

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 Operation 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 21

Michelle Diegel

From: Rachel Sully
Sent: Tuesday, November 22, 2016 3:27 PM
To: John Sacco
Cc: Lesley Miller; Michelle Diegel; Leah Dell; J BV (jbvin1@icloud.com)
Subject: RE: Tropicana Plaza - Blue Dogs Pub Lease

John,

Our client is still in the process of reviewing the lease in detail. Due to the substantial differences from the prior lease, JSJBD is ensuring that the terms comport with its specific use and existing business. We apologize for the delay and will have a substantive response to you as soon as possible.

Thank you,

Rachel

Rachel L. Sully
Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135-2958
Tel: (702) 792-7000
Fax: (702) 796-7181
Email: rsully@kcnvlaw.com

From: John Sacco [<mailto:jsacco@maclaw.com>]
Sent: Monday, November 7, 2016 2:48 PM
To: Rachel Sully
Cc: Lesley Miller; Michelle Diegel; Leah Dell
Subject: RE: Tropicana Plaza - Blue Dogs Pub Lease

Thanks for the update.

John

From: Rachel Sully [<mailto:RSully@kcnvlaw.com>]
Sent: Monday, November 07, 2016 1:53 PM
To: John Sacco
Cc: Lesley Miller; Michelle Diegel; Leah Dell
Subject: Tropicana Plaza - Blue Dogs Pub Lease

Mr. Sacco,

To provide a brief update on the Blue Dogs Pub lease matter, we anticipate having a response to you by the end of next week and will be in touch further at that time.

Thank you,

Rachel Sully

KAEMPFER

CROWELL

Rachel L. Sully
Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135-2958
Tel: (702) 792-7000
Fax: (702) 796-7181
Email: rsully@kcnvlaw.com

| [BIO](#) | [WEBSITE](#) | [VCARD](#) |



Please consider the environment before printing this email

This e-mail communication is a confidential attorney-client communication intended only for the person named above. If you are not the person named above, or the employee or agent responsible for delivery of the following information, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone (702) 792-7000. Also, please e-mail the sender that you have received the communication in error. We will gladly reimburse your telephone expenses. Thank you.

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

EXHIBIT 22

From: Jeff C <jbchauncey@outlook.com>

Date: August 3, 2017 at 3:10:23 PM MDT

To: "Jeff vincent (jbvin1@msn.com)" <jbvin1@msn.com>

Cc: "Stuart Vincent (stuartvincent77@yahoo.com)" <stuartvincent77@yahoo.com>, Danny Velarde <dvelarde@cilv.com>, Joe Velarde <joe@cilv.com>, John Sacco <jsacco@maclaw.com>

Subject: Re: New Lease Agreement

Hi Jeff. I'm sending you this email in hopes that you are ready to sign your new lease. I'm am very frustrated that this has not been resolved months ago as this has been going on over a year. We have sent you our final draft and If you are not going to provide the appropriate information as requested by my attorney and sign the lease, then you are leaving me no choice except to declare you in default.

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

This requires your immediate attention. Let's get this done.

Regards

Sent from my iPhone

Jeff C

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

EXHIBIT 23



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
TYE S. HANSEEN
LIANE K. WAKAYAMA
CANDICE E. RENKA
DAVID G. ALLEMAN
CODY S. MOUNTEER
CHAD F. CLEMENT

CHRISTIAN T. BALDUCCI
BRIANNA SMITH
JARED M. MOSER
JONATHAN B. LEE
ADELE V. KAROUM
MICHAEL D. MAUPIN
PATRICK C. McDONNELL
KATHLEEN A. WILDE
NEIL M. SANSONE
JACKIE V. NICHOLS
RACHEL A. SLOANE
JORDAN B. PEEL

JOHN M. SACCO
OF COUNSEL

August 9, 2017

Lucas A. Grower, Esq.
1810 E. Sahara Ave., Suite 112
Las Vegas, Nevada 89104

Re: Tropicana Investments, LLC and Blue Dogs Pub
Prospective Lease Agreement
Our File No. 8732-029

Dear Mr. Grower:

Thank you for your letter of August 7, 2017. I can assure you that my client also wishes to amicably resolve this matter and accordingly, we look forward to getting the Lease Agreement executed by the parties.

