

IN THE SUPREME COURT OF THE STATE OF NEVADA

JSJBD CORP, d/b/a Blue Dogs Pub, a)	Case No.: 80849	Electronically Filed Sep 04 2020 02:24 p.m. Elizabeth A. Brown Clerk of Supreme Court
Nevada corporation, STUART VINCENT,)		
JEFFREY VINCENT, and JEFF	)	(Dist. Ct. No. A-18-785311-1)
WHITE)		
)		
Appellants,)		
)		
vs.)		
)		
TROPICANA INVESTMENTS, LLC, a)		
California limited liability company,)		
)		
Respondent.)		
)		
)		
AND CROSS-APPEAL.)		
)		

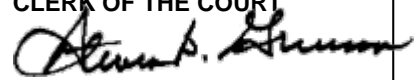
**APPELLANTS' APPENDIX
(VOL. 1)**

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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	)	BUSINESS COURT REQUESTED
California limited liability company,)	
	)	Exempt from arbitration:
Defendant.	)	Declaratory & Injunctive Relief
)	

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

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

25 21. The Lease Assignment & Modification expressly incorporated and confirmed the
26 Lease, the Amendment, and the Addendum, including that Blue Dog’s succeeds to all rights
27 thereunder.
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 59. Tropicana Investments possesses obligations to provide for security for the
8 common areas of the shopping center, but has failed and refused to comply with such obligations,
9 damaging Blue Dog's.

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

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

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

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

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

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

26 65. The various clauses and options for renewal / extension constitute part of the
27
28

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

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 ahs 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 ahs 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

BUSINESS COURT CIVIL COVER SHEET

A-18-785311-B

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

Department 11

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

Plaintiff(s) (name/address/phone): JSJBD Corp	Defendant(s) (name/address/phone): Tropicana Investments, LLC
Attorney (name/address/phone): Mario P Lovato, 7465 W Lake Mead Blvd Ste 100 Las Vegas, NV 702-979-9047	Attorney (name/address/phone): N/A

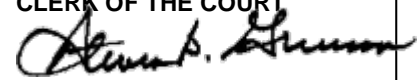
II. Nature of Controversy (Please check the applicable boxes for both the civil case type and business court case type)

☐ Arbitration Requested

Civil Case Filing Types		Business Court Filing Types
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Torts Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort	CLARK COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Enhanced Case Management <input checked="" type="checkbox"/> Other Business Court Matters
Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Civil Writs <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	WASHOE COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art.8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters
Judicial Review/Appeal/Other Civil Filing Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court		
Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters		

11/30/18
Date

[Signature] #7427
Signature of initiating party or representative



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
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. 11
Blue Dog's,)	
)	
v.)	
)	
TROPICANA INVESTMENTS, LLC, a)	
California limited liability company,)	
)	
Defendant.)	
_____)	

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TROPICANA INVESTMENTS, LLC, a California limited liability company

TO THE DEFENDANT: A civil Complaint has been filed by the Plaintiff against you for the relief set forth in the Complaint.

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

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

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

1 2. Unless you respond, your default will be entered upon application of the plaintiff and
2 this Court may enter a judgment against you for the relief demanded in the Complaint, which could
3 result in the taking of money or property or other relief requested in the Complaint.

4 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
5 so that your response may be filed on time.

6 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
7 members, commission members and legislators each have 45 days after services of this Summons
8 within which to file an Answer or other responsive pleading to the Complaint.
9

10 STEVEN D. GRIERSON
11 CLERK OF COURT

12 By:

13 Deputy Clerk
14 Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

12/4/2018

Shimaya Ladson

15 Submitted by:

16 /s/ Mario Lovato

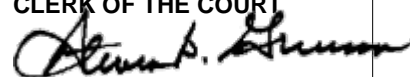
17 MARIO P. LOVATO
18 Nevada Bar No. 7427
Attorney for Plaintiff

19 NOTE: When service is by publication, add a brief statement of the object of the action. See
20 Nevada Rules of Civil Procedure 4(b).
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I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Rachel Mugdrey
Signature of person making service

**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.

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

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:¹

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

¹ 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, 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

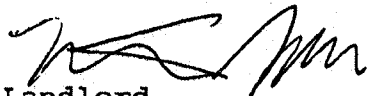

Mark S. Van Aken

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 16th 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 1st, 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 7th 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:

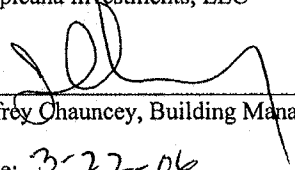
- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Addendum shall govern. All of the terms, covenants, provisions, and agreements of the lease not conflicting with this Amendment shall remain in full force and effect.
- B. This Addendum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

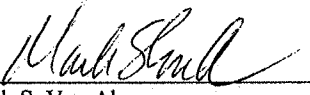
ACKNOWLEDGED AND AGREED:

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 its 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 19th 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 26th 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 26th 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.

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, 2002.

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 22nd 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.

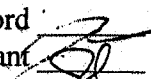
3. Pursuant to Article 4, Rent:

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:

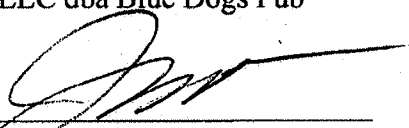
Tropicana Investments, LLC

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 1st 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>
Date: June 15, 2016 at 5:49:39 PM EDT
To: "Stuart Vincent (stuartvincent77@yahoo.com)" <stuartvincent77@yahoo.com>
Cc: "jbin1@msn.com" <jbin1@msn.com>, Danny Velarde <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:

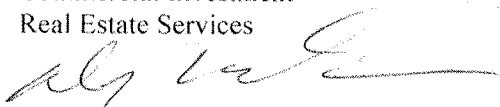
- The base rental total for the initial year of the lease extension shall remain the same as the previous year, with a three percent (3 %) annual base rental increase each subsequent year thereafter (Years 2 – 5).
- Include two (2) remaining five (5) year options (after this lease renewal).

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
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
702.792.7000

LAS VEGAS OFFICE
1980 Festival Plaza Drive
Suite 650
Las Vegas, NV 89136
Tel: 702.792.7000
Fax: 702.798.7181

RENO OFFICE
50 West Liberty Street
Suite 700
Reno, NV 89501
Tel: 775.852.3900
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

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

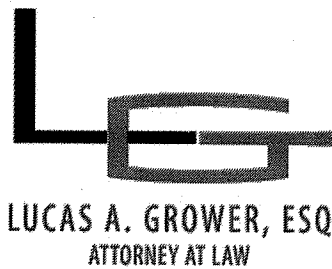
By: _____
Name: Jeffrey Chauncey
Its: Manager

TENANT:

JSJBD Corp,
a Nevada corporation

By: _____
Name: Stuart R. Vincent
Its: President

Exhibit 14



August 7, 2017

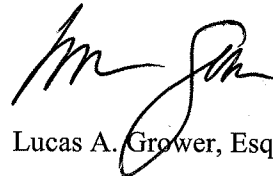
John M. Sacco, Esq.
Marquis Aurbach Coffing
10001 Park Run Dr.
Las Vegas, NV 89145

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/ft². 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, onsite" 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, flowing "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 Statutes¹.

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.

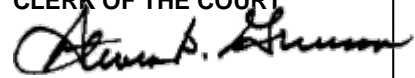
DATE: 11/14/18

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

¹ This statute is only applicable as described and included for ease of reference.



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 Dog's Pub

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; JEFFREY B.
VINCENT; and JEFF WHITE,

Counterdefendants.

Case No.: A-18-785311-B
Dept. No.: 11

BUSINESS COURT

COUNTERDEFENDANT JSJBD CORP'S REPLY TO COUNTERCLAIM

Plaintiff / Counterdefendant JSJBD Corp, d/b/a Blue Dog's Pub ("Blue Dog's") answers,
replies to, and otherwise denies, the allegations of the Counterclaim filed by Defendant /
Counterclaimant Tropicana Investments LLC ("TI" or "Landlord"), as follows:

PARTIES / GENERAL ALLEGATIONS

1
2 1. Blue Dog's is without sufficient knowledge or information to admit or deny the
3 allegations contained in paragraph 1 of the Counterclaim, and, on such basis, denies the
4 allegations.

5 2. Blue Dog's denies the allegations contained paragraph 2 of the Counterclaim.

6 3. Blue Dog's denies the allegations contained paragraph 3 of the Counterclaim.

7 4. Blue Dog's is without sufficient knowledge or information to admit or deny the
8 allegations contained in paragraph 4 of the Counterclaim, and, on such basis, denies the
9 allegations.
10

11 5. Blue Dog's is without sufficient knowledge or information to admit or deny the
12 allegations contained in paragraph 5 of the Counterclaim, and, on such basis, denies the
13 allegations.
14

15 6. Blue Dog's is without sufficient knowledge or information to admit or deny the
16 allegations contained in paragraph 6 of the Counterclaim, and, on such basis, denies the
17 allegations.

18 7. Blue Dog's denies the allegations contained in paragraph 7 of the Counterclaim as,
19 inter alia, incomplete, as the Lease and Option expressly refer to one another and are part of the
20 same agreement.
21

22 8. Blue Dog's denies the allegations contained paragraph 8 of the Counterclaim.

23 9. Blue Dog's denies the allegations contained paragraph 9 of the Counterclaim.

24 10. Blue Dog's denies the allegations contained paragraph 10 of the Counterclaim, as,
25 inter alia, the Counterclaim mischaracterizes the Option and is argumentative, the Option is in
26 writing and speaks for itself.

27 11. Blue Dog's denies the allegations contained paragraph 11 of the Counterclaim, as,
28 inter alia, the Lease is a written document that speaks for itself.

1 12. Blue Dog’s denies the allegations contained paragraph 12 of the Counterclaim, as,
2 inter alia, the Counterclaim mis-states and mischaracterizes the Amendment (e.g., the Amendment
3 “change[s]” the “Commencement Date” of the Lease and “changed” the “Expiration Date” of the
4 Lease), which is a written document that speaks for itself.

5 13. Blue Dog’s denies the allegations contained paragraph 13 of the Counterclaim, as,
6 inter alia, the Counterclaim mis-states and mischaracterizes the Addendum (e.g., the Amendment
7 “change[s]” the “Commencement Date” of the Lease and “changed” the “Expiration Date” of the
8 Lease), which is a written document that speaks for itself.

9 14. Blue Dog’s denies the allegations contained paragraph 14 of the Counterclaim, as,
10 inter alia, the Counterclaim mis-states and mischaracterizes the Lease (e.g., the Lease’s
11 “Commencement Date” and “Expiration Date” were “changed”), and the Lease Assignment and
12 Modification is a written document that speaks for itself.

13 15. Blue Dog’s denies the allegations contained paragraph 15 of the Counterclaim, as,
14 inter alia, the Counterclaim mis-states and mischaracterizes the Lease Assignment and
15 Modification, which is a written document that speaks for itself.

16 16. Blue Dog’s denies the allegations contained paragraph 16 of the Counterclaim.

17 17. Blue Dog’s denies the allegations contained paragraph 17 of the Counterclaim, as,
18 inter alia, the Counterclaim mis-states and mischaracterizes the Lease Assignment and
19 Modification, which is a written document that speaks for itself.

20 18. Blue Dog’s denies the allegations contained paragraph 18 of the Counterclaim.

21 19. Blue Dog’s denies the allegations contained paragraph 19 of the Counterclaim.

22 20. Blue Dog’s denies the allegations contained paragraph 20 of the Counterclaim.

23 21. Blue Dog’s is without sufficient knowledge or information to admit or deny the
24 allegations contained in paragraph 21 of the Counterclaim, and, on such basis, denies the
25 allegations.

1 22. Blue Dog's is without sufficient knowledge or information to admit or deny the
2 allegations contained in paragraph 22 of the Counterclaim, and, on such basis, denies the
3 allegations.

4 23. Blue Dog's is without sufficient knowledge or information to admit or deny the
5 allegations contained in paragraph 23 of the Counterclaim, and, on such basis, denies the
6 allegations.

7 24. Blue Dog's denies the allegations contained paragraph 24 of the Counterclaim, as,
8 inter alia, the Counterclaim mis-states and mischaracterizes the Addendum II, which is a written
9 document that speaks for itself.

10 25. Blue Dog's denies the allegations contained paragraph 25 of the Counterclaim, as,
11 inter alia, the Counterclaim mis-states and mischaracterizes the Addendum II, which is a written
12 document that speaks for itself.

13 26. In response to paragraph 26 of the Counterclaim, Blue Dog's admits that Stuart
14 Vincent sent the letter "to exercise our five year option" and as further stated in the letter, which
15 is a written document that speaks for itself, and denies the remainder as the Counterclaim, inter
16 alia, mis-states and mischaracterizes the letter and the Lease.

17 27. Blue Dog's denies the allegations contained paragraph 27 of the Counterclaim.

18 28. Blue Dog's denies the allegations contained paragraph 28 of the Counterclaim.

19 29. Blue Dog's denies the allegations contained paragraph 29 of the Counterclaim, as,
20 inter alia, the Counterclaim mis-states and mischaracterizes the Letter attached as part of Exhibit
21 11 to the Counterclaim, which is a written document that speaks for itself.

22 30. In response to paragraph 30 of the Counterclaim, Blue Dog's admits, that, in a letter
23 dated August 2, 2016, Lesley B. Miler of the law firm Kaempfer Crowell stated, inter alia, "Please
24 be advised that this firm is counsel to JSJBD Corp.," and Blue Dog's denies the remainder, as,
25 inter alia, the letter is a written document that speaks for itself.

1 31. In response to the allegations of paragraph 31 of the Counterclaim, Blue Dog's
2 admits that the referenced letter, again, provided notice that "JSJBD hereby exercises its option to
3 renew the Lease," but Blue Dog's denies the remainder of the allegations as, inter alia, the
4 Counterclaim mis-states and mischaracterizes the Letter attached as part of Exhibit 12 to the
5 Counterclaim, which is a written document that speaks for itself.

6 32. In response to the allegations of paragraph 32 of the Counterclaim, Blue Dog's
7 admits that Lesley B Miller was the then-attorney of JSJBD Corp., and Blue Dog's denies the
8 remainder of the allegations.
9

10 33. Blue Dog's denies the allegations contained in paragraph 33 of the Counterclaim,
11 as, inter alia, the Counterclaim mis-states and mischaracterizes the Lease and the related
12 documents, which are written documents that speak for themselves.

13 34. Blue Dog's denies the allegations contained in paragraph 34 of the Counterclaim,
14 as, inter alia, the Counterclaim mis-states and mischaracterizes Exhibit 12 and the related
15 documents, which are written documents that speak for themselves.
16

17 35. Blue Dog's denies the allegations contained in paragraph 35 of the Counterclaim,
18 as, inter alia, the Counterclaim mis-states and mischaracterizes Exhibit 13 and the related
19 documents, which are written documents that speak for themselves.

20 36. Blue Dog's denies the allegations contained in paragraph 36 of the Counterclaim.

21 37. Blue Dog's denies the allegations contained in paragraph 37 of the Counterclaim.

22 38. Blue Dog's denies the allegations contained in paragraph 38 of the Counterclaim.

23 39. In response to the allegation of paragraph 39 of the counterclaim, Blue Dog's
24 admits that there was a negotiation and exchange of drafts, but deny the remainder of the
25 allegations of paragraph 39.
26

27 40. Blue Dog's denies the allegations contained in paragraph 40 of the Counterclaim.

28 41. Blue Dog's denies the allegations contained in paragraph 41 of the Counterclaim,

1 as, inter alia, the Counterclaim mis-states and mischaracterizes Exhibit 14, which is a written
2 documents that speaks for itself.

3 42. Blue Dog's denies the allegations contained in paragraph 42 of the Counterclaim,
4 as, inter alia, the Counterclaim mis-states and mischaracterizes Exhibit 15, which is a written
5 documents that speaks for itself.

6 43. Blue Dog's denies the allegations contained in paragraph 43 of the Counterclaim.

7 44. Blue Dog's denies the allegations contained in paragraph 44 of the Counterclaim.

8
9 **FIRST CLAIM FOR RELIEF**
10 **(Declaratory Judgment)**

11 45. In response to paragraph 45 of the Counterclaim, Blue Dog's repeats and restates
12 its responses to the preceding paragraphs, above, as if stated in full herein.

13 46. Blue Dog's denies the allegations contained in paragraph 46 of the Counterclaim.

14 47. Blue Dog's denies the allegations contained in paragraph 47 of the Counterclaim.

15 48. Blue Dog's denies the allegations contained in paragraph 48 of the Counterclaim.

16 49. Blue Dog's denies the allegations contained in paragraph 49 of the Counterclaim.

17 50. Blue Dog's denies the allegations contained in paragraph 50 of the Counterclaim.

18 51. Blue Dog's denies the allegations contained in paragraph 51 of the Counterclaim.

19 52. Blue Dog's denies the allegations contained in paragraph 52 of the Counterclaim.

20 53. Blue Dog's denies the allegations contained in paragraph 53 of the Counterclaim.

21 54. Blue Dog's denies the allegations contained in paragraph 54 of the Counterclaim.

22 55. Blue Dog's denies the allegations contained in paragraph 55 of the Counterclaim.

23
24 **SECOND CLAIM FOR RELIEF**
25 **(Breach of Lease Agreement)**

26 56. In response to paragraph 56 of the Counterclaim, Blue Dog's repeats and restates
27 its responses to the preceding paragraphs, above, as if stated in full herein.

28 57. Blue Dog's denies the allegations contained in paragraph 57 of the Counterclaim.

1 58. Blue Dog's denies the allegations contained in paragraph 58 of the Counterclaim.

2 59. Blue Dog's denies the allegations contained in paragraph 59 of the Counterclaim.

3 60. Blue Dog's denies the allegations contained in paragraph 60 of the Counterclaim.

4 61. Blue Dog's denies the allegations contained in paragraph 61 of the Counterclaim.

5
6 **THIRD CLAIM FOR RELIEF**
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

7 62. In response to paragraph 62 of the Counterclaim, Blue Dog's repeats and restates
8 its responses to the preceding paragraphs, above, as if stated in full herein.

9
10 63. In response to paragraph 63 of the Counterclaim, Blue Dog's generally admits that
11 the generalized statement of law included in paragraph 63 approximates the implied duty of good
12 faith and fair dealing, although the actual language used by the Nevada Supreme Court controls.

13 64. Blue Dog's denies the allegations contained in paragraph 64 of the Counterclaim.

14 65. Blue Dog's denies the allegations contained in paragraph 65 of the Counterclaim.

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

17 66. In response to paragraph 66 of the Counterclaim, Blue Dog's repeats and restates
18 its responses to the preceding paragraphs, above, as if stated in full herein.

19 67. Blue Dog's denies the allegations contained in paragraph 67 of the Counterclaim.

20 68. Blue Dog's denies the allegations contained in paragraph 68 of the Counterclaim.

21 69. Blue Dog's denies the allegations contained in paragraph 69 of the Counterclaim.

22 70. Blue Dog's denies the allegations contained in paragraph 70 of the Counterclaim.

23 71. Blue Dog's denies the allegations contained in paragraph 71 of the Counterclaim.

24
25 72. To the extent that any allegations have not otherwise been answered or otherwise
26 responded-to in the above referenced paragraphs, such allegations are denied.

AFFIRMATIVE DEFENSES

1. The Counterclaim fails to state a claim for which relief can purportedly be granted.
2. The Counterclaims are precluded by Blue Dog's Option rights.
3. The Counterclaims are precluded by Blue Dog's exercise of option rights, accepted by Landlord, to the extent any such exercise was purportedly even required in light of the "shall commence" terminology of the Lease and related documents.
4. The Counterclaims are precluded by Blue Dog's payments, and, indeed, overpayments of rent and other amounts.
5. The Counterclaims are precluded by TI's acceptance of payments with knowledge.
6. The Counterclaims are precluded by the doctrines of estoppel and waiver.
7. The Counterclaims are precluded by legal authority holding that a landlord is estopped to deny option rights.
8. The Counterclaims are precluded and barred by the ascertainable nature of the rental amount, which can be determined by appraisal and/or the Court.
9. The Counterclaims are precluded and barred by TI's breach of contract / lease.
10. The Counterclaims are precluded and barred by TI's breach of obligation to negotiate rent in good faith.
11. The Counterclaims are precluded and barred by TI's breach in purporting to unilaterally set rent despite possessing no such right.
12. The Counterclaims are precluded and barred by TI's breach in purporting to terminate lease contrary to the option rights of tenant.
13. The Counterclaims are precluded and barred by TI's breach of obligation to repair roof and violation of Nevada statutes in regard to same.
14. The Counterclaims are precluded and barred by TI's breach of the covenant of good faith and fair dealing.
15. The Counterclaims are precluded and barred by TI's failure to differentiate the counterclaim for breach of the covenant of good faith and fair dealing from any breach claim, as well as Landlord's failure to allege any breach of the covenant.

1 16. The Counterclaims are precluded and barred by TI's failure to perform obligations
2 of Lease / "failure of consideration" by TI.

3 17. The Counterclaims are precluded and barred by TI's false statements / fraud upon
4 which Blue Dog's reasonably and actually relied.

5 18. The Counterclaims are precluded and barred by the doctrines of illegality and
6 unclean hands.

7 19. The Counterclaims are precluded and barred, subsequent to commencement and
8 exercise of the option, by the "mirror image" rule, including, inter alia, TI's counteroffers and
9 demands for new Lease agreement, which were never agreed upon by the parties.

10 20. The Counterclaims are precluded and barred by the express terms of the Lease and
11 related documents, which Landlord misstates and mischaracterizes.

12 21. The Counterclaims are precluded and barred because "Eviction" and "Writ of
13 Restitution" are not claims for relief.

14 22. The Counterclaims are precluded and barred by falsity and the lack of verification.

15 23. The Counterclaims are precluded and barred by the lack of any factual allegation
16 of breach by TI.

17 24. The Counterclaims are precluded and barred by TI's failure to allege a legally
18 protected right of Landlord that is purportedly ripe for determination and declaration by the Court.

19 25. The Counterclaims are precluded and barred by TI's incorrect and improper usage
20 of inapplicable and otherwise non-existent legal doctrines (i.e. "conditional" option contrary to the
21 express terminology in Lease and related documents, Landlord's reference to "void or voidable"
22 despite existence of express option rights, Landlord's reference to modification of "term" rather
23 than the pertinent documents' express modification of "Commencement Date" and "Expiration
24 Date," Landlord's reference to "holdover" contrary to express option rights).

25 26. The Counterclaims are precluded and barred by the lack of damage alleged or
26 incurred by TI.

27 27. The Counterclaims are precluded by a lack of subject matter jurisdiction over the
28 Counterclaims in District Court.

1 28. Blue Dog's may not currently possess the knowledge or information to state all
2 affirmative defenses, and, pursuant to NRCP 11 and otherwise, reserves the right to state additional
3 affirmative defenses as the same may become known as this case proceeds.
4

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

6 1. Judgment in favor of Blue Dog's and against Tropicana Investments on all claims
7 and counterclaims;

8 2. Declaratory relief in favor of Blue Dog's, whether as requested by Blue Dog's or
9 in regard to the Counterclaims.
10

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

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

14 5. Attorney fees, costs, and expenses.

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

16 7. Injunctive or other relief in favor of Blue Dog's.

17 8. An accounting of CAM and related costs, as described Blue Dog's Complaint.

18 9. Statutory relief pursuant to NRS Chapter 118C, NRS Chapter 40, and any other
19 chapters relating to landlord-tenant disputes, including disputes relating to commercial property.
20

21 10. An award of any and all additional relief that the Court finds just and proper.
22

LOVATO LAW FIRM, P.C.

23 /s/ Mario Lovato

24 MARIO P. LOVATO, ESQ.

25 Nevada Bar No. 7427

26 Attorney for JSJBD Corp.

27 dba Blue Dog's
28

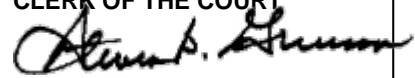
1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED that, on January 31, 2019, the above and foregoing
3 **COUNTERDEFENDANT JSJBD CORP'S REPLY TO COUNTERCLAIM** was served via
4 the Court's system of electronic service on all parties registered and listed for such service,
5 including upon by the following:
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

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_____/s/ Mario Lovato



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 and Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

Case No.: A-18-785311-B
Dept. No.: 11

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

BUSINESS COURT

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT; JEFFREY B.
VINCENT; and JEFF WHITE,

Counterdefendants.

