs to the exterior walls or roof repairs unless and until Tenant has notified Landlord in writing of the need for such repairs and Landlord shall have a reasonable period of time hereafter within which to commence and complete the repairs. Landlord agrees to use due diligence in the making of said repairs upon receipt of Tenant's notice with regards to.

10. COMPLIANCE WITH LAWS: Tenant shall, at his sole cost and expense, comply with all municipal, state, and federal authorities now in force or which may hereafter be in force pertaining to the use of said premises, and shall faithfully observe in said use all municipal ordinances and state and federal statutes now in force and which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant whether Landlord be a party there to or not, that Tenant has violated any such order or statute in said use shall be conclusive of that fact as between Landlord and Tenant.

Tenant shall not commit or suffer to be committed, any waste upon the demised premises, or any nuisance or the act or thing

which may disturb the quiet enjoyment of any other Tenant in the building in which the demised premises may be located.

Tenant shall also comply with the Rules and Regulations attached hereto as Exhibit "B".

**11. INDEMNIFICATION OF LANDLORD-LIABILITY INSURANCE BY TENANT:** Tenant as a material part of the consideration to be rendered to Landlord under this Lease hereby waives all claims against Landlord for damage to goods, wares, and merchandise in, upon, or about said premises and for injuries in or about said premises, from any cause arising at any time, and Tenant will hold Landlord exempt and harmless from any damage or injury to any person, or the goods, wares, and merchandise of any person arising from the use of the premises by Tenant or from the failure of Tenant to keep the premises in good condition and repair, as herein provided.

During the entire term of this Lease, the Tenant, shall at the Tenant's sole cost and expense, but for the mutual benefit of Landlord and Tenant, maintain general public liability insurance against claims for personal liability, including property damage occurring in, upon or about the demised premises and on any sidewalks directly adjacent to the demised premises. The limitation of liability of such insurance shall be not less than One Million (1,000,000) Dollars in respect to injury or to property damage. All such policies of insurance shall be issued in the name of Tenant and Landlord and for the mutual and joint benefit and protection of the parties, and such policies of insurance or copies thereof shall be delivered to Landlord.

**12. FREE FROM LIENS:** Tenant shall keep the demised premises and property in which the demised premises are situated free from liens arising out of any work performed, material furnished, or obligations incurred by Tenant.

**13. ABANDONMENT:** Tenant shall not vacate or abandon the demised premises at any time during the term of this Lease and if Tenant shall abandon, vacate, or surrender the demised premises be dispossessed by process of law, or otherwise, or otherwise, any personal property belonging to Tenant and left in the demised property shall be deemed to be abandoned, at the option of Landlord except such property as may be mortgaged to Landlord.

**14. SIGNS AND AUCTIONS:** The Tenant may affix and maintain upon the plate glass panes and supports of the show windows and within twelve (12) inches of any window and upon exterior walls of the building only such signs, advertising placards, names, insignia, trademarks, and descriptive material as shall have first received the written approval of the Landlord as to size, type, color, location, copy, nature, and display qualities. Anything to the contrary in this lease notwithstanding, Tenant shall not affix any sign to the roof of the building within control of Tenant to be stored or

remain outside the defined exterior walls and permanent doorways of the premises. Tenant further agrees not to install any exterior lighting, amplifiers or similar devices or use in or about the premises any advertising medium which may be heard or seen outside the premises such as flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts, No sign may be erected without the prior written consent of the Landlord.

15. UTILITIES: Tenant shall pay before delinquency all pro-rata charges for rubbish removal, water, gas, electricity, power, telephone service and all other services of utilities used in, upon, or about the demised premises by Tenant or any of its sub-tenants, licenses, or concessionaires during the term any any extension or rental of the term to this ease. This shall include pro-rata share of sewer fees and charges.

16. ENTRY AND INSPECTION: Tenant shall permit Landlord and his agents to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the same or for the purpose of making repairs, alterations or addition to any the portion of said building including the erection and maintenance of such scaffolding, canopy, fences, and prop[s as may be required, or for the purpose of posting notices of non-liability for alterations, additions or usual or ordinary "For Rent" signs. Landlord shall be permitted to do any of the above without any rebate of rent and without liability to Tenant for any loss of occupation or quiet enjoyment of the premises thereby occasioned. Tenant shall permit Landlord, at any time within thirty (30) days prior to the expiration of this Lease, to place upon said premises any usual or ordinary "For Lease" signs and during such thirty (30) day period Landlord or his agents may, during normal business hours, enter upon said premises and exhibit same to prospective tenants.

18. ASSIGNMENT: Tenant shall not assign this Lease or any interest therein, and shall not sublet the demised premises or any part thereof, or any right or privilege appurtenant thereto or permit any other person (the agents and servants of Tenant excepted) to occupy or use the demised premises or any portion thereof, without first obtains the written consent of the Landlord. Consent by Landlord by the Landlord to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to an assignment shall not release the original provisions on the part of Tenant to be kept and performed, unless Landlord specifically and in writing releases the original named Tenant from said liability. A assignment or subletting without the prior written consent of Landlord shall be null and void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of Tenant, by operation of law, without the prior written consent of Landlord.

22. SALE: In the event of any sale of the demised premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act of occupation or omission occurring after the consummation of such sale: and the purchaser, at such sale of any subsequent sale of the demised premises shall be deemed without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all the covenants and obligations of the Landlord under this Lease.

24. ATTORNEY FEES: In the event the Landlord finds it necessary to retain an attorney in connection with the default by the Tenant in any of the agreements or covenants contained in this Lease, Tenant shall pay reasonable attorney's fees to said attorney.

25. SECURITY DEPOSIT: Tenant contemporaneously with execution of the Lease, has deposited with Landlord the sum of \$4200.00 receipt of which is hereby acknowledged by Landlord and deposit being given to secure the faithful performance by the Tenant of all of the terms, covenants, and conditions of this Lease by the Tenant to be kept and performed during the term thereof. Tenant agrees that if the Tenant shall fail to pay the rent herein reserved promptly when due, said deposit may, at the option of the Landlord (but Landlord shall not be required to) be applied to any rent due and unpaid and if the Tenant violates any of the other terms, covenants, and conditions of this Lease said deposit may be applied to any damages suffered by Landlord as a result of Tenant's default to the extent of the amount of damages suffered.

Landlord shall have the right to commingle said security deposit with other funds of Landlord.

27. HOLDING OVER: Any holding over after the expiration of the term of this Lease, with consent of Landlord, shall be construed to be a tenancy from month to month cancelable upon thirty (30) written notice, at a rental and upon terms and conditions as existed during the last year of the term thereof.


33. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.

34. Tenant is allowed to have fifteen (15) gaming machines on premises and Tenant is allowed to sublease 1400 square feet of the premises for use as a restaurant.

36. SUBORDINATION, ATONEMENT: Upon request of the Landlord, Tenant will in writing subordinate its rights hereunder to the lien of any first mortgage or first deed of trust to any bank, insurance company or the lending institution, now or hereafter in force against the land and building of which the demised premises are a part, and upon any buildings hereafter placed upon the land of which demised premises are a part, and to all advances made or hereafter to be made upon the security thereof.

37. NO REPRESENTATIONS: Tenant acknowledges that there have been no representations made by Landlord, its agents, brokers or employees as to the present or future existence of any lease or leases with co-tenants of the shopping center or the occupancy by any co-tenant or co-tenants of any space within the shopping center except that which may be specifically set forth in writing in an exhibit attached hereto and executed by all parties in this Lease.

Landlord

  
Walter L. Schwartz

Tenant

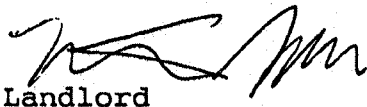
  
Mark S. Van Aken

# Exhibit 2

OPTION AGREEMENT

In the event Mark S. Van Aken has fully complied with all the terms, covenants condition of this lease and provided the Tenant gives the Landlord at least ninety ( 90 ) days notice in writing, in advance of the lease expiration the tenant shall have the option to renew this lease for a period of five years commencing September 1, 2001 at a market rental rate and terms as agreed by Landlord and Tenant.

In the event Mark S. Van Aken has fully complied with all the terms, covenants condition of this lease and provided the Tenant gives the Landlord at least ninety ( 90 ) days notice in writing, in advance of the lease expiration the tenant shall have the option to renew this lease for a period of five years commencing September 1, 2006 at a market rental rate and terms as agreed by Landlord and Tenant.

  
Landlord  
Walter L. Schwartz

Tenant  
Mark S. Van Aken



# Exhibit 3

**AMENDMENT**

**TO RETAIL BUILDING LEASE**

**TO LEASE DATED JULY 9, 1996,**

**BETWEEN WALTER L. SCHWARTZ, ASSIGNED TO TROPICANA INVESTMENTS, A  
CALIFORNIA LLC, (LANDLORD)**

**AND MARK S. VAN AKEN, (TENANT)**

THIS AMENDMENT is made this 16<sup>th</sup> day of April, 2001, by and between Tropicana Investments, LLC, as Landlord, and Mark S. Van Aken, as Tenant.

WHEREAS, Landlord and Tenant are the parties to the above described Lease for the Premises at Tropicana Plaza located at 3430 E. Tropicana Ave., Suites 27, 28, & 29, Las Vegas, Nevada 89121; and

WHEREAS, the parties desire to amend said Lease.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the adequacy and sufficiency of which is hereby acknowledged, Landlord and Tenant contract and agree as follows:

The following changes shall become effective on September 1, 2001.

1. Pursuant to Section 3, Term, Commencement Date shall change from April 1, 1996 to September 1, 2001.
2. Pursuant to Section 3, Term, Expiration Date shall changed from March 30, 2001 to August 31, 2006.

3. Pursuant to Article 4, Rent:

The Base rent shall be changed and paid in accordance with the following schedule:  
09/01/2001 - 08/31/2002 @ \$5,670.00 per month, \$68,040.00 per annum  
09/01/2002 - 08/31/2003 @ \$5,880.00 per month, \$70,565.00 per annum  
09/01/2003 - 08/31/2004 @ \$6,090.00 per month, \$73,080.00 per annum  
09/01/2004 - 08/31/2005 @ \$6,300.00 per month, \$75,600.00 per annum  
09/01/2005 - 08/31/2006 @ \$6,510.00 per month, \$78,120.00 per annum

4. Pursuant to Article 7, Parking and Common Facilities:

**Annually** Tenant shall be given an accounting of expenses and the balance of the account shall be paid within ten (10) days. This estimated common area maintenance expenses shall change from Five Hundred Dollars (\$500.00) per month to Seven Hundred Fifty Six Dollars (\$756.00) per month or eighteen cents (\$0.18) per square foot per month, and such estimated expenses are subject to increase based upon the actual operating expenses of the Center.

5. Pursuant to Article 15, Utilities:

6. Pursuant to Section 25, Security Deposit:

Security Deposit, shall change from Four Thousand Two Hundred Dollars (\$4,200.00) to Seven Thousand Dollars (\$7,000.00). Tenant agrees to pay Landlord an additional Security Deposit of Two Thousand Eight Hundred Dollars (\$2,800.00) in six (6) monthly payments in the amount of Four Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$466.67) beginning May 1<sup>st</sup>, 2001 in addition to monthly rental payment and Common Area Maintenance (C.A.M.) expenses.

7. ADDITIONAL REPRESENTATIONS:

- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Amendment shall govern. All of the terms, covenants, provisions, and agreements of the lease not conflicting with this Amendment shall remain in full force and effect.
- B. This Amendment is not an offer to lease until executed by Landlord, and shall become binding only upon execution by both parties.

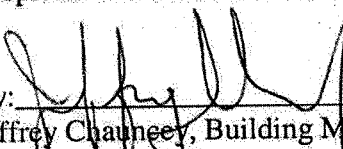
8. AGENCY DISCLOSURE:

Pursuant to Nevada Real Estate Division rules, Commercial Investment Real Estate Services advises that it represents only the Landlord in this transaction and does not act on behalf of or represent Mark S. Van Aken (Tenant.)

ACKNOWLEDGED AND AGREED:

LANDLORD:


Tropicana Investments, LLC

By:   
Jeffrey Chauncey, Building Manager

Date: 5-10-01

TENANT:

Mark S. Van Aken

By:   
Mark S. Van Aken

Date: 5/1/01

# Exhibit 4

**ADDENDUM**  
**TO RETAIL BUILDING LEASE**  
**TO LEASE DATED JULY 9, 1996**

THIS ADDENDUM is made this 7<sup>th</sup> day of March, 2006, by and between Tropicana Investments, a California LLC, as Landlord, and Mark S. Van Aken, as Tenant.

WHEREAS, Landlord and Tenant are the parties to the above described Lease for the Premises at Tropicana Plaza located at 3430 E. Tropicana Ave., Suites 27, 28, & 29, Las Vegas, Nevada 89121; and

WHEREAS, the parties desire to amend said Lease.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the adequacy and sufficiency of which is hereby acknowledged, Landlord and Tenant contract and agree as follows:

1. Pursuant to Section 3, Term, Commencement Date shall change from September 1, 2001 to September 1, 2006.
2. Pursuant to Section 3, Term, Expiration Date shall changed from August 31, 2006 to August 31, 2011.
3. Pursuant to Article 4, Rent:

The Base rent shall be changed and paid in accordance with the following schedule:

09/01/2006 - 08/31/2007 @ \$6,720.00 per month, \$80,640.00 per annum  
09/01/2007 - 08/31/2008 @ \$6,930.00 per month, \$83,160.00 per annum  
09/01/2008 - 08/31/2009 @ \$7,140.00 per month, \$85,680.00 per annum  
09/01/2009 - 08/31/2010 @ \$7,350.00 per month, \$88,200.00 per annum  
09/01/2010 - 08/31/2011 @ \$7,560.00 per month, \$90,720.00 per annum

4. Option to Extend Lease Term:



Provided Tenant is in compliance with each and every term, covenant and condition hereof on it's part to be performed during the extension term of the lease (9/1/2006-8/31/2011), Tenant shall have the option to extend the lease term for one (1) final extension term of five (5) years, commencing on the expiration date hereof. Said option shall be exercised by giving Landlord notice in writing of such election at least six (6) months prior to the expiration of the lease extension term. Such extension term shall be under terms and conditions to be negotiated. Time is of the essence.

5. Pursuant to Article 7, Parking and Common Facilities:

The estimated common area maintenance expenses due and payable from Tenant to Landlord as of the date of this Addendum (March 7, 2006) is One Thousand One Hundred Seventy-Six Dollars & 00/100 (\$1,176.00) per month, and such estimated expenses are subject to increase based upon the actual operating expenses of the Center.

6. Pursuant to Article 15, Utilities:

Tenant agrees to reimburse Landlord for all sewer fees and charges from Clark County Sanitation District. Tenant reimbursement payment to Landlord for sewer fees shall be paid by Tenant within ten (10) days of invoice from Landlord.

Landlord   
Tenant 

7. Additional Representations:

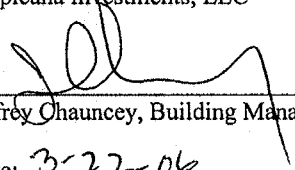
- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Addendum shall govern. All of the terms, covenants, provisions, and agreements of the lease not conflicting with this Amendment shall remain in full force and effect.
- B. This Addendum is not an offer to lease until executed by Landlord, and shall become binding only upon execution by both parties.

8. Agency Disclosure:

Pursuant to Nevada Real Estate Division rules, **Commercial Investment Real Estate Services** advises that it represents only the Landlord in this transaction and does not act on behalf of or represent Mark S. Van Aken (Tenant.).

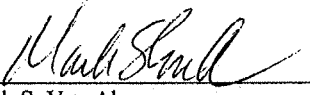
ACKNOWLEDGED AND AGREED:

LANDLORD:  
Tropicana Investments, LLC

By:   
Jeffrey Chauncey, Building Manager

Date: 3-22-06

TENANT:  
Mark S. Van Aken

By:   
Mark S. Van Aken

Date: 3/20/06

# Exhibit 5

## LEASE ASSIGNMENT AND MODIFICATION

This Lease Assignment and Modification is made and entered into by and between TROPICANA INVESTMENTS,LLC ("Landlord"), MARK S. VAN AKEN ("Tenant"), and J.S.J., LLC ("Assignee").

### RECITALS

WHEREAS Mark S. Van Aken ("Tenant") desires to assign all of its rights, title, and interests in the lease unto J.S.J., LLC ("Assignee"), for the premises located at 3430 East Tropicana Avenue, Suites 27, 28 & 29, Las Vegas, NV 89121 ("Premises"), as further described in said Lease.




WHEREAS it is the desire of all parties to allow Tenant to assign the lease to Assignee, and Assignee desires to assume the rights, duties and liabilities of Tenant under the terms and conditions set forth in this Lease Assignment and Modification and the Lease Agreement dated March 9, 1996 ("Premises");

WHEREAS on April 16, 2001, a Amendment to retail lease was executed (the "Lease Amendment");

WHEREAS on January 20, 2006, a Lease Renewal Addendum to the lease agreement was executed (the "Lease Addendum");

WHEREAS, there are no defaults or notices of default outstanding and/or uncured under the Lease Agreement, Lease Amendment or the Lease Addendum (collectively, the "Lease");

WHEREAS it is the desire of all parties to allow Tenant to assign the Lease Agreement, Lease Amendment and Lease Addendum to Assignee under the terms and conditions set forth in this Lease Assignment and Modification.




Initials  
Landlord   
Tenant   
Assignee 

NOW THEREFORE in consideration of the mutual promises, covenants and agreements between the parties, it is hereby agreed as follows:

1. Term of the Lease. The initial lease term shall be for the period September 1, 2006 through August 31, 2011 (existing lease term).
2. Rental Payment. The monthly rental payments shall be as set forth in the Lease Addendum.
3. Additional Rental (Operating Expenses & Taxes): The project operating expenses shall be as set forth in the Lease Agreement dated March 9, 1996.
4. Assignment to Assignee. On close of escrow of the sale of business currently conducted by Tenant at the Premises (the "Closing"), the Lease shall be assigned by Tenant to Assignee. Assignee shall assume all rights and obligations under the term of the Lease and this Lease Assignment and Modification. Effective April 30, 2009, MARK S. VAN AKEN shall be released from any obligations, payments, claims or demands by the Landlord pursuant to the Lease. Effective as of the Closing, Landlord agrees to this novation only as set forth above, and the substitution of Assignee.
5. Security Deposit. Landlord shall return Tenant's (Mark S. Van Aken) Security Deposit two (2) years from the date of the Closing. Assignee shall deposit with Landlord a Security Deposit in the amount of \$8,000.00 on or before the Closing, which shall be held by Landlord for the term of the lease and any renewal or extension.