I have been working on this matter with Rachel L. Sully, Esq. at Kaempfer Crowell for almost a year. We have already gone over her proposed redline of the Lease Agreement, and my client has no intention of rehashing the points that he has already rejected. The proposed Lease Agreement which you apparently have in your possession is a standardized shopping center lease as you will see from your review. If there are some minor changes, I am sure that we can work those out, but the concept of making substantive and major changes to the Lease Agreement just won't work.

I will call you in a few days to check on your progress in reviewing the Lease Agreement, and I look forward to working with you.

Very truly yours,

MARQUIS AURBACH COFFING

John M. Sacco, Esq.

JMS:ld

MAC:08732-029 3163886_1

EXHIBIT 24

From: Jeff vincent [<mailto:jbvin1@msn.com>]
Sent: Thursday, August 10, 2017 5:37 PM
To: jbchauncey@outlook.com; ronic@bellsouth.net
Cc: Lucas Grower <lucas@growerlaw.com>
Subject: Blue Dog's Pub Lease Negotiations

Jeff,

I am writing in response to your recent e-mails sent to me on August 3 and 7, 2017. I share your goal of concluding these negotiations and executing a new lease. We opened Blue Dogs Pub in 2008 and have invested a considerable amount of money and time to keep the business running during very difficult financial times, including our payment of \$50,000 for the option to negotiate the lease. I hope that we can continue negotiating the lease in good faith and resolve this matter quickly.

The proposed new lease agreement is three times longer than the original lease and contains new language that needs to be clarified. To expedite our negotiations, I have identified the following issues that must be discussed and clarified:

1. How will the existing deposit of \$8,000 be applied to the new lease deposit?
2. We need to negotiate the lease the price per square foot to reflect the current market average of the Plaza.(Total rental revenue from occupied units/total square footage of occupied units).
3. Please provide a detailed Financial report of the 2015 and 2016 CAM costs as per the requirements of our current lease.
4. The three five year options that we bought and paid \$50,000 for in the current lease, needs to be the same language for the remaining options in the [new] lease.
5. Clarification of the signage requirements in new lease.
6. Landlord must pay the cost of all future purchases of A/C units.

We (the four business partners at Blue Dog's Pub) would like to meet with you in person to further facilitate productive negotiations. We have been excellent tenants and would like to continue our lease. Thank you for your time.

Jeffrey Vincent,

Secretary Blue Dog's Pub

EXHIBIT 25

From: Jeff C [mailto:jbchauncey@outlook.com]
Sent: Tuesday, August 15, 2017 9:46 AM
To: jbv1@msn.com
Cc: Danny Velarde; Joe Velarde
Subject: FW: Blue Dog's Pub Lease Negotiations

Hi Jeff, I appreciate your response and wanted to first clarify some of the issues and respond to your other requests. Regarding the issue of the \$8000 security deposit. It is not our policy to refund to any tenant their security deposit. It remains as security for the term of the Lease. We have all gone through tough times and as you well know we have continued to maintain the integrity of the property and continue to do so.

Regarding the price you are paying. We are not starting this process again, I have spent a considerable amount on legal fees but did agree to give you a \$.05 per foot discount and at this point it is the best we can do. I will give you the requested three 5 year options to be negotiated but in no event would the rent be lower than what you are paying at the time of the negotiations. Market conditions or whatever other tenants are paying are not a factor as your location and type of use are unique to your industry.

Regarding the lease language. We use a standard commercial lease that we have used for years and approved by our attorney. Other than a minor change it is not negotiable. If you are not in default then a lot of what is written for the benefit of the Landlord have no effect.

Signage, at this point your sign faces are in need of replacement. I also have no objections to you adding signage or lights to the building. We would just need to see the renderings before you sign the contracts or install any signs or lighting.

As to the CAM. Your lease, I believe has CAM at \$.28 per foot. In the past we have not past on CAM increase because of the then poor economy. I will send you the 2015 and 2016 break down as requested.