**COUNTERDEFENDANTS STUART VINCENT, JEFFREY VINCENT,
AND JEFF WHITE'S REPLY TO COUNTERCLAIM**

Counterdefendants Stuart Vincent, Jeffrey Vincent, and Jeff White ("Counterdefendants")
answer, reply to, and otherwise deny, the allegations of the Counterclaim filed by Defendant /
Counterclaimant Tropicana Investments LLC ("TI" or "Landlord"), as follows:

PARTIES / GENERAL ALLEGATIONS

1
2 1. Counterdefendants are without sufficient knowledge or information to admit or
3 deny the allegations contained in paragraph 1 of the Counterclaim, and, on such basis, denies the
4 allegations.

5 2. Counterdefendants deny the allegations contained paragraph 2 of the Counterclaim.

6 3. Counterdefendants deny the allegations contained paragraph 3 of the Counterclaim.

7 4. Jeff White denies the allegations contained in paragraph 4, and the remaining
8 responding Counterdefendants are without sufficient knowledge or information to admit or deny
9 the allegations contained in paragraph 4 of the Counterclaim, and, on such basis, deny the
10 allegations.

11 5. Stuart Vincent admits the allegations contained in paragraph 5 of the Counterclaim
12 and the remaining responding Counterdefendants are without sufficient knowledge or information
13 to admit or deny the allegations contained in paragraph 5 of the Counterclaim, and, on such basis,
14 deny the allegations.

15 6. Jeffrey Vincent denies the allegations contained in paragraph 6, and the remaining
16 responding Counterdefendants are without sufficient knowledge or information to admit or deny
17 the allegations contained in paragraph 6 of the Counterclaim, and, on such basis, deny the
18 allegations.

19 7. Counterdefendants deny the allegations contained in paragraph 7 of the
20 Counterclaim as, inter alia, incomplete, as the Lease and Option expressly refer to one another and
21 are part of the same agreement.

22 8. Counterdefendants deny the allegations contained paragraph 8 of the Counterclaim.

23 9. Counterdefendants deny the allegations contained paragraph 9 of the Counterclaim.

1 10. Counterdefendants deny the allegations contained paragraph 10 of the
2 Counterclaim, as, inter alia, the Counterclaim mischaracterizes the Option and is argumentative,
3 the Option is in writing and speaks for itself.

4 11. Counterdefendants deny the allegations contained paragraph 11 of the
5 Counterclaim, as, inter alia, the Lease is a written document that speaks for itself.

6 12. Counterdefendants deny the allegations contained paragraph 12 of the
7 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Amendment
8 (e.g., the Amendment “change[s]” the “Commencement Date” of the Lease and “changed” the
9 “Expiration Date” of the Lease), which is a written document that speaks for itself.

10 13. Counterdefendants deny the allegations contained paragraph 13 of the
11 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Addendum (e.g.,
12 the Amendment “change[s]” the “Commencement Date” of the Lease and “changed” the
13 “Expiration Date” of the Lease), which is a written document that speaks for itself.

14 14. Counterdefendants deny the allegations contained paragraph 14 of the
15 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Lease (e.g., the
16 Lease’s “Commencement Date” and “Expiration Date” were “changed”), and the Lease
17 Assignment and Modification is a written document that speaks for itself.

18 15. Counterdefendants deny the allegations contained paragraph 15 of the
19 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Lease
20 Assignment and Modification, which is a written document that speaks for itself.

21 16. Counterdefendants deny the allegations contained paragraph 16 of the
22 Counterclaim.

23 17. Counterdefendants deny the allegations contained paragraph 17 of the
24 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Lease
25 Assignment and Modification, which is a written document that speaks for itself.

1 18. Counterdefendants deny the allegations contained paragraph 18 of the
2 Counterclaim.

3 19. Counterdefendants deny the allegations contained paragraph 19 of the
4 Counterclaim.

5 20. Counterdefendants deny the allegations contained paragraph 20 of the
6 Counterclaim.

7 21. Counterdefendants deny the allegations of paragraph 21 of the Counterclaim.

8 22. Counterdefendants deny the allegations of paragraph 22 of the Counterclaim.

9 23. Counterdefendants deny the allegations of paragraph 23 of the Counterclaim.

10 24. Counterdefendants deny the allegations contained paragraph 24 of the
11 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Addendum II,
12 which is a written document that speaks for itself.
13

14 25. Counterdefendants deny the allegations contained paragraph 25 of the
15 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Addendum II,
16 which is a written document that speaks for itself.
17

18 26. In response to paragraph 26 of the Counterclaim, Stuart Vincent admits that he sent
19 the letter “to exercise our five year option” and as further stated in the letter, which is a written
20 document that speaks for itself, and denies the remainder as the Counterclaim, inter alia, mis-states
21 and mischaracterizes the letter and the Lease, and the remaining responding Counterdefendants
22 are without sufficient information and knowledge to admit or deny the allegations and, on such
23 basis, deny the same.
24

25 27. Counterdefendants deny the allegations contained paragraph 27 of the
26 Counterclaim.

27 28. Counterdefendants deny the allegations contained paragraph 28 of the
28 Counterclaim.

1 29. Counterdefendants deny the allegations contained paragraph 29 of the
2 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Letter attached
3 as part of Exhibit 11 to the Counterclaim, which is a written document that speaks for itself.

4 30. In response to paragraph 30 of the Counterclaim, and based on the referenced
5 document Counterdefendants admit, that, in a letter dated August 2, 2016, Lesley B. Miler of the
6 law firm Kaempfer Crowell stated, inter alia, "Please be advised that this firm is counsel to JSJBD
7 Corp.," and Counterdefendants deny the remainder, as, inter alia, the letter is a written document
8 that speaks for itself.

9
10 31. In response to the allegations of paragraph 31 of the Counterclaim, and based on
11 the referenced document, Counterdefendants admit that the referenced letter, again, provided
12 notice that "JSJBD hereby exercises its option to renew the Lease," but Counterdefendants deny
13 the remainder of the allegations as, inter alia, the Counterclaim mis-states and mischaracterizes the
14 Letter attached as part of Exhibit 12 to the Counterclaim, which is a written document that speaks
15 for itself.

16
17 32. In response to the allegations of paragraph 32 of the Counterclaim,
18 Counterdefendants are without sufficient knowledge or information to admit or deny the
19 allegations, and, on such basis, deny the same.

20 33. Counterdefendants deny the allegations contained in paragraph 33 of the
21 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes the Lease and the
22 related documents, which are written documents that speak for themselves.

23
24 34. Counterdefendants deny the allegations contained in paragraph 34 of the
25 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes Exhibit 12 and the
26 related documents, which are written documents that speak for themselves.

1 35. Counterdefendants deny the allegations contained in paragraph 35 of the
2 Counterclaim, as, inter alia, the Counterclaim mis-states and mischaracterizes Exhibit 13 and the
3 related documents, which are written documents that speak for themselves.

4 36. Counterdefendants deny the allegations contained in paragraph 36 of the
5 Counterclaim.

6 37. Counterdefendants deny the allegations contained in paragraph 37 of the
7 Counterclaim.

8 38. Counterdefendants deny the allegations contained in paragraph 38 of the
9 Counterclaim.

10 39. In response to the allegation of paragraph 39 of the counterclaim,
11 Counterdefendants are without sufficient knowledge and information to admit or deny the
12 allegations, and, on such basis, deny the same.

13 40. Counterdefendants deny the allegations contained in paragraph 40 of the
14 Counterclaim.

15 41. Based on the referenced document, Counterdefendants deny the allegations
16 contained in paragraph 41 of the Counterclaim, as, inter alia, the Counterclaim mis-states and
17 mischaracterizes Exhibit 14, which is a written documents that speaks for itself.

18 42. Based on the referenced document, Counterdefendants deny the allegations
19 contained in paragraph 42 of the Counterclaim, as, inter alia, the Counterclaim mis-states and
20 mischaracterizes Exhibit 15, which is a written documents that speaks for itself.

21 43. Counterdefendants deny the allegations contained in paragraph 43 of the
22 Counterclaim.

23 44. Counterdefendants deny the allegations contained in paragraph 44 of the
24 Counterclaim.

25
26
27
28
FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

45. In response to paragraph 45 of the Counterclaim, Counterdefendants repeat and restate the responses to the preceding paragraphs, above, as if stated in full herein.

46. Counterdefendants deny the allegations contained in paragraph 46 of the Counterclaim.

47. Counterdefendants deny the allegations contained in paragraph 47 of the Counterclaim.

48. Counterdefendants deny the allegations contained in paragraph 48 of the Counterclaim.

49. Counterdefendants deny the allegations contained in paragraph 49 of the Counterclaim.

50. Counterdefendants deny the allegations contained in paragraph 50 of the Counterclaim.

51. Counterdefendants deny the allegations contained in paragraph 51 of the Counterclaim.

52. Counterdefendants deny the allegations contained in paragraph 52 of the Counterclaim.

53. Counterdefendants deny the allegations contained in paragraph 53 of the Counterclaim.

54. Counterdefendants deny the allegations contained in paragraph 54 of the Counterclaim.

55. Counterdefendants deny the allegations contained in paragraph 55 of the Counterclaim.

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

1 56. In response to paragraph 56 of the Counterclaim, Counterdefendants repeat and
2 restate the responses to the preceding paragraphs, above, as if stated in full herein.

3 57. Counterdefendants deny the allegations contained in paragraph 57 of the
4 Counterclaim.

5 58. Counterdefendants deny the allegations contained in paragraph 58 of the
6 Counterclaim.

7 59. Counterdefendants deny the allegations contained in paragraph 59 of the
8 Counterclaim.

9 60. Counterdefendants deny the allegations contained in paragraph 60 of the
10 Counterclaim.

11 61. Counterdefendants deny the allegations contained in paragraph 61 of the
12 Counterclaim.

13
14
15 **THIRD CLAIM FOR RELIEF**
16 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

17 62. In response to paragraph 62 of the Counterclaim, Counterdefendants repeat and
18 restate the responses to the preceding paragraphs, above, as if stated in full herein.

19 63. In response to paragraph 63 of the Counterclaim, Counterdefendants generally
20 admit that the generalized statement of law included in paragraph 63 approximates the implied
21 duty of good faith and fair dealing, although the actual language used by the Nevada Supreme
22 Court controls.

23 64. Counterdefendants deny the allegations contained in paragraph 64 of the
24 Counterclaim.

25 65. Counterdefendants deny the allegations contained in paragraph 65 of the
26 Counterclaim.

27
28 **FOURTH CAUSE OF ACTION**
 (Eviction and Issuance of Writ of Restitution)

66. In response to paragraph 66 of the Counterclaim, Counterdefendants repeat and restate the responses to the preceding paragraphs, above, as if stated in full herein.

67. Counterdefendants deny the allegations contained in paragraph 67 of the Counterclaim.

68. Counterdefendants deny the allegations contained in paragraph 68 of the Counterclaim.

69. Counterdefendants deny the allegations contained in paragraph 69 of the Counterclaim.

70. Counterdefendants deny the allegations contained in paragraph 70 of the Counterclaim.

71. Counterdefendants deny the allegations contained in paragraph 71 of the Counterclaim.

72. To the extent that any allegations have not otherwise been answered or otherwise responded-to in the above referenced paragraphs, such allegations are denied.

AFFIRMATIVE DEFENSES

1. By the plain language of the Counterclaim, the Frist, Third, and Fourth Claims for Relief are not asserted against these Counterdefendants.

2. The Counterdefendants possess the same defenses as Blue Dog's, including, but not limited to each of the following (as numbered in Blue Dog's Reply to Counterclaim):

1. The Counterclaim fails to state a claim for which relief can purportedly be granted.

2. The Counterclaims are precluded by Blue Dog's Option rights.

3. The Counterclaims are precluded by Blue Dog's exercise of option rights, accepted by Landlord, to the extent any such exercise was purportedly even required in light of the "shall commence" terminology of the Lease and related documents.

1
2 4. The Counterclaims are precluded by Blue Dog's
payments, and, indeed, overpayments of rent and other amounts.

3 5. The Counterclaims are precluded by TI's acceptance
4 of payments with knowledge.

5 6. The Counterclaims are precluded by the doctrines of
6 estoppel and waiver.

7 7. The Counterclaims are precluded by legal authority
8 holding that a landlord is estopped to deny option rights.

9 8. The Counterclaims are precluded and barred by the
10 ascertainable nature of the rental amount, which can be determined
11 by appraisal and/or the Court.

12 9. The Counterclaims are precluded and barred by TI's
13 breach of contract / lease.

14 10. The Counterclaims are precluded and barred by TI's
15 breach of obligation to negotiate rent in good faith.

16 11. The Counterclaims are precluded and barred by TI's
17 breach in purporting to unilaterally set rent despite possessing no
18 such right.

19 12. The Counterclaims are precluded and barred by TI's
20 breach in purporting to terminate lease contrary to the option rights
21 of tenant.

22 13. The Counterclaims are precluded and barred by TI's
23 breach of obligation to repair roof and violation of Nevada statutes
24 in regard to same.

25 14. The Counterclaims are precluded and barred by TI's
26 breach of the covenant of good faith and fair dealing.

27 15. The Counterclaims are precluded and barred by TI's
28 failure to differentiate the counterclaim for breach of the covenant
of good faith and fair dealing from any breach claim, as well as
Landlord's failure to allege any breach of the covenant.

16 16. The Counterclaims are precluded and barred by TI's
17 failure to perform obligations of Lease / "failure of consideration"
18 by TI.

19 17. The Counterclaims are precluded and barred by TI's
20 false statements / fraud upon which Blue Dog's reasonably and

1 actually relied.

2 18. The Counterclaims are precluded and barred by the
3 doctrines of illegality and unclean hands.

4 19. The Counterclaims are precluded and barred,
5 subsequent to commencement and exercise of the option, by the
6 “mirror image” rule, including, inter alia, TI’s counteroffers and
demands for new Lease agreement, which were never agreed upon
by the parties.

7 20. The Counterclaims are precluded and barred by the
8 express terms of the Lease and related documents, which Landlord
misstates and mischaracterizes.

9 21. The Counterclaims are precluded and barred because
10 “Eviction” and “Writ of Restitution” are not claims for relief.

11 22. The Counterclaims are precluded and barred by
12 falsity and the lack of verification.

13 23. The Counterclaims are precluded and barred by the
14 lack of any factual allegation of breach by TI.

15 24. The Counterclaims are precluded and barred by TI’s
16 failure to allege a legally protected right of Landlord that is
purportedly ripe for determination and declaration by the Court.

17 25. The Counterclaims are precluded and barred by TI’s
18 incorrect and improper usage of inapplicable and otherwise non-
19 existent legal doctrines (i.e. “conditional” option contrary to the
20 express terminology in Lease and related documents, Landlord’s
21 reference to “void or voidable” despite existence of express option
rights, Landlord’s reference to modification of “term” rather than
the pertinent documents’ express modification of “Commencement
Date” and “Expiration Date,” Landlord’s reference to “holdover”
contrary to express option rights).

22 26. The Counterclaims are precluded and barred by the
23 lack of damage alleged or incurred by TI.

24 27. The Counterclaims are precluded by a lack of subject
25 matter jurisdiction over the Counterclaims in District Court.

26 28. Blue Dog’s may not currently possess the knowledge
27 or information to state all affirmative defenses, and, pursuant to
28 NRCP 11 and otherwise, reserves the right to state additional
affirmative defenses as the same may become known as this case
proceeds.

3. By asserting a claim based on the Guaranty documents attached to the Counterclaim, which itself references the “Lease,” Landlord necessarily admits that the provisions of the Lease remain valid and enforceable, precluding Landlord’s claims, as well as any claim based on a purported Guaranty.

4. Landlord's counterclaims are not ripe, the necessary predicate has not been established, and the Landlord has accepted rent in excess of the express terms of the Lease, each precluding Landlord's claim(s) against Counterdefendants.

5. Landlord's claim(s) involve such a de minimus amount, which is unsupported by the express terms of the Lease, such that Landlord's claim(s) against Counterdefendants are asserted for vexatious and other improper purposes, entitling Counterdefendants to attorney fees, costs, and other damages.

WHEREFORE, Counterdefendants requests the following relief:

1. Judgment in favor of Counterdefendants and against Tropicana Investments on all counterclaims;

2. That the Court declare that Landlord take nothing by way of the Counterclaim(s).

3. Attorney fees, costs, and expenses.

4. Any relief requested by Blue Dog's deemed applicable to these responding Counterdefendants.

5. 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 Plaintiff and Counterdefendants

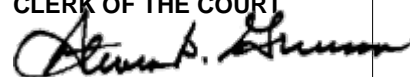
1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED that, on May 7, 2019, the above and foregoing
3 **COUNTERDEFENDANTS STUART VINCENT, JEFFREY VINCENT, AND JEFF**
4 **WHITE'S REPLY TO COUNTERCLAIM** was served via the Court's system of electronic
5 service on all parties registered and listed for such service, including upon by the following:
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

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_____/s/ Mario Lovato

**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**[HEARING REQUESTED]****MOTION FOR SUMMARY JUDGMENT**

Defendant/Counterclaimant Tropicana Investments, LLC a California limited liability company (hereinafter "Landlord"), by and through its attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submit their Motion for Summary Judgment. This Motion is made and based upon all papers, pleadings, and records on file herein, the attached

///

///

Memorandum of Points and Authorities, and any oral argument allowed at a hearing on this matter.

Dated this 22nd day of May, 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*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A landlord-tenant relationship has existed between the parties and their predecessors in interest for over twenty years relating to the same premises. In the course of that relationship, the monthly rent Plaintiff/Counterdefendant JSJBD Corp. ("Tenant") has paid to Landlord under the lease has increased nearly every year,¹ as is evident in repeated amendments to the Lease. In 2016, the Tenant sought to exercise an option to extend the lease term, but suddenly insisted on the rent being decreased, in direct contravention of the terms of the option provision which required and only provides for rental increases. When Landlord refused to give in to this demand, Tenant filed suit in an effort to unilaterally insert and impose a "market rent" term on the rental rate applicable to the current option term.

This dispute between the parties can be resolved as a matter of law, because the material facts are not in dispute, and the only remaining points of contention are pure questions of law for this Court to decide. As such, this motion seeks partial summary judgment in Landlord's favor as to its Declaratory Judgment counterclaim and against Tenant's Declaratory Relief cause of

¹ The sole exception to this trend was in 2011–2012, at the height of the Great Recession, when the parties agreed to maintain rent without an increase. Regular annual increases resumed in 2013.

1 action. Specifically, Landlord requests the Court declare the following to be determined as a
2 matter of law:

- 3 1. That the 1996 Option Agreement specifically relates only to the two options available
4 to the Tenant in 2001 and 2006;
- 5 2. That the option provision in the 2007 Lease Assignment agreed to by the parties only
6 provides for negotiation of rental increases, and thus does not contemplate the
7 possibility of negotiating rental decreases during the subsequent option terms;
- 8 3. That the rent applicable to the option period beginning in 2016 was agreed to between
9 the parties during the course of negotiations and as performed by the Tenant
10 thereafter; and
- 11 4. In the alternative, that if no agreement was reached as to the material terms of the
12 option, then the Tenant is currently in possession of the Premises as a holdover month-
13 to-month tenant.

14 **II. STATEMENT OF FACTS**

15 On or about July 9, 1996, Walter L. Schwartz, predecessor-in-interest to Landlord, as
16 lessor, and Mark S. Van Aken, as tenant, entered into a written Lease (hereinafter the "Lease")
17 for the premises located at 3430 East Tropicana Avenue, Las Vegas, Nevada, Units 27, 28 and
18 29, comprising a space of approximately 4,200 square feet (the "Premises"). *See* Lease, a true
19 and accurate copy of which is attached hereto as **Exhibit 1**. The Lease provided for a tenancy
20 lasting for a term of five years and five months, commencing April 1, 1996 and terminating on
21 August 31, 2001. *Id.*

22 During the initial term of the Lease, from April 1, 1996 to August 31, 2001, the minimum
23 monthly rent began at \$3,150.00 per month, and this monthly rent increased by \$210.00 at the
24 beginning of every year of the five-year and five month term. *Id.* at § 4.

25 The Lease did not include any options to extend the term of the Lease. Instead a separate
26 and distinct, undated and stand-alone "Option Agreement" was executed by the original
27 Landlord and Tenant of the Lease. *See* 1996 Option Agreement, a true and accurate copy of
28 which is attached hereto as **Exhibit 2**.

1 The Option Agreement specifically referred to only two (2) discrete five-year option
2 periods commencing in 2001 and 2006, “at a market rental rate and terms as agreed by Landlord
3 and Tenant.” Ex. 2. By its own plain language, it is evident that the Option Agreement was
4 neither indefinite nor perpetual, and was restricted to the two (2) defined five-year terms referred
5 to on the face of the document.

6 On April 16, 2001, Landlord and Mark S. Van Aken, entered into an Amendment to
7 Retail Building Lease Dated July 9, 1996 (the “2001 Amendment”). See 2001 Amendment, a
8 true and accurate copy of which is attached hereto as **Exhibit 3**. The 2001 Amendment extended
9 the Lease term for five (5) years, from September 1, 2001 through August 31, 2006. During the
10 extended term, it was agreed that the base rent began at \$5,670.00 per month, and this monthly
11 rent increased by \$210.00 at the beginning of every year, ending at \$6,510.00 per month for the
12 final year, ending on August 31, 2006. *Id.* at § 3.

13 On March 7, 2006, Landlord and Mark S. Van Aken, entered into an Addendum to Retail
14 Building Lease Dated July 9, 1996 (the “2006 Addendum”). See 2006 Addendum, a true and
15 accurate copy of which is attached hereto as **Exhibit 4**. The 2006 Addendum once again
16 extended the tenancy for a term of five (5) years, from September 1, 2006 through August 31,
17 2011. During the extended term, it was agreed that the base rent began at \$6,720.00 per month,
18 and this monthly rent again increased by \$210.00 at the beginning of every year, ending at
19 \$7,560.00 per month for the final year, ending on August 31, 2011. *Id.* at § 3. In addition, the
20 Addendum gave the tenant an option to extend the Lease term for “one (1) final extension term
21 of five (5) years,” to begin in 2011, and provided that such extension term shall be “under terms
22 and conditions to be negotiated.” That Addendum language thus modified and superseded all of
23 the other prior lease documents concerning the 2011 option term, by eliminating any reference
24 whatsoever to “market rental rate.”

25 During the term of the Lease, at this point extended to August 2011 by virtue of the 2006
26 Addendum, the tenant sought to assign the tenancy to Tenant’s predecessor-in-interest, JSJ, LLC.
27 Thus, Landlord, Mark S. Van Aken, as tenant, and JSJ, LLC, as assignee, entered into a Lease
28 Assignment and Modification agreement executed by all parties in June 2007 (the “2007 Lease

Modification"). See 2007 Lease Modification, a true and accurate copy of which is attached hereto as **Exhibit 5**.

The 2007 Lease Modification stated that it is the desire of all parties to allow Mark S. Van Aken to assign the Lease (Exhibit 1), the 2001 Amendment (Exhibit 3) and 2006 Addendum (Exhibit 4) to the Assignee, JSJ, LLC, under terms and conditions set forth in the 2007 Lease Modification. **Ex. 5**. Notably, the 2007 Lease Modification did not refer to or incorporate an assignment of the stand-alone and separate 1996 Option Agreement (Exhibit 2). Instead, the 2007 Lease Modification provided a new provision conditionally granting the tenant up to three options to extend the Lease by five years at a time:

...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.

Id. at § 8.

The operative language regarding the three (3) five-year options does not include, nor does it even contemplate, decreases in the minimum base rental to be paid by Tenant. Likewise, the operative language of the three (3) five-year options unmistakably does not include any reference to or consideration of "market rental rate."

On or about February 22, 2011, Landlord and JSJ LLC entered into a written Addendum II to Retail Building Lease ("2011 Addendum") which changed the Commencement Date of the Option Term to September 1, 2011 and the Expiration Date of the Option Term to August 31, 2016. See 2011 Addendum, a true and accurate copy of which is attached hereto as **Exhibit 6**.