Initials  
Landlord [Signature]  
Tenant [Signature]  
Assignee [Signature]

6. Payment of Rent. On the Closing, Assignee shall pay to the Landlord, Base Rent in the amount of \$6,720.00, estimated Operating Expenses and Taxes in the amount of \$1,176.00.
7. Inspection and Review. The Landlord represents it has fully reviewed all financial information regarding Assignee and agrees to accept Assignee under the terms of the Lease Agreement, Lease Amendment, Lease Addendum in the place of MARK S. VAN AKEN with no right, claim or demand regarding any obligation reserved except as otherwise set forth herein. Assignee acknowledges having had the opportunity to inspect the Premises and perform its own due diligence, and is taking the same in an "As Is" and "Where-Is" condition; provided, however, Landlord is not aware of and has not received notice of: (a) any violation or alleged violation of any municipal, state or federal law; (b) any structural damage or defect relating to the Premises; or (c) any announced or proposed renovation, construction, repair or other capital improvement project related to the Premises. This Lease Assignment and Modification Agreement constitutes the entire agreement of the parties and no oral modifications or understandings are incorporated or intended to be relied upon by any party. Assignee shall at Assignee's sole expense, comply with all Clark County code requirements and any other municipal, state or federal laws or regulations now in effect, or which may be in effect in the future, which are necessary to operate a bar and tavern within the county governmental jurisdiction.
8. Additional Terms. Tenant agrees to pay Landlord (Tropicana Investments, LLC) Ten Percent (10%) of the total sales price of said business sales transaction upon the

Initials  
Landlord   
Tenant   
Assignee 

Closing. Upon Tenant's sale of it's business to Assignee and Mark S. Van Aken's full payment to Landlord (Tropicana Investments, LLC) in the amount of ten percent (10 %) of the *total* sale price on or before the Closing, Landlord agrees to conditionally grant Assignee, J.S.J., LLC, three (3) additional five (5) year options to renew the term of the Lease under terms and conditions, including but not limited to rental increases, to be negotiated. The conditional options shall commence after August 31, 2016, provided Assignee has timely complied with all terms and conditions of the Lease.

9. Landlord agrees to allow Assignee at Assignee's sole cost and expense to install exterior signage on the south west side of the existing pyramid feature located outside the premises. The exterior signage to be installed on the pyramid feature shall be permitted for installation upon Landlord's prior written approval of signage renderings, where said approval shall not be unreasonably withheld.

**Tenant:** Mark S. Van Aken

**Assignee:** J.S.J., LLC

DATED this 19<sup>th</sup> day of JUNE, 2007.

DATED this 15 day of June, 2007.

By: Mark S. Van Aken  
Mark S. Van Aken

By: [Signature]

**Landlord:** Tropicana Investments, LLC

DATED this 26<sup>th</sup> day of June, 2007.

By: [Signature]  
Jeffrey Chauncey, Building Manager

# Exhibit 6

## GUARANTY

DESCRIPTION OF LEASE: General Retail Lease  
DATE: June 25, 2007  
LANDLORD: Tropicana Investments, a California Limited Liability Company  
TENANT: J.S.J., LLC  
PREMISES: 3430 E. Tropicana Avenue, Suite 27-29, Las Vegas, NV 89121

GUARANTY OF LEASE dated 6-26-07 by and between Tropicana Investments, LLC as Landlord and Stuart Vincent Guarantor.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocably guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease, including, but not limited to, the payment of all rent when and as the same shall become due. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party thereto, as the case may be. The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgements, damages, claims and demands of any kind whatsoever in connection with arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim of right to cause a marshaling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation, and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the said Lease, or by reason of summary or other proceedings against Tenant.

No delay on Landlord's part in exercising any right, power or privilege under this Guaranty or any other document executed in connection herewith shall operate as a waiver of any such privilege, power or right.

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceeding and judgment therein had been rendered against Guarantor.

Guarantor subordinates to Tenant's obligations to Landlord all indebtedness of Tenant to Guarantor, whether now existing or hereafter contracted, whether direct or indirect, contingent or determined. With respect to any such indebtedness of Tenant to Guarantor, Guarantor further agrees to make no claim therefor until any and all obligations of Tenant to Landlord shall have been discharged in full and Guarantor further covenants and agrees not to assign all or any part of such indebtedness while this Guaranty remains in effect.

**Guaranty - Cont.**

The terms, covenants and conditions contained in this Guaranty shall apply to and bind the successors and assigns of the undersigned.

The terms, covenants and conditions contained in this Guaranty shall inure to the benefit of the successors and assigns of Landlord.

If any term, covenant or condition of this Guaranty, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Guaranty, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

In this Guaranty, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

The laws of the state in which the leased premises are located shall govern the validity, construction, performance and effect of this Guaranty.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder.

DATED this 26<sup>th</sup> day of June, 2007.

Guarantor: Stuart Vincent

Social Security Number: 458-27-6156

Residence Address: 11261 Playa Caribe Ave  
Las Vegas NV 89138

# Exhibit 7

## GUARANTY

DESCRIPTION OF LEASE: General Retail Lease  
DATE: June 25, 2007  
LANDLORD: Tropicana Investments, a California Limited Liability Company  
TENANT: J.S.J., LLC  
PREMISES: 3430 E. Tropicana Avenue, Suite 27-29, Las Vegas, NV 89121

GUARANTY OF LEASE dated 6/26/07 by and between Tropicana Investments, LLC as Landlord and Jeff White Guarantor.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocably guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease, including, but not limited to, the payment of all rent when and as the same shall become due. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party thereto, as the case may be. The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim of right to cause a marshaling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation, and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the said Lease, or by reason of summary or other proceedings against Tenant.

No delay on Landlord's part in exercising any right, power or privilege under this Guaranty or any other document executed in connection herewith shall operate as a waiver of any such privilege, power or right.

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceeding and judgment therein had been rendered against Guarantor.

Guarantor subordinates to Tenant's obligations to Landlord all indebtedness of Tenant to Guarantor, whether now existing or hereafter contracted, whether direct or indirect, contingent or determined. With respect to any such indebtedness of Tenant to Guarantor, Guarantor further agrees to make no claim therefor until any and all obligations of Tenant to Landlord shall have been discharged in full and Guarantor further covenants and agrees not to assign all or any part of such indebtedness while this Guaranty remains in effect.

Initials  
Landlord  
Guarantor

**Guaranty - Cont.**

The terms, covenants and conditions contained in this Guaranty shall apply to and bind the successors and assigns of the undersigned.

The terms, covenants and conditions contained in this Guaranty shall inure to the benefit of the successors and assigns of Landlord.

If any term, covenant or condition of this Guaranty, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Guaranty, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

In this Guaranty, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

The laws of the state in which the leased premises are located shall govern the validity, construction, performance and effect of this Guaranty.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder.

DATED this 26 day of June, 2007.

Guarantor: [Signature]

Social Security Number: 457-45-7163

Residence Address: 5363 Cappellini St.  
Los Angeles, CA 90041

# Exhibit 8

## GUARANTY

DESCRIPTION OF LEASE: General Retail Lease  
DATE: June 25, 2007  
LANDLORD: Tropicana Investments, a California Limited Liability Company  
TENANT: J.S.J., LLC  
PREMISES: 3430 E. Tropicana Avenue, Suite 27-29, Las Vegas, NV 89121

GUARANTY OF LEASE dated June 26, 2007 by and between Tropicana Investments, LLC as Landlord and Jeffrey Vincent Guarantor.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocable guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease, including, but not limited to, the payment of all rent when and as the same shall become due. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party thereto, as the case may be. The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgements, damages, claims and demands of any kind whatsoever in connection with arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim of right to cause a marshaling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation, and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the said Lease, or by reason of summary or other proceedings against Tenant.

No delay on Landlord's part in exercising any right, power or privilege under this Guaranty or any other document executed in connection herewith shall operate as a waiver of any such privilege, power or right.

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceeding and judgment therein had been rendered against Guarantor.

Guarantor subordinates to Tenant's obligations to Landlord all indebtedness of Tenant to Guarantor, whether now existing or hereafter contracted, whether direct or indirect, contingent or determined. With respect to any such indebtedness of Tenant to Guarantor, Guarantor further agrees to make no claim therefor until any and all obligations of Tenant to Landlord shall have been discharged in full and Guarantor further covenants and agrees not to assign all or any part of such indebtedness while this Guaranty remains in effect.

**Guaranty - Cont.**

The terms, covenants and conditions contained in this Guaranty shall apply to and bind the successors and assigns of the undersigned.

The terms, covenants and conditions contained in this Guaranty shall inure to the benefit of the successors and assigns of Landlord.

If any term, covenant or condition of this Guaranty, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Guaranty, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

In this Guaranty, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

The laws of the state in which the leased premises are located shall govern the validity, construction, performance and effect of this Guaranty.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder.

DATED this 26TH day of June, 2007.

Guarantor: 

Social Security Number: 458-27-8807

Residence Address: 20 Chateau Whistler CT  
Las Vegas, NV 89148

# Exhibit 9

**ADDENDUM II**  
**TO RETAIL BUILDING LEASE**  
**TO LEASE DATED JULY 9, 1996**

THIS ADDENDUM is made this 22<sup>nd</sup> day of February, 2011, by and between Tropicana Investments, LLC, as Landlord, and Mark S. Van Aken, as Tenant. **J.S.J. LLC DBA BLUE DOGS PUB**, is the successor in interest to MARK S. VAN AKEN, as Tenant, with respect to the above referenced lease.

WHEREAS, Landlord and Tenant are the parties to the above described Lease for the Premises at Tropicana Plaza located at 3430 E. Tropicana Ave., Suites 27, 28, & 29, Las Vegas, Nevada 89121; and

WHEREAS, the parties desire to amend said Lease.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the adequacy and sufficiency of which is hereby acknowledged, Landlord and Tenant contract and agree as follows:

1. Pursuant to Section 3, Term, Commencement Date shall change from September 1, 2006 to September 1, 2011.
2. Pursuant to Section 3, Term, Expiration Date shall changed from August 31, 2011 to August 31, 2016.

3. Pursuant to Article 4, Rent:

The Base rent shall be changed and paid in accordance with the following schedule:

09/01/2011 - 08/31/2012 @ \$7,560.00 per month, \$90,720.00 per annum  
09/01/2012 - 08/31/2013 @ \$7,560.00 per month, \$90,720.00 per annum  
09/01/2013 - 08/31/2014 @ \$7,770.00 per month, \$93,240.00 per annum  
09/01/2014 - 08/31/2015 @ \$7,980.00 per month, \$95,760.00 per annum  
09/01/2015 - 08/31/2016 @ \$8,190.00 per month, \$98,280.00 per annum

4. Additional Representations:

- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Addendum shall govern. All of the terms, covenants, provisions and agreements of the Lease not conflicting with this Addendum shall remain in full force and effect.

Initial  
Landlord \_\_\_\_\_  
Tenant

B. This Addendum is not an offer to lease until executed by Landlord, and shall become binding only upon execution by both parties.

5. Agency Disclosure:

Pursuant to Nevada Real Estate Division rules, **Commercial Investment Real Estate Services** makes the following disclosure:

Pursuant to Nevada Real Estate Division rules, **Commercial Investment Real Estate Services** advises that it represents only the Landlord in this transaction and does not act on behalf of or represent J.S.J. LLC dba Blue Dogs Pub (Tenant.).

ACKNOWLEDGED AND AGREED:

LANDLORD:

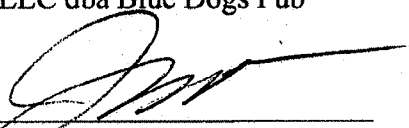
Tropicana Investments, LLC

By:   
Jeffrey Chauncey, Building Manager

Date: 3-2-11

TENANT:

J.S.J. LLC dba Blue Dogs Pub

By:   
Jeff A. White

Date: 3-1-11

# Exhibit 10

Jeff Chauncey,

Sent on Feb. 26, 2016

This letter is to notify you we intend to exercise our five year option beginning September 1<sup>st</sup> 2016.

There are some issues we have discussed with Joe and Dan Velarde. These include rental rate, designated parking during Layla's functions, sewer odor in alley and repair of leaking roof.

#### Rental rate for five year option

Blue Dogs took over the property in April of 2008. Business opened in June of 2008. This opening was followed by the national recession.

Blue Dogs, in addition to the \$400,000 note to Van Aken, borrowed an additional \$400,000 for renovation and capital from Nevada Commerce Bank. Initially, business was slow and required further capital investments from the owners. Business improved by 2011 and we were nearly able to achieve positive cash flow.

In 2012 and 2013 Blue Dogs had marginal profits, which were used to reduce some of the debt. During this time our slot operator ETT went into Bankruptcy and in January of 2014 we switched slot operators to JETT. Subsequently, Blue Dogs revenue has decreased significantly.

We attribute this reduced revenue to several factors:

- 1) Competition in immediate area and their aggressive marketing
- 2) Quality and size of tavern clientele has diminished throughout Las Vegas but especially in the local area.
- 3) Increase in food & alcohol costs are not offset by revenue increased.
- 4) Many of our patrons have informed us that they have stopped coming on the weekends because of the parking issues when Layla has events.
- 5) Change in slot machines associated with new slot operator.

Attached are the profit & loss for 2013, 2014, and 2015 through November. The primary revenue source for Blue Dogs is slot revenue. Nearly all of the bar revenue and food sales are offset by comps. Therefore we will concentrate on the slot revenue.

In 2013 slot revenue was \$665,450. It fell \$133,466 (20%) to \$531,984 in 2014. The profit & loss for 2015 is through November. Annualized it would be \$475,694. This is a reduction of an additional \$56,890 or 10.7%.

In order to manage this revenue loss Blue Dogs has taken extreme steps to reduce expenses. They have gone from \$761,699.79 in 2013 to \$699,124.74 in 2014 and \$623,513.40 for 2015 on an annualized basis. This resulted in a loss of \$37,466.72 in 2014, and a YTD loss of \$33,713.63 through November 2015.

These cash flow shortfalls have been covered by capital contributions from owners, bank loans and credit card loans. Stuart Vincent, Blue Dogs part owner/manager, has a salary of \$25,000 per year. He has declined to take this marginal salary several months when cash flow is critical.

No owner has ever taken any distribution. In fact in 2014 the owners infused \$200,000 to pay off one of the loans and reduce Blue Dogs monthly principle and interest payments.

Our experience is that the tavern / bar business in Las Vegas is not what it was ten years ago. Revenues are significantly lower and costs have continued to increase. In order for us to have a long term viable relationship it is absolutely necessary to get a concession on our rent.

During the past eight years rents in Las Vegas have declined as a result of the recession. Blue Dogs rent increased during this period, resulting in a rental rate that is significantly above current market rates and unaffordable.

We have been a loyal tenant. We have always tried to pay our rent on time, even in some very difficult financial times. In order for us to remain in business Blue Dogs needs a \$2,500 a month reduction in rent.

After reviewing this information please contact us. We will provide other information upon request.

Stuart Vincent

Cc: Joe Velarde  
Dan Velarde

# Exhibit 11

Begin forwarded message:

**From:** Joe Velarde <[joe@cilv.com](mailto:joe@cilv.com)>  
**Date:** June 15, 2016 at 5:49:39 PM EDT  
**To:** "Stuart Vincent ([stuartvincent77@yahoo.com](mailto:stuartvincent77@yahoo.com))" <[stuartvincent77@yahoo.com](mailto:stuartvincent77@yahoo.com)>  
**Cc:** "[jbin1@msn.com](mailto:jbin1@msn.com)" <[jbin1@msn.com](mailto:jbin1@msn.com)>, Danny Velarde <[dvelarde@cilv.com](mailto:dvelarde@cilv.com)>  
**Subject:** Letter dated 6-15-16

Hello Stuart, Danny forwarded Jeff's email to the Landlord last week. The Landlord asked us to prepare the attached letter on his behalf.

Please review a when have some time and email us with any questions or comments. Thank you

Regards,

**Joe Velarde**  
Broker Salesman



June 15, 2016

Mr. Stuart Vincent  
Blue Dogs Pub  
3430 E. Tropicana Ave., Suites # 27-29  
Las Vegas, NV 89121

Hello Stuart,

The Landlord is requiring a new lease document for Blue Dogs Pub due to the fact that you have changed your business entity name without Landlord approval. Please review your existing lease agreement and you will see it clearly states in Section 18. Assignment, *"this lease shall not, nor shall any interest therein, be assignable as to the interest of Tenant by operation of law, without the prior written consent of Landlord."*

In order for the Landlord to move forward with approving a lease extension they will require a new lease document/agreement to be drafted for JSJBD Corp., a Nevada Corporation which shall include the following terms and conditions:

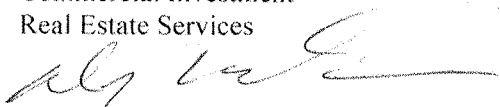
- The base rental total for the initial year of the lease extension shall remain the same as the previous year, with a three percent (3 %) annual base rental increase each subsequent year thereafter (Years 2 – 5).
- Include two (2) remaining five (5) year options (after this lease renewal).

In addition the Landlord is requesting JSJBD Corp., a Nevada Corporation provide documentation showing the percentage of ownership of each individual, as well as updated credit reports and financial statement for all individuals in the corporation. Attached is a credit authorization form should you need it (credit reports are \$25 per report). If you have a current credit report please submit for the Landlord's review.

Upon receiving the requested information, the Landlord will have the new lease agreement document prepared for your review and approval.

Sincerely,

Commercial Investment  
Real Estate Services



Danny Velarde  
Broker

## CREDIT REPORT AUTHORIZATION

I/we authorize *Commercial Investment Real Estate Services* to obtain my/our consumer credit report. I/we understand that the purpose of this credit report is to check my/our credit history.

### APPLICANT

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Current Street Address

\_\_\_\_\_  
City / State / Zip

\_\_\_\_\_  
Previous Street Address

\_\_\_\_\_  
City / State / Zip

\_\_\_\_\_  
*Signature*

### CO-APPLICANT

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Current Street Address

\_\_\_\_\_  
City / State / Zip

\_\_\_\_\_  
Previous Street Address

\_\_\_\_\_  
City / State / Zip

\_\_\_\_\_  
*Signature*

It is understood that Kroll Factual Data is not responsible for information contained in the credit report and that it is the responsibility of the consumer to contact the appropriate credit bureau to correct or to dispute any inaccuracies contained in the report.