HVAC systems. You run a 24/7 business operation with smoking and a kitchen. You have been in possession for more than 10 years and done a substantial amount of renovation. Per you lease agreement and any new lease, all HVAC, plumbing, electrical and any other type of equipment within your suite and on the roof are the responsibility of the Tenant to maintain and replace as required. There is no Landlord participation.

I to would like to get his concluded. I sent your last attorney a copy of the lease and what was acceptable after your last redline and at this point it is not open for negotiation, other then I don't believe you included the 9 parking spaces which we agreed to.

I will however give you one more incentive to get this done. I will allow the current rent less the \$.05 cent reduction to remain in effect for the next 2 years. With increases per the lease agreement thereafter.

You have my best offer.
Thanks

Jeff

EXHIBIT 26

Subject: FW: Tropicana Investments - Blue Dogs Lease (8732-029)
Date: Friday, August 18, 2017 at 2:49:26 PM Pacific Daylight Time
From: John Sacco
To: lucas@growerlaw.com
Attachments: image001.jpg, JSJBD CORP dba Blue Dogs Pub Lease Agreement (JMS clean 8-18-17).DOCX, JSJBD CORP dba Blue Dogs Pub Lease Agreement (JMS redline 8-18-17).docx

Lucas, good afternoon.

Yes you are correct; the previous email sent to you this morning contained the last version of the proposed Lease sent to your client's prior counsel in early July. I wanted to make sure that you had the correct version in front of you.

Attached is the current Lease in "clean" and redline form. It is a standard shopping center Lease.

You will notice that the Effective Date has been changed to September 1, 2017. We have been trying to get the Lease signed for the past year. This change in the Effective date will give your client in effect a longer Lease Term than what was originally intended. As you know, Blue Dogs is currently a month to month holdover tenant.

Renegotiation of the Base Rent is a non-starter. I understand that the amounts indicated in the Lease referenced above were previously discussed at length and my client isn't going to go back through that process. We simply increased the Base Rent \$.05 per square foot for the year September 1, 2021 to August 31, 2022, which had been done for each of the prior years. Your client requested that the rent be based on the "current market average" of the Center, and unequivocally, we aren't going to do that; nor are we obligated to do that.

You will also note that the requirement for your client to increase the Security Deposit to \$15,000.00 has been deleted, and we will continue to hold the existing deposit which I understand is \$8,000.00.

Also, you will see that there is a provision for two additional 5 year option terms, beyond August 31, 2022.

The Landlord will not pay for the cost of purchases of A/C- HVAC Units. Your client operates a 24 hour gaming/bar and restaurant operation, with smoking and a kitchen. Therefore, your client will be responsible for maintenance and replacement of the HVAC facilities/equipment. This isn't negotiable.

The signage requirements are pretty straightforward: The sign faces/fascia are in need of being replaced. Any additional signage or lighting must first be approved by the Landlord.

Also, your client has been paying \$.28/per square foot for its share of estimated Operating Costs; that is currently estimated to remain the same, but subject to change according to the Lease terms. I also understand that the sewer charges have been paid by your client on a monthly basis, and that practice is fine going forward.

Please also note that the six(6) reserved parking spaces are reflected on Exhibit G to the Lease. This was a major point that I understand your client wanted. But the Landlord isn't going to police this. It will be your client's responsibility.

So, I hope that this will clarify the Landlord's position. I can tell you that the Landlord has been trying to get

this matter finalized for about the last 12 months, so I encourage your client to get the Lease executed and returned before the end of this month; August 31, 2017.

Of course on behalf of my client, I reserve the right to change, modify or supplement the Lease and Exhibits.

Thanks. Give me a call or send an email at your convenience, and have a nice weekend.

John

From: Leah Dell
Sent: Friday, August 18, 2017 2:11 PM
To: John Sacco
Subject: Tropicana Investments - Blue Dogs Lease (8732-029)



Leah Dell | Paralegal
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.821.2403
f | 702.856.8975
ldell@maclaw.com
maclaw.com



Please consider the environment before printing this e-mail!