According to the 2011 Addendum, Landlord, in good faith and in an attempt to accommodate the requests of the Tenant, agreed that the monthly rent for the first two years of the first option term (September 2011 through August 2012, and September 2012 through August 2013) would remain at the same rate (but not decreased) as was paid the prior year (September 2010 through August 2011), and monthly rent thereafter would increase by \$210.00

at the beginning of each of the remaining three (3) years of the option (from September 1, 2013, through August 31, 2016).*Id.*

The below chart summarizes the various options provided over the course of the tenancy:

Document	Exhibit	Option Term
Lease	1	(none)
1996 Option Agreement	2	<ul style="list-style-type: none">Option to renew for five years commencing September 1, 2001, at a market rental rate and terms as agreed by Landlord and Tenant.Option to renew for five years commencing September 1, 2006, at a market rental rate and terms as agreed by Landlord and Tenant.
2006 Addendum	4	<ul style="list-style-type: none">Option to extend lease term for five years commencing September 1, 2011, under terms and conditions to be negotiated.
2007 Lease Modification	5	<ul style="list-style-type: none">Three Options to renew for five years each commencing September 1, 2016, under terms and conditions, including but not limited to rental increases, to be negotiated.

TENANT'S ATTEMPT TO EXERCISE THE FIRST FIVE-YEAR OPTION

On February 26, 2016, approximately six months prior to the expiration of the Lease term on August 31, 2016, Tenant purported to exercise the first five-year option given by the 2007 Lease Modification, to commence on September 1, 2016. *See* Written Notice dated February 26, 2016, a true and accurate copy of which is attached as **Exhibit 7**.

The purported notice of exercise of the first five-year option on February 26, 2016 ignored the express condition of the option language in the 2007 Lease Modification (Exhibit 5) which stated that the options were conditionally effective only with rental increases to be

1 negotiated. Contrary to this express agreement, Tenant demanded a \$2,500.00 reduction in rent
2 per month—a 30% reduction in the rental rate. Landlord did not accept this demand which
3 contradicted the express terms of the 2007 Lease Modification.

4 Notably, with the 2011-2013 exception previously noted above where rent stayed the
5 same for each and every monthly rental increase from the commencement of the initial Lease
6 term on April 1, 1996, through and including August, 2016, which amounted to more than 20
7 years, the minimum base monthly rent always increased, and never decreased, in the amount of
8 \$210.00 per month for every base rent increase.

9 **TENANT'S EXERCISE OF THE FIRST FIVE-YEAR OPTION THROUGH ITS**
10 **COUNSEL, AND TENANT'S PERFORMANCE THEREUNDER**

11 On June 15, 2016, Landlord's authorized agent, Commercial Investment Real Estate
12 Services, on behalf of Landlord, extended an offer in writing to Tenant that, among other terms,
13 proposed the amount of base rent for the initial year of the lease extension to remain the same as
14 the previous year (2015–2016) which amounted to \$8,190.00 per month. *See* Letter Dated June
15 15, 2016, a true and accurate copy of which is attached hereto as **Exhibit 8**.

16 On August 2, 2016, Lesley B. Miller, Esq. of the law firm Kaempfer Crowell, notified
17 Landlord that she represented Tenant as its counsel. *See* Letter Dated August 2, 2016 from
18 Lesley B. Miller, Esq., a true and accurate copy of which is attached hereto as **Exhibit 9**. In this
19 letter, Ms. Miller states in pertinent part as follows: "JSJBD hereby exercises its option to renew
20 the Lease pursuant to Section 8 of the Lease Assignment and Modification, dated June 26,
21 2007." *Id.*

22 Ms. Miller also requested that the payment of base rent for the first year of the five-year
23 renewal term would remain the same as the previous year (9/1/2015–8/31/2016), exactly as had
24 been proposed and offered by Landlord's authorized agent in its June 15, 2016 letter proposal
25 (Exhibit 8). *Id.* Further, Tenant's attorney and agent clearly recognized the 20-year pattern of
26 annual monthly rent increases of \$210.00, as well as the contractual obligation to negotiate
27 "rental increases" as set forth in the 2007 Lease Modification, as she requested an increase in
28

1 base rent for each subsequent year during the extended option term equal to the rate increase of
2 \$210.00 per month, all as had been set forth in the 2011 Addendum (Exhibit 6).

3 Ms. Miller was undisputedly the duly authorized agent of Tenant when she made the
4 representations contained in her August 2, 2016 letter.

5 Then on August 31, 2016, the day before the commencement of the Option Term, the
6 same attorney and agent for Tenant again reiterated the exercise of the option rights under the
7 Lease to renew for an additional five-year term. *See* Letter Dated August 31, 2016 from Lesley
8 B. Miller, Esq., a true and accurate copy of which is attached hereto as **Exhibit 10**. Notably, the
9 Tenant's attorney, Ms. Miller, attached a proposed amendment to the Lease which provided for a
10 rent schedule where the Tenant would pay the following:

11 09/01/16 to 08/31/17 - \$8,400.00 per month, \$100,500.00 per annum
12 09/01/17 to 08/31/18 - \$8,400.00 per month, \$100,500.00 per annum
13 09/01/18 to 08/31/19 - \$8,610.00 per month, \$103,320.00 per annum
14 09/01/19 to 08/31/20 - \$8,820.00 per month, \$105,840.00 per annum
15 09/01/20 to 08/31/21 - \$9,030.00 per month, \$108,360.00 per annum

16 Id.

17 On September 7, 2016, Landlord's counsel sent correspondence to Ms. Miller discussing
18 several other non-material issues, to wit, parking, CAMs, security patrols, and issues related to
19 personal guaranties. Critically, the Landlord did not reject the proposed rent amounts. Rather,
20 the Landlord's counsel confirmed that the parking, CAMs, security patrols and guarantee related
21 issues were the "final matters" that the parties were attempting to work through. *See* **Exhibit 11**.
22 In other words, the parties agreed on the foregoing rental amounts for the option term.

23 Thereafter, consistent with the parties' agreement, the Tenant began paying \$8,400.00 per
24 month in September 2016. Further, the Tenant paid this sum uninterrupted for the ensuing year,
25 through August 2017. These monthly rental payments were accepted by the Landlord, and the
26 Tenant remains in possession of the premises to date.

27 Although the parties reached an agreement on the rent amounts for the Option Term,
28 Tenant and Landlord, through their respective counsel, exchanged drafts of a proposed
standardized lease form during the next twelve (12) months in an attempt to update the

1 remaining non-rent portions of the twenty (20) year old Lease. During that time frame, the
2 parties' conduct was consistent with the parties having agreed to the essential terms of the
3 Option.

4 Notably, at no time during the twelve month period from September 2016 to August 2017
5 was there ever an objection made to the amount of base rent then being paid by the Tenant,
6 \$8,400.00 per month, and at no time was this payment of increased rent raised as a disputed
7 issue. Likewise, at no time during this twelve month period did Lesley B. Miller, Esq. demand
8 that the base rent be reduced or decreased, nor did she demand the base rent be negotiated down
9 from the prior year's rent based on the condition of the market.

10 On August 7, 2017, counsel for Landlord received correspondence from Lucas A.
11 Grower, Esq., advising that Kaempfer Crowell had been relieved of its representation of Tenant
12 and that in its place and stead Mr. Grower would be representing Tenant. *See* Letter Dated
13 August 7, 2017 from Lucas A. Grower, a true and accurate copy of which is attached hereto as
14 **Exhibit 12**.

15 On August 31, 2017, the Tenant, through its new counsel, suddenly demanded that Lease
16 negotiations be restarted for the base rent on the basis of "market rental rate and terms," which
17 had not been included in the various Lease documents since the original 1996 Option
18 Agreement. *See* Letter Dated August 31, 2017 from Lucas A. Grower, a true and accurate copy
19 of which is attached hereto as **Exhibit 13**. During the entire prior twelve months, not once was
20 such a position advanced or brought up by Tenant's initial counsel, Lesley B. Miller, Esq..

21 On December 20, 2017, Mr. Grower, writing as the attorney for Tenant, again
22 communicated Tenant's position that the rent for the option provided by the 2007 Lease
23 Modification should be based on fair market value. *See* Letter Dated December 20, 2017 from
24 Lucas A. Grower, a true and accurate copy of which is attached hereto as **Exhibit 14**. Further,
25 Tenant's counsel admitted in this letter that Tenant was merely a holdover tenant: "[Tenant's]
26 pattern of conduct is consistent with its position as a holdover tenant and nothing more." *Id*.

27 After the Tenant's second attorney refused to acknowledge that an agreement had been
28 reached on the important issue of base rent, Tenant, with its third attorney, filed this complaint

1 initiating this action on November 30, 2018 – 33 months after Tenant initially indicated it wanted
2 to exercise the option and 27 months after the Option term commenced.

3 **III. LEGAL STANDARD**

4 The purpose of summary judgment proceedings is to pierce the pleadings and to test
5 whether there are no issues of material fact, such that a party is entitled to a judgment as a matter
6 of law. *See Dredge Corp. v. Husite Co.*, 78 Nev. 69, 89, 369 P.2d 686, 687 (1962). Under
7 NRCP 56(a), a party may move for summary judgment on all of, or a part of, a claim or defense.
8 “The court shall grant summary judgment if the movant shows that there is no genuine dispute as
9 to any material fact and the movant is entitled to judgment as a matter of law.” NRCP
10 56(a). Although the non-moving party is entitled to all reasonable inferences from the documents
11 and supporting evidence in its favor, it “is not entitled to build a case on the gossamer threads of
12 whimsy, speculation, and conjecture.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026,
13 1030 (2005).

14 The non-moving party “bears the burden to do more than show that there is some
15 metaphysical doubt as to the operative facts in order to avoid summary judgment” *Id.* at
16 732, 121 P.3d at 1031 (internal quotation marks omitted). Rather, “[t]he nonmoving party must,
17 by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue
18 for trial or have summary judgment entered against him.” *Id.* “A factual dispute is genuine when
19 the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.”
20 *Id.* at 731, 121 P.3d at 1031 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574,
21 586 (1986)).

22 **IV. LEGAL ARGUMENT**

23 Partial summary judgment is appropriate in Landlord’s favor here because Landlord is
24 only seeking judgment as to issues that are pure questions of law, and the material facts are
25 undisputed.

26 The undisputed facts that are material to the requested declarations are as follows: (1) the
27 text of the Lease and all of the various related agreements, addenda, and modifications attached
28 hereto as exhibits; (2) the fact that Landlord has never agreed to extend the Lease under terms

1 including a reduction in rent; and (3) the content of the various letters between the parties and
2 their authorized representatives, and (4) the conduct and performance of the Tenant. None of
3 these facts are subject to reasonable dispute, and as such, the Court is able to make
4 determinations as a matter of law based on these facts. Therefore, for the reasons stated below,
5 Landlord is entitled to judgment as a matter of law on the declarations sought herein, and the
6 Motion should be granted.

7 **A. THE 1996 OPTION AGREEMENT RELATES ONLY TO THE TWO**
8 **OPTIONS AVAILABLE TO THE TENANT IN 2001 AND 2006;**

9 First, Landlord requests the Court declare that the terms of the 1996 Option Agreement
10 (Exhibit 2 to this Motion) applies solely to the two (2) specifically referenced options provided
11 in the 1996 Option Agreement—those that began in September 2001 and September 2006—and
12 do not apply to any other options provided by subsequent documents. As this issue involves a
13 pure question of interpretation of contractual terms, the Court may make such a determination on
14 a motion for summary judgment. *See Fed. Ins. Co. v. Coast Converters*, 130 Nev. 960, 965, 339
15 P.3d 1281, 1284 (2014) (“In the absence of ambiguity or other factual complexities, contractual
16 interpretation presents a question of law for the district court to decide...”) (internal quotations
17 omitted).

18 The starting point for the interpretation of any contract is the plain language of the
19 contract. *See, e.g. McDaniel v. Sierra Health & Life Ins. Co., Inc.*, 118 Nev. 596, 53 P.3d 904
20 (2002). When a contract contains clear and unequivocal provisions, those provisions must be
21 construed by their usual and ordinary meaning. *Dickenson v. Nevada*, 110 Nev. 934, 937, 877
22 P.2d 1059, 1061 (1994). Additionally, Nevada law has long mandated that “contracts should be
23 construed so as to avoid rendering portions of them superfluous.” *See, e.g. Musser v. Bank of*
24 *Am.*, 114 Nev. 945, 950, 964, P.2d 51, 54 (1998).

25 Here, the terms of the 1996 Option Agreement are plain and unambiguous in their
26 application solely to the two (2) options created therein. The entire Option Agreement consists
27 of two nearly identical paragraphs, each of which plainly states terms solely for a single option,
28 not for any future option. For example, the first paragraph reads: “...the tenant shall have the

1 option to renew this lease for a period of five years commencing September 1, 2001 at a market
2 rental rate and terms as agreed by Landlord and Tenant.” Ex. 2. The second paragraph is
3 identical, except the date is changed to September 1, 2006.

4 Accordingly, the 1996 Option Agreement consists of unambiguous terms that apply only
5 to two very specific, distinct, and fixed option periods—the five-year periods beginning on
6 September 1, 2001, and September 1, 2006. The plain language of the 1996 Option Agreement
7 thus necessarily does not apply to any other potential option periods, which were not even
8 contemplated at that time. To suggest that the inclusion of these terms in a 1996 agreement
9 could imply that the same terms were intended to be included in all successive option agreements
10 would be contrary to the express wording of the document, to which Plaintiff was not even a
11 party, and to which Tenant cannot possibly offer testimony regarding the intention of the parties
12 to the 1996 Option Agreement.

13 Secondly, any terms pertaining to the options provided in the 1996 Option Agreement
14 were superseded by the 2006 Addendum. *See Ex. 4.* The option provided in the 2006
15 Addendum carries its own terms, including that the option period “shall be under terms and
16 conditions to be negotiated.” *Id.* at § 4. The 2006 Addendum includes no language suggesting
17 that the terms of the 1996 Option Agreement were to be included, considered or re-applied to the
18 new options. Rather, the 2006 Addendum states that the intent of that document is “to amend
19 [the] Lease.” *Id.* Thus, the plain language of the 2006 Amendment shows an intent to supersede
20 the terms present in the 1996 Option Agreement. Again, the Plaintiff was not a party to this
21 2006 Addendum, and therefore cannot offer credible evidence of a contrary intent.

22 **B. THE 2007 OPTION PROVISION ONLY PROVIDES FOR NEGOTIATION**
23 **OF RENTAL INCREASES, AND THUS DOES NOT CONTEMPLATE**
24 **THE POSSIBILITY OF RENTAL DECREASES**

25 Next, Landlord seeks a declaration that the 2007 Lease Modification—the agreement
26 governing the term that would begin in 2016 should the option provision therein be properly
27 exercised—does not provide for the possibility of a decrease in monthly rent at the beginning of
28 the option period.

1 Once again, the terms of the 2007 Lease Modification, like the 1996 Option Agreement
2 and the 2006 Lease Addendum, are plain and unambiguous and may be interpreted as a matter of
3 law. See **Ex. 5** at § 8. Under these clear terms, the five-year options were expressly and
4 unambiguously made conditional upon “terms and conditions, including but not limited to rental
5 increases, to be negotiated.” *Id.*

6 A plain reading of this option provision requires recognition of the use of “rental
7 increases,” as opposed to merely “rent.” This choice of words undisputedly reflects a manifest
8 intent and agreement that the option period would be subject to increased rent, and that the
9 parties would negotiate the degree and amount of said increases. Any contrary interpretation
10 would ignore the plain meaning of the contract terms, and would render the use of the term
11 “increases” superfluous, a result that must be avoided. See, e.g., *Musser v. Bank of Am.*, 114 Nev.
12 945, 950, 964, P.2d 51, 54 (1998).

13 In addition to the unambiguous language of the contract, Tenant has already recognized
14 through its counsel that the 2007 Lease Modification does not contain any “fair market”
15 language. **Ex. 14** at TROP 589 (letter from Lucas Grower arguing that Tenant may negotiate
16 base rent despite “[t]he absence of language explicitly stating that negotiations would consider
17 ‘fair market value’”). This admission by Tenant’s second lawyer only reaffirms the
18 propriety of a judicial declaration that the option provided by the 2007 Lease Modification is not
19 subject to considerations of fair market rental value. The unequivocal contract language requires
20 rental increases.

21 **C. THE RENT APPLICABLE TO THE OPTION PERIOD BEGINNING IN**
22 **2016 WAS AGREED TO BETWEEN THE PARTIES**

23 Third, independent of the plain and unambiguous contractual language discussed above,
24 the Court should declare that the parties reached an agreement as to the rent which would apply
25 to the option period beginning in 2016.

26 Under Nevada law, a contract is formed once an offer has been accepted, and a meeting
27 of the minds exists. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). A
28 meeting of the minds exists when the parties have agreed upon the contract’s essential terms.

1 *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996). This requirement extends to
2 option agreements, which are unenforceable if they leave an essential term to be decided in the
3 future, because this signifies a lack of meeting of the minds. *City of Reno v. Silver State Flying*
4 *Service, Inc.*, 84 Nev. 170, 175, 438 P.2d 257, 261 (1968).

5 Which terms are essential to a contract “depends on the agreement and its context and
6 also on the subsequent conduct of the parties, including the dispute which arises and the remedy
7 sought.” *Cert. Fire Prot., Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255
8 (2012) (quoting Restatement (Second) of Contracts § 131 cmt. g (1981)). Longstanding Nevada
9 law provides that lease options must contain the same essential terms of an ordinary lease: (1) the
10 names of the parties, (2) a description of the property, (3) the amount of rent, (4) when rent is
11 payable, and (5) the duration of the lease. *Reno Club v. Young Inv. Co.*, 64 Nev. 312, 330, 182
12 P.2d 1011, 1012 (1947).

13 In *Silver State Flying Service*, the Nevada Supreme Court considered an option
14 agreement similar to that at issue in the present case, and found it unenforceable for lack of
15 specificity. The agreement between the parties in that case provided the lessee the option to
16 obtain an extension of the term for an additional ten years, and that the parties “hereby mutually
17 covenant and agree to negotiate as to the terms and conditions of said ten year extension of
18 term...” *Id.*, 84 Nev. at 173, 438 P.2d at 259. The Nevada Supreme Court, citing California
19 cases, held that under the “well established” rule, the option was too indefinite to be enforced
20 because either party may refuse to agree to anything to which the other party will agree. *Id.*, 84
21 Nev. at 175, 438 P.2d at 261.

22 Here, three of the four terms that are considered “essential” under Nevada law—the
23 names of the parties, the description of the property, and when rent is payable—are governed by
24 the underlying Lease, and the parties never proposed changing any of those terms. As such, the
25 only essential term that remained to be agreed upon was the amount of rent. In other words,
26 once the parties agreed upon the amount of rent, there was a meeting of the minds, and the
27 contract was formed.
28

1 **1. The Tenant Proposed the Rent Schedule for the Option Term.**

2 This is precisely what occurred in the Fall of 2016 when the Tenant's attorney and
3 authorized representative, Lesley B. Miller, Esq., proposed a rental amount, the Landlord
4 accepted that amount, the Tenant began paying the agreed upon rental amount, and the Tenant
5 continued to pay the agreed upon rental amounts without objection or dispute during the first
6 year of the Option Term.

7 The history of the negotiations of the rent amount to be paid can be summarized as
8 follows: Tenant's first indication of intention to exercise the option came in its February 26,
9 2016 letter to Landlord, in which Tenant demanded a rent reduction. **Ex. 7** at TROP 30-31.
10 Landlord responded on June 15, 2016, with a counteroffer that the base rent would remain the
11 same (\$8,190 per month) for the initial year, with rent increasing by three percent each year
12 thereafter.**Ex. 8** at TROP 125. Tenant's attorney, Lesley B. Miller, Esq., responded with a letter
13 on August 2, 2016, agreeing to the terms of the option as offered by Landlord, except for the
14 slight change that rent would increase at the historical rate of \$210 per month every year instead
15 of three percent. **Ex. 9.**

16 Thereafter, on August 31, 2016, the day before the option term commenced, Ms. Miller
17 sent correspondence to the Landlord and included a proposed Amendment which set forth the
18 following rental amounts:
19
20

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

23 "09/01/16 to 08/31/17 - \$8,400.00 per month, \$100,500.00 per annum
24 09/01/17 to 08/31/18 - \$8,400.00 per month, \$100,500.00 per annum
25 09/01/18 to 08/31/19 - \$8,610.00 per month, \$103,320.00 per annum
26 09/01/19 to 08/31/20 - \$8,820.00 per month, \$105,840.00 per annum
27 09/01/20 to 08/31/21 - \$9,030.00 per month, \$108,360.00 per annum"

28 See **Ex.10.**

1 Landlord's counsel then responded to Tenant's counsel on September 7, 2016. **Ex. 11.**
2 In that correspondence, the Landlord mentioned a few other non-rent related matters and
3 confirmed that those other non-rent related items were the "final matters" that the parties needed
4 to discuss. In other words, the Landlord agreed to the proposed rental amounts and consistent
5 therewith, the Tenant began paying the \$8,400.00 a month in September 2016 without objection
6 or dispute, and the Landlord accepted that amount. Given the foregoing, the Tenant is estopped
7 from disclaiming its agreement to the rental amounts and it should be bound by the terms agreed
8 to by the parties and confirmed by the Tenant's own conduct.

9
10 The determination that the parties had reached an agreement regarding the essential term
11 of base rental amount is further supported by Section 34 of the Restatement (Second) of
12 Contracts which provides that:

13 **§ 34. Certainty and Choice of Terms; Effect of Performance or Reliance**

14 (1) The terms of a contract may be reasonably certain even though it
15 empowers one or both parties to make a selection of terms in the course of
16 performance.

17 (2) Part performance under an agreement may remove uncertainty and
18 establish that a contract enforceable as a bargain has been formed.

19 ...

20 Here the terms of the Lease were certain, even though the parties continued to work on
21 non-essential terms and update the lease document, and such certainty was confirmed by the
22 conduct (payment of rent by Tenant and acceptance of same by Landlord with continued
23 uninterrupted possession of the leasehold by Tenant) of both Tenant and Landlord.

24 In short, Tenant offered rent terms which Landlord accepted. Notwithstanding that the
25 parties were ultimately unsuccessful in agreeing to update peripheral terms in an updated lease
26 form, the undeniable fact is that the parties reached an agreement as to the rent that would apply
27 to the option period. As such, Landlord requests the Court declare that the parties agreed that the
28

1 monthly rent applicable to the option period beginning on September 1, 2016 would be \$8,400,
2 with the agreed upon rental increases set forth above.

3 **D. IN THE ALTERNATIVE, THE OPTION WAS NOT EXERCISED AND**
4 **TENANT IS A HOLDOVER TENANT**

5 Finally, in the event the Court does not declare that the rent applicable to the current
6 option period was agreed to, Landlord requests the Court declare that Tenant is a holdover
7 month-to-month tenant.

8 First, Tenant has already acknowledged through its second attorney, Mr. Grower, that it
9 is a holdover tenant. *See* **Ex. 14** at TROP 588 (“[Tenant’s] pattern of conduct is consistent with
10 its position as a holdover tenant and nothing more.”). Simply put, if the Court cannot rule as a
11 matter of law that the parties agreed to the amount of rent for the option period, then Landlord
12 would agree with Tenant’s second attorney’s position that the option provision in the 2007 Lease
13 Modification was never executed, meaning the Lease terminated by its terms on September 1,
14 2016, and thus Tenant is now and has been a holdover month-to-month tenant.

15 Landlord’s primary request is for the Court to determine that the term of rent during the
16 2016 option period was agreed to. However, if the Court finds that the undisputed
17 communications and conduct of the parties did not result in such an agreement, then the
18 necessary result, as a matter of law, is that there is no lease in effect and Tenant is a holdover
19 month-to-month tenant.

20 ///

21 ///

22 ///

23 ///

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V. CONCLUSION

In light of the above, the Court should grant Landlord's motion and declare as a matter of law that (1) the 1996 Lease Option contains terms relating only to the options available to the Tenant in 2001 and 2006; (2) the option provision in the 2007 Lease Modification only provides for rental increases, and thus does not contemplate the possibility of rental decreases; and (3) the parties agreed to the rent amount applicable to the option period beginning in September 2016, which is currently in effect. Finally, if the Court cannot make these three declarations at this time, then in the alternative, Landlord requests the Court declare that Tenant is currently in possession of the premises as a holdover tenant.