Experian ..... 1-888-397-3742  
Equifax ..... 1-800-658-1111

# Exhibit 12

**KAEMPFER  
CROWELL**

ATTORNEYS AT LAW

LAS VEGAS OFFICE

**LESLEY B. MILLER**

[lmiller@kcnvlaw.com](mailto:lmiller@kcnvlaw.com)  
702.792.7000

**LAS VEGAS OFFICE**  
1980 Festival Plaza Drive  
Suite 650  
Las Vegas, NV 89135  
Tel: 702.792.7000  
Fax: 702.796.7181

**RENO OFFICE**  
50 West Liberty Street  
Suite 700  
Reno, NV 89501  
Tel: 775.852.3800  
Fax: 775.327.2011

**CARSON CITY OFFICE**  
510 West Fourth Street  
Carson City, NV 89703  
Tel: 775.884.8300  
Fax: 775.882.0257

August 2, 2016

Jeffrey Chauncey  
Tropicana Investments, LLC  
P.O. BOX 50170  
Lighthouse Point, FL 33074

**Re: Blue Dogs Pub Lease – 3430 East Tropicana Avenue, Suites 27, 28 & 29**

Dear Mr. Chauncey:

Please be advised that this firm is counsel to JSJBD Corp, a Nevada corporation (“**JSJBD**”), and are in receipt of your letter dated June 15, 2016, concerning the Blue Dogs Pub lease, dated July 9, 1996, as amended (the “**Lease**”). JSJBD hereby exercises its option to renew the Lease pursuant to Section 8 of the Lease Assignment and Modification, dated June 26, 2007.

As a preliminary matter, to provide clarification on the concerns presented in your letter regarding the entity change, JSJBD would like to offer reassurance that the tenant of the Lease did not change; rather, JSJ, LLC converted into JSJBD. Ownership of the entity remained the same, as reflected in the Articles of Conversion filed with the Nevada Secretary of State, enclosed herewith. No notice of an entity name change is required under the Lease, and JSJBD did not assign or otherwise transfer the Lease and merely converted from a limited liability company into a corporation, with ownership of the entity remaining the same.

Concerning terms of the lease renewal, JSJBD requests that the rent for the first year of the five (5) year renewal term remain the same as the previous year (09/01/2015 – 08/31/2016), as set forth in your letter, with an increase each subsequent year thereafter equal to the current rate of increase of \$210.00 per year, as set forth in Addendum II to the Lease, dated February 22, 2011.

JSJBD is in full compliance with the Lease and, given that status, rather than enter into a new lease agreement, instead requests that the terms of the Lease be kept in full force and effect, with only the rent amounts being revised as set forth herein.

...

...

We look forward to working with you towards an expedient and cooperative resolution to this matter.

Sincerely,

KAEMPFER CROWELL



Lesley B. Miller

*Copy mailed to:*

Dan Velarde  
COMMERCIAL INVESTMENT  
REAL ESTATE SERVICES  
1399 Galleria Drive  
Suite 110  
Henderson, NV 89014

# Exhibit 13

**KAEMPFER**

**CROWELL**

**ATTORNEYS AT LAW**

LAS VEGAS OFFICE

**LESLEY B. MILLER**

[lmiller@kcnvlaw.com](mailto:lmiller@kcnvlaw.com)  
702.792.7000

**LAS VEGAS OFFICE**  
1980 Festival Plaza Drive  
Suite 650  
Las Vegas, NV 89135  
Tel: 702.792.7000  
Fax: 702.798.7181

**RENO OFFICE**  
50 West Liberty Street  
Suite 700  
Reno, NV 89501  
Tel: 775.852.8900  
Fax: 775.327.2011

**CARSON CITY OFFICE**  
510 West Fourth Street  
Carson City, NV 89703  
Tel: 775.884.8300  
Fax: 775.882.0257

August 31, 2016

Via U.S. Mail and email: [jbchauncey@outlook.com](mailto:jbchauncey@outlook.com)

Jeffrey Chauncey  
TROPICANA INVESTMENTS LLC  
P.O. Box 50170  
Lighthouse Point, FL 33074

**Re: Blue Dogs Pub- Proposed Amendment to Lease**

Dear Jeff:

We appreciate your continued attention to and cooperation in the ongoing discussions and negotiations concerning the Blue Dogs Pub lease (the "Lease"). Enclosed herewith for your review and comment is a proposed amendment to the existing Lease.

As you are aware, J.S.J. LLC converted into JSJBD Corp ("JSJBD") in March 2014. In accordance with Nevada law, the conversion into JSJBD operated as a continuation of the existence of J.S.J. LLC. See NRS 92A.250(3)(b). The conversion by no means operated as a dissolution of J.S.J. LLC; rather, JSJBD is the continuation of J.S.J. LLC in accordance with Nevada law. See NRS 92A.250(3)(h).

Accordingly, the entity conversion did not operate as an assignment under the terms of the Lease. Because JSJBD is the legal continuation of J.S.J. LLC, the same party is the interest-holder under the Lease and the same party occupies the premises. JSJBD remains in full compliance with the terms of the Lease and has made all payments due thereunder in a timely manner, which Tropicana Investments has accepted since the conversion occurred in March 2014. As a result of the foregoing, JSJBD declines to go forward with a new lease as proposed, and hereby again exercises its valid option rights under the Lease to renew for an additional five (5) year term.

Further, the principals of JSJBD are willing to sign guaranties of the Lease to the extent of and in proportion to each principal's respective ownership interest in JSJBD for the total base rental amount of \$1.00/square feet (in accordance with the current advertised rate of the shopping center), plus a 25% premium on that amount. If you are interested in exploring this option further, please so advise.

Thank you for your time and attention to this matter, and we look forward to reaching an amenable resolution to these continued discussions.

Sincerely,

KAEMPFER CROWELL



Lesley B. Miller

LBM/RLS

## AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE ("Amendment") is made and entered into as of the \_\_\_\_ day of August, 2016 ("Effective Date"), by and between TROPICANA INVESTMENTS, LLC A CALIFORNIA LIMITED LIABILITY COMPANY ("Landlord"), and JSJBD CORP, a Nevada corporation, dba Blue Dogs Pub ("Tenant") and together with Landlord, collectively, the "Parties" and individually, a "Party").

### RECITALS

WHEREAS, Landlord and Tenant are the parties to that certain Lease dated July 9, 1996 (together with any and all addendums and attachments, collectively, the "Lease"), wherein Landlord leased to Tenant, and Tenant leased from Landlord that certain real property located in Clark County, Nevada, commonly known as 3430 E. Tropicana Ave., Suites 27, 28, & 29, Las Vegas, Nevada 89121 ("Premises"), as more fully defined in the Lease;

WHEREAS, Tenant currently operates the Premises as a tavern known as Blue Dogs Pub ("Business"); and

WHEREAS, the Parties have agreed to amend some of the terms of the Lease as set forth below, and now deem it to be in their respective best interests to enter into this Amendment.

### AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are hereby incorporated herein by this reference, the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Interpretation. Except as expressly modified hereby, the terms and conditions of the Lease shall remain in full force and effect. In the event of a conflict between the terms of the Lease and the terms of this Amendment, this Amendment shall govern and control. Initially capitalized terms used herein (including in the above Recitals) but not defined herein shall have the meanings set forth in the Lease.

2. Acknowledgment. Tenant hereby acknowledges that it converted from a limited liability company (J.S.J. LLC) into a corporation (JSJBD Corp) in 2014. All of Tenant's obligations under the Lease remain in force and effect. Landlord hereby acknowledges this entity conversion of Tenant.

3. Option. In exercising Tenant's option under the Lease, the term of the Lease shall be extended for an additional five (5) years, and the Expiration Date shall hereby be amended to August 31, 2021.

4. Operation and Cooperation. On and after the Effective Date until the Expiration Date, Tenant shall continue to operate the Business on the Premises and shall use its best efforts to promote and operate the Business. Without limiting the generality of this Section 4, Tenant

hereby covenants and to keep and maintain all licenses necessary to continue the Business, including, but not limited to, liquor and gaming licenses, through the Expiration Date.

5. Rent. The minimum rent amounts set forth in Section 4 of the Lease shall be amended as follows:

"09/01/2016 to 08/31/2017 - \$8,400.00 per month, \$100,800.00 per annum  
09/01/2017 to 08/31/2018 - \$8,400.00 per month, \$100,800.00 per annum  
09/01/2018 to 08/31/2019 - \$8,610.00 per month, \$103,320.00 per annum  
09/01/2019 to 08/31/2020 - \$8,820.00 per month, \$105,840.00 per annum  
09/01/2020 to 08/31/2021 - \$9,030.00 per month, \$108,360.00 per annum"

6. Parking. Section 7 of the Lease shall be amended to add the following thereto

"Tenant shall be given twelve (12) dedicated parking spaces exclusively for the use of Tenant and its patrons, including the six (6) spaces located directly in front of the Premises and an additional six (6) spaces in close proximity to the Premises."

7. Common Area Maintenance Charges. Per Section 7 of the Lease, Landlord shall provide to Tenant a quarterly written report of the common area maintenance charges, which shall be subject to review and audit by Tenant. In addition to the foregoing, Section 7 of the Lease shall be amended to provide that if the results of any audit show Tenant has underpaid for the applicable period, Tenant shall pay the additional amount owing to Landlord. If the results of an audit show that Tenant has overpaid for the applicable period, the amount of said overpayment shall either be i) credited by Landlord to Tenant's next payments of Tenant's pro rata share of common area maintenance charges becoming due and payable, or ii) refunded to Tenant within thirty (30) days following determination of the overpayment if the Lease has terminated, less any amounts payable by Tenant to Landlord.

Landlord and Tenant shall further remain in compliance with their respective obligations set forth in Section 7, including, without limitation, the obligations of Landlord to "police the automobile parking and common areas" of the center and to keep the parking and common areas "properly lighted".

8. Compliance with Gaming Laws. Section 22 of the Lease shall be amended to add the following thereto:

"Landlord shall provide Tenant at least thirty (30) days notice before any sale of the Premises occurs. Both Landlord and Tenant agree to comply with all applicable state and local laws, regulations and ordinances concerning bars/taverns and gaming/gaming establishments with respect to all provisions contained in this Lease, including, without limitation, any sale of the Premises."

9. Repairs. Pursuant to the obligations set forth in Section 9 of the Lease, Landlord shall repair all damages resulting from the previous repairs Landlord conducted at the Premises, which damages Tenant has previously detailed in writing to Joe Velarde, as the representative of Landlord, in that certain electronic correspondence dated May 1, 2016.

according to the fair meaning of its terms. Time is of the essence. All exhibits and schedules attached hereto are hereby incorporated herein by this reference.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the Effective Date.

**LANDLORD:**

Tropicana Investments, LLC,  
a California limited liability company

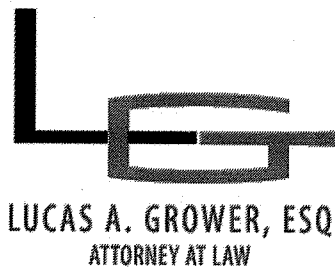
By: \_\_\_\_\_  
Name: Jeffrey Chauncey  
Its: Manager

**TENANT:**

JSJBD Corp,  
a Nevada corporation

By: \_\_\_\_\_  
Name: Stuart R. Vincent  
Its: President

# Exhibit 14



August 7, 2017

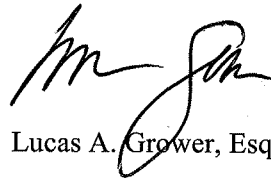
John M. Sacco, Esq.  
Marquis Aurbach Coffing  
10001 Park Run Dr.  
Las Vegas, NV 89145

re: *Blue Dogs Pub and Tropicana Investments, LLC*

Dear Mr. Sacco:

Please be advised that I have been retained to represent Blue Dogs Pub. Please direct all future correspondence regarding Blue Dogs Pub to my office. My client has provided me with the most recent draft of the Lease Agreement, and I am in the process of reviewing it. I look forward to working with you to amicably resolve this matter. Thank you in advance for your time and courtesy.

Sincerely,



Lucas A. Grower, Esq.

# Exhibit 15



August 31, 2017

John M. Sacco, Esq.  
Marquis Aurbach Coffing  
10001 Park Run Dr.  
Las Vegas, NV 89145

re: *Blue Dogs Pub and Tropicana Investments, LLC*

Dear Mr. Sacco:

I have spoken with my client at length regarding the current status of negotiations and terms proposed in the most recent Lease Agreement that you forwarded to me on August 18, 2017. First and foremost, I think it is important to emphasize my client's position regarding negotiations in general. My client purchased the \$50,000 option based upon the understanding that doing so would grant my client the right to participate in negotiations regarding the terms and conditions of the new Lease Agreement. There is no language in any Lease Agreement or Addendum that explicitly or implicitly limits the parameters of those negotiations. There is also no language stating that subsequent agreements must conform to the format, terms and conditions set forth by the lender to Tropicana Investments, LLC.

Please refer to the attached Option Agreement executed by Walter Schwartz as Landlord and Mark S. Van Aken as Tenant as part of the 1996 Lease. The Option Agreement provides that "...tenant shall have the option to renew this lease for a period of five years commencing September 1, 2001 at a market rental rate and terms as agreed by Landlord and Tenant." This language helps to clarify the basis for my client's position that the amount of monthly base rent is negotiable and must reflect the current condition of the subject property.

At this time, my client is offering to pay base rent in the amount of \$1.45/ft<sup>2</sup>. My client asserts that this price accurately reflects the rental value of the property in light of the current condition of the subject property. The community surrounding the Plaza has deteriorated, and there was a murder on the premises. The lack of security officers in the Plaza is a major concern. Additionally, several storefronts continue to remain vacant and present an eyesore. My client believes that the rental price demanded by your client is unfairly inflated to compensate for the financial shortfall caused by this lack of rent-paying tenants. Further, my client believe that their rental price is unreasonably greater than the rent paid by other Plaza occupants.

My client is also requesting a detailed accounting of the CAM costs set forth in the 2015 and 2016 reports you provided. There are serious concerns regarding how your client has appropriated those costs. For example, the 2015 report states an expense of \$108,531 for "Property Management 10% of Gross." The 2016 report states an expense of \$76,704 for "Property Management 6% of Gross" and a new expense of

\$26,400 for "Property Management, oversight" that was not included in the 2015 report. My client does not know who the property manager is or how this expense was applied. It would be much appreciated if your client would provide the on-site property manager's identity, address, and contact information. A more detailed accounting of the expenses outlined in these reports is also requested.

Another specific issue that I would like to raise is the amount of the late fee that would be applied to any future late rent payments. The amount stated in the current draft of the proposed Lease Agreement is 10% of the base rent. This amount is extremely high and would present an unreasonable financial burden. My client proposes a late fee of 3% instead.

My client reviewed and redlined the most recent Lease Agreement from August 18, 2017. I would prefer to send you a redline from me to ensure that I do not unwittingly disclose any attorney-client privileged communications. I will send you that redline by no later than Tuesday, September 5, 2017.

Finally, I would like to emphasize that my client remains committed to resolving these differences and negotiating a lease that is acceptable to both parties. There are some additional issues with the language of the Lease Agreement that will be more appropriately addressed in my forthcoming redline. However, the issues outlined above appear to be the most critical to continuing negotiations and reaching a consensus.

Thank you again for your time and continued courtesy in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lucas A. Grower". The signature is stylized with a large, loopy "L" and "G".

Lucas A. Grower, Esq.

# Exhibit 16

**THIRTY DAY NOTICE TO QUIT THE PREMISES**

**[NRS 40.251]**

TO: JSJBD CORP, J.S.J, LLC; AND ANY SUBTENANTS, ASSIGNEES AND OCCUPANTS  
PREMISES: 3430 EAST TROPICANA AVENUE, SUITES 27, 28, & 29  
LAS VEGAS, NV 89121

PLEASE TAKE NOTICE that your tenancy at the above Premises ("Premises") is hereby terminated. You must vacate within thirty (30) days from the date of service of this Notice the Premises commonly described as:

3430 EAST TROPICANA AVENUE, SUITES 27, 28, & 29  
LAS VEGAS, NV 89121

PLEASE TAKE FURTHER NOTICE that you are hereby required to vacate the Premises within thirty (30) calendar days following the Date of Service of this notice. If you do not comply with this notice, your possession of the Premises will be unlawful (called "unlawful detainer"), and your Landlord may initiate an eviction against you by either serving you with a Five Day Notice to Quit for Unlawful Detainer or a Summons and Complaint for Unlawful Detainer. If the court determines that you are guilty of an unlawful detainer, the court may issue a summary order for your removal or an order providing for your nonadmittance, directing the sheriff or constable to remove you within twenty-four (24) hours after receipt of the order.

PLEASE BE ADVISED that if you are sixty (60) years of age or older, or if you have a physical or mental disability and your tenancy is not week-to-week, you may make a written request to your Landlord to be allowed to continue in possession of the rental Premises for an additional thirty (30) days past the expiration of this notice pursuant. You must provide your Landlord with proof of your age or disability with your written request. If your Landlord rejects your request, you have the right to petition the court to continue possession of the Premises for an additional thirty (30) days.

PLEASE BE ADVISED that pursuant to NRS 118A.390, you may seek relief if a Landlord unlawfully removes you from the Premises, or excludes you by blocking or attempting to block your entry upon the Premises, or willfully interrupts or causes or permits the interruption of an essential service required by the rental agreement or chapter 118A of the Nevada Revised Statutes<sup>1</sup>.

**PLEASE BE ADVISED THAT YOU CAN OBTAIN INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the Civil Law Self-Help Center, which is located on the first floor of the Regional Justice Center in downtown Las Vegas, or on its website, [www.CivilLawSelfHelpCenter.org](http://www.CivilLawSelfHelpCenter.org).**

DATE: 11/14/18

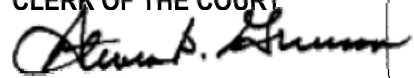
TROPICANA INVESTMENTS, LLC, OWNER/LANDLORD,

By: 

Terry A. Moore, Esq.  
Nevada Bar No. 7831  
MARQUIS AURBACH COFFING P.C.  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for Owner/Landlord  
(702) 382-0711

<sup>1</sup> This statute is only applicable as described and included for ease of reference.

# Exhibit C



**Marquis Aurbach Coffing**

Terry A. Moore, Esq.

Nevada Bar No. 7831

Collin M. Jayne, Esq.

Nevada Bar No. 13899

10001 Park Run Drive

Las Vegas, Nevada 89145

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tmoore@maclaw.com

cjayne@maclaw.com

*Attorneys for Defendant/Counterclaimant,*

*Tropicana Investments, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation; STUART VINCENT, an individual;  
JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B

Dept. No.: XI

**[HEARING REQUESTED]**

**DEFENDANT/COUNTERCLAIMANT**  
**TROPICANA INVESTMENTS, LLC'S**  
**MOTION TO ALTER OR AMEND**  
**JUDGMENT**

Defendant/Counterclaimant Tropicana Investments, LLC a California limited liability  
company, by and through its attorneys of record, the law firm of Marquis Aurbach Coffing,  
hereby submit its Motion to Alter or Amend Judgment. This Motion is made and based upon all

1 papers, pleadings, and records on file herein, the attached Memorandum of Points and  
2 Authorities, and any oral argument allowed at a hearing on this matter.