Pursuant to IRS Circular 230, any tax information or written tax advice contained herein (including any attachments) is not intended to be and can neither be used by any person for the purpose of avoiding tax penalties nor used to promote, recommend or market any tax-related matter addressed herein.

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you.
Marquis Aurbach Coffing - Attorneys at Law

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

EXHIBIT 27

Subject: Tropicana Investments / Blue Dogs Pub
Date: Friday, August 25, 2017 at 9:59:51 AM Pacific Daylight Time
From: John Sacco
To: Lucas A. Grower, Esq.
Attachments: image001.jpg

Hi Lucas;

I checked with my client regarding the Rent being paid by your client .

For the past several months, Blue Dogs has been paying \$2.00 psf, plus the \$0.28 psf Operating Cost estimate, for a total of \$9,576.00,(plus the sewer fees).

So, if you look at the Lease document that I sent you, my client has indicated that the \$2.00 psf Base Rent can start on 9/1/2017 and continue for 12 months through August 31, 2018.

To make this more blunt, the Landlord isn't asking for a rental increase now, and your client would be agreeing to pay Base Rent in the amount that he has already been paying for the next 12 months. So, I fail to see how he can complain about continuing to pay what he has already been paying.

Anyhow, give me a call at your convenience.

John



John M. Sacco, Esq.

10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2182
f | 702.856.8983
jsacco@maclaw.com | [vcard](#)
maclaw.com



Please consider the environment before printing this e-mail!

Pursuant to IRS Circular 230, any tax information or written tax advice contained herein (including any attachments) is not intended to be and can neither be used by any person for the purpose of avoiding tax penalties nor used to promote, recommend or market any tax-related matter addressed herein.

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you.
Marquis Aurbach Coffing - Attorneys at Law

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

EXHIBIT 28

Subject: Tropicana Investments/ Blue Dogs Pub
Date: Friday, August 25, 2017 at 11:45:11 AM Pacific Daylight Time
From: John Sacco
To: Lucas A. Grower, Esq.
Attachments: image001.jpg

Lucas, I am following up with you on this matter.

As I told you in my prior email, your client has been paying \$2.00 PSF for the last several months.

You will also note that the first year Base Rent in the proposed Lease is at \$2.00 PSF for September 1, 2017 through August 31, 2018.

However, and PROVIDED that we can get the Lease finalized and signed by your client and the Guarantors on or before 5:00 PM September 1, 2017, my client will reduce the Base Rent to \$1.95 PSF for the first year, with annual increases after that of \$0.05 PSF.

So, hopefully this incentive will help get this matter finalized.

But, please understand, that if the Lease and Guaranty have not been signed and delivered to me by next Friday at 5:00 PM, then this incentive is automatically withdrawn, and the Base Rent will go back up to \$2.00 PSF.

Call me with any questions.

John



John M. Sacco, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2182
f | 702.856.8983
jsacco@maclaw.com | [vcard](#)
maclaw.com



Please consider the environment before printing this e-mail!

Pursuant to IRS Circular 230, any tax information or written tax advice contained herein (including any attachments) is not intended to be and can neither be used by any person for the purpose of avoiding tax penalties nor used to promote, recommend or market any tax-related matter addressed herein.

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you.
Marquis Aurbach Coffing - Attorneys at Law

EXHIBIT 29



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 blue 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 30

Subject: RE: update - redline forthcoming
Date: Wednesday, September 6, 2017 at 12:43:47 PM Pacific Daylight Time
From: John Sacco
To: Lucas A. Grower, Esq.
Attachments: image001.png

Lucas, don't waste your time with revisions or redlines.

A detailed letter to you will be forthcoming in the next day or two.

John

From: Lucas A. Grower, Esq. [mailto:lucas@growerlaw.com]
Sent: Wednesday, September 06, 2017 12:25 PM
To: John Sacco
Subject: update - redline forthcoming

John,

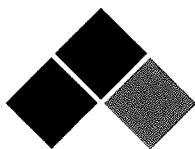
My client and I discussed your most recent version of the Lease Agreement at length, and I am in the process of preparing a redlined copy for your review. Given my schedule this week, I believe that a realistic timeframe for me to complete that work and forward it to you is Tuesday, Sept. 12, 2017. I will certainly try to finish sooner if possible. Thank you for your continued courtesy. I hope you enjoyed the holiday weekend. Please do not hesitate to contact my office if you have any questions or concerns whatsoever.