Dated this 22nd day of May, 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
Tropicana Investments, LLC

DECLARATION OF JEFFREY CHAUNCEY

JEFFREY CHAUNCEY, declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.
2. I am the manager of Defendant/Counterclaimant Tropicana Investments, LLC in the case of JSJBD, Corp. v. Tropicana Investments, LLC et al, Case No. A-18-785311-B and am submitting this Declaration in support of Defendant's Motion for Summary Judgment.
3. I have read the foregoing Motion for Summary Judgment, including the points and authorities and any exhibits attached thereto and the same are true and correct to the best of my knowledge and belief; and your declarant incorporates all factual statements therein in this Declaration. Furthermore, I have reviewed the documents attached to the Motion and I certify that the documents attached thereto are true and accurate copies of those documents consistent with the provisions of NRCP 56(b) and (e).

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this ___ day of May, 2019.


JEFFREY CHAUNCEY

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 22nd day of May, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

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/ Carrie Roberts
an employee of Marquis Aurbach Coffing

² 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

22 22

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, 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 16th 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 1st, 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 7th 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:

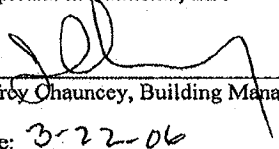
- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Addendum shall govern. All of the terms, covenants, provisions, and agreements of the lease not conflicting with this Amendment shall remain in full force and effect.
- B. This Addendum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

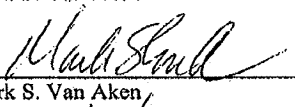
ACKNOWLEDGED AND AGREED:

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 G

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is made as of this 1st day of March, 2007, by and between M.S.K.C. Inc., a Nevada Company ("Assignor"), and Jeff White, an individual, and/or his nominee or assigns ("Assignee"), with reference to the following:

A. This Assignment is executed pursuant to that certain Purchase and Sale Agreement dated ~~September 30~~, January 2006, 2007 (the "Purchase Agreement") with respect to certain real property commonly known as 3430 E. Tropicana Avenue, Suite 27,28, and 29, Las Vegas, Nevada (the "Property").

B. Assignor is party to that certain Commercial Lease Agreement dated July 15, 2004 by and between Tropicana Investment L.L.C., as Landlord and Assignor as Tenant (the "Lease"), covering the Property.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, effective as of the Closing Date (as defined in the Purchase Agreement) and contingent upon the closing of the purchase and sale transaction described in the Purchase Agreement, Assignor and Assignee agree as follows:

1. Assignor hereby assigns and transfers to Assignee the tenant's interest in the Lease, and all right, title and interest in and to the Lease, including all deposits thereunder, without representation or warranty except as expressly provided in the Purchase Agreement.
2. Assignee hereby accepts the foregoing assignment and hereby assumes all of the duties, obligations and responsibilities of the tenant under the Lease arising or accruing on or after the Closing Date.
3. This Assignment shall be binding on and inure to the benefit of the parties hereto and their successors in interest and assigns. This Assignment may be executed in counterparts.

[Signature Page Follows]



IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:

M.S.K.C. Inc.
a Nevada Company

Mark S. Van Aken
Mark S. Van Aken, Managing Member *PRESIDENT*

ASSIGNEE:

Jeff White
Jeff White, his nominee or assigns

Consent of Landlord:

The forgoing assignment and assumption is hereby approved
by the undersigned Landlord

gc

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 *[Signature]*
Tenant *[Signature]*
Assignee *[Signature]*

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 19th 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 26th day of June, 2007.

By: [Signature]

Jeffrey Chauncey, Building Manager

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 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: Stuart Vincent

Social Security Number: _____

Residence Address: 11261 Playa Caribe Ave
Las Vegas NV 89138

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 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.

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: [Signature]

Social Security Number: _____

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

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 J.S.J., LLC as 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.

Page 1 of 2

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: _____

Residence Address: 583 Cappellini St.
Las Vegas, NV 89141

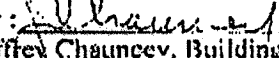
Addendum for Lease Agreement with J.S.J., LLC

J.S.J. LLC's three (3) additional five (5) year options shall be contingent upon J.S.J., LLC depositing with the Landlord a Security Deposit in the amount of \$8,000.00 on or before the close of escrow. Assignee's Security Deposit shall be paid to Landlord by Assignee's escrow company.

Landlord: Tropicana Investments LLC Assignee: J.S.J., LLC

Dated this 27 day of June, 2007

Dated this 5 day of July 2007.

By: 
Jeffrey Chauncey, Building Manager

By: 

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

THIS ADDENDUM is made this 22nd 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 SA

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:

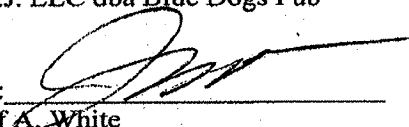
Tropicana Investments, LLC

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 6

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

THIS ADDENDUM is made this 22nd 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
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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 SA

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:

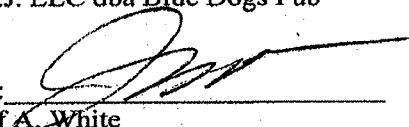
Tropicana Investments, LLC

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 7

Blue Dogs Pub

Jeff Chauncey,

This letter is to notify you we intend to exercise our five year option beginning September 1st 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 - President
Stuart Vincent

Cc: Joe Velarde
Dan Velarde

Exhibit 8



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

cc: Tropicana Investments, LLC

1399 Galleria Drive, Suite #110, Henderson, NV 89014 • Phone: (702) 454-7788 • Fax: 97020 454-4668 • www.cilv.com

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 9

**KAEIMPFFER
CROWELL**

ATTORNEYS AT LAW

LAS VEGAS OFFICE

LESLEY B. MILLER
lmiller@kcncvlaw.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: 775.862.3800
Fax: 775.327.2011

CARSON CITY OFFICE
610 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.

...

...

KAEMPFER
CROWELL

Jeffrey Chauncey
August 2, 2016
Page 2

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 10

KAEMPFER

CROWELL

ATTORNEYS AT LAW

LAS VEGAS OFFICE

LESLEY B. MILLER

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: 775.852.3900
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

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 foot (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 11



MARQUIS AURBACH COFFING

DIRECT LINE: (702) 942-2182
DIRECT FAX: (702) 856-8983
EMAIL: JSACCO@MACLAW.COM

ALBERT G. MARQUIS
PHILLIP S. AURBACH
AVECE M. HIGBEE
DALE A. HAYES
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
CRAIG R. ANDERSON
TERRY A. MOORE
GERALDINE TOMICH
NICHOLAS D. CROSBY
JASON M. GERBER
MICAH S. ECHOLS
BRIAN R. HARDY
TYE S. HANSEEN
LIANE K. WAKAYAMA
CANDICE E. RENKA
DAVID G. ALLEMAN

CODY S. MOUNTEER
CHAD F. CLEMENT
BENJAMIN T. AUTEN
CHRISTIAN T. BALDUCCI
VINCENT J. VITATOE
BRIANNA SMITH
JARED M. MOSER
JONATHAN B. LEE
ADELE V. KAROUM
MICHAEL D. MAUPIN
PATRICK C. McDONNELL
BRYAN M. VIELLION
KATHLEEN A. WILDE

JOHN M. SACCO
OF COUNSEL

September 7, 2016

Via Regular Mail and Email (lmiller@kcnvlaw.com)

Kaempfer Crowell Attorneys at Law
Attn: Lesley D. Miller, Esq.
1980 Festival Plaza Dr., #650
Las Vegas, Nevada 89135

Re: Blue Dogs Pub
Tropicana Investments, LLC
Proposed Amendment to Lease
Our File No. 8732-29

Dear Ms. Miller:

I write to let you know that our office represents Tropicana Investments, LLC. I have reviewed your proposed "Amendment to Lease" with my client and thought it would be a good idea to send you our comments in writing, prior to our commencing a dialogue.

As far as the "Amendment to Lease" is concerned, your requested change set forth in Paragraph 6, "Parking" is not acceptable. Provided we are able to reach an agreement on all other points, the Landlord will agree to provide six reserved parking spaces, three in front and three on the south side of the driveway, all to be designated on a Site Plan (see attached). Please note that if any of the designated spaces on the Site Plan are currently designated for handicapped use, then an adjacent space will be provided.

As far as Paragraph 7. is concerned, the Landlord will agree to provide Tenant a statement of the Common Area Maintenance Charges within 120 days after the end of each calendar year. This is the procedure the Landlord currently follows for all of its other tenants. The Landlord recommends using the language attached hereto.

In order to clarify any potential ambiguity in the original Lease dated July 9, 1996, which states "police the automobile parking and common areas", the Landlord insists that the existing language be deleted and the following be inserted:

"Landlord may, but shall have no obligation to, from time to time, employ one or more persons or entities to patrol or provide security for the Center. To the extent Landlord elects to provide any patrol

Kaempfer Crowell Attorneys at Law
Lesley D. Miller, Esq.
September 7, 2016
Page 2

or security services, the cost thereof shall be included as part of the Center's Operating Costs and Expenses."

The modification suggested above will more accurately reflect the situation as it has existed since July 9, 1996 between the original Landlord and Tenant, as security patrols or guards are not now nor have they ever been provided.

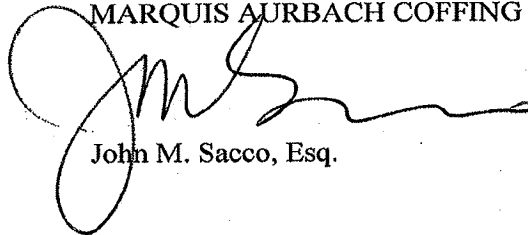
My client also requests that personal guaranties be executed and delivered by Stuart R. Vincent, Jeffrey B. Vincent, Bruce Eisman, and Bruno Mark, with joint and several responsibility (to be provided).

Lastly, the Landlord wants the Amendment to reflect that the Tenant will acknowledge the current Shopping Center Rules and Regulations, and include a provision that the Tenant will promptly replace the exterior signs which are faded and in poor condition.

I look forward to discussing these points with you and attempting to work through these final matters. Please feel free to call me on my direct line, 702-942-2183.

Very truly yours,

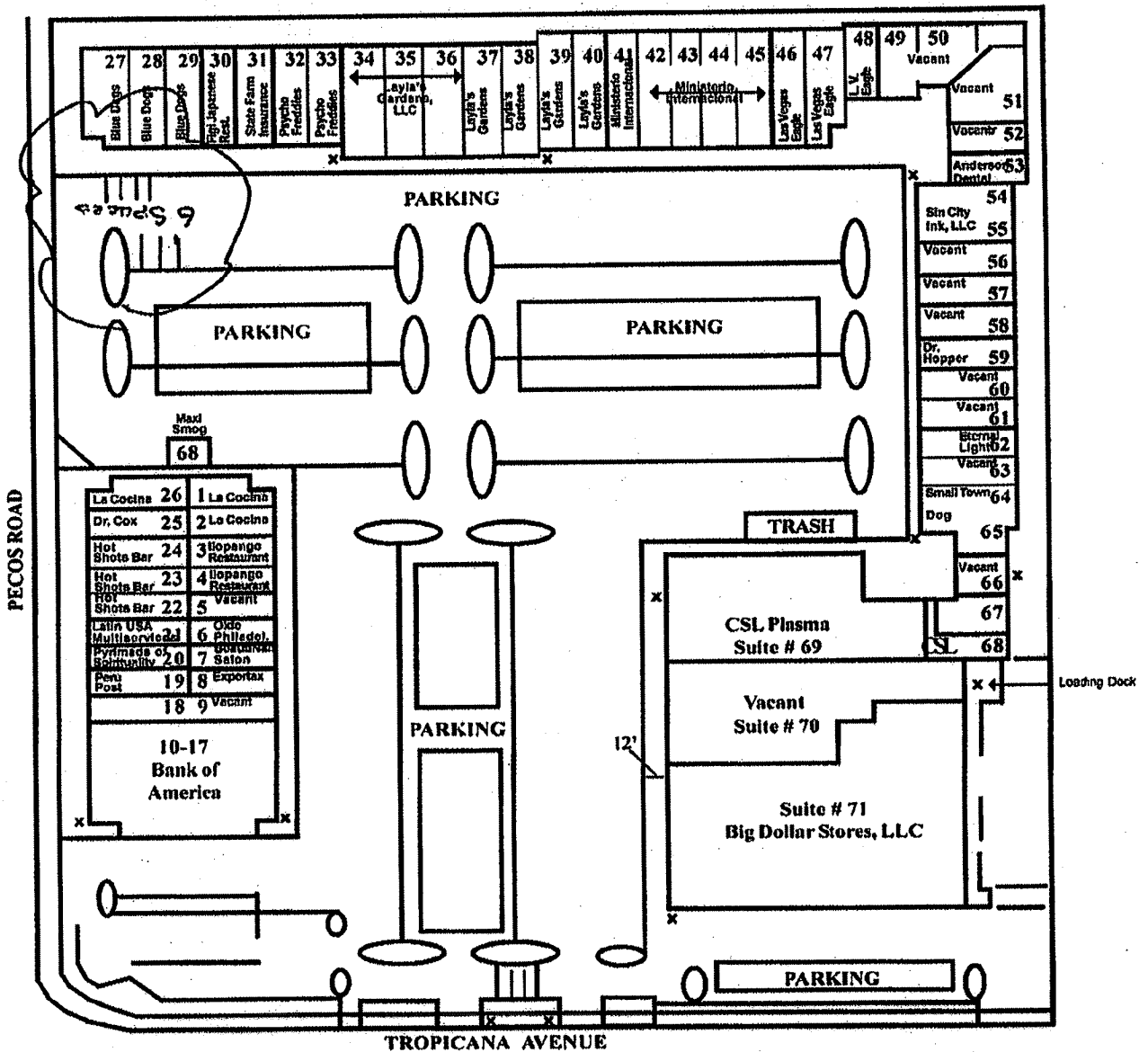
MARQUIS AURBACH COFFING

A handwritten signature in black ink, appearing to read 'John M. Sacco', is written over the typed name.

John M. Sacco, Esq.

JMS:ld
Enclosure: Site Plan
Lease Language Insert
cc: Tropicana Investments, LLC *via email*
MAC:08732-029 2888295_1

Tropicana Plaza Shopping Center Site Plan



Landlord shall ascertain the actual Center's Operating Cost for each period of twelve (12) consecutive calendar months commencing and ending on such dates as may be designated by Landlord. Tenant upon presentation of Centers operating costs shall pay to Landlord on demand the amount, if any, without any deduction or offset by which Tenant's proportionate share of the actual Center's Operating Cost exceeded the Tenant's proportionate share of the estimated Center's Operating Cost for such twelve (12) month period. The balance, if any, of estimated Center's Operating Cost remaining after the payment of the actual Center's Operating Cost shall be held by Landlord and applied to the next monthly payment of additional rent provided to be paid under this Section 10, and if necessary, each monthly payment thereafter until fully exhausted. Tenant shall not be entitled to receive interest on any additional rent paid hereunder.

Landlord shall provide to Tenant within one hundred twenty (120) days of each calendar year an accountant's prepared statement of the Center's operating costs.

If any dispute arises as to the amount of any additional rent due hereunder, within sixty (60) days of receipt by the Tenant of such notice of the additional rent due, Tenant shall have the right after reasonable notice to Landlord and at reasonable times to inspect Landlord's accounting records at Landlord's accounting office and, if after such inspection Tenant still disputes the amount of additional rent owed, a certification as to the proper amount shall be made by Landlord's certified public accountant, which certification shall be final and conclusive. Tenant agrees to pay the cost of such certification unless it is determined that Landlord's original statement overstated Project Operating Costs by more than five percent (5%). In the event that such costs were overstated, Landlord will credit Tenant any money that may be due Tenant, to Tenant's next regular monthly CAM payment.

Exhibit 12



August 7, 2017

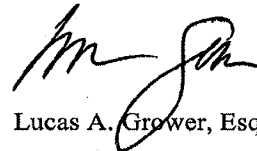
John M. Sacco, Esq.
Marquis Aurbach Coffing
10001 Park Run Dr.
Las Vegas, NV 89145

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 13



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/ft². 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, onsite" 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".

Lucas A. Grower, Esq.

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 14



December 20, 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 John:

I am writing to follow up with you regarding my client's request for a detailed financial report of the 2015 and 2016 CAM costs. Jeff Vincent submitted this request to Jeff Chauncey in an e-mail dated August 10, 2017. The summaries I received from you on August 20, 2017, did not comport with my client's request. You advised me on October 3, 2017, that your client was traveling at the time but would provide the requested information upon his return. As of today's date, neither my client nor I have received any further documentation regarding the CAM costs from 2015 and 2016. Please update me on the status of the promised report and when I can expect to receive it.

In the meantime, I have familiarized myself with the prior agreements and correspondence in this matter. I feel there are some critical misunderstandings that require clarification. First, Blue Dogs Pub is only required to pay Base Rent equal to the last year of the previous lease term, 2015-2016, until the parties execute a written contract for the next five-year tenancy period. Your August 18, 2017 letter states that Blue Dogs Pub is a "month to month holdover tenant." Pursuant to Paragraph 27 of the 1996 Lease Agreement, Blue Dogs Pub is only required to pay "at a rental [sic] and upon terms and conditions as existed during the last year of the term thereof." BDP's pattern of conduct is consistent with its position as a holdover tenant and nothing more.

Each time a prior Tenant exercised its lease option, the parties executed an Amendment or an Addendum to the Lease Agreement stating the new tenancy period and Base Rent for each of the five years. In response to Lesley Miller's August 2, 2016 letter, Jeffrey Chauncey demanded that BDP execute an entirely new Lease Agreement. The parties then spent over one year trying to negotiate the terms of that new Lease Agreement. Your client cannot unilaterally declare that negotiations have concluded and demand increased rent payments based on proposed drafts of an agreement that was never executed. Your letter to me dated September 6, 2017, is the first indication from you or your client that Ms. Miller's declaration concluded negotiations and somehow obviated the need to execute a written agreement.

As a sign of good faith, Blue Dogs Pub has provided me with a check for \$210 each month, from September 2017 to December 2017. Each month, these checks will be deposited into a separate interest-bearing trust account until the parties resolve this matter. If it is ultimately agreed to or otherwise determined that Blue

Dogs Pub was obligated to pay the additional \$210 per month beginning in September 2017, then all funds in the trust account will be released to Landlord immediately.

Second, your client's interpretation of the lease option is contrary to the plain language of the provision (in all versions) and would render the lease option valueless. The phrase "conditionally grants" in the 2007 Lease Assignment and Modification merely grants the Landlord authority to determine whether the Tenant "has timely complied with all terms and conditions of the Lease." Because BDP satisfied that precondition, BDP was entitled to enjoy the benefit of its bargain by negotiating the terms and conditions of the next lease term. Please explain what rights BDP does have under the lease option.

The bottom line is that the Base Rent demanded by your client is untenable. Dating back to 2009, BDP has consistently stated its concerns about Base Rent and why a reduction is justified. There is nothing devious or dishonest about a tenant expressing its belief that rent is unjustifiably high, especially when that tenant has a contractual right to negotiate the terms and conditions of its lease extension. The absence of language explicitly stating that negotiations would consider "fair market value" does not mean that BDP is barred from negotiating Base Rent. The fact that we are even debating whether or not fair market value should be *considered as a factor in determining* Base Rent is a clear sign that your client has stacked the deck against BDP.

Third, with regard to your request for Articles of Conversion and other corporate documents, I will direct you to prior correspondence from Rachel Sully, Esq. dated August 11 and 31, 2016, and from Ms. Miller on August 2 and September 14, 2016. BDP's position on this issue has been made abundantly clear in each of these letters. I do not see any responsive communications from you or your client on this issue. Instead, weeks or even months later, the same request is parroted as if BDP's counsel never addressed it.

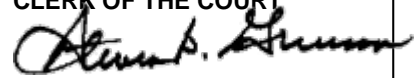
Fourth, I am repeating my request for information regarding the identity of the property manager. The summarized report titled "Operating Expenses" for 2016 states that \$26,400 were expended for "Property Management, on-site." BDP is unaware of any individuals who acted as on-site property managers in 2016, and that expenditure was not stated in the 2015 summary.

I remain optimistic about this matter. If your client is willing to participate in arms' length negotiations, I believe we can reach an agreement that will be fair to both parties while honoring their contractual duties and obligations. However, BDP is committed to enforcing its rights and will do so through litigation if necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lucas A. Grower', written over a horizontal line.

Lucas A. Grower, Esq.



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

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada)	
corporation,	)	Case No.: A-18-785311-B
)	
Plaintiff,)	
	)	BUSINESS COURT
vs.)	
)	
TROPICANA INVESTMENTS, LLC, a)	
California limited liability company,)	
)	
Defendant.)	
)	
	)	HEARING DATE: 07/08/19
AND COUNTERCLAIMS.	)	HEARING TIME: 9:00 A.M.
)	

**PLAINTIFF JSJBD CORP DBA BLUE DOGS PUB'S OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT AND
COUNTERMOTION FOR PARTIAL SUMMARY ADJUDICATION**

Plaintiff JSJBD Corp, d/b/a Blue Dogs Pub ("Blue Dogs") opposes Defendant Tropicana Investments, LLC's motion for partial summary judgment. Blue Dogs countermoves for partial summary adjudication, on its declaratory judgment claim, declaring that: (1) Blue Dogs has enforceable option rights and has complied with the requirements for exercising its current option; (2) the parties have not been able agreed on the amount of rent, and, in accordance with Nevada case law, Plaintiff Blue Dogs is entitled to have rent set by the Court, in further proceedings in this case, at a reasonable rate ascertained from market conditions.

1 This Opposition and Counter-motion is based on the pleadings and papers on file, the
2 attached Memorandum and exhibits, and any oral argument that may occur.

3 LOVATO LAW FIRM, P.C.

4 /s/ Mario Lovato

5 MARIO P. LOVATO, ESQ.

6 Nevada Bar No. 7427

Attorney for Blue Dogs Pub

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I.**

9 **INTRODUCTION**

10 In 2016, Blue Dogs timely exercised a five-year option to extend its lease. Blue Dogs'
11 options do not state the amount for rent for the option periods. Instead, the options reference
12 "market rental rate," "as agreed," and "to be negotiated"). From 2016-18, the parties exchanged
13 numerous proposed rental rates, but were unable to agree. Tropicana Investments has threatened
14 eviction, rather than negotiate a rental decrease to a reasonable market rate.

15
16 In *Cassinari v. Mapes*, the Nevada Supreme Court adopted the "modern rule" that holds
17 that a commercial tenant's option to renew lease is enforceable, despite not having a specific
18 amount for rent because the District Court can determine a "reasonable" rental rate.¹ As stated:

19
20 It is proper, then, to imply that the parties intended a reasonable rent
21 for the extended period. If unable to agree, a court should be allowed
22 to fix the rental since economic conditions are ascertainable with
sufficient certainty to make the clause capable of enforcement.²

23 A commercial tenant is entitled to apply to the District Court to determine reasonable rent.
24 As the Nevada Supreme Court stated in a 1987 case discussing *Cassinari*:

25 The doctors did not seek to *affirm the lease* and retain occupancy,
26 *something that they were clearly entitled to do*. See, e.g., *Cassinari*
v. Mapes, 91 Nev. 778, 542 P.2d 1069 (1975) (in which it was held

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28 ¹ *Cassinari v. Mapes*, 91 Nev. 778, 781, 542 P.2d 1069, 1071 (1975) ("[T]he better view is to enforce such a provision for extension."), *citing* numerous cases and 58 A.L.R.3d 500 "Validity & Enforceability of provision for renewal of lease at rental to be fixed by subsequent agreement of parties."

² *Cassinari*, 91 Nev. at 781, 542 P.2d at 1071.

that *in these kinds of situations, in which an option provides for rental to be negotiated and the parties fail to reach an agreement, the option is enforceable and a reasonable rental will be imposed*).³

Blue Dogs has remained in compliance with lease obligations by paying the higher, “old” rent while the parties negotiated.

The Court should deny Tropicana Investment's motion and grant Blue Dogs' Countermotion. Blue Dogs has enforceable option rights, the parties have been unable to agree on the rent, and, accordingly, the Court can determine the reasonable rent via further proceedings.