3 Dated this 27th day of December, 2019.

4 MARQUIS AURBACH COFFING

5  
6 By /s/ Terry A. Moore  
7 Terry A. Moore, Esq.  
8 Nevada Bar No. 7831  
9 Collin M. Jayne, Esq.  
10 Nevada Bar No. 13899  
11 10001 Park Run Drive  
12 Las Vegas, Nevada 89145  
13 *Attorney for Defendant/Counterclaimant*  
14 *Tropicana Investments, LLC*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 This breach of lease case concerns a dispute between Plaintiff/Counterdefendant JSJBD  
18 (“Tenant”) and Defendant/Counterclaimant Tropicana Investments (“Landlord”) as to the rent  
19 applicable to a five-year option period which began September 1, 2016. Tenant alleged that the  
20 parties never agreed on what rent would apply to the option period and that they should only be  
21 required to pay “market rental rate,” while Landlord maintained that an agreement was in fact  
22 reached and ratified by the Tenant paying the agreed-upon amounts without objection or dispute,  
23 and that Tenant had subsequently ceased paying the agreed-upon rental rate in 2018. Ancillary  
24 to this issue, Tenant further alleged that Landlord had breached the lease and breached the  
25 implied covenant of good faith and fair dealing by impermissibly charging Tenant for “reserve”  
26 accounts as part of common area maintenance charges (“CAMs”) for the shopping center.  
27 Finally, Tenant initially asserted a claim that Landlord failed to comply with maintenance  
28 obligations, but this claim was abandoned at trial.

1 The case proceeded to a bench trial lasting five days, at the conclusion of which the Court  
2 found that the parties had agreed in 2016 on the rent applicable to the option period precisely as  
3 argued by Landlord, and further awarded Landlord damages for the amount of underpaid rent.  
4 However, the Court's calculation of underpayment of rent contains a math error, where the  
5 correct amount of underpaid rent based on the Court's findings and conclusions should be  
6 \$16,780. Thus, the judgment should be amended to reflect the correct amount of rent owed.

7 Additionally, the judgment should be amended to remove the award of attorneys' fees as  
8 damages for Tenant's breach of implied covenant of good faith and fair dealing claim. Tenant  
9 disclosed no documents in discovery, and provided zero evidence at trial, reflecting any  
10 attorneys' fees Tenant incurred in bringing this action. Further, the damages to which Tenant  
11 would be entitled for its breach of implied covenant claim are expressly limited to contract  
12 damages under Nevada law. Thus, even though the Court found that Landlord's use of reserves  
13 as part of the CAM expenses constituted a breach of the implied covenant of good faith and fair  
14 dealing, Tenant is nevertheless precluded from recovering attorney's fees as special damages for  
15 that claim, and instead is limited to the amount that Tenant proved it overpaid in CAMs.<sup>1</sup>  
16 Therefore, the Court's award of damages in an unproven amount of attorneys' fees is contrary to  
17 Nevada law which requires a party plead and prove special damages by competent evidence.

18 Finally, despite the Court's findings and conclusions aligning with nearly all of  
19 Landlord's arguments, the Court's order states that judgment is entered in Tenant's favor on both  
20 parties' declaratory relief claims. The effect of the Court's judgment setting rent for the option  
21 period according to the rent schedule to which the parties agreed is supported by the Court's  
22 findings and conclusions, and entirely consistent with the arguments made by Landlord, and thus  
23 the wording of the judgment in Tenant's favor, rather than in Landlord's favor, appears to be a  
24 mistake that should be corrected.

25  
26  
27 <sup>1</sup> However, since the Court ruled that the Tenant was entitled to recover those same amounts under its  
28 breach of contract claim, the double recovery doctrine necessarily precludes an award of the same  
amounts under the breach of implied covenant claim.

1 Accordingly, Defendant respectfully requests the Court alter or amend the judgment in  
2 the following manner:

- 3 1. Remove the attorneys' fees awarded to Tenant as damages on its breach of implied  
4 covenant claim so as to comply with Nevada law;
- 5 2. Amend the amount of damages due to Landlord on its breach of contract claim for  
6 nonpayment of rent to \$16,780; and
- 7 3. Rephrase the judgment on the parties' declaratory relief claims to be entered in favor  
8 of Landlord and against Tenant, with the same outcome of rent being set according to  
9 the agreed-upon rent schedule.

10 **II. STATEMENT OF FACTS**

- 11 1. Tenant filed the complaint in this case on November 30, 2018.
- 12 2. Landlord filed its answer and counterclaim on January 9, 2019.
- 13 3. The parties proceeded through discovery, during which both sides produced  
14 numerous documents.
- 15 4. A bench trial for this case began on November 18, 2019, and concluded on  
16 November 22, 2019.
- 17 5. On December 5, 2019, the Court issued Findings of Fact and Conclusions of Law  
18 ("FFCL"), entering judgment on each of the parties' claims.

19 **A. FACTS RELEVANT TO TENANT'S CLAIMS REGARDING PAYMENT**  
20 **OF CAMS.**

- 21 6. Tenant asserted a claim for breach of lease, and a claim for breach of implied  
22 covenant of good faith and fair dealing, both of which contained allegations that Landlord was  
23 liable for charging inaccurate CAM amounts. *See* Compl. ¶¶ 85, 103
- 24 7. Prior to trial, Tenant produced zero documents in discovery that showed any  
25 attorneys' fees Tenant incurred in bringing this action.
- 26 8. During the trial, no witness testified to any amount Tenant had paid its attorneys,  
27 at any time.

1           9.     No documents were admitted into evidence which show any amount that Tenant  
2     had paid its attorneys at any time.

3           10.    The parties delivered closing arguments and the case was submitted on Friday,  
4     November 22, 2019.

5           11.    In the five days of trial, Tenant provided zero documentary evidence or testimony  
6     relating to any attorneys' fees incurred by Tenant, at any time.

7           12.    Relevant to Tenant's claims for overpayment of CAMs, the Court's findings of  
8     fact and conclusions of law include the following:

9           a.     The lack of credibility and general lack of knowledge of any of Plaintiff's  
10    witnesses forces the Court to rely upon the documentary evidence admitted during the  
11    proceedings. Findings of Fact and Conclusions of Law, at ¶ 71.

12          b.     The parties' predecessors in interest executed the subject Lease on July 9,  
13    1996. *Id.* ¶ 7.

14          c.     The 1996 Lease referenced \$500 per month in "estimated" CAM charges,  
15    which were subject to a quarterly accounting of actual CAM costs. *Id.* ¶ 12.

16          d.     The Lease defined CAM costs. *Id.* ¶ 13.

17          e.     The Lease also contains an attorney's fees provision, which provides that  
18    "[i]n the event the Landlord finds it necessary to retain an attorney in connection with the  
19    default by the Tenant in any of the agreements or covenants contained in this Lease,  
20    Tenant shall pay reasonable attorney's fees to said attorney." *Id.* ¶ 16, n.4.

21          f.     On April 16, 2001, the parties executed an Amendment to Retail Building  
22    Lease Dated July 9, 1996, which, among other things, changed the documentation and  
23    accounting for CAM expenses from quarterly to annual. *Id.* ¶¶ 20-21.

24          g.     In June 2007, the parties executed a Lease Assignment and Modification  
25    which changed the "estimated" CAM charge to \$1,176 per month, but did not otherwise  
26    alter or change the accounting obligation of Landlord, and/or the other obligations of  
27    Defendant to properly charge for actual CAM expenses under the Lease. *Id.* ¶¶ 25, 32.

1 h. From approximately 2007 to present, Tenant has paid the “estimated”  
2 CAM of \$1,176 for each and every month. *Id.* ¶ 63.

3 i. The list of items to be included in CAMs does not include the category  
4 used by Landlord for “reserves.” *Id.* ¶ 65.

5 j. Landlord has failed to provide a CAM accounting including the  
6 accounting of the various “reserves” referenced in the annual Statements produced by  
7 Landlord in this case. *Id.* ¶ 66.

8 k. Landlord did not breach the Lease by failing to provide quarterly  
9 accounting CAM costs as that provision was modified in writing by the 2001  
10 Amendment to an annual accounting. *Id.* ¶ 68.

11 l. However, as a result of Landlord’s inclusion of “reserve” funds in the  
12 CAMs, Tenant has overpaid the CAM expense and is entitled to reimbursement. *Id.* ¶¶  
13 67, 69.

14 m. Evidence was presented at trial of the amounts of CAMs charged,  
15 including the “reserves” which Landlord charged, from which the Court found that  
16 Tenant overpaid \$4,578.00. *Id.* ¶ 98, n.7.

17 n. Landlord’s use of reserves as part of the CAM expenses is a breach of the  
18 Lease and a breach of the covenant of good faith and fair dealing. *Id.* ¶¶ 95, 104.

19 13. The Court made no findings regarding whether attorney’s fees were incurred by  
20 Tenant in asserting its breach of implied covenant claim, nor any findings as to the amount of  
21 attorney’s fees incurred by Tenant.

22 14. Based on these findings and conclusions, the Court entered judgment in Tenant’s  
23 favor and against Landlord on Tenant’s claim for breach of lease, in the amount of \$4,578.00.  
24 *Id.* at 18:7–9

25 15. The Court further entered judgment in Tenant’s favor and against Landlord on  
26 Tenant’s claim for breach of the implied covenant of good faith and fair dealing “in the amount  
27  
28

1 of the attorney's fees and costs related to the CAM expense portion of the litigation only." *Id.*  
2 at 18:10–15.

3 16. While the Lease includes a unilateral attorney's fees provision allowing for  
4 Landlord to recover reasonable attorney's fees incurred in bringing an action to enforce a  
5 default by Tenant, the Lease and its various addenda and amendments do not contain any  
6 provision providing for attorney's fees to be awarded to Tenant in any case.

7 **B. FACTS RELEVANT TO LANDLORD'S CLAIM FOR UNPAID RENT.**

8 17. In connection with Landlord's position that an agreement was reached as to the  
9 rent applicable to the option period beginning in September 2016, Landlord asserted a breach of  
10 lease claim based on Tenant's failure to pay the full rent amount to which the parties agreed.  
11 *See Answer & Countercl.* ¶¶ 58–60.

12 18. In the Court's FFCL, the Court made the following findings and conclusions  
13 relevant to Landlord's claim for unpaid rent:

14 a. An agreement was reached by the parties as to a rent schedule for the five-  
15 year option period beginning on September 1, 2016, which provided for monthly rent of  
16 \$8,400 for the first two years, which would increase to \$8,610 starting September 1,  
17 2018; \$8,820 starting September 1, 2019; and \$9,030 starting September 1, 2020.  
18 Findings of Fact and Conclusions of Law, at ¶ 89.

19 b. Consistent with the parties' agreement, Tenant began paying \$8,400 per  
20 month in September 2016, and continued paying in accordance with the agreement in  
21 September 2017, and through August 2018. *Id.* ¶¶ 47, 54, 92.

22 c. In September 2018, Tenant continued paying \$8,400 per month, despite  
23 the parties' agreement that rent would increase to \$8,610 per month on September 1,  
24 2018. *Id.* ¶¶ 91–92.

25 d. Tenant failed to pay rent according to the agreed-upon rent schedule from  
26 that date through November 2019, including the most recent payment at the time of trial.  
27 *Id.* ¶ 92.

1 e. Tenant paid a reduced rent rate of \$5,150 for four months. *Id.* ¶ 92, n.6.

2 f. Therefore, Tenant's underpayment totals \$13,000. *Id.*

3 19. Based on these findings, the Court entered judgment on Landlord's breach of  
4 lease claim in Landlord's favor, in the amount of \$13,000.

5 20. However, based on the numbers and dates in the Court's findings, the correct  
6 calculation of underpaid rent is \$16,780.<sup>2</sup>

7 **C. FACTS RELEVANT TO DECLARATORY RELIEF CLAIMS.**

8 21. Tenant's complaint sought declaratory relief on the following points:

9 a. The Court should fix the amount of monthly rent for the five-year option  
10 period because the option clause is capable of enforcement. Compl. ¶ 70.

11 b. The Court should declare that Tenant possessed option rights that it  
12 exercised, with all terms settled. Compl. ¶ 73

13 c. The Court should declare that the parties agreed to reasonable / market  
14 rent for the option period. Compl. ¶ 74.

15 d. The Court should declare the amount of reasonable / market rent for the  
16 premises based on market conditions as of the date of the exercise of the option. Compl. ¶  
17 75.

18  
19 <sup>2</sup> The calculation of underpayment of rent, based on the Court's findings, should be as follows:

20 a) For the eleven months from September 2018 through and including July 2019, Tenant paid  
21 \$8,400 per month, \$210 short of the agreed-upon \$8,610 for that year, totaling underpayment of  
22 **\$2,310.**

23 b) In August 2019, Tenant reduced its rent to \$5,150, which was short of the agreed-upon rent of  
24 \$8,610 by **\$3,460.**

25 c) Finally, for September 2019 through November 2019, the agreed-upon rent increased to \$8,820,  
26 and Tenant continued paying \$5,150. Thus, Tenant underpaid by \$3,670 each of these three  
27 months, totaling **\$11,010.**

28 d) Thus, Tenant underpaid rent by a total of  $(2,310 + 3,460 + 11,010) =$  **\$16,780.**

It should be noted that the Tenant also underpaid December 2019's rent by only paying \$7,350, leaving a  
balance owed of \$1,470 for that month.

1 e. The Court should declare that Landlord acted unreasonably in unilaterally  
2 setting the amount of rent. Compl. ¶ 76.

3 f. The Court should declare the amount of rent that should be paid and/or  
4 deposited with the Court while the case remains pending. Compl. ¶ 77.

5 22. Landlord's counterclaim sought declaratory relief on the following points:

6 a. The Court should declare that the purpose and effect of the 1996 Option  
7 Agreement extended only to the two option periods for 2001 and 2006, and that the  
8 market rental rate term did not extend beyond those two option periods. Countercl. ¶ 47.

9 b. The Court should declare that the 2007 Lease Assignment and  
10 Modification provides for three conditional options subject to negotiations of rental  
11 increases. Countercl. ¶ 48.

12 c. The Court should declare that the 2007 Lease Assignment and  
13 Modification did not contemplate decreases in base rent or rent based on "market rate"  
14 for the options provided. Countercl. ¶ 49.

15 d. The Court should declare that (1) Tenant's insistence upon renegotiation  
16 of a reduced rent based on market rate contrary to the express language of the 2007 Lease  
17 Assignment and Modification; (2) failure to negotiate in good faith; and (3) failure to  
18 satisfy the conditional nature of the option renders Tenant a month-to-month holdover  
19 tenant. Countercl. ¶ 50-53.

20 e. The Court should declare that Tenant's authorized agent and attorney,  
21 Lesley Miller, Esq., exercised the option, and that the exercise of the option was  
22 confirmed and ratified in all respects, including the payment of rental increases which  
23 Tenant made voluntarily and without protest. Countercl. ¶ 54.

24 f. The Court should declare that there is no further need to negotiate the base  
25 monthly rent and that Tenant is required to pay the sum of base rent as agreed by  
26 Tenant's agent and attorney, with annual increases of \$210 per month. Countercl. ¶ 55.

1           23.    The Court issued relevant findings and conclusions as follows:

2           a.       The 1996 Option Agreement provided two options that entitled the Tenant  
3 to renew the lease on September 1, 2001 and September 1, 2006, respectively, “at a  
4 market rental rate and terms as agreed by Landlord and Tenant.” Findings of Fact and  
5 Conclusions of Law at ¶¶ 18–19.

6           b.       During negotiations leading up to the 2007 Lease Modification, Tenant  
7 attempted to add a “fair market value” term to the rental rate in the Lease, which was  
8 rejected by Landlord. *Id.* ¶ 26.

9           c.       The 2007 Lease modification was entered into after the exercise of all  
10 prior options by Tenant’s predecessors-in-interest. *Id.* ¶¶ 31, 73.

11          d.       Tenant timely exercised the option in 2016, for which all terms and  
12 conditions were in place except for the rental rate. *Id.* ¶¶ 74–75.

13          e.       The parties reached an agreement on the rent amounts for the option term  
14 beginning September 1, 2016, and Tenant acted consistent with that agreement by paying  
15 the full amount of rent without protest or dispute. *Id.* ¶¶ 49–50.

16          f.       The evidence and the terms of the 2007 Lease Modification do not support  
17 Tenant’s position that the contract permits a lower “fair market value” rent to be  
18 established, when it states that rent for the option period would be “under terms and  
19 conditions, including but not limited to rental increases to be negotiated.” *Id.* ¶¶ 86, 88.

20          g.       \$8,400 per month, the amount that was agreed to between the parties, is  
21 not an unreasonable amount of rent for the option period, as this comports with the terms  
22 of the option exercised by Tenant, as well as the understanding of the parties that rent  
23 would increase during the option periods, and reflects the schedule Tenant’s attorney  
24 proposed and Defendant accepted. *Id.* ¶¶ 60, 89.

25          h.       Substantial evidence was submitted establishing beyond a preponderance  
26 of the evidence that, based on the contractual language negotiated and agreed to by the  
27 parties as part of the 2007 Lease Modification, as well as the subsequent negotiations and  
28

1 conduct of the parties, the appropriate rent applicable to the option period cannot be  
2 based on market rental rate or fair market value. *Id.* ¶ 105.

3 i. Tenant's failure to pay the agreed-upon amount of rent from August 2019  
4 through November 2019 constituted a breach of Tenant's obligations under the Lease and  
5 the Counterdefendants' obligations under the guaranties.

6 24. Based on these findings and conclusions, the Court entered judgment in favor of  
7 Tenant and against Landlord on Tenant's claim for declaratory judgment, establishing a  
8 reasonable rent schedule matching the amount proposed by Tenant's attorney, beginning at  
9 \$8,400 per month for the first two years and increasing by \$210 per month every year thereafter.  
10 *Id.* at 17:26–18:6.

11 25. The Court further entered judgment in favor of the counterdefendants and against  
12 Landlord on all counterclaims other than Defendant's claim for breach of Lease, including  
13 Landlord's claim for declaratory relief.

### 14 **III. LEGAL ARGUMENT**

15 The Court should alter or amend the judgment as to (1) the damages awarded for  
16 Tenant's breach of implied covenant claim; (2) the amount of unpaid rent due to Landlord under  
17 its breach of lease claim; and (3) correctly identify Landlord as the prevailing party on both  
18 parties' declaratory relief claims.