LUCAS A. GROWER, ESQ.
NEVADA BAR #11384
1810 E. SAHARA AVE., #112
702.866.9971 (OFFICE)
702.204.6654 (CELL)
702.921.7555 (FAX)

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

EXHIBIT 31



MARQUIS AURBACH COFFING

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

September 6, 2017

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
TYE S. HANSEEN
LIANE K. WAKAYAMA
CANDICE E. RENKA
DAVID G. ALLEMAN
CODY S. MOUNTEER
CHAD F. CLEMENT

CHRISTIAN T. BALDUCCI
BRIANNA SMITH
JARED M. MOSER
JONATHAN B. LEE
ADELE V. KAROUM
MICHAEL D. MAUPIN
PATRICK C. McDONNELL
KATHLEEN A. WILDE
JACKIE V. NICHOLS
RACHEL A. SLOANE
JORDAN B. PEEL
JAMES A. BECKSTROM

JOHN M. SACCO
OF COUNSEL

Via Email: lucas@growerlaw.com

Lucas A. Grower, Esq.
1810 E. Sahara Ave., Suite 112
Las Vegas, Nevada 89104

Re: Your Client: JSJBD Corp, a Nevada corporation
My Client: Tropicana Investments, LLC, a California limited liability
company
Our File No. 8732-029

Dear Mr. Grower:

This will confirm that I have received your letter dated August 31, 2017.

Please allow me to correct and clarify several of the points which you made regarding your client's position.

First of all, in the initial paragraph of your letter, you claim that it was your client who purchased a \$50,000 option. In this respect, I direct your attention to the Lease Assignment and Modification dated and signed by your client on June 15, 2007 as Assignee. At paragraph 8. of the Lease Assignment and Modification, it clearly indicates that it was the Tenant, Mark S. Van Aken, who agreed to pay the Landlord a total of 10% of the total sales price of the business transaction. The written document does not contain any reference whatsoever to your client paying \$50,000 for an option.

Secondly, you are incorrect that the Lease Assignment and Modification does not contain language which "explicitly or implicitly limits the parameters" of lease negotiations. Again, kindly review the language in paragraph 8. of the Lease Assignment and Modification, which clearly indicates that your client was conditionally granted three (3) additional five (5)-year options to renew under terms and conditions, including but not limited to rental increases, to be negotiated. As I have pointed out before, these option rights are not absolute. They are conditional upon good faith negotiations between the parties.

For your information, I have reviewed the history of this matter, including written emails and correspondence between the parties, as well as the offers from my client which were rejected, and I must say that it is clear that from the outset, your client did not negotiate in good faith. Negotiation is, by definition, a process

whereby parties try to find a way to reach an agreement by discussion. The only thing your client did was to dig in his heels during the course of prior negotiations. However, as I will explain further in this correspondence, the concept of any further negotiation is now moot.

Thirdly, I have reviewed the attached "Option Agreement" executed by Walter Schwartz as Landlord and Mark S. Van Aken as Tenant as an attachment to the 1996 Lease Agreement. Indeed, that document indicates that for two (2) five (5)-year periods, the renewal of the Lease was to be negotiated at a "market rental rate". However, it is hard for me to believe that you claim that this language has remained in effect. Please read the document that you sent to me. It clearly indicates and contemplates only renewal periods from September 1, 2001 and September 1, 2006. There is absolutely nothing in any of the documentation that incorporates that language beyond those two option periods.

Furthermore, I direct your attention to the written Addendum to Retail Building Lease dated March 7, 2006, a copy of which is attached. Again, this document clearly and simply indicates that any extension term shall be under terms and conditions to be negotiated. See Paragraph 4 thereof. There is absolutely no reference to "market rental rate". And, kindly also consider the fact that this Addendum dated March 7, 2006 specifies that the Addendum governs in the event there is any conflict between the language of the Addendum and the Lease dated July 9, 1996. In other words, the language that you refer to and rely upon was deleted and eliminated.