II.

STATEMENT OF FACTS

Blue Dogs Pub is located in a shopping center owned by Tropicana Investments at East Tropicana Ave. and South Pecos Rd. *See* Decl. of Mark Van Aken, attached as **Ex. 1**. Blue Dogs has been granted several five-year options, the first of which commenced in 2016.

A. THE LEASE AND THE OPTION RIGHTS.

As reasonable rent cannot be known years or decades beforehand, the options do not state a specific rental amount. Rather:

- Two options, attached to the 1996 Lease, state rent will be at *“market rental rate”*
- A 2006 option is at rent *“to be negotiated.”*
- Three additional five-year options granted in 2007 are at rent *“to be negotiated.”*

For 20 years, the parties operated under a 1996 Lease, and related documents, drafted by the Landlord. Prior to 2016, no option had been exercised because the parties entered into Amendment / Addendum documents three separate times that each continued the commencement date and expiration date of the 1996 Lease by five-year periods, keeping all Lease and related documents in “full force and effect.” This occurred in 2001, 2006, and 2011, continuing the term

³ *Charter Medical Corp. v. Bealick*, 103 Nev. 368, 370, 741 P.2d 1359, 1360-61 (1987) (emphasis added).

of the Lease to a commencement date in 2011 and an expiration date in 2016. Blue Dogs' option rights are exercisable within 90 days' prior to expiration of the Lease (the 1996 options), within 6 months prior to expiration (the 2006 option), or automatically (3 options granted in 2007).

In summary, the key lease documents are as follows:

YEAR / TITLE	DESCRIPTION
1996 Lease & attached Option Agreement (Ex. 3)	Sets the Lease terms and conditions. Sets rent for 1996-2001. The Option Agreement is exhibit to, the Lease. <i>Grants two 5-year options-to-renew</i> "at a <i>market rate</i> " and "as agreed"
2001 Amendment (Ex. 4)	Changes "commencement" of 1996 Lease to 2001, "expiration" to 2006. Sets rent amounts for 2001-06. Does not exclude any prior option-to-renew.
2006 Addendum" (Ex. 5)	Changes "commencement" of Lease to 2006, "expiration" to 2011. Sets rent amounts for 2006-11. Does not exclude any prior option-to-renew. <i>Grants a 5-year option-to-extend</i> "under terms and conditions <i>to be negotiated</i> "
2007 Lease Assignment & Modification (Ex. 6)	Assigned all Lease rights to Blue Dogs. Does not exclude any prior options. <i>Grants three "additional" 5-year options-to-renew</i> at rent amount " <i>to be negotiated</i> "
2011 Addendum II (Ex. 7)	Changes "commencement" of Lease to 2011, "expiration" to 2016. Sets rent amounts for 2011-16. Does not exclude any prior options.
02/06/16 Renewal Letter (Ex. 8)	Blue Dogs serves letter exercising "our five year option" and discussing "rental rate that is significantly above current market rates"

1. 1996 Lease with two five-year options.

In 1996, the parties' predecessors-in-interest entered into a Lease. *See* Decl. of Mark Van Aken ("Van Aken Decl."), attached as Ex. 1; Lease, Ex. 3. The Lease had a "term" of five years, expiring on August 31, 2001⁴, with two options to renew the lease by giving 90-days' notice "*in advance of the Lease expiration*" for an additional five years each.

The two options were attached as an exhibit to the Lease under the heading "Option

⁴ The Lease referenced a March 30, 2001 expiration, but also stated the rent payable through August 31, 2001. Subsequent documents amend the "expiration date" to August 31 in a pertinent year.

1 Agreement.” See Ex. 3 (last page). Each option could be exercised 90 days’ prior to “Lease
2 expiration.” This also recognizes that “expiration” changes over time. *Id.* The rent for any option
3 that is “**market rental rate** and terms as agreed by Landlord and Tenant.” *Id.*

4 The 1996 Lease and the options are part of the same agreement.⁵ Van Aken Decl. ¶ 3. The
5 Lease and the Option Agreement were drafted by the Landlord. *Id.* The options were part of the
6 same agreement as the Lease and attached to it. *Id.* The two documents refer to one another (e.g.,
7 **both referencing “this Lease,”** and the page before the options stating the Lease has an “exhibit”).
8 They have the same font and formatting. See Lease & Option Agreement, Ex. 3.
9

10 The options would be critical to any commercial tenant operating a tavern, and were to Van
11 Aken, who had liquor and gaming licensing at the location. Van Aken Decl. ¶¶ 4-5. Blue Dogs
12 later succeeded to these same rights, which are tied to the location. *Id.* ¶ 10; Lease Assign &
13 Modif., Ex. 7. The Option Agreement was signed by then-Landlord Schwartz and then-Tenant
14 Van Aken at the same time as the Lease. Van Aken Decl. ¶ 3. They were part of the same
15 bargained-for exchange, (see *id.* ¶¶ 2-6), making the options irrevocable.⁶
16

17 The two five-year options granted in 1996 specifically reference “market rental rate.” See
18 Ex. 3 (last page). In negotiating these, the landlord specifically discussed his willingness to adjust
19 the rent to the “market rental rate” when the time came. Van Aken Decl. ¶ 6.
20

21 **2. 2001 “Amendment” to Lease**

22 By 2001, Tropicana Investments had succeeded to the Landlord’s interest. When the
23 expiration date of the Lease approached, the principal Jeff Chauncey would not discuss “market
24 rental rates” or the options, themselves. Van Aken Decl. ¶ 7.
25
26

27 ⁵ “Multiple writings signed at the same time, addressing the same subject, and cross-referencing one another may be
28 taken to comprise a single agreement.” *Coast to Coast Demolition & Crushing, Inc. v. Real Equity Pursuit, LLC*, 126
Nev. 97, 101, 226 P.3d 605, 608 (Nev. 2010).

⁶ See, e.g., *Hennessey v. Price*, 96 Nev. 33, 36, 604 P.2d 355, 357 (Nev. 1980) (“the option was supported by
consideration and was, therefore, irrevocable.”)

1 Rather, Landlord Tropicana Investments drafted an “Amendment” (Van Aken Decl. ¶ 7),
2 signed by Landlord and then-Tenant. *See* 2001 Amendment, attached as **Ex. 4**. The Amendment
3 changes the “commencement date” of the Lease from April 1, 1996 to September 1, 2001. *Id.* It
4 changes the “expiration date” of the Lease from March 30, 2001, to August 31, 2006. *Id.* It set
5 the specific rent for 2001-2006. *Id.*

6
7 The Amendment does **not** exclude the two options from the continued terms of the Lease,
8 which allows the tenant to renew by giving 90-days’ notice in advance of the expiration of the
9 Lease. The Amendment stated that, “All of the terms, covenants, provisions, and agreements to
10 the lease not conflicting with this Amendment ***shall remain in full force and effect.***” *Id.* ¶ 7(A).

11 The plain language kept the options in “full force and effect.”⁷

12 **3. 2006 “Addendum” to Lease.**

13
14 In 2006, when the Lease expiration date approached, Tropicana Investments’ principal Jeff
15 Chauncey would not discuss “market rental rates” or the options. Van Aken Decl. ¶ 8.

16 Rather, in 2006, Landlord Tropicana Investments drafted an “Addendum,” signed by
17 Landlord and then-Tenant. *See* 2006 Addendum, attached as **Ex. 5**. The Addendum changes the
18 “commencement date” to September 1, 2006 and the “expiration date” to August 31, 2011.

19 The Addendum does **not** exclude the two five-year options from the continued terms of the
20 Lease, which allows the tenant to renew by giving 90-days’ notice in advance of the “expiration.”
21 The Amendment states, “All of the terms, covenants, provisions, and agreements to the lease not
22 conflicting with this Amendment [sic] ***shall remain in full force and effect.***” Addendum ¶ 7(A).

23
24 Further, the Addendum granted another five-year option after the August 31, 2011
25 expiration date, leaving rent “to be negotiated.” *Id.* ¶ 4. Thus, paragraph 4 of the Addendum states:

26
27
28 ⁷ As stated by the Ninth Circuit on the same pertinent facts: “*The amendment extended the ‘term’ of the lease The option clause, which remained ‘in full force and effect’ after the amendment, gave [Tenant] the option to renew the lease for five years beyond the ‘term’ of the lease. The amendment changed the meaning of ‘term’ throughout the lease.*” *McLane & McLane v. Prudential Ins. Co.*, 735 F.2d 1194, 1195-96 (9th Cir. 1984); *see also* 49 Am. Jur. 2d *Landlord & Tenant* § 143 (same).

1 “Tenant shall have the option to extend the lease term for one (1) final extension term of five (5)
2 years, commencing on the *expiration date* hereof.” *Id.* Regarding exercise of the option, the
3 Addendum states: “Said option shall be exercised by giving Landlord notice in writing of such
4 election at least *six (6) months prior to the expiration of the lease.*” *Id.*

5 This option was also part of a bargained-for exchange of rights, making it irrevocable.

6 **4. 2007 “Lease Assignment & Modification”**

7
8 In 2007, Mark Van Aken sought to sell the bar in light of his advancing age and because
9 of the difficulty of operating another bar that is unconnected to this case. Van Aken Decl. ¶¶ 10,
10 11. Tropicana’s principal, Jeff Chauncey, refused to consent to an assignment of the Lease and
11 related rights to a new tenant, unless 10% of the \$500,000.00 purchase price was paid to Tropicana
12 Investments. *Id.* Jeff Chauncey gave no reason, let alone any good faith reason, for withholding
13 consent to assignment. *Id.* Needing to sell, Van Aken eventually capitulated, and Landlord
14 received \$50,000.00 of the monies paid by Blue Dogs.⁸ *See* Lease Assign. & Modif., **Ex. 6.**

15
16 In 2007, the parties entered into a Lease Assignment & Modification. *Id.* It incorporated
17 and confirmed the Lease, the Amendment, and the Addendum, and that Blue Dogs succeeds to all
18 rights. *See id.* at 1. It also granted “three *additional* five year options, stating:

19 Landlord agrees to conditionally grant Assignee, J.S.J., LLC, three
20 (3) additional five (5) year options to renew the term of the Lease
21 under terms and conditions, including but not limited to rental
22 increases, to be negotiated. The conditional options shall
commence⁹ after August 31, 2016¹⁰, provided Assignee has timely
23 complied with all terms and conditions of the Lease.

24 *Id.* ¶ 8.

25
26 ⁸ Tropicana Investments’ taking of \$50,000.00 is a breach of both the duty of good faith and fair dealing and of the
27 Lease. *See, e.g., Cohen v. Ratnoff*, 195 Cal. Rptr. 84, 88 (Cal. Ct. App. 1983). (“The duty of good faith and fair
dealing . . . militates against the arbitrary or unreasonable withholding of consent to an assignment. A breach by the
28 lessor of his duty constitutes a breach of the lease agreement.”).

⁹ “[S]hall commence” is a self-renewing, or “evergreen,” clause, that automatically renews the Lease upon expiration.

¹⁰ The provision states “after August 31, 2016,” which indicates there are other options “to renew,” and leaves open
that the three “additional” options to renew that are being granted can be exercised many years “after” August 31,
2016. Again, the provision does not exclude any previously granted options.

1 Discussing this exact provision with Landlord in 2007, Blue Dogs requested a change so
2 that it expressly state that rent for each option would be the “market” rent in the area. *See* Jeff
3 Vincent Decl.,¹¹ attached as **Ex. 2**. In response, Landlord’s representative stated that Landlord and
4 his counsel would not agree to any change, but explained the provision by further stating: “This
5 Landlord has always negotiated in good faith and *at market value and below market value* with
6 his Tenants.” *See* 06/06/07 Email from Landlord (J. Velarde) to Blue Dogs, attached as **Ex. 9**.

7
8 The Lease Assignment & Modification does not exclude the prior options. Rather, it
9 incorporates all prior documents “collectively” as part of the “Lease” being assigned.

10 **5. 2011 “Addendum II” to Lease.**

11 In 2011, Blue Dogs and Tropicana Investments entered into an Addendum II. *See* **Ex. 7**.
12 The Addendum II changes the “commencement date” of the Lease to September 1, 2011. *Id.* ¶ 1.
13 It changes the “expiration date” to August 31, 2016. *Id.* ¶ 2. It was drafted by the Landlord.
14

15 The Addendum does *not* exclude the prior options from the continued terms of the Lease.
16 It states that, “All of the terms, covenants, provisions, and agreements to the lease not conflicting
17 with this Amendment [sic] *shall remain in full force and effect.*” *Id.* ¶ 4(A).

18 **B. ON FEBRUARY 26, 2016 BLUE DOGS EXERCISES ITS FIRST 5-YEAR**
19 **OPTION.**

20 **1. Timely exercise of option.**

21 On February 26, 2016, Blue Dogs provided notice, in writing, that Blue Dogs was
22 “exercis[ing] our five year option beginning September 1st 2016.” *See* 02/26/16 Renewal Letter,
23 attached as **Ex. 8**. Landlord admits that Blue Dogs exercised its option by such writing on February
24 26, 2016. *See* Answer ¶ 15 (admitting “that Plaintiff attempted to exercise its option.”).

25 The Renewal Letter was timely. It was sent more than 90 days prior to the August 31, 2016
26 expiration date of the Lease. The Letter was also more than 6 months prior to the expiration.
27
28

¹¹ The Jeff Vincent Declaration attests to facts, and documents, from 2007 to present. For purposes of brevity, further reference to it is largely omitted.

1 **2. Terms and conditions already in place, with only rent to negotiate.**

2 All terms and conditions of the Lease were already in place, except for the “market rental
3 rate.” For two pages, the Renewal Letter discusses that rent needs to decrease in light of a decline
4 in the market (e.g., “During the past eight years rents in Las Vegas have declined as a result of the
5 recession. Blue Dogs rent increased during this period, resulting in a rental rate that is significantly
6 above current market rates and unaffordable.”). *See* Renewal Letter, Ex. 8.

7
8 For years, Blue Dogs had communicated the need to adjust rent to the decreased market
9 rental rates in the area. *See, e.g.*, 06/06/07 Email exchange, Ex. 9. Even prior to the Renewal
10 Letter, Blue Dogs attempted to meet to discuss the reduction of rent to market rates. *See, e.g.*,
11 02/16/16 Email from Blue Dogs to Landlord (requesting meeting to discuss the “rental rates” for
12 the option term), attached as **Ex. 10**. Tropicana Investments had repeatedly stated its alleged
13 willingness to adjust the rent to reflect the market rent in the area. *See* Vincent Decl., Ex. 2.

14
15 **3. Blue Dogs has continued paying the “old” rent to stay in compliance
16 with alleged Lease obligations and protect its option rights.**

17 Since September 1, 2016, Blue Dogs, in good faith, has continued to pay the above-market
18 rent from 2016 while it negotiated with Landlord. It has done this to ensure that it remains entitled
19 to enforce its option rights. Meanwhile, as shown below, Landlord has repeatedly sought to claim
20 default despite the rental payments far in excess of market rates since September 1, 2016.

21 **C. THE PARTIES ARE UNABLE TO AGREE ON RENT, AS LANDLORD
22 ADOPTS AN AGGRESSIVE BARGAINING POSITION, REFUSING TO
23 LOWER RENT TO REASONABLE / MARKET RENTAL RATES.**

24 **1. No new lease document has been signed, as the parties do not agree.**

25 From February of 2016 to the filing of this case, the parties discussed the rental rate and
26 Landlord’s demand for all new Lease documents. This case involves a commercial lease. All
27 parties have understood at all times that *there is no agreement unless and until the parties actually*
28 *sign off on binding lease documents*. *See* Vincent Decl., Ex. 2.

1 Repeatedly, Landlord and his counsel have both recognized in written correspondence that
2 there is no new agreement regarding the specific amount of rent, let alone on the entirely new
3 Lease documents Landlord sought, because neither sign would sign off on proposed terms.

4 There has been no agreement because Landlord adopted an aggressive negotiating position
5 of refusing to adjust rent to market rental rates, resorting to default declarations, that Landlord
6 would unilaterally set the rent (which Landlord has no right to do under the Lease or Nevada law),
7 and, finally, to service of a Notice of Termination.

8
9 **2. From 2016-2018, the parties exchanged numerous correspondences**
10 **while they negotiated, which shows the parties were at loggerheads over**
11 **the rental rate (as well as Landlord's additional demands).**

12 Landlord's claim that there is any agreement regarding a specific amount of rent for the
13 option term is meritless. It is merely Landlord's bargaining position, subjecting Blue Dogs to
14 threats that affect it far more than Landlord because Blue Dogs' licensing is tied to the location.

15 The following recites the history of negotiations, leaving the parties far apart on rent.

16 **a. February to June 2016: Blue Dogs attempts to negotiate**
17 **market rent for the option period.**

18 On February 16, 2016, Blue Dogs sent an email to Landlord: "We would like to set up a
19 meeting to discuss the renewal of the five(5) year lease option for BDP and *the rental rates going*
20 *forward* for the next five years. We will bring four years of financials." See 02/16/16 Email, Ex.
21 **10.** "It is critical that we meet as soon as possible to renew the option for Blue Dogs Pub." *Id.*

22 On February 26, 2016, Blue Dogs its five-year option. See Ex. 8. In the same
23 correspondence, it discussed the lower market rents in the area. The letter further stated: "[F]or us
24 to remain in business Blue Dogs needs a \$2,500 a month reduction in rent." *Id.*

25 On April 6, 2016, Landlord sent a proposed "Addendum" (attached as Ex. 11), which
26 would have changed the commencement and expiration dates of the Lease, would increase the
27 rent, and would put off the issue of options by another five years. Blue Dogs did not agree.

28 On April 26, 2016, Blue Dogs sent a responding letter to Landlord, attached as Ex. 12. It

1 stated, inter alia: “We cannot accept a rent above *\$1.40 per Sq/Ft*, \$5880 per month”

2 On April 28, 2016, Landlord sent correspondence, (Ex. 13). It stated, “You have our best
3 offer. *We are reducing rent by a substantial amount* . . . we are not in business to lose money.”

4 In May of 2016, Blue Dogs discussed the rent issue with Landlord’s representatives. On
5 May 19, 2016, Landlord’s broker sent correspondence (Ex. 14), discussing “lease renewal” and
6 “rental reduction.” It states: “The Landlord reiterated . . . you have his best offer. The rental
7 *reduction . . . of \$840.00 per month (or \$0.20 psf/per month)* over the next five years”

8
9 Blue Dogs further discussed the rental issue directly with Landlord. Landlord proposed a
10 reduction of rent (\$50,400 over five years), subject to repayment to Landlord if Blue Dogs sold /
11 assigned its rights in the bar. On May 26, 2016, Blue Dogs sent an email to Landlord, (attached
12 as Ex. 15), that Blue Dogs did not agree with the proposal.

13
14 **b. In June of 2016, Landlord begins demanding all new Lease**
15 **documents, and new counsel for Blue Dogs discussed**
16 **negotiating points all of which were immediately rejected by**
17 **Landlord.**

18 In June of 2016, Landlord began demanding entirely new Lease documents to replace the
19 1996 Lease and related documents, apparently to avoid “market” rental rights in the options.

20 On June 15, 2016, Landlord sent a letter to Blue Dogs (Ex. 16) that stated: “Landlord is
21 requiring a new lease document for Blue Dogs Pub” Landlord’s began claiming a breach of
22 the assignment provision. Landlord demanded a *rental increase of 3%*.

23 For the next several months, the discussion involved Landlord’s new claimed that there
24 was a violation by Blue Dogs regarding the assignment provisions of the 1996 Lease.

25 **c. On August 2, 2016, Leslie Miller, Esq. sends a letter as counsel**
26 **for Blue Dogs, which Landlord immediately rejects on all points.**

27 On August 2, 2016, an attorney for Blue Dogs sent a letter.¹² On August 2, 2016, Leslie
28

¹² Years later, Landlord’s counsel would purport that Landlord “accept[ed]” despite Landlord’s prompt rejection of all items in the letter by way of a responding letter Landlord (Jeff Chauncey) sent on August 3, 2016.

1 Miller, Esq. sent correspondence (**Ex. 17**) that:

2 (1) asserted Blue Dogs did not violate the Lease’s assignment provision;

3 (2) Blue Dogs was exercising its option (already done on February 26, 2016);

4 (3) discussed increasing rent by \$210 (despite Blue Dogs principals’ discussions with
5 Landlord that rent needed to decrease to market rental rates); and

6 (4) requested further discussion regarding entering into “Addendum III” (which was a
7 document sent by Landlord on April 6, 2016, but which Landlord stated on June 15, 2016 that he
8 no longer sought because of his latest demand for entirely new Lease documents).

9
10 Miller did not sign the Addendum III referenced in her letter. She was new counsel in the
11 case, and not one of the parties who might sign off on commercial lease documents.

12 The next day, August 3, 2016, Landlord’s principal, Jeff Chauncey, sent responding
13 correspondence (**Ex. 18**) directly to Leslie Miller *rejecting all of her proposals*. Landlord rejected
14 Miller’s arguments regarding the assignment provision. Landlord rejected her discussion of rent,
15 stating that Landlord sought higher rent consisting of an *increase of 3% per year*, with the same
16 increase each year thereafter. Landlord rejected Miller’s discussion of an “Addendum III,” as
17 Landlord had been demanding entirely new Lease documents since June 15. As Chauncey stated:
18 “We will require a *new lease documents*. The options and rate will be per the original lease.”
19

20 The purpose of Chauncey’s email was to communicate that, whatever Miller argued about
21 assignment, she obviously did not know the parties’ respective negotiating positions.

22 The notion that Landlord supposedly had an agreement on rent is meritless. Both sides had
23 rejected the other sides’ proposals. No new lease document had been entered into.

24
25 **d. August 2016 to August 2017: The parties negotiate, but do not**
26 **agree, on new Lease documents.**

27 After the early-August 2016 discussion, Landlord sent proposed new Lease documents to
28 Leslie Miller. On August 31, 2016, Miller sent correspondence that stated, “*JSJBD declines to*
go forward with a new lease as proposed, and hereby again exercises its valid option rights under

1 the Lease” August 31, 2016 Letter from Miller to Landlord, attached as **Ex. 19**. The letter
2 also counter-proposed a “total base *rental amount of \$1.00/square feet—in accordance with the*
3 *current advertised rate of the shopping center, plus a 25% premium* on that amount.”

4 On September 7, 2016, Landlord’s counsel John Sacco, Esq. sent correspondence, attached
5 as **Ex. 20**. Sacco’s letter sought to negotiate various lease provisions as part of Landlord’s
6 proposed new Lease documents. He did not claim that a binding agreement on rent already existed.

7
8 On November 22, 2016, Blue Dogs’ counsel sent correspondence confirming that there
9 still is no agreement on new lease documents. See **Ex. 21**. It stated, inter alia, “Our client is still
10 in the process of reviewing the lease in detail. Due to the substantial differences from the prior
11 lease, JSJBD is ensuring that the terms comport with its specific use and existing business.”

12 From November 2016 to August of 2017, the parties’ counsel discussed proposed Lease
13 documents, but no agreement was reached. By August of 2017, Landlord’s principal discussed
14 matters directly with Blue Dogs’ principals. Landlord threatened to declare Blue Dogs in default.
15 On August 3, 2017, Landlord’s principal, Jeff Chauncey, sent an email to Blue Dogs stating:

17 I’m sending you this email in hopes that you are ready to sign your
18 new lease. I’m [sic] am very frustrated that *this has not been*
19 *resolved* months ago as this has been going on over a year. We have
20 sent you our final draft and if you are not going to provide the
21 appropriate information as requested by my attorney and sign the
22 lease, then you are leaving me no choice except to *declare you in*
23 *default*.

24 You have been a tenant for a long time and this is not my preference
25 but I don’t understand these continuing delays and I’m really tired
26 of this back and forth and having to keep paying attorneys.

27 See **Ex. 22**. The email confirmed that there is no agreement on new lease terms. It also confirms
28 that Landlord would resort to actions not authorized under the Lease to force a capitulation.