#### 19 **A. DAMAGES FOR TENANT'S CAMS CLAIM.**

20 First, the judgment should be amended with regard to the amount of damages awarded to  
21 Tenant on its claim for breach of the implied covenant of good faith and fair dealing. The  
22 Court's award of Tenant's attorneys' fees incurred in pursuing the CAMs issue is unsupported by  
23 Nevada law, as an award of attorneys' fees as special damages must be pleaded and proven by  
24 competent evidence at trial, and the Tenant failed to disclose or present any evidence of  
25 attorneys' fees in the case.

1. **Tenant cannot recover attorneys' fees that were not proven as special damages at trial.**

Nevada generally adheres to the "American Rule" that attorneys' fees may only be awarded when authorized by statute, rule, or agreement. *See, e.g. Pardee Homes of Nev. v. Wolfram*, 135 Nev. Adv. Op. 22, 444 P.3d 423, 426 (2019). Some exceptions to this general rule have been recognized, including an exception allowing for attorneys' fees as special damages which are allowed in a few select types of cases. *See Sandy Valley Assocs' v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 960, 35 P.3d 964, 971 (2001).

In *Sandy Valley*, the Nevada Supreme Court considered an award of attorneys' fees as special damages in an action involving title to real property where those fees were not requested until after trial. *Id.* at 958–60, 35 P.3d at 970–71. The Court held that the district court erred in considering attorney fees as special damages because the issue was neither pleaded nor proven by competent evidence at trial, specifically stating that litigants cannot obtain attorney fees as special damages without complying with NRCP 9(g) and proving by competent evidence attorneys' fees "just as any other element of damages." *See id.* at 959–60, 35 P.3d at 971. Following the *Sandy Valley* decision, the Nevada Supreme Court has consistently re-affirmed that attorneys' fees cannot be awarded as special damages absent proof at trial by competent evidence:

*Sandy Valley's* comment that attorney fees as special damages are "foreseeable damages arising from tortious conduct or a breach of contract," and a "natural and proximate consequence of ... injurious conduct" did not expand the scope of the scenarios that warrant attorney fees as special damages. *Sandy Valley's* holding embraced the general concept that attorney fees as special damages, as with any other item of damages, must be pleaded and proven by competent evidence. Therefore, to the extent *Sandy Valley* has been read to broadly allow attorney fees as special damages whenever the fees were a reasonably foreseeable consequence of injurious conduct, we disavow such a reading.

*Pardee Homes*, 444 P.3d at 426 (citations omitted).

The *Sandy Valley* Court provided three scenarios in which attorneys' fees as special damages may be appropriate: (1) "cases when a plaintiff becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant." *Sandy Valley* at 957, 35 P.3d at 970; (2) "cases in which a party incurred the fees in recovering real or personal

1 property acquired through the wrongful conduct of the defendant or in clarifying or removing a  
2 cloud upon the title to property.” *Id.*, and (3) injunctive or declaratory relief actions compelled  
3 “by the opposing party’s bad faith conduct.” *Id.* at 958, 35 P.3d at 970.

4 In *Pardee Homes*, the Nevada Supreme Court reversed the district court’s award of  
5 attorneys’ fees as special damages under a two-party breach of contract claim. *Id.* In reaching  
6 this conclusion, the Court noted that *Sandy Valley* “does not support an award of attorney fees as  
7 special damages where a plaintiff merely seeks to recover fees incurred for prosecuting a breach-  
8 of-contract action against a breaching defendant.” *Pardee Homes*, 444 P.3d at 426.

9 Here, Tenant did not plead attorneys’ fees as special damages. Further, Tenant failed to  
10 disclose any evidence of attorneys’ fees prior to trial, and failed to elicit any testimony or  
11 documentary evidence that established any facts of attorneys’ fees incurred by the Tenant at any  
12 time. As a result of the lack of any such evidence being presented, the Court’s findings of fact  
13 contain no mention of the amount of attorney’s fees Tenant proved at trial. As such, Tenant is  
14 precluded from recovering attorneys’ fees as special damages for any of its claims.

15 An award of damages will only be overturned if the award is “clearly wrong,” meaning it  
16 is unsupported by evidence presented at trial. *See, e.g. Road & Highway Builders v. N. Nev.*  
17 *Rebar*, 128 Nev. 384, 391, 284 P.3d 377, 381 (2012). Here, the Court’s award of damages “in  
18 the amount of the attorney’s fees and costs related to the CAM expense portion of the litigation  
19 only” is impermissible because no evidence was presented at trial to establish these damages. As  
20 such, the judgment must be amended to cure this legal defect.

21  
22 **2. Tenant’s damages for its breach of implied covenant claim are limited  
to damages it could recover in a breach of contract claim.**

23 The proper amount of damages that should be awarded to Tenant for its contractual  
24 breach of implied covenant claim is limited to contract damages—the amount which Tenant  
25 could recover on a breach of contract claim. In *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*,  
26 the seminal case on breach of implied covenant claims, the Nevada Supreme Court held that such  
27 a claim “give[s] rise to an award of contract damages.” *Hilton Hotels*, 107 Nev. 226, 232–33,  
28

1 808 P.2d 454). The *Hilton Hotels* decision further enunciated the significant difference between  
2 an action founded in tort or contract in good faith covenant cases, where “the tort action requires  
3 a special element of reliance or fiduciary duty as was present in, for example, *United States*  
4 *Fidelity v. Peterson*, 91 Nev. 617, 540 P.2d 1070 (1975), and *K Mart v. Ponsock*, 103 Nev. 39,  
5 732 P.2d 1364 (1987).” *Id.* at 232–33, 808 P.2d 919, 923 (1991). The cases cited by *Hilton*  
6 *Hotels* concern an action by an insured against its his insurer based on bad-faith refusal to  
7 compensate a loss, and an action by an employee against her employer alleging bad-faith  
8 discharge to avoid paying retirement benefits.

9 Thus, when a breach of implied covenant claim does not involve a contract with such a  
10 “special element of reliance or fiduciary duty,” only contract damages are recoverable. *Id.*; *see*  
11 *also Morris v. Bank of Am. Nevada*, 110 Nev. 1274, 1279, 886 P.2d 454, 458 (1994). Contract  
12 damages are those “awarded to make the aggrieved party whole and ... place the plaintiff in the  
13 position he would have been in had the contract not been breached.” *Hornwood v. Smith’s Food*  
14 *King No. 1*, 107 Nev. 80, 84, 807 P.2d 208, 211 (1991).

15 Here, Tenant’s recovery for its claim for breach of implied covenant claim is limited to  
16 the amount of damages Tenant could recover under its breach of contract claim, as both claims  
17 are limited to contract damages, and are based on the same contract and the same alleged  
18 conduct by Landlord. As stated above, contract damages are limited to compensatory damages,  
19 and do not include attorneys’ fees unless pleaded and proven by competent evidence as special  
20 damages, which did not occur here. Moreover, the Court has already considered the amount of  
21 damages Tenant may recover on its breach of contract claim, as the Court awarded a total of  
22 \$4,578 on Tenant’s second claim for relief for breach of contract. *See* FFCL at 18:7–9.

23 Furthermore, the Nevada Supreme Court has repeatedly affirmed that a party may not  
24 receive a double recovery: “a plaintiff can recover only once for a single injury even if the  
25 plaintiff asserts multiple legal theories.” *Elyousef v. O’Reilly & Ferrario, LLC*, 126 Nev. 441,  
26 444, 245 P.3d 547, 549 (2010). As such, the Court cannot award Tenant any additional damages  
27 for its breach of implied covenant claim beyond what the Tenant has already been awarded on its  
28

1 breach of contract claim. Thus, the judgment must be amended to reduce the damages awarded  
2 to Tenant for this claim to either zero dollars, or simply nominal damages. *See, e.g. Commercial*  
3 *Cabinet Co., Inc. v. Mort Wallin of Lake Tahoe, Inc.*, 103 Nev. 238, 240, 737 P.2d 515, 517  
4 (1987) (“a money damage award must be supported by substantial evidence to be sustained  
5 because the law does not permit arriving at a figure by conjecture. A plaintiff who proves a right  
6 to damages without proving the amount as well is only entitled to nominal damages.”).

7 **3. Tenant is not a prevailing party**

8 Finally, while the judgment appears to award attorneys’ fees to Tenant as a form of  
9 special damages, it bears noting that the only other explanation for awarding attorneys’ fees—as  
10 to a prevailing party—is inapplicable here. As is more thoroughly addressed in Landlord’s  
11 concurrently-filed motion for attorneys’ fees, Tenant is not a prevailing party here, and thus no  
12 circumstances would apply in which Tenant would be entitled to recover attorneys’ fees.

13 To be a prevailing party, a party must “succeed[] on any significant issue in litigation  
14 which achieves some of the benefit it sought in bringing suit.” *Valley Electric Ass’n v.*  
15 *Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Further, the judgment awarded to the  
16 prevailing party must be monetary in nature. *Id.* In cases where both sides are awarded  
17 monetary judgments, the district court should offset all awards and then determine which party  
18 prevailed. *Parodi v. Budetti*, 115 Nev. 236, 241, 984 P.2d 172, 175 (1999). Finally, the district  
19 court’s offset calculation should be used to determine whether the “total net damages” exceed the  
20 \$20,000 threshold for permissive attorneys’ fees under NRS 18.010(2)(a).

21 Here, both Landlord and Tenant were awarded monetary judgments; Tenant was awarded  
22 \$4,578 for its breach of contract claim, and Landlord was awarded \$13,000<sup>3</sup> for its breach of  
23 contract claim. As Tenant is entitled to only nominal damages on its breach of implied covenant  
24 claim, for the reasons stated above, the offset “net damages” result in Landlord’s favor. Thus,

25  
26  
27 <sup>3</sup> As discussed below, this amount appears to be based on a calculation error and should be increased to  
28 \$16,780, but the error does not impact the analysis of which party prevailed.

1 Tenant cannot be a prevailing party, and the Court cannot award Tenant attorneys' fees for any  
2 reason other than as special damages.

3 As explained in detail above, attorneys' fees cannot be awarded as special damages for  
4 Tenant's breach of implied covenant claim because Tenant did not set forth any evidence—much  
5 less prove by competent evidence—of attorneys' fees incurred. As such, Tenant is limited to  
6 recover contract damages for this claim. Finally, because the double-recovery doctrine precludes  
7 Tenant from recovering the same amount the Court has already awarded as contract damages in  
8 Tenant's breach of contract claim, the judgment must be amended to reduce the damages for the  
9 breach of implied covenant claim to zero or nominal damages.

10 **B. DAMAGES FOR LANDLORD'S BREACH OF LEASE CLAIM.**

11 Second, the judgment must be altered or amended to correct an apparent calculation error  
12 as to the amount of underpaid rent, which is necessary to determine the correct amount of  
13 Landlord's damages for its breach of contract claim.

14 As reflected in the Court's Findings of Fact and Conclusions of Law, the option period is  
15 subject to the schedule of rents agreed to by the parties, as follows:

16 9/1/16 to 8/31/17 - \$8,400 per month, \$100,500 per annum  
17 9/1/17 to 8/31/18 - \$8,400 per month, \$100,500 per annum  
18 9/1/18 to 8/31/19 - \$8,610 per month, \$103,320 per annum  
19 9/1/19 to 8/31/20 - \$8,820 per month, \$105,840 per annum  
20 9/1/20 to 8/31/21 - \$9,030 per month, \$108,360 per annum

21 Findings of Fact and Conclusions of Law, at ¶ 89, 91.

22 Further, the Court's Findings of Fact included that Tenant paid the following amounts:  
23 (1) \$8,400 through July 2019; and (2) \$5,150 from August 2019 through November 2019. *Id.* ¶¶  
24 47, 54, 91, 92 n.6. Putting the amount of rent required and the amount of rent paid side-by-side  
25 illustrates that the sum of Tenant's underpayments under this rent schedule is **\$16,780**:

26 ///

27 ///

28 ///

Year	Date	Rent Required	Rent Paid	Underpayment
1	9/2016–8/2017	\$8,400	\$8,400	\$0
2	9/2017–8/2018	\$8,400	\$8,400	\$0
3	9/2018–7/2019	\$8,610	\$8,400	(210 x 11 months) = \$2,310
3	8/2019	\$8,610	\$5,150	(3,460 x 1 month) = \$3,460
4	9/2019–11/2019	\$8,820	\$5,150	(3,670 x 3 months) = \$11,010
				<b>TOTAL: \$16,780</b>

Based on this correct calculation, the judgment should be amended to increase the damages awarded to Landlord for its breach of contract cause of action to \$16,780.

**C. DECLARATORY RELIEF ACTIONS.**

Third, the Court's findings and conclusions do not support judgment in Tenant's favor on both Tenant's declaratory relief claim and Landlord's declaratory relief claim. Based on the Court's findings, nearly all of Landlord's requested declarations were in fact declared, and almost none of Tenant's requested declarations were in fact declared. Thus, the judgment should be amended to state that judgment is entered in Landlord's favor on both declaratory relief claims, or at the very least, that judgment is entered in favor of both parties on their respective declaratory relief claims.

**1. Tenant's Declaratory Relief Claim.**

Tenant's Declaratory Relief Cause of Action sought to have the Court (1) declare that Landlord acted unreasonably in unilaterally setting the amount of rent; (2) declare that the parties agreed to reasonable / market rent; (3) declare the amount of reasonable / market rent for the premises based on market conditions; (4) declare that Tenant possessed option rights that it exercised with all terms settled; (5) declare the amount of rent that should be paid and/or deposited with the Court while the case is pending; and (6) fix the amount of monthly rent for the five-year option period because the option clause is capable of enforcement. Compl. ¶¶70–77.

1 Of these six request declarations, the Court's findings and conclusions reflect agreement  
2 only with the final topic—setting the amount of rent for the option period. Apart from this, the  
3 Court's findings and conclusions contradict the other five requested declarations: (1) the Court  
4 found that the Landlord did not unilaterally set the rent because the rent was based on Tenant's  
5 attorney's offer; (2) the Court found that the parties did not agree to "reasonable/market rent,"  
6 and that such a term was contrary to the 2007 Lease Modification's terms and the expectations of  
7 the parties; (3) the Court set rent for the premises, but did so based on the parties' agreement  
8 rather than based on market conditions; (4) the Court found that the Tenant exercised option  
9 rights, but that the rent term was not settled; and (5) the Court declined to declare any amount  
10 requiring to be deposited while the case was pending. As such, the Court's findings and  
11 conclusions rule against Tenant on five of the six topics Tenant sought.

12 Moreover, the one issue in which Tenant could be viewed as prevailing—seeking a  
13 declaration of the rent for the premises for the option period—was also sought by Landlord, who  
14 asserted a counterclaim seeking a declaration "that there is no further need to negotiate the base  
15 monthly rent as claimed by [Tenant], and that for the first option period, [Tenant] is required to  
16 pay the sum of base rental as agreed by [Tenant]'s agent and attorney, with annual monthly  
17 increases in the amount of \$210.00 per month." Countercl. ¶ 55. In other words, both parties  
18 sought a declaration of what rent should apply to the option period, with the one difference being  
19 that Tenant asserted that the rent should be ascertained based on market conditions, and Landlord  
20 asserted that it should be ascertained based on the agreement of the parties. The Court did in fact  
21 set rent for the option period based on the agreement of the parties. As such, if the Court's  
22 decision could be viewed as granting Tenant's requested declaration in any way, it can only be  
23 construed as granting Landlord's requested declaration as well.

24 The judgment should therefore be amended to rule in Landlord's favor on Tenant's  
25 declaratory relief claim, as Tenant did not receive the vast majority of the declarations this claim  
26 for relief sought, and the only declaration which the Court did grant was granted in the fashion  
27 that Landlord requested.

2. **Landlord's Declaratory Relief Counterclaim.**

Similarly, the judgment should be amended to be in Landlord's favor on Landlord's own declaratory relief counterclaim. Landlord's counterclaim asserted a claim for declaratory relief which sought declarations on the following topics: (1) that Tenant's authorized agent and attorney exercised the option, and that the exercise of the option was ratified in all respects including voluntary payment of rental increases by Tenant; (2) that there is no further need to negotiate the base monthly rent due to the agreement reached; (3) that the 1996 Option Agreement extended only to the two option periods offered in 2001 and 2006 and that the "market rent" term did not extend beyond those two option periods; (4) that the three options provided by the 2007 Lease Modification were subject to negotiations of rental increases; (5) that the 2007 Lease Modification did not contemplate decreases in base rent, nor rent based on "market rate;" and (6) that, in the alternative, Tenant failed to comply with the conditions necessary for exercise of the option, resulting in Tenant being a month-to-month holdover tenant. Countercl. ¶¶ 47-55.

As noted above, the Court's findings and conclusions repeatedly coincide with Landlord's requested declarations. The Court found an agreement was reached as to rent, and that no further negotiation was necessary based on that agreement. Findings of Fact and Conclusions of Law ¶¶ 49-50, 60, 89, 105. The Court found that both options provided in the 1997 Option Agreement were exercised, and that the "market rent" term did not apply to the future options, which instead were subject only to rental increases. *Id.* ¶¶ 18-19, 26, 31, 60, 73-75, 86, 88-89, 105. These findings and conclusions provide the declarations that Landlord sought, with the sole exception of the alternative claim for Tenant to be declared a holdover tenant due to the lack of an enforceable option. All things considered, Landlord prevailed in receiving judicial declarations on five of the six topics requested. As such, the judgment in Tenant's favor on Landlord's declaratory relief counterclaim is clearly erroneous, and must be amended.

The judgment entered in this case, while largely arriving at the correct outcome, contains three significant errors that must be corrected. First, Nevada law generally precludes an award of attorneys' fees as special damages in a contractual breach of implied covenant claim, and even when those fees are recoverable, such damages must be pleaded and proven by competent evidence at trial. Because Tenant failed to present any evidence of attorneys' fees it incurred, the Court's award of attorneys' fees as special damages is impermissible. Moreover, as the judgment awards Tenant the full extent of contract damages as a result of its breach of contract claim, the judgment must be amended to award zero dollars, or only nominal damages for the breach of implied covenant claim. Second, the judgment contains a math error in calculating that amount of underpaid rent, and as a result awards an amount of damages on Landlord's breach of contract claim that is contrary to the evidence, and the judgment must be amended to award the correct amount according to the Court's findings and conclusions. Finally, in light of the Court's findings and conclusions nearly universally adopting Landlord's theory of the case and the factual declarations which Landlord sought, the judgment should be amended to reflect judgment in Landlord's favor on Tenant's declaratory relief claims, as well as Landlord's declaratory relief counterclaims. In the alternative, because the judgment may be construed as granting one of Tenant's requested declarations (albeit in Landlord's favor), the judgment should, at least, be altered to reflect judgment in Landlord's favor on Landlord's declaratory relief claim, even if judgment is entered in Tenant's favor on Tenant's declaratory relief claim.