Lastly, this is again confirmed in the Lease Assignment and Modification signed by your client on June 15, 2007. Please note that a significant purpose of the document is a modification agreement. Again, there is absolutely no reference therein to "market rental rate" as a component of the rental increases to be negotiated. The only thing that is referred to is that your client has a conditional grant of three (3) additional five (5)-year options based on terms and conditions, including but not limited to rental increases, to be negotiated.

To be perfectly clear, please allow me to disabuse you of any notion that there will be any further "negotiations" with respect to this matter. Your client's offer to pay Base Rent in the amount of \$1.45 per square foot contradicts his past performance, conduct, and the amount of Base Rent paid during the past 12 months. The offer is firmly rejected.

On August 2, 2016, your client's prior attorney indicated in writing that your client exercised its option to renew the Lease pursuant to Section 8. of the Lease Assignment and Modification dated June, 2007. Please see the attached letter. In other words, the option has already been exercised by your client, and since then, your client has already completed the first year of its first option term. During the first year of the option term, which runs from the months of September, 2016 through August, 2017, your client paid Base Rent of \$8,400 per month. So, in other words, your client's authorized agent and attorney provided written notice of the exercise of the option, coupled with your client's continuous, voluntary and uninterrupted

payment of Base Rent in the amount of \$8,400 per month plus Common Area Maintenance charges, which constitutes performance by the Tenant and acceptance thereof by the Landlord.

Indeed, it is significant that during all the months during which we attempted to finalize a new Lease Agreement document with your client's prior counsel, not once did an issue come up regarding the amount of the Base Rent to be paid by the Tenant. That never came up until your office was retained, whereupon you attempted to reopen negotiations.

And, what is even more significant is that during that entire period of time, from September, 2016 through August, 2017, your client paid \$8,400 Base Rent per month without any objection whatsoever. Your client's retention of possession, continued use and occupancy, and payment of the amount of Base Rent in the sum of \$8,400 per month confirms and ratifies your client's understanding and agreement to pay that amount for the first year of the initial five (5)-year option period.

So, based upon your client's conduct, your client has demonstrated an agreement to perform on a continued basis pursuant to the July, 1996 Lease as amended, with the consistent pattern of corresponding annual rent increases.

Accordingly, Base Rent for the balance of the five (5)-year option term shall reflect the same annual increases as in the past and shall be as follows:

| | |
|--------------------|----------------------|
| 9-1-2017-8-31-2018 | \$8,610.00 per month |
| 9-1-2018-8-31-2019 | \$8,820.00 per month |
| 9-1-2019-8-31-2020 | \$9,030.00 per month |
| 9-1-2020-8-31-2021 | \$9,240.00 per month |

In light of the fact that your client's counsel exercised the option consistent with the underlying Lease dated July 9, 1996, as amended, there will be no new Lease Agreement for your client to review or consider, and, therefore, there will be no necessity for you to send redlines or proposed revisions to my office. Negotiations have been concluded effective from the date of your client's lawyer's letter dated August 2, 2016. No further negotiations will take place, and your client will not receive the six reserved parking spaces which were requested.

Please direct your attention to paragraph 18. of the Lease entered on July 9, 1996. This paragraph prohibits the assignment of the Lease or any interest therein or permitting any other person to occupy or use the premises without first obtaining the written consent of the Landlord.

The Lease dated July 9, 1996 as amended was originally assigned to J.S.J., LLC. Since then, and without the approval of the Landlord, your client effected a conversion, purportedly pursuant to NRS 92A.250(3), into JSJBD Corp. While the conversion process may be authorized under Nevada law if conducted within the parameters of the appropriate statutes, that nevertheless does not obviate the need for Landlord's approval under the Lease, especially in light of the fact that the constituent entity has new officers and directors involved who were not

Lucas A. Grower, Esq.
September 6, 2017
Page 4

members or managers of J.S.J., LLC Allowing such new and unapproved officers and directors to have the benefit of or use or occupy the demised premises is a direct violation of the terms of the aforesaid Lease.