On August 9, 2017, Landlord’s counsel sent a letter to Blue Dogs’ new counsel, Lucas
Grower. See **Ex. 23**. Confirming the lack of any agreement, the letter stated: “I can assure you
that my client also wishes to amicably resolve this matter and accordingly, we look forward to

1 getting the Lease Agreement executed by the parties.” It stated that he had “been working on this
2 matter with Rachel L. Sully, Esq. at Kaempfer Crowell for almost a year.” It discussed redlines
3 of proposed Lease documents and that there would be no “rehashing the points” “already rejected.”

4 On August 10, 2017, Blue Dogs send an email to Landlord (Chauncey) that stated that rent
5 needed to be reduced to “*current market average of the Plaza.*” See **Ex. 24.**

6 On August 15, 2017, Landlord (Chauncey) sent an email to Blue Dogs, reducing
7 Landlord’s rent demand. See **Ex. 25.** It stated his proposal “to give you a *\$.05 per foot discount*
8 and at this point it is the best we can do.” He offered no rental increases for two years.

9 Landlord stated, however, that he refused to discuss market rates, knowing that Blue Dogs
10 was tied to its location, stating: “*Market conditions or whatever other tenants are paying are not*
11 *a factor* as your location and type of use are unique to your industry.” *Id.*

12 In response, on August 18, 2017, Blue Dogs’ counsel discussed with Landlord’s counsel
13 that rent be reduced to “*current market average.*” In Landlord’s counsel’s email confirming the
14 call, Landlord’s counsel stated: “Your client requested that the rent be based on the ‘*current*
15 *market average*’ of the Center, and unequivocally, we aren’t going to do that” See **Ex. 26.**
16 Landlord’s counsel began arguing that Blue Dogs was a “holdover tenant,” ignoring the option.

17 On August 25, 2017, Landlord’s counsel sent an email with yet another rental offer, stating:
18 “Landlord isn’t asking for a rental increase now, and your client would be agreeing to pay Base
19 Rent in *the amount that he has already been paying* for the next 12 months.” See **Ex. 27.** While
20 the email acknowledged the lack of any agreement, it revealed that Landlord’s new strategy would
21 be assert Blue Dogs continue paying the “old rent” it was merely paying while it negotiated.

22 Later in the day of August 25, 2017, Landlord’s counsel offered to *reduce rent by \$.05 to*
23 *\$1.95* per square foot per month if Blue Dogs would sign the proposed Lease. See **Ex. 28.**

24 On August 31, 2017, Blue Dogs counsel sent a letter to Landlord’s counsel. See **Ex. 29.**
25 The letter *proposed rent of \$1.45 per square foot per month.* It quoted the “market rental rate”

1 provision of the Option Agreement attached to the 1996 Lease.

2 After counsel for Blue Dogs stated that he would provide redlines to the latest lease
3 documents sent by Landlord, Landlord's counsel stated: "[D]on't waste your time with revisions
4 or redlines. A detailed letter to you will be forthcoming" **Ex. 30.**

5 **e. On September 6, 2018, Landlord purports to unilaterally set the**
6 **rent, falsely claiming the parties agreed in August of 2016.**

7 On September 6, 2017, Landlord's counsel sent a letter to Blue Dogs counsel. *See Ex. 31.*
8 The letter spends the first page recognizing that negotiation is a two-way street and that no
9 agreement had been reached by the parties. For example, it states: "offers from my client were
10 rejected" and "Negotiation is, by definition, a process whereby parties try to find a way to reach
11 an agreement by discussion." The letter further states:

13 [A]llow me to disabuse you of any notion that there will be any
14 further "negotiations" with respect to his matter. Your client's offer
15 to pay Base Rent in the amount of \$1.45 per square foot contradicts
16 his past performance, conduct, and the amount of Base Rent paid
17 during the past 12 months. The offer is firmly rejected.

18 Thus, at the same time that Landlord's counsel rejects Blue Dogs' counsel's proposal of
19 \$1.45 per square foot, Landlord pretends there is already an agreement on rent.

20 Landlord's counsel asserts that an August 2, 2016 letter from Blue Dogs then-counsel
21 Leslie Miller supposedly made an offer and that there is *"acceptance thereof by the Landlord."*
22 *Id.* This ignores that Landlord's principal, Jeff Chauncey, immediately sent correspondence on
23 August 3, 2016 rejecting everything stated in the Leslie Miller's letter. It ignores two-and-half
24 years of other negotiations. It ignores that the clients are the ones who sign lease documents.

25 Landlord's counsel then purports to unilaterally set the amount of the rent for the five-year
26 period of the option, increasing it from one year to the next. There 1996 Lease and related
27 documents do not grant such right or power to Landlord.

28 The parties' counsel exchanged further correspondence disagreeing with each other's
positions. On December 29, 2017, Landlord's counsel sent a letter refusing to negotiate further.

1 See **Ex. 32**. For the next 6-9 months, counsel continued discussing the matter, with no progress.
2 On September 6, 2018, Landlord sent yet another rent proposal (*see* **Ex. 33**), offering to “forgive”
3 rent increases that Landlord asserted if Blue Dogs would sign the proposed Lease documents.

4 **f. Blue Dogs proposes use of a joint appraiser or other neutral**
5 **method, and Landlord responds by serving a Notice of**
6 **Termination.**

7 On October 8, 2018, Blue Dogs’ counsel called and spoke with Landlord’s counsel,
8 proposing that the parties use a neutral and reasonable methodology for determining reasonable /
9 market rent. *See* **Ex. 34, 35**. Blue Dogs proposed that the parties hire a joint appraiser to determine
10 market / reasonable rent. Tropicana Investments immediately rejected the proposal.

11 Blue Dogs also proposed other neutral and reasonable methods for determining rent, such
12 as use of more than one appraiser and/or by using an appraiser in conjunction with an arbitrator.
13 Tropicana Investments rejected these as well. *See id.*

14 In response, Tropicana Investments served a “Thirty Day Notice to Quit the Premises”
15 dated November 14, 2018. On November 16, 2018, Blue Dogs sent correspondence regarding the
16 improper Notice of Termination and affirming its option rights: “As Landlord knows, in 2016,
17 Blue Dogs exercised an option to extend the lease for a five-year period.” *See* **Ex. 36**. The same
18 date, Blue Dogs served a copy of an appraisal of market / reasonable rent (**Ex. 37**), which shows a
19 market rental rate far less than what Blue Dogs has paid in good faith while negotiations continued.
20

21 **III.**

22 **ARGUMENT**

23
24 Plaintiff Blue Dogs opposes Tropicana Investments’ motion, and countermoves for
25 declaratory relief that enforces its right to renew / extend a commercial lease, including the
26 following: (1) Blue Dogs has enforceable option rights and has complied with the requirements
27 for exercising its current option; (2) the parties have not been able agreed on the amount of rent,
28

1 and, in accordance with Nevada case law, Plaintiff Blue Dogs is entitled to have rent set by the
2 Court, in further proceedings in this case, at a reasonable rate ascertained from market conditions.

3 NRCP 56(c) and (d) allow parties to seek summary judgment or partial summary
4 adjudication. Summary judgment is appropriate and shall be rendered forthwith when the
5 pleadings and other evidence on file demonstrate that no genuine issue as to any material fact
6 remains and that the moving party is entitled to a judgment as a matter of law. *Wood v. Safeway,*
7 *Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Pursuant to NRCP 56(c) and (d), this Court
8 may enter a partial summary judgment, interlocutory in character, on any point of the law and
9 retain jurisdiction on other points of law or make other decisions at a later time where the facts so
10 warrant as they do here.
11

12 Enforcement of a lease option involves enforcement of contract rights. A commercial
13 tenant may, as here, affirm the option rights and seek judicial determination of the amount of rent
14 where the parties have been unable to agree. *Cassinari v. Mapes*, 91 Nev. 778, 781, 542 P.2d
15 1069, 1071. Commercial tenants may “affirm the lease and retain occupancy, something that they
16 [a]re clearly entitled to do.” *Charter Medical Corp. v. Bealick*, 103 Nev. 368, 370, 741 P.2d 1359,
17 1360-61 (1987). This simply requires proof of the option rights, the tenant’s compliance with the
18 Lease / option obligations, and that the parties have been unable to agree on the amount of rent.
19

20 Interpretation of a contract is a question of law. *Anvui, LLC v. G.L. Dragon, LLC*, 123
21 Nev. 212, 215-16, 163 P.3d 405, 407 (Nev. 2007) The Court proceeds by looking at the plain
22 language in the contract documents.
23

24 To the extent that the Lease or options are allegedly ambiguous, they must be construed
25 against Landlord. A contract is ambiguous when it is subject to more than one reasonable
26 interpretation. “Any ambiguity, moreover, should be construed against the drafter.” *Anvui, LLC*
27 *v. G.L. Dragon, LLC*, 123 Nev. 212, 215-16, 163 P.3d 405, 407 (Nev. 2007), citing *Mullis v.*
28 *Nevada National Bank*, 98 Nev. 510, 513, 654 P.2d 533, 535 (1982). The drafter of all of the

1 Lease and the related documents was the landlord.

2 **A. PLAINTIFF BLUE DOGS HAS ENFORCEABLE OPTION RIGHTS.**

3 There is no question that Blue Dogs has enforceable options. All of the options were in
4 writing and were relied upon. They were granted to Blue Dogs were part of bargained for
5 exchanges, i.e. consideration, making them irrevocable. They also involved substantial payments
6 of rent, payment of security deposits, and even payment of \$50,000.00 to which Landlord was not
7 entitled for consenting to an assignment to Blue Dogs.
8

9 Each of the options granted since the initial Lease was entered into in 1996 is can be
10 exercised 90 days prior to “**expiration**” of the Lease. By the plain language of the Amendment,
11 the Addendum, and Addendum II, the expiration was continued to August 31, 2016.

12 Blue Dogs has two options to renew from 1996 that are measured from the date of the
13 expiration of the Lease. The two options are part of the 1996 Lease. Agreements entered into at
14 the same time form part of a single overarching agreement. “Multiple writings signed at the same
15 time, addressing the same subject, and cross-referencing one another may be taken to comprise a
16 single agreement.” *Coast to Coast Demolition & Crushing, Inc. v. Real Equity Pursuit, LLC*, 126
17 Nev. 97, 101, 226 P.3d 605, 608 (Nev. 2010), citing *Collins v. Union Fed. Savings & Loan*, 99
18 Nev. 284, 292, 662 P.2d 610, 615 (1983).
19

20 Mark Van Aken has attested to the Lease and Option Agreement being entered into at the
21 same, they were attached together, and were signed together. See Mark Van Aken Decl., Ex. 1.
22

23 The Option states four times that it is part of “**this** lease.” It states:

24 In the events [Tenant] has fully complied with all the terms,
25 covenants condition of **this lease** and provided the Tenant gives the
26 Landlord at lease ninety (90) days notice in writing, in advance of
the lease expiration the tenant shall have the option to renew **this**
lease

27 (Emphasis added). The same paragraph is repeated for a second right to renew the lease for an
28 additional five years, using the same “this lease” language. The Lease also repeatedly uses the

1 same “this Lease” terminology that appears four times in the Option. *See, e.g.,* Lease at 1st sent.,
2 ¶ 8, ¶ 9, ¶ 11 (and in all but two paragraphs from ¶¶ 13-37). The Lease also refers to the Option
3 Agreement. The last paragraph of the Lease has a merger / integration clause that states:

4 Tenant acknowledges that there have been no representations made
5 by Landlord . . . ***except that which may be specifically set forth in***
6 ***writing in an exhibit attached hereto*** and executed by all parties in
7 ***this Lease.***

8 Lease at 7 (emphasis added). The Option Agreement is exhibit attached to the Lease that is in
9 writing and executed by all parties in this Lease. The merger / integration clause uses the same
10 “this Lease” terminology that is used in both the Lease and the Option Agreement.

11 The Option Agreement states that “provided the Tenant gives the Landlord at least ninety
12 (90) days’ notice in writing, in advance of the lease expiration the tenant shall have the option to
13 renew this lease for a period of five years.” The provision specifically references “the lease
14 expiration.” It further states that the five years would be “commencing September 1, 2001.” Thus,
15 it specifically references a separate commencement date. As of the time entered into, 2001 would
16 be the commencement date, but this is subject to change when the parties amend the Lease.

17 The Option Agreement has a second paragraph for a second right conferred to the Tenant
18 if the Tenant “gives the Landlord at least ninety (90) days’ notice in writing, in advance of the
19 lease expiration.” This provides for a second option right.

20 In addition, Blue Dogs has an option to extend that was granted in the 2006 Addendum,
21 and which is measured from the date of the expiration of the Lease (whose expiration was
22 thereafter changed and continued to August 31, 2016 by Addendum II).

23 Finally, Blue Dogs has three “additional” options to renew that are contained in the Lease
24 Assignment & Modification, which are evergreen option rights that automatically commence upon
25 expiration “after August 31, 2016,” and the expiration of the Lease was thereafter changed and
26 continued in 2011 to August 31, 2016.

27 Plainly, Blue Dogs has option rights, all of which were granted as part of bargained-for
28

exchanges, making them irrevocable.

B. BLUE DOGS HAS COMPLIED WITH THE REQUIREMENTS FOR EXERCISING IS OPTION RIGHTS.

Blue Dogs provided more than 90 days' notice for exercising an option to renew / extend by exercising its option on February 26, 2016, which is also more than six months prior to the expiration date of the Lease, which had been continued to August 31, 2016. To the extent that the 2006 option is at issue, Blue Dogs complied with the six month notice requirement for that option. To the extent that the three "additional" options in the 2007 Lease Assignment & Modification are pertinent, there is no notice requirement for such options, as they are self-renewing.¹³

Blue Dogs is also in compliance by paying rent so as to preserve its right and power to exercise options to renew / extend. Even though rent is required to be re-set at a "market rate" and/or via other provisions that require a reasonable or market rate (because no rental amount is stated, but rather, that the amount shall be "as agreed" or "negotiated), Blue Dogs has paid well in excess of the market or reasonable rate by continuing the "old" 2016 payments. It has continued paying rent in compliance with the implied covenant of good faith and fair dealing that read into every contract here in Nevada, and in contract provisions requiring some type of negotiation.

Blue Dogs has continued presenting proposals for lower, market rent throughout the time since it exercised its first option on February 26, 2016 to the date in 2018 when Landlord refused to further negotiate or discuss the issues. *See* Exs. 34-36. Even after such date, Blue Dogs proposed use of a joint appraiser, further showing its reasonableness. *Id.* It then proposed the use of a combination of appraisers and/or arbitrator. *Id.* Finally, and after Landlord rejected any neutral methodology, Blue Dogs obtained an appraisal and served it on Landlord. *Id.*

Blue Dogs is in compliance with any pertinent and material obligations under the Lease for exercising options to renew / extend the Lease.

¹³ This further shows the meritless nature of the argument that Leslie Miller "exercised" one of the 2007 options since they were self-renewing. They automatically renew on "expiration."

1 **C. TROPICANA INVESTMENTS HAS FAILED TO COMPLY WITH THE**
2 **OPTION RIGHTS, AND IS NOT ENTITLED TO UNILATERALLY SET**
3 **THE AMOUNT OF RENT.**

4 The 1996 options were part of the original Lease, attached to it, and were part of the
5 bargained-for exchange of rights embodied in the Lease. The 1996 options required rent when the
6 options were exercised to be re-set at the “market rental rate.” Landlord delayed the date for
7 having to re-set the amount of rent by changing and continuing the expiration date of the Lease
8 via the Amendment, the Addendum, and Addendum II, profiting mightily as market rent decreased
9 and Landlord delayed the day when rent would have to be adjusted to a reasonable market rate.

10 Neither the option that was granted in the 2006 Addendum nor the options granted in the
11 Lease Assignment and Modification purportedly grant the landlord a power to unilaterally set the
12 amount of rent. Landlord’s refusal to lower rent to the market / reasonable rate does not affect the
13 enforceability of Blue Dogs options. *See, e.g., Hennessey v. Price*, 96 Nev. 33, 36, 604 P.2d 355,
14 357 (Nev. 1980) (“The Hennesseys' statement . . . that they would not abide by ‘that silly little
15 agreement’ did not and could not terminate the option, since the option was supported by
16 consideration and was, therefore, irrevocable.”), *citing Mohr Park Manor, Inc. v. Mohr*, 83 Nev.
17 107, 112-13, 424 P.2d 101, 105 (Nev. 1967); *see also Paulk v. Maese*, 2014 WL 6609490, at *3
18 (Nev. 2014) (option to purchase shares).

19 The Landlord and Blue Dogs have not signed a new Lease document that would
20 purportedly change their rights from the Lease and related documents that have actually been
21 entered into from 1996 to 2011. Landlord’s argument that there is some agreement regarding
22 higher rent for the option period fails because the parties have had ongoing negotiations as shown
23 by Exhibits 11-34, with no agreement ever being reached regarding the specific amount of rent.

24 When Landlord entered into Lease documents that contained the options, Landlord
25 communicated his willingness to negotiate reasonable market rent. This is shown in the June 6,
26 2007 email Landlord’s representative stated: “This Landlord has always negotiated in good faith
27 2007 email Landlord’s representative stated: “This Landlord has always negotiated in good faith
28 2007 email Landlord’s representative stated: “This Landlord has always negotiated in good faith

1 and *at market value and below market value* with his Tenants.” See 06/06/07 Email from
2 Landlord (J. Velarde) to Blue Dogs, Ex. 9. This is also shown by the terminology of each of the
3 options, which refer to “market rental rates” and to negotiated rates.

4 Yet, when it comes to engaging in a good faith negotiation to determine reasonable rent,
5 Landlord has made clear that he will not honor his obligations in the option that have been granted.
6 This is shown in the August 15, 2017, email (Ex. 25) Landlord sent email to Blue Dogs, stating:
7 “*Market conditions or whatever other tenants are paying are not a factor* as your location and
8 type of use are unique to your industry.” It is further shown by Landlord’s demand for \$50,000.00
9 just to consent to a sale of the bar. See Ex. 6. It is shown in the email Landlord sent where he
10 stated he would make the same demand on Blue Dogs in the future if it sold the bar. See Ex. 15.

12 By refusing to further discuss reasonable rent, the Landlord is not in compliance with the
13 obligations contained in the various options to re-set the rent at a market / reasonable rate.

14
15 **D. BECAUSE THE PARTIES HAVE BEEN UNABLE TO AGREE ON THE**
16 **AMOUNT FOR RENT FOR THE OPTION PERIOD COMMENCING**
17 **SEPTEMBER 1, 2016, REASONABLE MARKET RENT SHOULD BE SET**
18 **BY THE COURT.**

19
20 **1. Where no rental amount is stated in the option, the Court can set the**
21 **amount by looking to market / reasonable rent for the area.**

22 The location where the bar is located has declined since the Lease was originally entered
23 into by predecessors-in-interest in 1996. The current Landlord leases out neighboring pads for the
24 shopping center for as low as 85 cents per square foot, and perhaps lower. Yet, the Landlord,
25 having previously discussed lower amounts, is now attempting to keep the former rent of \$2.10
26 per square foot for Blue Dogs location. Negotiations have broken down.

27 Where there is an option right to extend or renew a real property lease, and yet there is no
28 set rental rate and the parties are unable to agree on the amount, the Nevada Supreme Court has
adopted the more “modern” rule that the rental amount can be ascertained from market conditions
and, thus, may be set by the Court. In *Cassinari v. Mapes* (attached as Exhibit 1), the Nevada

1 Supreme Court rejected the argument that, in a virtually identical situation, the lease / option was
2 void for vagueness because the Court could imply and determine a “reasonable” rental rate:

3 In the case before us, however, all terms and conditions of the
4 renewal were settled, *leaving only the rental to later be determined*.
5 There is a division of authority as to enforceability in this
6 circumstance. *We are persuaded that the better view is to enforce
such a provision for extension.*¹⁴

7 In *Cassinari*, the Nevada Supreme Court further described the role of the trial court:

8 It is appropriate to enforce such a provision since the clause for
9 renewal constitutes part of the consideration for the original lease,
10 and was without question intended by the parties to have meaning
11 and to be effective. Surely we may not presume that one of the
12 signatories agreed to the provision only in the secret belief that it
13 would prove unenforceable. *It is proper, then, to imply that the
parties intended a reasonable rent for the extended period. If
14 unable to agree, a court should be allowed to fix the rental since
economic conditions are ascertainable with sufficient certainty to
15 make the clause capable of enforcement.* This view, we think,
carries out the true intention of the parties, and does not constitute a
making of a lease by the court in opposition to the desire of lessor
and lessee.¹⁵

16 Thirteen years later, in *Charter Medical Corp. v. Bealick*, the Nevada Supreme Court
17 described the *Cassinari* case in a subsequent case involving a lease dispute involving doctors.
18 While the doctors in the 1987 case did not attempt to enforce the option period, the Nevada
19 Supreme Court stated, based on *Cassinari*, the doctors had every right to do so:

20 The doctors did not seek to *affirm the lease and retain occupancy,*
21 *something that they were clearly entitled to do.* (See, e.g., *Cassinari*
22 *v. Mapes*, 91 Nev. 778, 542 P.2d 1069 (1975), in which it was held
23 that *in these kinds of situations, in which an option provides for
rental to be negotiated and the parties fail to reach an agreement,*
24 *the option is enforceable and a reasonable rental will be imposed.*)
Rather, the doctors have taken the position that the hospital breached
25 the option agreement, thereby entitling them to recover contract
damages.¹⁶

26
27 ¹⁴ *Cassinari*, 91 Nev. at 781, 542 P.2d at 1071 (emphasis added), citing: *Playmate Club, Inc. v. Country Clubs, Inc.*,
462 S.W.2d 890 (Tenn. App.1970); *Moolenaar v. Co-Build Cos.*, 354 F. Supp. 980 (D.C.V.I. 1973); *Edwards v. Tobin*,
284 P. 562 (Or. 1930); *Chaney v. Schneider*, 206 P.2d 669 (Cal. App. Ct. 1949); *Fuller v. Michigan Nat'l Bank*, 68
28 N.W.2d 771 (Mich. 1955); 58 A.L.R.3d 500 “Validity & Enforceability of provision for renewal of lease at rental to
be fixed by subsequent agreement of parties.”

¹⁵ *Cassinari*, 91 Nev. at 781, 542 P.2d at 1071 (emphasis added).

¹⁶ *Charter Medical Corp. v. Bealick*, 103 Nev. 368, 370, 741 P.2d 1359, 1360-61 (1987) (emphasis added).

1 Shortly before the Complaint was filed, the Landlord served a Notice of Termination that
2 follows its 2018 assertion that there is no Lease if Blue Dogs does not agree to continue paying
3 \$2.10 per square foot, the amount from 2011-16.
4

5 In response, Blue Dogs affirmed the Lease and its option rights. It seeks enforcement of
6 those rights. Further, Blue Dogs obtained an appraisal (Ex. 9), which asserts that the market rate
7 is approximately half of what Landlord's is demanding, and filed the present case in Business
8 Court. Blue Dogs requests a declaration that the Court will determine reasonable market rent via
9 further proceedings before the Court.
10

11 **2. By the plain language of the Lease and related documents, all of the**
12 **options that were granted, going back to the 1996 Option Agreement**
13 **attached to the Lease can be exercised.**

14 In 1984, a panel of three judges of the Ninth Circuit dealt with precisely the same issue
15 presented here regarding what options can be exercised. Because the Landlord kept changing and
16 continuing the expiration date of the original Lease, and the options are measured from the date of
17 the expiration of the Lease, all of the options remain valid and can be exercised. The Court stated:

18 McLane & McLane persuasively argues that the plain meaning of
19 the amended lease gave McLane & McLane the right to renew the
20 lease for the 1983–1988 period. The amendment extended the
21 “term” of the lease through September 14, 1983. The option clause,
22 which remained “in full force and effect” after the amendment, gave
23 McLane & McLane the option to renew the lease for five years
24 beyond the “term” of the lease. The amendment changed the
25 meaning of “term” throughout the lease. We may presume that
26 words have the same meaning throughout the contract.

27 *McLane & McLane v. Prudential Ins. Co.*, 735 F.2d 1194, 1195-96 (9th Cir. 1984), citing *Miller*
28 *Cattle Co. v. Mattice*, 298 P. 640, 643 (Ariz. 1931); 4 S. Williston, *A Treatise on the Law of*
Contracts § 618, at 715–16 (3d ed. 1961).