Dated this 27th day of December, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore  
Terry A. Moore, Esq.  
Nevada Bar No. 7831  
Collin M. Jayne, Esq.  
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10001 Park Run Drive  
Las Vegas, Nevada 89145  
*Attorneys for*  
*Defendant/Counterclaimant*  
*Tropicana Investments, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **DEFENDANT/COUNTERCLAIMANT**  
**TROPICANA INVESTMENTS, LLC'S MOTION TO ALTER OR AMEND JUDGMENT**  
was submitted electronically for filing and/or service with the Eighth Judicial District Court on  
the 27th day of December, 2019. Electronic service of the foregoing document shall be made in  
accordance with the E-Service List as follows:<sup>4</sup>

Mario Lovato                      mpl@lovatolaw.com

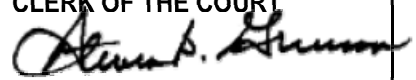
I further certify that I served a copy of this document by mailing a true and correct copy  
thereof, postage prepaid, addressed to:

N/A

/s/ Cally Hatfield  
an employee of Marquis Aurbach Coffing

<sup>4</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System  
consents to electronic service in accordance with NRCP 5(b)(2)(D).

# Exhibit D



MARIO P. LOVATO, ESQ.  
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Attorney for Plaintiff / Counterdefendant  
JSJBD Corp dba Blue Dogs Pub and  
the individual Counterdefendants

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

AND COUNTERCLAIMS.

Case No.: A-18-785311-B

BUSINESS COURT

**NOTICE OF ENTRY OF ORDER**

TAKE NOTICE that an Order was entered by the Court in the above-referenced case on  
July 24, 2019, a copy of which is attached.

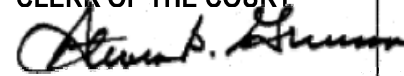
LOVATO LAW FIRM, P.C.

/s/ Mario Lovato

MARIO P. LOVATO  
Nevada Bar No. 7427  
Attorney for Plaintiff / Counterdefendant  
JSJBD Corp dba Blue Dogs Pub

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

AND COUNTERCLAIMS.

Case No.: A-18-785311-B

BUSINESS COURT

**ORDER**

On July 8, 2019, on the 9:00 a.m. hearing calendar, a hearing took place for: (1) Defendant / Counterclaimant Tropicana Investments, LLC's Motion for Partial Summary Judgment; and (2) Plaintiff / Counterdefendant JSJBD Corp dba Blue Dogs Pub's Countermotion for Partial Summary Adjudication, the parties having filed opposition and reply briefs in regard to such Motion and Countermotion, the parties appearing through their respective counsel, and client-representatives Jeffrey Vincent, Stuart Vincent and Bruce Eisman also appearing in person, the Court having reviewed the Motion, Countermotion, and opposition and reply briefs thereto, the Court having heard the arguments of counsel, and for good cause,

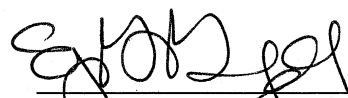
1 THE COURT HEREBY FINDS that Plaintiff / Counterdefendant JSJBD Corp has an  
2 enforceable option to renew / extend the Lease for the current option period of September 1, 2016  
3 to August 31, 2021, that the parties have not been able to agree on an amount for the rent for such  
4 option period, and that per Nevada case law cited in JSJBD Corp.'s briefing, the Court can  
5 determine a reasonable rental rate via an evidentiary hearing, i.e. at the trial currently set for  
6 November 18, 2019 at 1:30 p.m. per the Business Court Scheduling Order already entered by the  
7 Court herein.  
8

9 IT IS HEREBY ORDERED, ADJUDGED, DECREED that:

10 1. Defendant Tropicana Investments, LLC's Motion for Partial Summary Judgment is  
11 DENIED; and

12 2. Plaintiff / Counterdefendant's JSJBD Corp's Countermotion for Partial Summary  
13 Adjudication is GRANTED such that the Court determines that JSJBD Corp has an enforceable  
14 option to renew / extend for the current option period of September 1, 2016 to August 31, 2021  
15 *whether it has been properly exercised and if so*  
16 and that the Court will determine the reasonable rental rate for such option period subject to the  
17 proof, etc. presented by the parties at trial.

18 DATED: July 23<sup>rd</sup>, 2019.

19   
20 DISTRICT COURT JUDGE  
21 *W. interlunet*

21 Submitted by:

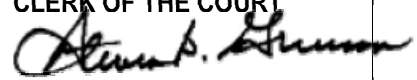
22 LOVATO LAW FIRM, P.C.

23   
24 MARIO P. LOVATO

25 Nevada Bar No. 7427

26 Attorney for Plaintiff / Counterdefendant  
27 JSJBD Corp dba Blue Dogs Pub and  
28 the individual Counterdefendants

# Exhibit E

**Marquis Aurbach Coffing**

Terry A. Moore, Esq.

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Attorneys for Tropicana Investments, LLC

**DISTRICT COURT****CLARK COUNTY, NEVADA**JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept. No.: XI

**NOTICE OF ENTRY OF FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation; STUART VINCENT, an individual;  
JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

**NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Please take notice that Findings of Fact and Conclusions of Law was entered in the above-captioned matter on the 5th day of December, 2019, a copy of which is attached hereto.

Dated this 27th day of December, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore  
Terry A. Moore, Esq.  
Nevada Bar No. 7831  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorney for Tropicana Investments, LLC

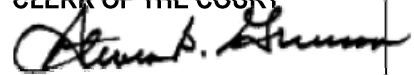
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 27th day of December, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield  
an employee of Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept.: XI

AND RELATED CLAIMS

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

52

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez beginning on November 18, 2019, and continuing day to day, until its completion on November 22, 2019; Mario Lovato, Esq. appeared on behalf of Plaintiff/Counterdefendants ("Plaintiff") and Terry A. Moore, Esq. and Collin Jayne, Esq. appeared on behalf of Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant"); the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility;<sup>1</sup> having considered the oral and written arguments of counsel, and with the intent of

<sup>1</sup> The Court previously entered orders binding the Plaintiff to the answers and testimony given during deposition by its NRCP 30(b)(6) representative and ordering that with respect to any "I don't know" or similar answers related to topics for which the NRCP 30(b)(6) witness testified. The Court also ruled that with respect to communications made by prior counsel, those communications were authorized to be sent by Plaintiff and the Plaintiff is bound by the representations made in those communications.

1 rendering a decision on all remaining claims<sup>2</sup> before the Court,<sup>3</sup> pursuant to NRCP 52(a) and 58;  
2 the Court makes the following findings of fact and conclusions of law:

3 FINDINGS OF FACT

4 1. Plaintiff JSJBD Corp ("JSJBD") is a Nevada corporation doing business in Clark  
5 County, Nevada.

6 2. Defendant Tropicana Investments, LLC ("Tropicana Investments") is a California  
7 limited liability company doing business in Clark County, Nevada.

8 3. JSJBD was formed on March 8, 2007.

9 4. JSJBD was formerly named JSJ, LLC that filed Articles of Conversion under NRS  
10 92A.205 with the Nevada Secretary of State on March 6, 2014, which changed the name of the  
11 entity and converted it to a corporation.

12 5. Tropicana Investments owns the commercial shopping center commonly referred  
13 to as Tropicana Plaza located at 3430 East Tropicana Avenue, Las Vegas, Nevada, 89121.

14 6. JSJBD does business as Blue Dog's Pub, and owns and operates a tavern in Suites  
15 27, 28, and 29 comprising a space of approximately 4,200 square feet ("Subject Premises") in  
16 Tropicana Plaza.

17 7. On or about July 9, 1996, Walter L. Schwartz ("Schwartz"), as lessor, and Mark S.  
18 Van Aken ("Van Aken"), as tenant, entered into a written Lease ("Lease") for the Subject  
19 Premises.

20  
21  
22  
23  
24 <sup>2</sup> Plaintiff's Complaint asserts three causes of action: (1) declaratory relief, (2) breach of  
25 contract, and (3) breach of implied covenant of good faith and fair dealing. Defendant's  
26 Counterclaim asserts four causes of action: (1) declaratory judgment, (2) breach of lease  
27 agreement, (3) breach of the implied covenant of good faith and fair dealing, and (4) execution  
28 and issuance of writ of restitution.

<sup>3</sup> Plaintiff voluntarily abandoned its claim of damages from repair and maintenance issues.

1           8.     Tropicana Investments is the successor-in-interest and current landlord under the  
2 Lease entered into on July 9, 1996, and various Amendments/Addenda, for the Subject Premises.

3           9.     Plaintiff is the successor-in-interest and current tenant under the Lease, and  
4 various Amendments/Addenda for the Subject Premises.

5           10.    The Lease provided for a tenancy lasting for a term of five years and five months,  
6 commencing April 1, 1996, and terminating on August 31, 2001.

7           11.    During the initial term of the Lease, from April 1, 1996 to August 31, 2001, the  
8 minimum monthly rent began at \$3,150 per month, and this monthly rent increased by \$210 at the  
9 beginning of every year of the five-year and five month term.

10          12.    The 1996 Lease referenced \$500 per month in "estimated" common area  
11 maintenance ("CAM") charges, which were subject to the quarterly accounting of actual CAM  
12 costs.  
13

14          13.    The CAM costs are defined in the Lease:  
15

16           to include but not limited to all upgrading, general maintenance and repairs, resurfacing,  
17 rubbish removal, painting, restripping, cleaning, sweeping and janitorial services, personnel  
18 to implement such services including property management fees for the entire parcel and  
19 to police the automobile parking and common areas: real and personal property taxes and  
20 assessment thereon, Water.

21           Insurance, including but not limited to General Liability and Property Damages, Fire  
22 Hazard on Demised Premises, Building.

23           Common Areas and Parking Lot. A reasonable allowance to Landlord for Landlord's  
24 administrative expenses of said automobile parking and common areas no to excess in any  
25 calendar year fifteen percent of the total of the aforementioned expenses for said calendar  
26 year.

27           (various errors in original).

28          14.    Under Paragraph 7 of the Lease, Landlord is obligated to keep "common areas in a  
neat, clean, and orderly condition, properly lighted and landscaped, and shall improve and repair  
any damage to the facilities. The Lease further states: "[A]ll expenses in connection with said

1 automobile parking and common areas shall be charged and prorated in the manner herein after  
2 [sic] set forth.”

3 15. Under paragraph 9 of the Lease, Roof expenses are carved-out and made the sole  
4 obligation of the Landlord. The Lease states: “**Landlord shall at his sole cost and expense, keep**  
5 **and maintain in good repair**, (excluding painting) of extension walls and **roof repairs . . .**”  
6 (emphasis added).  
7

8 16. Section 24 of the Lease contains an attorney’s fees provision.<sup>4</sup>

9 17. The Lease did not include any options to extend the term of the Lease. A separate  
10 Option Agreement was executed by the original landlord and tenant (“1996 Option Agreement”).  
11

12 18. The 1996 Option Agreement provided two (2) five-year options if the tenant was  
13 in full compliance with the terms of the Lease. The first option provided that the tenant would be  
14 entitled to renew the Lease for a five-year period commencing on September 1, 2001. The  
15 second option provided that the tenant would be entitled to renew the Lease for a second five-year  
16 period commencing on September 1, 2006.

17 19. The options provided by the 1996 Option Agreement were to be “at a market  
18 rental rate and terms as agreed by Landlord and Tenant.”  
19

20 20. On April 16, 2001, Van Aken exercised the first option under the 1996 Option  
21 Agreement. As a result of the exercise of that Option, an Amendment to Retail Building Lease  
22 Dated July 9, 1996 (“2001 Amendment”) was executed. The 2001 Amendment extended the  
23 Lease term for five (5) years, from September 1, 2001 through August 31, 2006. During the  
24 extended term, the parties agreed that the base rent would begin at \$5,670 per month, and that this  
25

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26 <sup>4</sup> That section states:

27 In the event the Landlord finds it necessary to retain an attorney in connection with the  
28 default by the Tenant in any of the agreements or covenants contained in this Lease,  
Tenant shall pay reasonable attorney’s fees to said attorney.

1 monthly rent would increase by \$210 at the beginning of every year, ending at \$6,510 per month  
2 for the final year.

3 21. Paragraph 4 of the 2001 Amendment changed the documentation and accounting  
4 for CAM expenses from quarterly to annual.

5 22. On March 7, 2006, Van Aken exercised the second option under the 1996 Option  
6 Agreement. The Addendum to Retail Building Lease Dated July 9, 1996 ("2006 Addendum")  
7 extended the tenancy for a term of five (5) years, from September 1, 2006 through August 31,  
8 2011. During the extended term, it was agreed that the base rent would begin at \$6,720 per  
9 month for the 2006–2007 year, and that this monthly rent would increase by \$210 at the  
10 beginning of every year, ending at \$7,560 per month for the final year.

11 23. The 2006 Addendum gave Van Aken an option to extend the Lease term for "one  
12 (1) final extension term of five (5) years," to begin on September 1, 2011, and provided that such  
13 extension term would be "under terms and conditions to be negotiated."

14 24. In approximately 2007, Van Aken, sold the assets of his bar located in the Subject  
15 Premises to JSJ, LLC.

16 25. Defendant, Van Aken, as assignor, and Plaintiff as assignee, entered into a Lease  
17 Assignment and Modification agreement executed by all parties in June 2007 ("2007 Lease  
18 Modification").

19 26. As part of the negotiations leading up to the 2007 Lease Modification, JSJ, LLC  
20 attempted to add a term of "fair market value" for the rental rate in the Lease. The addition of  
21 this term was rejected by Defendant.

22 27. After the Defendant rejected "fair market value" as a term, Plaintiff signed the  
23 2007 Lease Modification with the wording requiring "rental increases."

1           28.     The 2007 Lease Modification stated that it is the desire of all parties to allow Van  
2 Aken to assign the Lease, the 2001 Amendment, and 2006 Addendum to the Assignee, Plaintiff,  
3 under terms and conditions as set forth in the 2007 Lease Modification.

4           29.     The 2007 Lease Modification provided a new provision conditionally granting the  
5 Plaintiff three additional options to extend the Lease by five years at a time:  
6

7                     ...Landlord agrees to conditionally grant Assignee, J.S.J., LLC,  
8 three (3) additional five (5) year options to renew the term of the  
9 Lease under terms and conditions, including but not limited to  
10 rental increases, to be negotiated. The conditional options shall  
commence after August 31, 2016, provided Assignee has timely  
complied with all terms and conditions of the Lease.

11           30.     The 2007 Lease Modification regarding the three five-year options does not  
12 include the term "fair market value."  
13

14           31.     The 2007 Lease Modification was entered into after the exercise of all prior  
15 options by Plaintiff's predecessor in interest.

16           32.     The 2007 Lease Modification changed the "estimated" CAM charge to \$1,176 per  
17 month, but did not otherwise alter or change the accounting obligation of Defendant and/or the  
18 other obligations of Defendant to properly charge for actual CAM expenses under the Lease.

19           33.     The 2007 Lease Modification provided that Van Aken would pay Defendant ten  
20 percent (10%) of the total sales price of the business as consideration for the Defendant offering  
21 Plaintiff the three additional five-year options.  
22

23           34.     Concurrently with the execution of the 2007 Lease Modification, the three  
24 managers of JSJ, LLC—Jeffrey Vincent, Stuart Vincent, and Jeff White—each executed a  
25 personal guaranty of JSJ, LLC's obligations under the Lease.  
26  
27  
28

1           35.     On or about February 22, 2011, Defendant and Plaintiff entered into a written  
2 Addendum II to Retail Building Lease ("2011 Addendum") which gave effect to the option<sup>5</sup>  
3 exercised by Plaintiff and set forth the amount of rent that was agreed upon for the term.

4           36.     The 2011 Addendum extended the term of the Lease from September 1, 2011 to  
5 August 31, 2016.  
6

7           37.     In the 2011 Addendum, Defendant and Plaintiff agreed that the monthly rent for  
8 the first two years of the first option term (September 2011 through August 2012, and September  
9 2012 through August 2013) would remain at the same rate as was paid the prior year (September  
10 2010 through August 2011), and that the regular annual increases of monthly rent by \$210 would  
11 resume thereafter at the beginning of each of the remaining three (3) years of the option (from  
12 September 1, 2013, through August 31, 2016). Monthly rent remained at \$7,560 through August  
13 31, 2013; increased by \$210 on September 1, 2013, to \$7,770; increased by \$210 on September 1,  
14 2014 to \$7,980; and increased by \$210 on September 1, 2015 to \$8,190.  
15

16           38.     On February 26, 2016, Plaintiff notified Defendant that it was exercising its option  
17 available under the 2007 Lease Modification, to commence on September 1, 2016.

18           39.     During the negotiations on the terms of the modification to implement the option,  
19 Plaintiff requested a \$2,500 reduction in monthly rent - a 30% reduction in the rental rate.  
20

21           40.     Defendant did not accept this request.

22           41.     Defendant informed Plaintiff that, instead of exercising another addenda or  
23 amendment as the parties had done in the past to effectuate the exercise of options, Defendant  
24 preferred to execute an entirely new form of Lease to replace the outdated form of lease.  
25

---

26  
27 <sup>5</sup>     This option was the first of the three 5-year options granted under the 2007 Lease  
28 Modification.

1           42.     On June 15, 2016, Defendant's authorized agent, Commercial Investment Real  
2 Estate Services, extended an offer in writing to Plaintiff that, among other terms, proposed the  
3 amount of base rent for the initial year of the lease extension to remain the same as the previous  
4 year (2015–2016), which amounted to \$8,190 per month with 3% annual increases thereafter.

5           43.     On August 2, 2016, Lesley B. Miller, Esq. of the law firm Kaempfer Crowell,  
6 notified Landlord that she represented Plaintiff. Miller requested that the payment of base rent  
7 for the first year of the five-year renewal term would remain the same as the previous year  
8 (9/1/2015–8/31/2016).

9           44.     On August 31, 2016, Miller again reiterated the exercise of the option rights under  
10 the Lease to renew for an additional five-year term. Miller attached a proposed amendment to the  
11 Lease which provided for the following rent schedule:

12                   09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum  
13                   09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum  
14                   09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum  
15                   09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum  
16                   09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum

17           45.     On September 7, 2016, Defendant's counsel, John M. Sacco, Esq., sent  
18 correspondence to Miller discussing several other issues including: parking, CAMs, security  
19 patrols, and issues related to personal guaranties. No mention of rejecting the amount of rent was  
20 set forth in Sacco's letter. He confirmed that the parking, CAMs, security patrols and guaranty-  
21 related issues were the "final matters" that the parties were attempting to work through.

22           46.     Sacco called Miller to let her know that the Defendant agreed with the rent  
23 schedule as she had proposed in her August 31st addendum and he reiterated that he thought the  
24 other issues set forth in his letter were the final matters that needed to be resolved.