As the Court further stated:

Moreover, because the renewal of the original lease did not require
an amendment, we may infer that the parties amended the lease,
instead of simply renewing it, to keep the option clause in effect. If

1 Prudential had not wished to give McLane & McLane another five-
2 year option, it could easily have renewed the original lease by
3 executing a separate renewal letter, or by amending the lease and
4 deleting the option clause.

5 *McLane & McLane*, 735 F.2d at 1196; *see also Kavanagh v. Walbro Engine, LLC*, 2017 WL
6 741662, at *3 & n.4 (Ariz. Ct. App. 2017) (approving *McLane & McLane v. Prudential Ins. Co.*).

7 “[A]mending a lease’s ‘term’ to coincide with the renewal period, and expressly keeping
8 the lease otherwise in effect, may be seen as granting an additional option period, where the
9 renewal option was in the original lease.” 49 Am. Jur. 2d *Landlord and Tenant* § 143.

10 In its motion, Tropicana Investments makes the argument that it did not grant a “perpetual”
11 lease in 1996 or at other times. Yet, Blue Dogs has not argued that a “perpetual” option was
12 granted, but rather, that each time the Lease term neared expiration prior to 2016, the Landlord
13 drafted an Amendment / Addendum that continued the expiration to a later date. As stated by the
14 Ninth Circuit in addressing the same argument:

15 This case, unlike *Tucker*, does not involve the enforcement of a
16 perpetual lease. *McLane & McLane* does not argue that it has the
17 right, *ad infinitum*, to renew the lease. Even as amended, the lease
18 provision conferring the option to renew, unlike the provision in
19 *McLane & McLane*, 735 F.2d at 1196.

20 *McLane & McLane*, 735 F.2d at 1196.

21 By the plain language of each Amendment / Addenda, the Landlord put off the date when
22 the rent would re-set at market / reasonable rent for another five years in exchange for increased
23 rent for each five year period after 2001. When the Lease reached its expiration in 2016, Blue
24 Dogs and its predecessor had a number of options beginning with the 1996 options, which had
25 been paid for as part of bargained-for exchanges and substantial rent monies. Those options are,
26 by their plain language, enforceable upon expiration of the Lease. In addition, the Lease repeatedly
27 recognizes, itself and in subsequent amendments, that the expiration date of the Lease can change.

28 **3. None of the options state a specific amount for rent, which allows the
Court to set the amount at market / reasonable rent.**

1 **a. 1996 options: “market rental rate” “as agreed”**

2 The options granted in 1996 require that rent be re-set at the “market rental rate.” Each of
3 the two options granted in 1996 state provided the tenant gives 90 days’ notice “in advance of the
4 lease expiration” the lease will be renewed for five years “*at a market rental rate* and terms *as*
5 *agreed* by Landlord and Tenant.” Per *Cassinari*, this leaves the rental rate to be determined later.
6 That the options actually use the term “market rental rate” is unnecessary, but further shows that
7 the rent should be re-set at the market rate.
8

9 **b. 2006 Addendum: “to be negotiated”**

10 The option granted in the 2006 Addendum also left the rental rate to determined later. So
11 long as notice was given 6 months expiration of the Lease, an option would be granted “under
12 terms and conditions to be negotiated.” As in *Cassinari*, if the parties are unable to agree on the
13 amount of rent, the rent can be determined by the Court.
14

15 **c. 2007 Lease Assignment & Modification.**

16 The “additional” options granted int he 2007 Lease Assignment & Modification also leave
17 the rental to be determined later. Since the parties have been unable to agree on rent, the amount
18 can be set by the Court by determining a market / reasonable rate.

19 **E. TROPICANA INVESTMENTS’ ARGUMENT THAT THE “ADDITIONAL”**
20 **OPTIONS IN THE 2007 LEASE ASSIGNMENT & MODIFICATION ONLY**
21 **ALLOW INCREASES IGNORES THE PRIOR OPTIONS AND IS**
22 **CONTRARY TO THE PLAIN LANGUAGE.**

23 **1. As stated above, all of the prior options are enforceable.**

24 Tropicana Investments’ argument that the “additional” options in the 2007 Lease
25 Assignment & Modification are the only enforceable options ignores the prior options that remain
26 enforceable and that were again recognized in 2007.

27 As stated above, all the options remained enforceable based on the plain language of the
28 Amendment / Addendums. Further, in 2007, in the Lease Assignment & Modification, itself,
Landlord recognized that the three options were “additional.” Landlord also recognized that

1 commencement would not occur until “after August 31, 2016,” which was nine or more years
2 away. Four years after the 2007 Lease Assignment & Modification, the Landlord again drafted an
3 Addendum that changed and continued the expiration date of the Lease to 2016. That 2011
4 Addendum II kept all of the provisions of the Lease in “full force and effect” while changing the
5 expiration date against which all options have been measured.

6
7 **2. The controlling provision of the 2007 additional options is the phrase**
8 **“under terms and conditions . . . to be negotiated.”**

9 Tropicana Investments’ argument that the 2007 Lease Assignment & Modification only
10 allows for higher rent is contrary to the plain language of the 2007 Lease Assignment &
11 Modification. The pertinent phrase states that Landlord grants “three additional five year options
12 to renew the term of the Lease under terms and conditions, including but not limited to rental
13 increases, to be negotiated.” The phrase has a controlling, or operative, phrase that states the
14 controlling rule / terminology, which is: *“under terms and conditions . . . to be negotiated.”*

15 Such controlling phrase does not require that rent only increase, as no rent is stated and
16 good faith negotiations would result in a rental amount that is reasonable in light of the market.

17
18 **3. In addition, the subordinate phrase is a non-exclusive list using**
19 **“including but not limited to”**

20 The phrase, “including but not limited to” is subordinate. The term “including” usually
21 kicks off a dependent clause, and dependent clauses can be removed without changing the meaning
22 of a sentence. It would be foolish to put an exhaustive list in a dependent clause, especially without
23 explicitly stating the list is exhaustive. Furthermore, “including” something has no connotation of
24 excluding everything not mentioned. “Including” is not used when creating an exhaustive list.

25 Ordinary words are given their ordinary meaning, so “including” would mean not
26 “exclusively.” The list that follows “including but not limited to” is non-exhaustive. *Zhang v.*
27 *Barnes*, 2016 WL 4926325, at *5 n.3, 382 P.3d 878 (Nev. 2016) (rejecting argument that
28 *“including, but not limited to, a corporation, partnership, association trust or unincorporated*

1 organization” excludes a “professional medical corporation” from being subject to liability
2 because it is not an exhaustive list); *see also Auer v. Commonwealth*, 621 S.E.2d 140 (Va. Ct. App.
3 2005) (“ ‘include’ implies that the provided list of parts or components is not exhaustive and, thus,
4 not exclusive.”). Use of the phrase “but not limited to” emphasizes this even more. *See, e.g.,*
5 *DIRECTV, Inc. v. Crespín*, 2007 U.S. App. Lexis 6279 (10th Cir. Mar. 16, 2007) (“the normal use
6 of ‘include’ as introducing an illustrative—and non-exclusive—list”); *Jackson v. Concord Co.*,
7 253 A.2d 793 (N.J. 1969) (terms like include are “words of enlargement and not of limitation and
8 that examples specified thereafter are merely illustrative” “especially so here where the word
9 ‘including’ is followed by the phrase ‘but not limited to.’”).

11 Thus, “including but not limited to rental increases” plainly includes the possibility of both
12 rental increases and decreases, depending on market forces affect what is to be negotiated.

13 4. Any ambiguities are construed against Landlord as the drafter.

14 The provision was drafted by the Landlord, and the only way that Landlord can claim that
15 a non-exclusive provision is exclusive is by resorting to parol evidence. When *Landlord is the*
16 *drafter*, however, alleged ambiguities must be interpreted against the Landlord.

18 5. Landlord stated in writing that the “to be negotiated” provision meant 19 “market value and below market value”

20 Further, Landlord sent correspondence at the same time that the provision was being
21 discussed that stated that the provision should be interpreted as meaning that the Landlord would
22 agree on market rental rates, including decreases. In discussing this exact phrase of the Lease,
23 Landlord’s representative stated to Blue Dogs, “I went through your additions of [sic] the Lease
24 Assignment . . . *This Landlord has always negotiated in good faith and at market value and*
25 *below market value with his Tenants.*” June 6, 2007 Email from J. Velarde to Jeff White. The
26 parties had already stated in prior options that rent would adjust to “market rental rate.” It was
27 unknown in 2007 what the market rent would be a decade, or more, later “after August 31, 2016.”
28 When 2016 came, the parties actually discussed lower rental amounts, including the Landlord.

1 Finally, an agreement with open terms comes with an obligation to negotiate in good faith,
2 and the negotiation provision in the same Lease Assignment and Modification must mean that the
3 parties would so negotiate by looking at the market a decade or more later.

4 **6. The provision is unquestionably an open-term provision, which**
5 **requires a reasonable price term and good faith negotiation.**

6 The two five-year options granted by the Option Agreement were a critical part of entering
7 into the Lease, as an operator of a bar and tavern would not enter into a Lease for only five years.
8 The options, and the power to exercise them, are a very important part of the agreement as they
9 ensure that ability to operate for a lengthy period of time.

10 The option rights are also important because of the liquor and gaming licensing that is
11 connected to the location, which cannot easily be moved. The landlords, including Walter
12 Schwartz and his successor landlord Tropicana Investments, LLC, are aware that they have
13 operators of bars and taverns “over a barrel” when it comes to renewing and extending the term of
14 the Lease because the operator of the bar / tavern cannot pick up and relocate.

15 **F. LANDLORD’S ARGUMENTS REGARDING “PART PERFORMANCE”**
16 **AND THE AUGUST 2, 2016 LESLIE MILLER LETTER ARE MERITLESS.**

17 “Part performance” is not a substitute to an actual written agreement that the parties have
18 already entered into. The parties have a written Lease. There are already written options. Blue
19 Dogs exercised its first option on February 26, 2016. The option rights are enforceable under
20 *Cassinari*. The options plainly do not state an amount of rent. In enforcing an option, a
21 commercial tenant will ensure, as here, that it remains in compliance with alleged lease obligations
22 while the parties negotiate. Blue Dogs remained in compliance by paying the “old” 2016 rent
23 while negotiations continued. Landlord further showed that it would capitalize on any alleged
24 non-compliance by Blue Dogs when it actually served a Notice of Termination despite Blue Dogs’
25 option rights and its continued payments of rent that is far in excess of market rates.

26 Landlord has no lease document that the parties have supposedly signed to show regarding
27
28

1 rent amount. Landlord cannot unilaterally set the rent. Instead, Blue Dogs can apply to the Court.

2 Landlord's argument that he "accepted" the negotiated points made by Leslie Miller on
3 August 2, 2016 is meritless. On August 3, 2016, Landlord rejected every point presented by Miller.
4 He also made clear that Miller was unaware of the status of the negotiations, as Landlord had
5 already ceased any request that the parties enter into "Addendum III." Rather, Landlord demanded
6 entirely new lease documents, which Landlord's August 3, 2016 email repeated. Miller's letter
7 was not the exercise of the option, which Blue Dogs accomplished on February 26, 2016—as
8 admitted by Landlord in its Answer to the Complaint. Miller's letter was plainly not intended to
9 be a new lease document.
10

11 Landlord's response was a rejection and counteroffer (to the extent it is even deemed more
12 than mere "negotiation"). See Restatement (Second) of Contracts § 59.¹⁷ Landlord's counsel's
13 September 6, 2018 letter claiming "*acceptance thereof by the Landlord*" (see Ex. 31) two years
14 after Landlord rejected all of Miller's statements is a meritless argument.
15

16 IV.

17 CONCLUSION

18 Tropicana Investments motion for partial summary judgment should be denied. Plaintiff
19 Blue Dogs' countermotion for partial summary judgment should be granted.
20

21 LOVATO LAW FIRM, P.C.

22 /s/ Mario Lovato

23 MARIO P. LOVATO, ESQ.

24 Nevada Bar No. 7427

25 Attorney for Blue Dogs
26
27

28 ¹⁷ In the law of contracts, the mirror image rule, also referred to as an unequivocal and absolute acceptance requirement, states that *an offer must be accepted exactly with no modifications*. The offeror is the master of one's own offer. An attempt to accept the offer on different terms instead creates a counter-offer, and this constitutes a rejection of the original offer. Restatement (Second) of Contracts § 59.

1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED that, on June 19, 2019, and after being granted an extension
3 and stipulating to continuance of the hearing by two weeks, the above and foregoing **PLAINTIFF**
4 **JSJBD CORP DBA BLUE DOGS PUB'S OPPOSITION TO MOTION FOR PARTIAL**
5 **SUMMARY JUDGMENT AND COUNTERMOTION FOR PARTIAL SUMMARY**
6 **ADJUDICATION** was served via the Court's system of electronic service on all parties registered
7 and listed for such service, including upon by the following:
8

9
10 Terry A. Moore
11 Marquis Aurbach Coffing
12 10001 Park Run Dr.
13 Las Vegas, NV 89145
Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC

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15 /s/ Mario Lovato
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EXHIBIT LIST

1. Mark Van Aken Declaration
2. Jeffrey Vincent Declaration
3. 1996 Lease & Option Agreement
4. 2001 Amendment
5. 2006 Addendum
6. 2007 Lease Assignment & Modification
7. 2011 Addendum II
8. Renewal Letter dated 02/26/16
9. 06/06/07 Email exchange between Blue Dog's and Landlord
10. 02/16/16 Email from Blue Dog's to Landlord
11. Landlord's proposed Addendum dated 04/06/16
12. Addendum III (proposed) dated 04/06/16
13. 04/26/16 Letter from Blue Dogs to Landlord
14. 05/19/16 Letter from Landlord to Blue Dogs
15. 05/26/16 Email from Blue Dogs to Landlord
16. 06/15/16 Letter from Landlord to Blue Dogs
17. 08/02/16 Letter from Blue Dogs' counsel to Landlord
18. 08/03/16 Email from Landlord to Blue Dogs' counsel
19. 08/31/16 Letter from Blue Dogs' counsel to Landlord
20. 09/07/16 Letter from Landlord's counsel to Blue Dogs' counsel
21. 11/22/16 Letter from Blue Dogs' counsel to Landlord's counsel
22. 08/03/17 Email from Landlord to Blue Dogs
23. 08/09/17 Letter from Landlord's counsel to Blue Dogs' counsel
24. 08/10/17 Email from Blue Dogs to Landlord
25. 08/15/17 Email form Landlord to Blue Dogs
26. 08/18/17 Email from Landlord's counsel to Blue Dogs' counsel
27. 08/25/17 Email from Landlord's counsel to Blue Dogs' counsel
28. 08/25/17 Email from Landlord's counsel to Blue Dogs' counsel
29. 08/31/17 Letter from Blue Dogs' counsel to Landlord's counsel
30. 09/06/17 Email from Landlord's counsel to Blue Dogs' counsel
31. 09/06/17 Letter from Landlord's counsel to Blue Dogs' counsel
32. 12/29/17 Letter from Landlord's counsel to Blue Dogs' counsel
33. 09/06/18 Email from Landlord to Blue Dogs
34. 11/08/18 Letter from Blue Dogs' counsel to Landlord's counsel
35. Notice of Termination
36. 11/16/18 Letter from Blue Dogs' counsel to Landlord's counsel
37. Market Rent Analysis (served 11/16/18)

EXHIBIT 1

1
2 **DECLARATION OF MARK S. VAN AKEN**

3 I, MARK S. VAN AKEN, declare and state:

4 1. I have knowledge of the contents of this Declaration and, if required to do so, could
5 competently testify as to same. The following is true and correct.

6 2. In 1996, I entered into the Lease with Walter L. Schwartz for a bar and tavern at
7 3430 E. Tropicana in Las Vegas, Nevada, a true and correct copy of which is attached hereto as
8 Exhibit 1. The Landlord Walter Schwartz, through his office and representatives, was the person
9 who drafted the Lease.

10 3. In 1996, and at the same time that the Lease was drafted, the Option Agreement
11 was drafted by Walter Schwartz through his office and representatives, a true and correct copy of
12 which is attached hereto as Exhibit 2. The Option Agreement was drafted as part of the same
13 agreement as the Lease and was signed by me and Schwartz at the same time.

14 4. The two five-year options granted by the Option Agreement were a critical part of
15 entering into the Lease, as an operator of a bar and tavern such as myself would not enter into a
16 Lease for only five years. The options, and the right to exercise them, are a very important part of
17 the agreement as they ensure that ability to operate for a lengthy period of time.

18 5. The option rights are also important because of the liquor licensing^{& GAMING LICENSING} that is connected
19 to the location, which cannot easily be moved. The landlords, including Walter Schwartz and his
20 successor landlord, are aware that they have operators of bars and taverns "over a barrel" when it
21 comes to renewing and extending the term of the Lease because the operator of the bar / tavern
22 cannot pick up and relocate.

23 6. As part of the Option Agreement entered into along with the Lease in 1996, I sought
24 to have a term included regarding the amount of rent, and the landlord agreed to the term "market
25 rental rate." At the time that the 1996 Lease and the 1996 Option Agreement were entered into
26 the landlord discussed and "sweet-talked" about his reasonableness in having the rent for the
27 option terms be set at whatever the market rent would be when the time came.
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2 7. In 2001, when the time approached for a new term, the new landlord, Tropicana
3 Investments, LLC and its owner Jeff Chauncey, would not discuss "market rental rate" or the
4 options in the Option Agreement. Instead, the Landlord demanded that an Amendment be entered
5 into, a true and correct copy of which is attached as Exhibit 3. The Landlord drafted the 2001
6 Amendment through its office and representatives. The Amendment did not state anything about
7 an option being exercised or used, as the Landlord would not discuss the "market rental rate"
8 required by the two five-year options. Instead, the Landlord demanded the Amendment be signed,
9 which just changed the period of the Lease under the original Lease document from 1996.

10 8. In 2006, when the time approached for a new term, again, the landlord, Tropicana
11 Investments, LLC and its owner Jeff Chauncey, would not discuss "market rental rate" or the
12 options in the Option Agreement. Instead, the Landlord demanded that an Addendum be entered
13 into, a true and correct copy of which is attached as Exhibit 4. The Landlord drafted the 2006
14 Addendum through its office and representatives. The Addendum did not state anything about an
15 option being exercised or used, as the Landlord would not discuss the "market rental rate" required
16 by the two five-year options. Instead, the Landlord demanded the Addendum be signed, which
17 just changed the period of the Lease under the original Lease document from 1996.

18 9. The Addendum granted another option to extend for five years. As with the prior
19 Option Agreement, the additional option was a very valuable part of entering into the Addendum.

20 10. In 2007, I sought to sell the bar at 3430 East Tropicana because operating that bar
21 and another that I owned was becoming too burdensome. When I obtained a buyer and sought the
22 landlord's consent, the landlord stated he would only agree if he received 10% of the purchase
23 price. No reason was given for refusing consent, and there was no basis for demanding monies.
24 The landlord only consented once the monies were paid as part of the closing of the sale.

25 11. During the time from 1996 to 2007 when I owned and operated the bar at 3430 East
26 Tropicana, Las Vegas, Nevada, no option rights were exercised or used since the Landlord
27 demanded that an Amendment, an Addendum, or a Lease Assignment & Modification be entered
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into that just changed the original period of the Lease and that also increased rent rather than looking to the "market rent" or something similar. At no point from 1996 to 2007 was the rent ever changed to the "market rental rate" or something similar, as promised in the 1996 Option Agreement.

12. I declare under penalty of perjury of the laws of the State of Nevada that the above and foregoing is true and correct.

DATED: June 4TH, 2019.


MARK S. VAN AKEN

EXHIBIT 2

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DECLARATION OF JEFFREY VINCENT

I, JEFFREY VINCENT, declare and state:

1. I have knowledge of the contents of this Declaration and, if required to do so, could competently testify as to same. The following is true and correct.

2. In 2007, Blue Dogs, its predecessor-in-interest Mark S. Van Aken, and Tropicana Investments entered into a Lease Assignment & Modification, a true and correct copy of which is attached to the same motion to which this Declaration is attached as Exhibit 6.

3. Blue Dogs' principals, including myself, sought changes to the option provision in paragraph 8 of the Lease Assignment & Modification so that the options would refer to rent for the option period as being measured by market rates in the area. In response to the email sent by Jeff White, Landlord's agent / broker Joe Velarde sent me the email that is included in the June 6, 2007 email exchange that is attached to the Motion as Exhibit 9. The email exchange was forwarded to me by Jeff White at that time. That email exchange between Landlord's representative and Jeff White referenced that the Landlord, meaning Jeff Chauncey, negotiates the rent at market rates and even below market rates. That also informed me that that was Landlord's interpretation given to the option provision in paragraph 8 of the Lease Assignment and Modification.

4. From 2007 to 2016, I had conversations with either Jeff Chauncey or Joe Velarde, and counsel at the time (e.g., Tom Harper) did as well regarding having the rent reduced in 2016 to market rental rates. Prior to the option being exercised in February of 2016, they indicated their willingness to re-set the rent at market rates when the options were exercised.

5. On February 26, 2016, Blue Dogs provided notice, in writing, that Blue Dogs was "exercis[ing] our five year option beginning September 1st 2016." A true and correct copy of such

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2 letter is attached to the motion as Exhibit 8. Landlord recognized in February of 2016 that such
3 letter exercised the option.

4 6. The Renewal Letter was timely. It was sent more than 90 days prior to the August
5 31, 2016 expiration date of the Lease. The Letter was also more than 6 months prior to the
6 expiration.

7
8 7. In the Renewal Letter, in other correspondence around the time, and in telephone
9 calls I made, I attempted to have the rent set at market rental rates, which were far lower than what
10 Blue Dogs was paying in early 2016.

11 8. From September 1, 2016 to present, Blue Dogs has continued to pay the rental
12 amount from 2016 while it negotiated with Landlord. Blue Dogs continued doing this so that it
13 would not be in default and to protect its option rights. During the entire period from February 26,
14 2016 to present, Blue Dogs has continued negotiating the rent, but the parties have been unable to
15 agree. The ongoing dispute regarding the amount of rent to be paid for the option period eventually
16 resulted in the filing of the case that is currently ongoing against Tropicana Investments.

17
18 9. From February of 2016 to the filing of this case, the parties discussed the rental rate
19 and Landlord's demand for all new Lease documents. All parties understand that there is no
20 agreement unless and until the parties actually sign off on binding lease documents, which has
21 never occurred since February 26, 2016 when the option was exercised. There is still no agreement
22 on the amount of rent, which necessitated the filing of the case.

23
24 10. Repeatedly, Landlord and his counsel have both recognized in written
25 correspondence that there is no new agreement regarding the specific amount of rent, let alone on
26 the entirely new Lease documents Landlord sought, because neither side would sign off on
27 proposed terms. True and correct copies of the correspondence showing this is attached to the
28

1
2 Motion as Exhibits 11-34. I was either party to the correspondence or such correspondence was
3 forwarded to me contemporaneously (for example, when it was between counsel).

4 11. Specifically, the letter that Leslie Miller sent on August 2, 2016 was not the renewal
5 of the option, which had already occurred on February 26, 2016, as Landlord recognized after
6 receiving it in February of 2016.

7 12. Leslie Miller's letter references an Addendum III, which was never signed and
8 which Landlord did not even want at the time.

9 13. All of the preliminary proposals that Leslie Miller made in such letter, were rejected
10 by Landlord the next day. Miller's discussion in her letter was not informed of the actual
11 discussions taking place between myself and Landlord, as Landlord communicated in the
12 correspondence he sent back to Leslie Miller on August 3, 2016.

13 14. For the following two years after August 3, 2016, the parties exchanged various
14 proposals, but never agreed on the amount of rent, let alone other terms being demanded by
15 Landlord in new lease documents. The parties have never signed new Lease documents since
16 February 26, 2016, and there is still no agreement on the amount of rent for the current option
17 period.

18 I declare under penalty of perjury of the laws of the State of Nevada that the above and
19 foregoing is true and correct.

20 DATED: June 19, 2019.

21
22 
23 JEFFREY VINCENT

EXHIBIT 3

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, 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.