25           47.     Consistent with the parties' agreement, the Plaintiff began paying \$8,400 per  
26 month in September 2016. The Plaintiff paid this sum through August 2017. These monthly  
27  
28

1 rental payments were accepted by the Defendant, and Plaintiff remains in possession of the  
2 premises to date.

3 48. At no point during the first year of the Option Term (9/1/16 – 8/31/17) did the  
4 Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the  
5 Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it  
6 was making such payments to preserve its rights under the option agreements.  
7

8 49. Although the parties reached an agreement on the rent amounts for the option  
9 term, and Plaintiff then paid consistent with that agreement, Plaintiff and Defendant, through their  
10 respective counsel, exchanged drafts of a proposed updated standardized lease form during the  
11 next twelve months in an attempt to update the remaining non-rent portions of the twenty-year old  
12 Lease.  
13

14 50. During that time frame, the parties' conduct was consistent with the parties having  
15 agreed to the rent term of the Option, as Plaintiff paid the full amount of rent in accordance with  
16 the agreement reached in September 2016, Plaintiff continuously occupied the Premises, and both  
17 Plaintiff and Defendant performed their obligations under the Lease without protest or dispute.  
18

19 51. On August 7, 2017, Plaintiff, through new counsel, Lucas A. Grower, Esq., sent  
20 Defendant correspondence advising that Grower would be representing Plaintiff.

21 52. On August 31, 2017, the Plaintiff, through its new counsel, demanded that Lease  
22 negotiations be restarted for the base rent on the basis of "market rental rate and terms".

23 53. Defendant's attorney disagreed with Plaintiff's new position, maintaining that the  
24 parties had reached an agreement as to rent, and that the option did not provide for negotiations  
25 based on market rental rate.  
26  
27  
28

1           54.     Beginning in September of 2017, Plaintiff continued to pay monthly rent of  
2 \$8,400. Payment of this amount was consistent with the second year of the rent schedule that had  
3 been agreed upon by the parties.

4           55.     At no point during the second year of the Option Term (9/1/17 – 8/31/18) did the  
5 Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the  
6 Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it  
7 was making such payments to preserve its rights under the option agreements.

8           56.     On November 30, 2018, 27 months after the Option term commenced, Plaintiff  
9 filed the instant lawsuit.

10           57.     At trial, Plaintiff presented an expert witness, Matthew Lubawy, who testified to  
11 his opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was  
12 \$1.05 per square foot per month, or monthly rent of \$4,410.

13           58.     Defendant presented an expert witness, Charles E. Jack IV, who testified to his  
14 opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was  
15 \$1.75 per square foot per month, or monthly rent of \$7,350.

16           59.     The Court determines that both expert witnesses provided credible testimony.  
17 However, the Court finds that the comparables utilized by Jack were more applicable to the  
18 conditions of the Subject Premises.

19           60.     \$8,400 per month is not an unreasonable amount of rent for the option period, as  
20 this comports with the terms of the option exercised by Plaintiff, as well as the understanding of  
21 the parties that rent would increase during the option periods, and reflects the schedule Plaintiff's  
22 attorneys proposed and Defendant accepted.

1           61.     After receiving Jack's expert report that opined that \$1.75 per square foot per  
2 month was the market rental rate, Plaintiff reduced the amount it was paying monthly from  
3 August 2019 through November 2019, from \$8400 to \$5150.

4           62.     Defendant did not present sufficient evidence that Plaintiff was previously  
5 undercharged for its water usage within the Leased Premises. The Court finds that the  
6 methodology utilized by Defendant in determining the amount of the Plaintiff's pro-rata water  
7 usage was not reasonable, and not credible.

8  
9           63.     From the date of the assignment of the Lease in approximately 2007 to present,  
10 Plaintiff has paid the "estimated" CAM of \$1,176 for each and every month.

11           64.     Defendant did not present sufficient evidence that it incurred \$239,803 in CAM  
12 expenses from 2012 through 2018 that were not previously assessed to the Plaintiff.

13           65.     The list of items to be included in CAMS does not include the category used by  
14 Defendant for "reserves".

15  
16           66.     Defendant has failed to provide a CAM accounting including the accounting of  
17 the various "reserves" referenced in the annual Statements produced by Defendant in this case.

18           67.     As a result of Defendants inclusion of "reserve" funds in the CAMS, Plaintiff has  
19 overpaid the CAM expense and is entitled to reimbursement.

20           68.     Defendant did not breach the Lease by failing to provide quarterly accounting  
21 CAM costs as that provision was modified in writing by the 2001 Amendment to an annual  
22 accounting.

23           69.     Defendant has charged amounts in excess of the CAM charges, for which  
24 restitution and reimbursement should be made to Plaintiff.

25  
26           70.     Defendant has not breached its obligation to repair and maintain the premises,  
27 including the roof, the HVAC system, and other portions of the premises.  
28

1           71.     The witnesses for Plaintiff were not credible. The testimony at deposition of the  
2 NRCP 30(b)(6) representative presented by Plaintiff provided virtually no substantive  
3 information, after motion practice before trial the Court permitted Plaintiff to inquire of the  
4 witnesses subject to question by question challenge based upon the inconsistency with the NRCP  
5 30(b)(6) representative testimony. The lack of credibility and general lack of knowledge of any  
6 of Plaintiff's witnesses forces the Court to rely upon the documentary evidence admitted during  
7 the proceedings.  
8

9           72.     If any findings of fact are properly conclusions of law, they shall be treated as if  
10 appropriately identified and designated.  
11

#### 12                                   **CONCLUSIONS OF LAW**

13           73.     A preponderance of the evidence supports the conclusion that Plaintiff's  
14 predecessor in interest executed both options provided in the Option Agreement, extending the  
15 Lease for two successive five-year periods. The exercise of these options is memorialized in the  
16 2001 Amendment and the 2006 Addendum. As Plaintiff's predecessor in interest exercised these  
17 options, the only option Plaintiff could have exercised in 2016 was an option provided in the 2007  
18 Lease Modification.  
19

20           74.     The execution of the option in 2016 was timely. It was sent more than 90 days  
21 prior to the August 31, 2016 expiration date of the Lease.  
22

23           75.     Although Defendant sought modification of the Lease, all terms and conditions of  
24 the Lease were already in place, except for the rental rate.  
25

26           76.     Plaintiff continued paying the rent agreed to in the schedule proposed by its  
27 counsel until August 2019.  
28

          77.     Plaintiff has by payment of such rent remained entitled to enforce its option rights.

          78.     Beginning September 1, 2016, Plaintiff paid \$8,400 in base rent.

1           79.     The elements of a claim for breach of contract are: (1) the parties entered into a  
2 valid and existing contract; (2) Plaintiff performed or was excused from performance; (3)  
3 Defendant breached; and (4) Plaintiff sustained damages as a result of the breach.

4           80.     A contract must contain all essential terms to be enforceable, and rent is an  
5 essential term of an option agreement.  
6

7           81.     Interpretation of a contract is a question of law. The Court looks at the plain  
8 language in the contract.

9           82.     Nevada has recognized an exception for a lease extension option containing all  
10 terms except for rent, holding that such an option should be enforced at an agreed rent or at a  
11 court-fixed reasonable rent. *Cassinari v. Mapès*, 91 Nev. 778, 781 (1975).  
12

13           83.     A commercial tenant may affirm the option rights and seek judicial determination  
14 of the amount of rent where the parties have been unable to agree. *Cassinari* at 781.

15           84.     The terms of the 2007 Lease Modification are plain and unambiguous and may be  
16 interpreted as a matter of law. Under these clear terms, the five-year options were expressly and  
17 unambiguously made conditional upon “terms and conditions, including but not limited to rental  
18 increases, to be negotiated.”

19           85.     The language in the 2007 Lease Modification related to rent after the execution of  
20 the Option is unambiguous.  
21

22           86.     As the Plaintiff contends that the parties failed to come to an agreement as to the  
23 amount of rent for the option period beginning September 1, 2016, the Court is empowered to  
24 declare the amount of rent applicable to that option period. The evidence and the terms of the  
25 2007 Lease Modification do not support Plaintiff’s position that the contract permits a lower “fair  
26 market value” to be established.  
27  
28

1           87. While there is some evidence that the Plaintiff attempted to change the terms of  
2 the proposed rent schedule in July 2017 to reduce the amount of rent for the first year, the  
3 evidence shows that Plaintiff never actually paid this lower amount.

4           88. The language of the 2007 Lease Modification states that the rent for the option  
5 period would be "under terms and conditions, including but not limited to rental increases to be  
6 negotiated." The parties agree that all essential terms other than rent are provided elsewhere in  
7 the 2007 Lease Modification, leaving only the rent to be negotiated. Thus, if no agreement was  
8 reached as to rent, all essential terms of the option are present except the rental rate, and  
9 *Cassinari* would apply to render the option enforceable based on a reasonable rental amount to be  
10 determined by this Court.

11           89. Based on the facts presented, the Court determines that an agreement was reached  
12 and that the reasonable rent is \$8,400 per month for the first two years of the second option term  
13 under the 2007 Lease Modification increasing by \$210 every year starting on September 1, 2018.  
14 The Plaintiff agreed to the 2007 Lease Modification option language which requires that any  
15 options be based on "rental increases," so it would not be reasonable for rent to decrease.

16           90. The rent agreed to by the parties and reflected in this schedule based upon the  
17 evidence before the Court, reflects a reasonable amount of rent under *Cassinari*.

18           91. After hearing and weighing the evidence the Court sets the rent as the schedule  
19 agreed to and partially performed by the parties:

20           09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum  
21           09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum  
22           09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum  
23           09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum  
24           09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum  
25  
26  
27  
28

92. As Plaintiff deviated from this schedule from September 1, 2018 through November 2019, the Plaintiff has underpaid the rent due in the amount of \$13,000.<sup>6</sup>

93. This deviation is a breach of the Plaintiff's obligations under the Lease.

94. The Lease provision related to CAM expenses does not include the ability of Defendant to charge for "reserves".

95. The Defendant's charging of "reserves" as a CAM expense is a breach of contract.

96. Plaintiff has requested that an accounting be ordered as part of the relief in this matter.

97. In light of the Plaintiff disputing various CAM charges and its request to the Court to reevaluate the 2012 through 2018 CAM charges, the Court finds that Plaintiff has overpaid the CAM expenses.

98. As the evidence was presented at trial there is no need for an accounting and the Court orders reimbursement of the overpayment.<sup>7</sup>

<sup>6</sup> The agreed upon rental rate was \$8400 per month. The reduced rental rate paid by Plaintiff was \$5150. The monthly deficiency of \$3250 accrued for 4 months yielding a total underpayment of \$13,000.

<sup>7</sup> The Court disallows the line items for parking lot reserve and painting reserve from the annual CAM statements. The calculation for the breach of contract claim related to CAMS is to divide the revised "Total Operating Expense" by 115,671 square feet as represented in the Lease for a square footage rate and multiply by 4200 representing the square footage occupied by Plaintiff as represented in the Lease and to compare the pro rata share to estimated amounts advanced by Plaintiff pursuant to the 2007 Lease Modification on a monthly basis of \$1176.

Year	Operating Expense	Less Disallowed Reserve	Revised Operating Expense	Square Foot Rate	Plaintiffs Pro Rata Share	Less Payments Made	Difference
2015	385185	32500	352685	3.05	12810	14112	-1302
2016	389683	32500	357183	3.09	12978	14112	-1134
2017	398059	32500	365559	3.16	13272	14112	-840
2018	385363	32500	352863	3.05	12810	14112	-1302
Total							-4578

1           99.     The elements of a claim for breach of the implied covenant of good faith and fair  
2 dealing are: (1) Plaintiff and defendant were parties to a contract; (2) Defendant owed a duty of  
3 good faith to plaintiff; (3) Defendant breached that duty by performance in a manner that was  
4 unfaithful to the purpose of the contract; and (4) Plaintiff's justified expectations were thus  
5 denied.  
6

7           100.   In every contract there is an implied promise of good faith and fair dealing.

8           101.   Where the terms of a contract are literally complied with, but one party to the  
9 contract deliberately contravenes the intention and spirit of the contract, that party can incur  
10 liability for breach of the implied covenant of good faith and fair dealing.

11           102.   When one party performs a contract in a manner that is unfaithful to the purpose of  
12 the contract and the justified expectations of the other party are thus denied, damages may be  
13 awarded against the party who does not act in good faith.  
14

15           103.   Whether the controlling party's actions fall outside the reasonable expectations of  
16 the dependent party is determined by the various factors and special circumstances that shape  
17 these expectations.

18           104.   The use of reserves as part of the CAM expenses is a breach of the covenant of  
19 good faith and fair dealing.  
20

21           105.   Substantial evidence was submitted establishing beyond a preponderance of the  
22 evidence that, based on the contractual language negotiated and agreed to by the parties as part of  
23 the 2007 Lease Modification, as well as the subsequent negotiations and conduct of the parties,  
24 the appropriate rent applicable to the option period cannot be based on market rental rate or fair  
25 market value.

26           106.   The doctrines of part performance and/or estoppel preclude the Plaintiff from  
27 arguing that no agreement existed. In general, principles of part performance and/or estoppel  
28

1 prevent a party from taking a position contrary to a previously asserted position when another  
2 party has relied upon the previous position.

3 107. At the time Plaintiff began paying rent in September 2016, Plaintiff was apprised  
4 of all relevant facts. Plaintiff's conduct of paying this amount of rent was designed to be relied  
5 upon, in that Plaintiff intended for Defendant to accept the full amount of rent as payment under  
6 the Lease, in exchange for being allowed to continue to occupy the Premises. Plaintiff's  
7 significant delay in asserting any dispute or protest as to the amounts being paid demonstrate the  
8 Defendant had no idea of Plaintiff's purported hidden understanding that it did not agree to the  
9 rent. Defendant detrimentally relied on Plaintiff's position, as Defendant kept the property off the  
10 market instead of attempting to find a new tenant willing to pay full rent. The Plaintiff is estopped  
11 from now taking a contrary position as to the amount of rent that Plaintiff offered, agreed to, and  
12 did, in fact, perform.  
13

14  
15 108. As there were good faith disputes related to the amount of rent for the option  
16 period presented for determination to the Court, the Court finds that there has been no breach of  
17 the implied covenant of good faith and fair dealing on that issue.

18 109. Judgment in Defendant's favor is appropriate on Defendant's counterclaim for  
19 breach of Lease, as Plaintiff's failure to pay the agreed-upon amount of rent from August 2019  
20 through November 2019 constituted a breach of Plaintiff's obligations under the Lease and  
21 Counterdefendants' obligations under the Guaranties.  
22

23 110. If any conclusions of law are properly findings of fact, they shall be treated as if  
24 appropriately identified and designated.

25 Based upon the foregoing Findings of Fact and Conclusions of Law

26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
27 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,  
28

1 LLC, on the First Claim for Relief for Declaratory Judgment establishing a reasonable rent  
2 schedule as :

3 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum  
4 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum  
5 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum  
6 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum  
7 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
9 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,  
10 LLC, on the Second Claim for Relief for Breach of Contract in the amount of \$4,578.

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
12 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,  
13 LLC, on the Third Claim for Relief for Breach of the Implied Covenant of Good Faith and Fair  
14 Dealing in the amount of the attorney's fees and costs related to the CAM expense portion of the  
15 litigation only.

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
17 hereby entered in favor of Defendant Tropicana Investments, LLC, and against Plaintiff JSJBD  
18 Corp, on all other claims for relief contained in the Complaint.

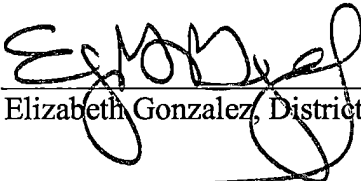
19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
20 hereby entered in favor of Counterclaimant Tropicana Investments, LLC, and against  
21 Counterdefendant JSJBD Corp, and all other Counterdefendants on the Second Claim for Relief  
22 for Breach of Lease Agreement for the underpayment of rent according to the schedule in the  
23 amount of \$13,000.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
25 hereby entered in favor of Counterdefendant JSJBD Corp, and all other Counterdefendants, and  
26 against Counterclaimant Tropicana Investments, LLC, on all other claims for relief contained in  
27  
28

1 the Counterclaim.

2 In light of the awards on both the Complaint and Counterclaim, the issue of attorney's  
3 fees as sought in both the Complaint and Counterclaim is reserved for post-trial motion practice.  
4

5  
6 DATED this 5<sup>th</sup> day of December, 2019.

7  
8   
9 Elizabeth Gonzalez, District Court Judge

10 **Certificate of Service**

11 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of  
12 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth  
13 Judicial District Court Electronic Filing Program.

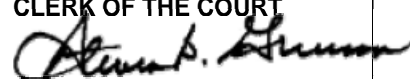
14 *If indicated below, a copy of the foregoing Scheduling Order was also:*

15 ☐ Placed in the Attorney(s) Folder on the 1<sup>st</sup> Floor of the RJC for;

16 ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at  
17 their last known address(es):

18  
19   
20 Dan Kutinac

# Exhibit F

**Marquis Aurbach Coffing**Terry A. Moore, Esq.  
Nevada Bar No. 7831  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
tmoore@maclaw.com

Attorneys for Tropicana Investments, LLC

**DISTRICT COURT****CLARK COUNTY, NEVADA**JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

Case No.: A-18-785311-B  
Dept. No.: XI**NOTICE OF ENTRY OF ORDER**TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation; STUART VINCENT, an individual;  
JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

**NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Denying Defendant's Motion to Alter or Amend Judgment was entered in the above-captioned matter on the 24th day of February, 2020, a copy of which is attached hereto.

Dated this 25th day of February, 2020.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore  
Terry A. Moore, Esq.  
Nevada Bar No. 7831  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorney for Tropicana Investments, LLC

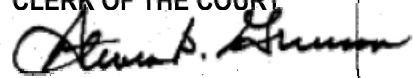
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 25th day of February, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield  
an employee of Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



Marquis Aurbach Coffing  
Terry A. Moore, Esq.  
Nevada Bar No. 7831  
Collin M. Jayne, Esq.  
Nevada Bar No. 13899  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
tmoore@maclaw.com  
cjayne@maclaw.com  
Attorneys for Tropicana Investments, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation; STUART VINCENT, an individual;  
JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B  
Dept. No.: XI

Date of Hearing: January 27, 2020  
Time of Hearing: 9:00 a.m.

**ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT**

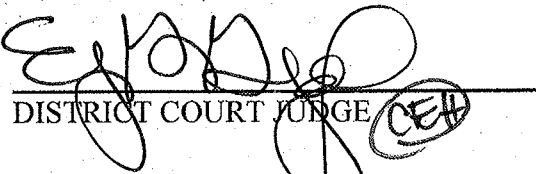

This matter having come before the Court on January 27, 2020 for a hearing regarding Defendant/Counterclaimant Tropicana Investments, LLC's Motion to Alter or Amend Judgment, with Terry A. Moore Esq. and Collin M. Jayne, Esq. of the law firm of Marquis Aurbach Coffing appearing for Defendant/Counterclaimant Tropicana Investments, LLC; and Mario P. Lovato,

1 Esq. of Lovato Law Firm, P.C. appearing for Plaintiff/Counterdefendants JSJBD Corp, Stuart  
2 Vincent, Jeffrey Vincent, and Jeff White; and the Court, having entertained the arguments of  
3 counsel, and for good cause appearing,

4 IT IS HEREBY ORDERED that Defendant's Motion to Alter or Amend Judgment is  
5 DENIED.

6 Dated this 21 day of February, 2020.

7 THE HONORABLE ELIZABETH GONZALEZ

8  
9  
10   
DISTRICT COURT JUDGE 

11 Respectfully submitted by:  
12 MARQUIS AURBACH COFFING

Approved as to form:  
LOVATO LAW FIRM, P.C.

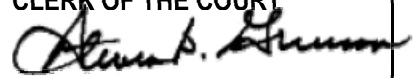
13  
14 By 

15 Terry A. Moore, Esq.  
16 Nevada Bar No. 7831  
17 Collin M. Jayne, Esq.  
18 Nevada Bar No. 13899  
19 10001 Park Run Drive  
20 Las Vegas, Nevada 89145  
21 Attorneys for Defendant/Counterclaimant  
22 Tropicana Investments, LLC

By  02/19/20

23 Mario P. Lovato, Esq.  
24 Nevada Bar No. 7407  
25 7465 W. Lake Mead Blvd., #100  
26 Las Vegas, Nevada 89128  
27 Attorney for Plaintiff JSJBD and  
28 Counterdefendants

# Exhibit G



MARIO P. LOVATO, ESQ.  
Nevada Bar No. 7427  
LOVATO LAW FIRM, P.C.  
7465 W. Lake Mead Blvd. Ste. 100  
Las Vegas, Nevada 89128  
TEL: (702) 979-9047  
mpl@lovatolaw.com  
Attorney for Plaintiff / Counterdefendant  
JSJBD Corp dba Blue Dogs Pub and  
the individual Counterdefendants

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

AND COUNTERCLAIMS.

Case No.: A-18-785311-B

BUSINESS COURT

**NOTICE OF ENTRY OF ORDER**

TAKE NOTICE that an Order was entered by the Court in the above-referenced case on  
February 24, 2020, a copy of which is attached.

LOVATO LAW FIRM, P.C.

/s/ Mario Lovato

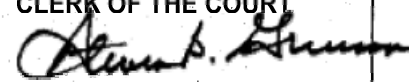
MARIO P. LOVATO  
Nevada Bar No. 7427  
Attorney for Plaintiff / Counterdefendant  
JSJBD Corp dba Blue Dogs Pub and  
the individual Counterdefendants

1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED that, on February 25, 2020, the above and foregoing  
3 **NOTICE OF ENTRY OF ORDER** was served via the Court's system of electronic service on  
4 all parties registered and listed for such service, including upon by the following:  
5

6  
7 Terry A. Moore  
8 Marquis Aurbach Coffing  
9 10001 Park Run Dr.  
10 Las Vegas, NV 89145  
11 Attorneys for Defendant / Counterclaimant  
12 Tropicana Investments, LLC  
13  
14  
15  
16  
17  
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20  
21  
22  
23  
24  
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26  
27  
28

\_\_\_\_\_/s/ Mario Lovato



MARIO P. LOVATO  
Nevada Bar No. 7427  
LOVATO LAW FIRM, P.C.  
7465 W. Lake Mead Blvd. Ste. 100  
Las Vegas, Nevada 89128  
T: (702) 979-9047  
mpl@lovatolaw.com  
Attorney for Plaintiff JSJBD Corp  
dba Blue Dogs Pub and Counterdefendants

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JSJBD CORP dba Blue Dogs Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a California  
limited liability company,

Defendant.

CASE NO. A-18-785311-B  
DEPT 11

TROPICANA INVESTMENTS, LLC, a California  
limited liability company,

Counterclaimant,

vs.

JSJBD CORP. dba Blue Dogs Pub, a Nevada  
corporation; STUART VINCENT; JEFFREY B.  
VINCENT; and JEFF WHITE,

Counterdefendants.

**ORDER GRANTING PLAINTIFF / COUNTERDEFENDANTS'  
MOTION FOR ATTORNEY FEES AND COSTS**

On January 27, 2020, a hearing took place for Plaintiff / Counterdefendants' Motion for Attorney Fees and Costs, the parties appearing through their respective counsel of record and parties / party-representatives Stuart Vincent and Bruce Eisman also appearing, the Court, having reviewing the briefing and arguments of counsel, and good cause appearing:

02-20-20P02:59 RCVD

1 THE COURT HEREBY FINDS that:

2  
3 1. Plaintiff JSJBD Corp was, and is, the prevailing party in this matter as pertains to  
4 the claims in the Complaint filed by JSJBD Corp and as determined in the Court's Findings of  
5 Fact and Conclusions of Law entered herein on December 5, 2019.

6 2. Under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), when  
7 courts determine the appropriate fee to award in civil cases, they must consider various factors: (1)  
8 the qualities of the advocate: his ability, his training, education, experience, professional standing  
9 and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time  
10 and skill required, the responsibility imposed and the prominence and character of the parties  
11 where they affect the importance of the litigation; (3) the work actually performed by the lawyer:  
12 the skill, time and attention given to the work; (4) the result: whether the attorney was successful  
13 and what benefits were derived.

14  
15 3. The *Brunzell* factors support the award of attorney fees. Mr. Lovato is a business  
16 litigator who has appeared before the Court on numerous occasions, has worked at reputable law  
17 firms in Las Vegas, Nevada, has charged a reasonable billing rate in this matter; the character of  
18 the work involved the filing of motions and related pleadings, appearance at hearings, appearance  
19 at trial, the drafting and service of written discovery and related work, which is commensurate  
20 with the requested billable rate; the work performed by such counsel, was reasonable; and the  
21 result obtained supports the fees.

22  
23 4. The following attorney fees and costs of Plaintiff JSJBD Corp and  
24 Counterdefendants should be, and are, approved as being reasonable, and being necessarily and  
25 actually incurred in the litigation of this matter from its inception up to December 26, 2019 (the  
26 date of filing of the motion for attorney fees and costs: (a) attorney fees in the amount of  
27 \$126,630.00; and (b) costs in the amount stated in, and separately addressed by, the Order  
28 addressing Defendant / Counterclaimant's Motion to Retax Costs.

1 5. Judgment should be entered in favor of Plaintiff JSJBD Corp. and against  
2 Defendant / Counterclaimant Tropicana Investments, LLC, as further stated below, based upon the  
3 Findings and Fact and Conclusions of Law entered on December 5, 2019 and for the amounts  
4 granted herein for the Motion for Attorney Fees and Costs.  
5

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff /  
7 Counterdefendants' Motion for Attorney Fees and Costs is GRANTED such that Plaintiff JSJBD  
8 Corp is granted attorney fees in the amount of the attorney fee figure of One-Hundred Twenty-Six  
9 Thousand Six-Hundred Thirty Dollars (\$126,630.00).  
10


11 Dated: February 21, 2020.

12 THE HONORABLE ELIZABETH GONZALEZ

13   
14 DISTRICT COURT JUDGE


15 Submitted by:

16 LOVATO LAW FIRM, P.C.

17   
18 MARIO P. LOVATO, ESQ.  
19 Nevada Bar No. 7427  
20 Attorney for Plaintiff JSJBD Corp. and  
21 Counterdefendants

22 Approved as to form:

23 MARQUIS AURBACH COFFING

24   
25 TERRY A. MOORE, ESQ.  
26 Nevada Bar NO. 7831  
27 COLLIN M. JAYNE, ESQ.  
28 Nevada Bar No. 13899  
10001 Park Run Dr.  
Las Vegas, NV 89145  
Attorneys for Defendant / Counterclaimant  
Tropicana Investments, LLC

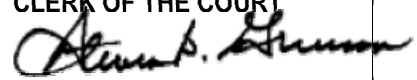
# Exhibit H

**Marquis Aurbach Coffing**

Terry A. Moore, Esq.  
Nevada Bar No. 7831  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
tmoore@maclaw.com

Attorneys for Tropicana Investments, LLC

Electronically Filed  
2/13/2020 11:02 AM  
Steven D. Grierson  
CLERK OF THE COURT



**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

Case No.: A-18-785311-B  
Dept. No.: XI

**NOTICE OF ENTRY OF ORDER**

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation; STUART VINCENT, an individual;  
JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

**NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Granting in Part Defendant's Motion for Attorneys' Fees and Costs was entered in the above-captioned matter on the 13th day of February, 2020, a copy of which is attached hereto.

Dated this 13th day of February, 2020.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore  
Terry A. Moore, Esq.  
Nevada Bar No. 7831  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorney for Tropicana Investments, LLC

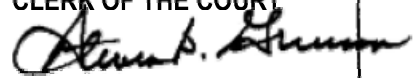
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 13th day of February, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield  
an employee of Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



Marquis Aurbach Coffing  
Terry A. Moore, Esq.  
Nevada Bar No. 7831  
Collin M. Jayne, Esq.  
Nevada Bar No. 13899  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
tmoore@maclaw.com  
cjayne@maclaw.com  
Attorneys for Tropicana Investments, LLC

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation; STUART VINCENT, an individual;  
JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B  
Dept. No.: XI

Date of Hearing: January 27, 2020  
Time of Hearing: 9:00 a.m.

**ORDER GRANTING IN PART DEFENDANT'S MOTION TO FOR ATTORNEYS'**  
**FEES AND COSTS**

This matter having come before the Court on January 27, 2020 for a hearing regarding  
Defendant/Counterclaimant Tropicana Investments, LLC's Motion for Attorneys' Fees and  
Costs, with Terry A. Moore Esq. and Collin M. Jayne, Esq. of the law firm of Marquis Aurbach

1 Coffing appearing for Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant");  
2 and Mario P. Lovato, Esq. of Lovato Law Firm, P.C. appearing for Plaintiff/Counterdefendants  
3 JSJBD Corp, Stuart Vincent, Jeffrey Vincent, and Jeff White (collectively, "Plaintiff"); and the  
4 Court, having entertained the arguments of counsel, considered the points and authorities thereof,  
5 and for good cause appearing, hereby finds and orders that Defendant's Motion for Attorneys'  
6 Fees and Costs is granted in part and denied in part, as follows:

7       The Court finds that Defendant is entitled to recover its reasonable attorneys' fees  
8 incurred in this litigation, regardless of whether Defendant is a prevailing party, under Section 24  
9 of the Lease which provides that "In the event the Landlord finds it necessary to retain an  
10 attorney in connection with the default by the Tenant in any of the agreements or covenants  
11 contained in this Lease, Tenant shall pay reasonable attorney's fees to said attorney." Defendant  
12 asserted a counterclaim for breach of the Lease, and this Court found in Defendant's favor on  
13 this claim, concluding that Plaintiff breached the Lease. Thus, Defendant is entitled to recover  
14 reasonable attorneys' fees.

15       After weighing the factors provided in *Brunzell v. Golden Gate National Bank*, 85 Nev.  
16 345, 349-50, 455 P.2d 31, 33 (1969), the Court finds that Defendant's requested attorneys' fees  
17 are reasonable, except for the fees related to a second attorney attending trial. The second  
18 attorney's time at trial amounts to fees of \$10,807.50, and thus Defendant is entitled to all  
19 requested fees, less this amount. Defendant is therefore awarded attorneys' fees of \$208,967.50.

20       Finally, the Court finds that Defendant was a prevailing party, and thus Defendant is  
21 entitled to recover costs under NRS 18.020. As stated in this Court's order Granting Plaintiff's  
22 Motion to Retax, Defendant has not established that the circumstances surrounding its expert's  
23 testimony were of such necessity as to require fees beyond the \$1,500 cap provided by NRS  
24 18.005(5), so Defendant's requested expert fees will be reduced to \$1,500. *Frazier v. Drake*,  
25 131 Nev. 632, 357 P.3d 365 (Nev. App. 2015). Additionally, Defendant has not established that  
26 its requested costs for scanning charges were reasonable and necessary, so this cost is not  
27 recoverable. Defendant has properly established that all other requested costs were reasonable,  
28 necessary, and actually incurred in this action. *Cadle Company v. Woods & Erickson LLP*, 131

MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1 Nev. 114, 120-121, 345 P.3d 1049, 1054 (2015). In sum, Defendant will be awarded costs  
2 totaling \$13,835.50.

3 Therefore,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion  
5 for Attorneys' Fees and Costs is GRANTED IN PART and DENIED IN PART. Defendant is  
6 awarded attorneys' fees totaling \$208,967.50, and costs totaling \$13,835.50.


7 Dated this 11 day of February, 2020.

8 THE HONORABLE ELIZABETH GONZALEZ

9  
10   
11 DISTRICT COURT JUDGE 

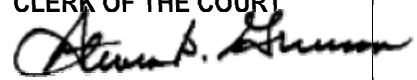
12 Respectfully submitted by:  
13 MARQUIS AURBACH COFFING

Approved as to form:  
LOVATO LAW FIRM, P.C.

14  
15 By   
16 Terry A. Moore, Esq.  
17 Nevada Bar No. 7831  
18 Collin M. Jayne, Esq.  
19 Nevada Bar No. 13899  
20 10001 Park Run Drive  
21 Las Vegas, Nevada 89145  
22 Attorneys for Defendant/Counterclaimant  
23 Tropicana Investments, LLC

By \_\_\_\_\_  
Mario P. Lovato, Esq.  
Nevada Bar No. 7407  
7465 W. Lake Mead Blvd., #100  
Las Vegas, Nevada 89128  
Attorney for Plaintiff JSJD and  
Counterdefendants

# Exhibit I

**Marquis Aurbach Coffing**

Terry A. Moore, Esq.

Nevada Bar No. 7831

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

tmoore@maclaw.com

Attorneys for Tropicana Investments, LLC

**DISTRICT COURT****CLARK COUNTY, NEVADA**JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept. No.: XI

**NOTICE OF ENTRY OF FINAL  
JUDGMENT**TROPICANA INVESTMENTS, LLC, a  
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
corporation; STUART VINCENT, an individual;  
JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

**NOTICE OF ENTRY OF FINAL JUDGMENT**

Please take notice that a Final Judgment was entered in the above-captioned matter on the 25th day of February, 2020, a copy of which is attached hereto.

Dated this 25th day of February, 2020.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore  
Terry A. Moore, Esq.  
Nevada Bar No. 7831  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorney for Tropicana Investments, LLC

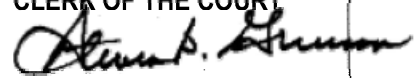
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF FINAL JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 25th day of February, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield  
an employee of Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



1 **Marquis Aurbach Coffing**  
2 Terry A. Moore, Esq.  
3 Nevada Bar No. 7831  
4 Collin M. Jayne, Esq.  
5 Nevada Bar No. 13899  
6 10001 Park Run Drive  
7 Las Vegas, Nevada 89145  
8 Telephone: (702) 382-0711  
9 Facsimile: (702) 382-5816  
10 tmoore@maclaw.com  
11 cjayne@maclaw.com  
12 Attorneys for Tropicana Investments, LLC

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
16 corporation,

17 Plaintiff,

18 vs.

19 TROPICANA INVESTMENTS, LLC, a  
20 California limited liability company,

21 Defendant.

22 TROPICANA INVESTMENTS, LLC, a  
23 California limited liability company,

24 Counterclaimant,

25 vs.

26 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada  
27 corporation; STUART VINCENT, an individual;  
28 JEFFREY B. VINCENT, an individual; JEFF  
WHITE, an individual; JOHN DOES I-X; and  
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B

Dept. No.: XI

**FINAL JUDGMENT**

Date of Hearing: January 27, 2020

Time of Hearing: 9:00 a.m.

**FINAL JUDGMENT**

Whereas, the above matter having been tried to the Court, and good cause appearing.

JUDGMENT IS HEREBY ENTERED in favor of Defendant/Counterclaimant Tropicana Investments, LLC and against Counterdefendants JSJBD Corp., Stuart Vincent, Jeffrey Vincent, and Jeff White ("Counterdefendants"), jointly and severally, as follows:

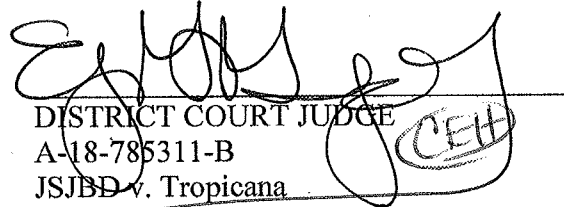
1. JSJBD Corp. is awarded \$4,578.00 against Tropicana Investments, LLC, representing compensatory damages for overpaid CAMs;
2. JSJBD Corp. is awarded pre-judgment interest accruing from December 6, 2018, through December 5, 2019, against Tropicana Investments, LLC, in the amount of \$342.41;
3. JSJBD Corp. is awarded attorneys' fees in the amount of \$126,630.00 against Tropicana Investments, LLC;
4. JSJBD Corp. is awarded costs of suit against Tropicana Investments, LLC, in the amount of \$7,124.97;
5. Tropicana Investments, LLC is awarded \$13,000 against the Counterdefendants, representing compensatory damages for unpaid rent under the subject lease;
6. Tropicana Investments, LLC is awarded pre-judgment interest accruing from January 9, 2019, through December 5, 2019, against the Counterdefendants, in the amount of \$878.84;
7. Tropicana Investments, LLC is awarded costs of suit against the Counterdefendants, in the amount of \$13,835.50; and
8. Tropicana Investments, LLC is awarded its attorneys' fees totaling \$208,967.50 against the Counterdefendants.
9. After offsetting the amount awarded to JSJBD Corp. this Final Judgment is entered in favor of Tropicana Investments, LLC and against JSJBD Corp., Stuart Vincent, Jeffrey

1 10. Vincent, and Jeff White, jointly and severally in the amount of \$98,006.46, with interest  
2 accruing at the rate of 6.75% per annum until paid in full.

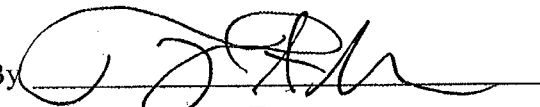
3 IT IS SO ORDERED.

4 Dated this 11 day of February, 2020.

5 THE HONORABLE ELIZABETH GONZALEZ

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7   
8 DISTRICT COURT JUDGE  
9 A-18-785311-B  
JSJBD v. Tropicana

10 Respectfully submitted by:  
11 MARQUIS AURBACH COFFING

12  
13 By   
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