CERTIFICATE OF SERVICE

I hereby certify that, on September 3, 2020, I submitted **APPELLANTS' APPENDIX** for service via electronic service to the parties registered for service with the Nevada Supreme Court in this matter, including the following:

Terry A. Moore
Marquis Aurbach Coffing
10001 Park Run Dr.
Las Vegas, NV 89145
Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC

/s/ Mario Lovato
An employee of Lovato Law Firm, P.C.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JSJBD CORP, d/b/a Blue Dogs Pub, a	)	Case No.: 80849
Nevada corporation, STUART VINCENT,)	
JEFFREY VINCENT, and JEFF	)	(Dist. Ct. No. A-18-785311-B)
WHITE)	
)	
Appellants,)	
)	
vs.)	
)	
TROPICANA INVESTMENTS, LLC, a)	
California limited liability company,)	
)	
Respondent.)	
_____)	
)	
AND CROSS-APPEAL.)	
_____)	

**APPELLANTS' APPENDIX
(VOL. 2)**

MARIO P. LOVATO, ESQ.
Nevada Bar No. 7427
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd. Ste. 100
Las Vegas, Nevada 89128
(702) 979-9047
mpl@lovatolaw.com
Attorney for Appellants
JSJBD Corp., Stuart Vincent, Jeffrey
Vincent, and Jeff White

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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

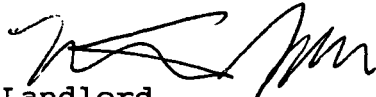


Mark S. Van Aken

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 4

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 16th 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 change 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, \$70,560.00 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 parking expenses of the Center.

5. Pursuant to Article 13, Utilities:

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

Landlord: Walter L. Schwartz
Tenant: Mark S. Van Aken

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 1st, 2008 in addition to monthly rental payment and Common Area Maintenance (C.A.M.) expenses.

7. ADDITIONAL REPRESENTATIONS:

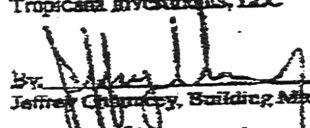
- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Amendment shall govern. All of the terms, covenants, provisions, and agreements of the lease not conflicting with the Amendment shall remain in full force and effect.
- B. This Amendment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

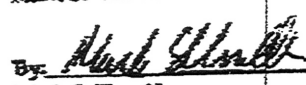
ACKNOWLEDGED AND AGREED:

LANDLORD:
Tropicana Investments, LLC

By: 
Jeffrey Chaudhry, Building Manager

Date: 5-10-07

TENANT:
Mark S. Van Aken

By: 
Mark S. Van Aken

Date: 5/10/07

EXHIBIT 5

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

THIS ADDENDUM is made this 7th 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) full 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 & 30/100 (\$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 payments to Landlord for sewer fees shall be paid by Tenant within ten (10) days of invoice from Landlord.

Landlord
 Tenant

04/05/2007 14:07 702-454-3555

7. Additional Representations

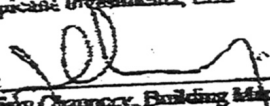
- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Addendum shall govern. All of the terms, covenants, provisions, and agreements of the lease not conflicting with this Amendment shall remain in full force and effect.
- B. This Addendum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

Date: 3-22-06

TENANT:
Mark S. Van Aken

By: 
Mark S. Van Aken

Date: 3/20/06

EXHIBIT 6

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 
Tenant 
Assignee 

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 19th 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 26th day of June, 2007.

By: [Signature]
Jeffrey Chauncey, Building Manager

EXHIBIT 7

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

THIS ADDENDUM is made this 22nd 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:

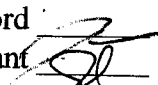
1. Pursuant to Section 3, Term, Commencement Date shall change from September 1, 2006 to September 1, 2011.
2. Pursuant to Section 3, Term, Expiration Date shall changed from August 31, 2011 to August 31, 2016.
3. Pursuant to Article 4, Rent:

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:

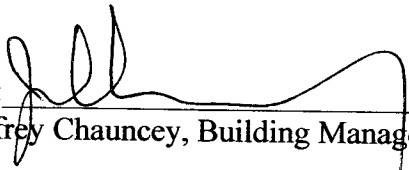
Pursuant to Nevada Real Estate Division rules, **Commercial Investment Real Estate Services** makes the following disclosure:

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:

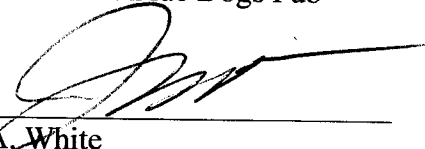
Tropicana Investments, LLC

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 8

Blue Dogs Pub

Jeff Chauncey,

This letter is to notify you we intend to exercise our five year option beginning September 1st 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 - President
Stuart Vincent

Cc: Joe Velarde
Dan Velarde

EXHIBIT 9

From: Joe Velarde <joe@cilv.com>
To: White, Jeff
Sent: Wed Jun 06 15:03:42 2007
Subject: Lease Assignment

Hi Jeff – I went through your additions of the Lease Assignment draft received in your package. The Landlord stated that his attorney has already reviewed the Assignment and your lease option conditions are not acceptable. We have national Tenants in the Center that have the same language for renewal terms.

This Landlord has always negotiated in good faith and at market value and below market value with his Tenants.

The Landlord will not be available for comments from the 7th to the 18th of June, but has given me instructions that this is the final draft, which is attached above.

Please call with any questions or comments 592-4542.

Regards,

Joe Velarde

Broker Salesman

Commercial Investment

Real Estate Services

1725 S. Rainbow Blvd., Suite 20

Las Vegas, NV 89146

(702) 454-7788 office

(702) 454-4668 fax

joe@cilv.com

EXHIBIT 10

From: Joe Velarde joe@cilv.com
Subject: Re: Renewal Blue Dog's Pub Lease Option 2016 - 2021
Date: February 17, 2016 at 1:27 PM
To: Jeff vincent jbvin1@msn.com
Cc: Danny Velarde dvelarde@cilv.com, Surko, Caryn bruno@brunomark.com, Stuart Vincent stuartvincent77@yahoo.com



Hello Jeff, is there a good time to set up a conference call this week to discuss your lease option.

Look forward to your response. Thank you

Sent from my iPhone

On Feb 16, 2016, at 11:00 AM, Jeff vincent <jbvin1@msn.com> wrote:

We would like to set up a meeting to discuss the renewal of the five(5) year lease option for Blue Dog's Pub and the rental rates going forward for the next five years. We will bring four years of financials as well as supply Social Security numbers to check all officers personal credit reports if necessary. It is critical that we meet as soon as possible to renew the option for Blue Dog's Pub. We would appreciate your immediate attention and response.

Regards,
Jeff Vincent
Director Blue Dog's Pub
02/16/2016

From: "Joe Velarde" <joe@cilv.com>
To: "Jeff Vincent" <jbvin1@msn.com>
Date: 2/17/2016 3:44:05 PM
Subject: Re: Renewal Blue Dog's Pub Lease Option 2016 - 2021

That sounds good, we will talk with you soon. Thanks Jeff

Sent from my iPhone

On Feb 17, 2016, at 3:34 PM, Jeff vincent <jbvin1@msn.com> wrote:

This Friday February 19th at 10:00am PST, would work for us. Would this time work for both of you. If so, Please use Stuart's cell phone number as the contact, or if you would like, we can call one of you.

Thank You
Jeff Vincent

From: joe@cilv.com
To: jbvin1@msn.com
CC: dvelarde@cilv.com; bruno@brunomark.com; stuartvincent77@yahoo.com
Subject: Re: Renewal Blue Dog's Pub Lease Option 2016 - 2021
Date: Wed, 17 Feb 2016 21:27:33 +0000

Hello Jeff, is there a good time to set up a conference call this week to discuss your lease option.

Look forward to your response. Thank you

Sent from my iPhone

On Feb 16, 2016, at 11:00 AM, Jeff vincent <jbvin1@msn.com> wrote:

We would like to set up a meeting to discuss the renewal of the five(5) year lease option for Blue Dog's Pub and the rental rates going forward for the next five years. We will bring four years of financials as well as supply Social Security numbers to check all officers personal credit reports if necessary. It is critical that we meet as soon as possible to renew the option for Blue Dog's Pub. We would appreciate your immediate attention and response.

Regards,
Jeff Vincent
Director Blue Dog's Pub
02/16/2016

EXHIBIT 11

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

THIS ADDENDUM is made this 6th day of April, 2016, 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:

JSJBD CORP, a Nevada Corporation is the successor in interest to **J.S.J. LLC, a Nevada Limited Liability Company** with respect to the above referenced lease.

1. Jeff A. White is no longer associated with or a part of J.S.J. LLC DBA BLUE DOGS PUB (Tenant). Jeff A. White will no longer be a signatore/guarantor or legal contact upon the mutual approval of this agreement by Landlord and Tenant.
2. Pursuant to Section 3, Term, Commencement Date shall change from September 1, 2011 to September 1, 2016.
3. Pursuant to Section 3, Term, Expiration Date shall changed from August 31, 2016 to August 31, 2021.
4. **Pursuant to Article 4, Rent:**

Beginning September 1, 2016, Tenant shall pay to Landlord a base minimum rent in the amount of \$7,350.00 per month, plus estimated monthly Common Area Maintenance (CAM) charges as designated in the Lease Agreement. Subject to rental adjustments

Initials
Landlord_____
Tenant_____

hereinafter for the term of this Lease, the minimum total sum in the amount of **Four Hundred Sixty Eight Thousand Two Hundred Sixty Five Dollars & 78/100 (\$468,265.78)**. Beginning on the commencement date, Tenant shall pay to Landlord minimum monthly base rent as follows:

9/01/16 - 8/31/17 @ \$7,350.00 per month, \$88,200.00 per annum.

2nd, 3rd, 4th & 5th Years of the Lease (September 1, 2017 - August 31, 2021):
Beginning September 1, 2017 and annually thereafter, Tenant's base minimum monthly rent shall increase annually the greater of three percent (3 %) or a Consumer Price Index (CPI) rental increase pursuant to the U.S. City Average, All Items Base Period: 1982-84=100 published by the Bureau of Labor Statistics of the United States Department of Labor, whichever is greater. Landlord shall designate (the "Index") for the month of May immediately preceding August 2017.

On May 1, 2016 Tenant's base rental payment shall be reduced to \$7,350.00 for the remaining five (5) months of their existing lease term provided Tenant approves this Lease Addendum on or before May 1st, 2016.

5. **Reserved Parking:**

Landlord agrees to reserve six (6) parking spaces in front of Suites # 27-29.

6. **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.
- B. This Addendum is not an offer to lease until executed by Landlord, and shall become binding only upon execution by both parties.

Initials

Landlord_____

Tenant_____

7. 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 **JSJBD CORP, a Nevada Corporation** (Tenant).

ACKNOWLEDGED AND AGREED:

LANDLORD:

Tropicana Investments, LLC

TENANT:

JSJBD CORP, a Nevada Corporation

By: _____

Jeffrey Chauncey, Building Manager


By: _____

Stuart Vincent, President

Date: _____

Date: _____

EXHIBIT 12

From: Jeff vincent jbvin1@msn.com 
Subject: Letter to Landlord Blue Dog's Pub
Date: April 26, 2016 at 6:23 PM
To: Surko, Caryn bruno@brunomark.com, Stuart Vincent stuartvincent77@yahoo.com



Blue Dogs Pub
Landlo...6.docx

Response to Lease Amendment

4/26/2016

In Response to your offer concerning Blue Dog's Pub Lease Renewal option. We cannot accept a rent above \$1.40 per Sq/Ft, \$5880 per month excluding CAM cost for Blue Dog's Pub. As we have expressed earlier emails our situation that the rent is not conducive for us to maintain a positive cash flow. The recent damages to our equipment and business interruptions caused by Let It Rain Roofing Co. have negatively impacted our business even more. It is imperative that all ventilation ducts, A/C units, Swamp Cooler and electrical boxes and wiring be repaired by Friday April 29, 2016. Summer temperatures will be here shortly and non-use of our cooling system will hurt our already struggling business. If you decide to use your license professional A/C serviceman, all work is subject to inspection and must meet building code standards. Listed below is our response:

- 1) Rent to be \$1.40 per Sq/Ft, \$5880 per month excluding CAM cost for Blue Dog's Pub
- 2) The damages caused by the Roofing Company : Let It Rain to our equipment : A/C units, swamp cooler , ventilation ducts, wiring and electrical, computers and hardware associated with it. We will pay for the above damages, if above lease terms are accepted. All structural damage of the roof and the proper drainage to prevent future damage will be the sole responsibility of the landlord.
- 3) Blue Dog's Pub will have six (6) reserved parking in front of our building with the signage provided by the landlord, and Blue Dog's Pub will enforce the towing at our discretion. Blue Dog's Pub will have a reserved common area of parking between our building and the adjacent building containing Double Shots bar, the parking spots will be reserved for all tenants that are not a banquet or catering facility. Only patrons other

than Layla's or any Banquet facility within the shopping plaza may use during any banquet (Layla's) functions. Enforcement will be the responsibility of the landlord.

EXHIBIT 13

Tropicana Investments, LLC
P.O. Box 50170
Lighthouse Point, FL 33074
(954) 782-1882 (954) 782-1841 fax

April 28, 2016

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

RE: Blue Dogs Pub

Dear Stuart,

First I do want to apologize for problems and inconvenience caused by the roofer. Unfortunately we can not control the weather and there is always a risk when dealing with old roofs and old mechanical. If in fact you suffered any loss of income that can be substantiated you should contact your insurance carrier. To date I have not received the amount of loss you are stating. If your insurance company feels there is a Landlord liability then they can contact our insurance carrier, but please note that whatever the problem was it was resolved as quickly as possible.

As to your swamp cooler along with the other roof mounted equipment I'm am told that everything up there is old and in need of repair. Danny will forward you the report from our HVAC vendor upon received.

In regards to the lease. You have my best offer. We are reducing your rent by a substantial amount and as you, we are not in business to lose money. When rent goes down in addition to the loss of income we lose value.

So in a nut shell, talk to your partners and make a decision. There will be no concessions for the roof problems and even if you did have some loss it will be more then covered by the rent decrease. You have my best offer. Also as requested we need the personal financials and credit reports on your partners and they will need to sign personal guarantees.

Sincerely,

Tropicana Investments, LLC

EXHIBIT 14



May 19, 2016

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

Hello Jeff,

In follow up to our phone call yesterday, Danny and I discussed your comments with the Landlord regarding the position you and the partners expressed having to do with the lease renewal and base rental rate. The Landlord reiterated his position and stated that you have his best offer. The rental reduction in the amount of \$840.00 per month (or \$0.20 psf/per month) over the next five (5) years equals a total sum of \$50,400.00 over the term of your lease renewal period. The Landlord will also add the provision that should JSJBD CORP sell their interest in the business within the five (5) year lease renewal term that Landlord will be reimbursed by JSJBD CORP for the rental concession total sum in the amount of \$50,400.00 at the time of sale.

In the past Stuart mentioned that Blue Dogs Pub has experienced a significant reduction in gaming drop and bar sales over the last two (2) years. As a condition of the rental reduction the Landlord is requesting you provide him with a gaming report from your slot route operator as well as your P & L statement for the previous twenty-four (24) months which should help substantiate your loss.

As requested in the previous correspondence from Tropicana Investments, LLC, you still have not provided the Landlord with the updated credit & financial information of all the members of JSJBD COPR. This will be required for the Landlord and his partners to review before a final decision can be made.

The Landlord is requesting your provide the above information no later than May 26th in order to substantiate the rental reduction. Should the Landlord not receive the above information previously requested, the above rental concession will be rescinded and we will move forward based on the current terms of the existing lease agreement.

It is our hope that we can continue working together. Tropicana Investment, LLC recognizes the past faithful performance of Blue Dogs Pub and looks forward to our continued good working relationship.

We look forward to your response, time is of the essence.

Sincerely,

Commercial Investment
Real Estate Services

A handwritten signature in blue ink, appearing to read "Joe Velarde".

Joe Velarde
Broker Salesman

EXHIBIT 15

From: Jeff vincent jbv1@msn.com
Subject: Blue Dog's Pub Lease Renewal
Date: May 26, 2016 at 4:10 PM

To: Joe Velarde joe@cilv.com, Dan Velarde dvelarde@cilv.com, Surko, Caryn bruno@brunomark.com, Stuart Vincent stuartvincent77@yahoo.com



May 25, 2016 Jeff Chauncey, This is in response to your letter regarding the 5 year lease renewal options for Blue Dog's Pub dated May 19, 2016. We intend to exercise our 5 year option effective September 1, 2016.

In regard to your request for additional detailed revenue, slot and financial information we respectfully decline. We believe there is a conflict of interest regarding your potential gaming relationships within the shopping center. We have already provided 3 years (2013, 2014, & 2015) Profit & Loss statements on our prior letter dated February 23, 2016.

The damages that resulted from your roofing contractors work have not been resolved as of yet.

The \$50,400 payment to you upon sale has gaming licensing issues. In conversations with state and county gaming this could be considered ownership interest.

Blue Dog's Pub
Stuart Vincent

EXHIBIT 16

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:

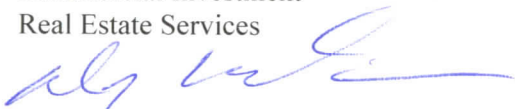
- The base rental total for the initial year of the lease extension shall remain the same as the previous year, with a three percent (3 %) annual base rental increase each subsequent year thereafter (Years 2 – 5).
- Include two (2) remaining five (5) year options (after this lease renewal).

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

cc: Tropicana Investments, LLC

EXHIBIT 17

**KAEMPFER
CROWELL**

ATTORNEYS AT LAW

LAS VEGAS OFFICE

LESLEY B. MILLER
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: 775.852.3900
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 18

From: Jeff Chauncey [mailto:jbchauncey@outlook.com]

Sent: Wednesday, August 3, 2016 2:41 PM

To: Lesley Miller

Cc: dvelarde@cilv.com; Joe Velarde

Subject: FW: Blue Dogs, letter of August 2, 2016

Subject: Blue Dogs, letter of August 2, 2016

Dear Lesley, we are in receipt of your letter regarding the lease renewal and change of entity for Blue Dogs Pub. First, you have an error regarding the annual rental increase, the rental amount increases by 3% on the Gross yearly rental amount. You have the monthly increase amount. Please note that the amount will be confirmed when the new lease is written up.

In reference to your explanation of the new entity. We have already been advised by Mr. Vincent, and have a copy of the Corp filing, showing 2 additional partners now owning the bar. Thus we will require the requested credit info on the new partners. In addition, since there has been both a change in the entity and ownership, we will require a new lease to be signed. The rental amounts and the options will remain intact. If Mr. Vincent wants to remain as the sole guarantor then we will need an update of his financial condition as well.

I have requested Mr. Velarde to prepare a new lease on our current lease format to be forwarded to you and your client.

Please feel free to call me should you have any questions. I am located in Florida so I am 3 hours ahead. My cell is 954 461-8303.

Thank You.

Jeff Chauncey
Manager

EXHIBIT 19

KAEMPFER

CROWELL

ATTORNEYS AT LAW

LAS VEGAS OFFICE

LESLEY B. MILLER

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: 775.852.3900
Fax: 775.327.2011

CARSON CITY OFFICE
510 West Fourth Street
Carson City, NV 89703
Tel: 775.684.8300
Fax: 775.682.0257

August 31, 2016

Via U.S. Mail and email: 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).

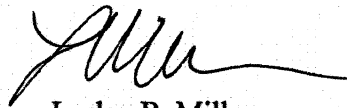
Accordingly, the entity conversion did not operate as an assignment under the terms of the Lease. Because JSJBD is the legal continuation of J.S.J. LLC, the same party is the interest-holder under the Lease and the same party occupies the premises. JSJBD remains in full compliance with the terms of the 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 foot (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,

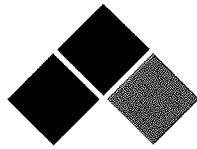
KAEMPFER CROWELL



Lesley B. Miller

LBM/RLS

EXHIBIT 20



MARQUIS AURBACH COFFING

DIRECT LINE: (702) 942-2182
DIRECT FAX: (702) 856-8983
EMAIL: JSACCO@MACLAW.COM

ALBERT G. MARQUIS
PHILLIP S. AURBACH
AVECE M. HIGBEE
DALE A. HAYES
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
CRAIG R. ANDERSON
TERRY A. MOORE
GERALDINE TOMICH
NICHOLAS D. CROSBY
JASON M. GERBER
MICAH S. ECHOLS
BRIAN R. HARDY
TYE S. HANSEEN
LIANE K. WAKAYAMA
CANDICE E. RENKA
DAVID G. ALLEMAN

CODY S. MOUNTEER
CHAD F. CLEMENT
BENJAMIN T. AUTEN
CHRISTIAN T. BALDUCCI
VINCENT J. VITATOE
BRIANNA SMITH
JARED M. MOSER
JONATHAN B. LEE
ADELE V. KAROUM
MICHAEL D. MAUPIN
PATRICK C. McDONNELL
BRYAN M. VIELLION
KATHLEEN A. WILDE

JOHN M. SACCO
OF COUNSEL

September 7, 2016

Via Regular Mail and Email (lmiller@kcnvlaw.com)

Kaempfer Crowell Attorneys at Law
Attn: Lesley D. Miller, Esq.
1980 Festival Plaza Dr., #650
Las Vegas, Nevada 89135

Re: Blue Dogs Pub
Tropicana Investments, LLC
Proposed Amendment to Lease
Our File No. 8732-29

Dear Ms. Miller:

I write to let you know that our office represents Tropicana Investments, LLC. I have reviewed your proposed "Amendment to Lease" with my client and thought it would be a good idea to send you our comments in writing, prior to our commencing a dialogue.

As far as the "Amendment to Lease" is concerned, your requested change set forth in Paragraph 6. "Parking" is not acceptable. Provided we are able to reach an agreement on all other points, the Landlord will agree to provide six reserved parking spaces, three in front and three on the south side of the driveway, all to be designated on a Site Plan (see attached). Please note that if any of the designated spaces on the Site Plan are currently designated for handicapped use, then an adjacent space will be provided.

As far as Paragraph 7. is concerned, the Landlord will agree to provide Tenant a statement of the Common Area Maintenance Charges within 120 days after the end of each calendar year. This is the procedure the Landlord currently follows for all of its other tenants. The Landlord recommends using the language attached hereto.

In order to clarify any potential ambiguity in the original Lease dated July 9, 1996, which states "police the automobile parking and common areas", the Landlord insists that the existing language be deleted and the following be inserted:

"Landlord may, but shall have no obligation to, from time to time, employ one or more persons or entities to patrol or provide security for the Center. To the extent Landlord elects to provide any patrol

Kaempfer Crowell Attorneys at Law
Lesley D. Miller, Esq.
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or security services, the cost thereof shall be included as part of the Center's Operating Costs and Expenses."

The modification suggested above will more accurately reflect the situation as it has existed since July 9, 1996 between the original Landlord and Tenant, as security patrols or guards are not now nor have they ever been provided.

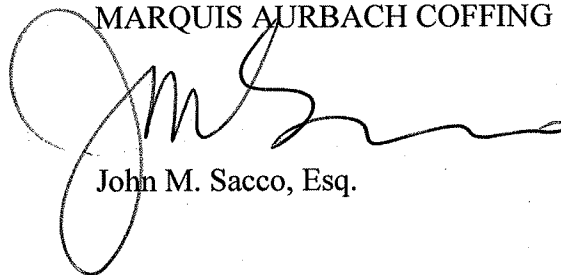
My client also requests that personal guaranties be executed and delivered by Stuart R. Vincent, Jeffrey B. Vincent, Bruce Eisman, and Bruno Mark, with joint and several responsibility (to be provided).

Lastly, the Landlord wants the Amendment to reflect that the Tenant will acknowledge the current Shopping Center Rules and Regulations, and include a provision that the Tenant will promptly replace the exterior signs which are faded and in poor condition.

I look forward to discussing these points with you and attempting to work through these final matters. Please feel free to call me on my direct line, 702-942-2183.

Very truly yours,

MARQUIS AURBACH COFFING

A handwritten signature in black ink, appearing to read 'John M. Sacco', is written over the typed name. The signature is fluid and cursive.

John M. Sacco, Esq.

JMS:ld
Enclosure: Site Plan
Lease Language Insert
cc: Tropicana Investments, LLC *via email*
MAC:08732-029 2888295_1

Tropicana Plaza Shopping Center Site Plan