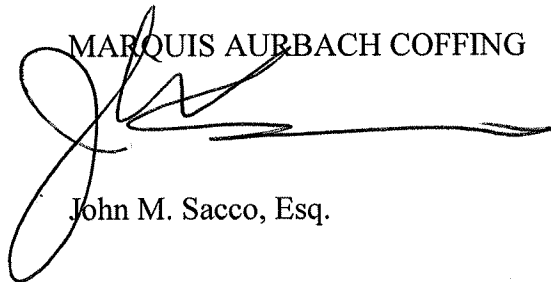
Accordingly, demand is hereby made on your client to formally request the written consent of the Landlord for such conversion, and also to provide this office with a copy of the plan of conversion with all related documents required by NRS 92A.105(2) and all documents identified in NRS 92A.010 and NRS 92A.150 which specifically relates to the purported conversion of a domestic limited liability company, and in addition, all documents required for filing with the Secretary of State as set forth in NRS 92A.205.

Your attention is also directed to paragraph 11. of the Lease dated July 9, 1996 which requires the Tenant to obtain and maintain liability insurance in an amount not less than one million dollars (\$1,000,000.00), and further requires Landlord to be listed as a co-insured. Your client has failed to provide written proof of the existence of said coverage and demand is hereby made for your client to do so within 10 days from the date of this letter.

We look forward to your client's prompt payment of its rental obligations and the rental increases consistent with your client's lawyer's letter and consistent with past practices.

Very truly yours,

MARQUIS AURBACH COFFING

A handwritten signature in black ink, appearing to read 'John M. Sacco', with a long horizontal flourish extending to the right.

John M. Sacco, Esq.

JMS:ld
cc: Tropicana Investment, LLC
Enclosures: As stated.

MAC:08732-029 3163886_1

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



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:

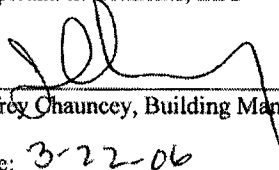
- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Addendum shall govern. All of the terms, covenants, provisions, and agreements of the lease not conflicting with this Amendment shall remain in full force and effect.
- B. This Addendum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

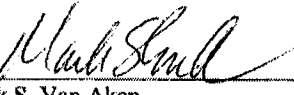
ACKNOWLEDGED AND AGREED:

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

**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: 775.884.8500
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

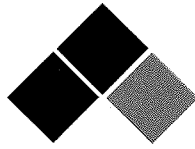


Lesley B. Miller

Copy mailed to:

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

EXHIBIT 32



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
TYE S. HANSEEN
LIANE K. WAKAYAMA
CANDICE E. RENKA
DAVID G. ALLEMAN
CODY S. MOUNTEER
CHAD F. CLEMENT

CHRISTIAN T. BALDUCCI
BRIANNA SMITH
JARED M. MOSER
JONATHAN B. LEE
ADELE V. KAROUM
MICHAEL D. MAUPIN
PATRICK C. McDONNELL
KATHLEEN A. WILDE
JACKIE V. NICHOLS
RACHEL A. SLOANE
JORDAN B. PEEL
TOM W. STEWART
JAMES A. BECKSTROM

JOHN M. SACCO
OF COUNSEL

December 29, 2017

Via Email: lucas@growerlaw.com

Lucas Grower, Esq.
1810 E. Sahara Ave., Suite 112
Las Vegas, Nevada 89104

Re: Your Client: JSJBD Corp, a Nevada corporation
My Client: Tropicana Investments, LLC, a California limited liability
company
Our File No. 8732-029

Dear Mr. Grower:

I am in receipt of your letter dated December 20, 2017, which was received in our office on December 26, 2017.

Once again, I am enclosing a listing of the Operating Expenses for the years 2015 and 2016. You claim that these documents do not comport with your client's request. However, please inform your client that the existing Lease dated July 9, 1996 does not require any further specificity than that which is provided in the enclosed Operating Expense Reports.

Although you claim that you have familiarized yourself with the prior agreements and correspondence, it is obvious to me that you have not been provided with all of the facts. Attempts to negotiate with your client are documented as far back as April, 2016. Your client was provided with multiple opportunities to engage in meaningful discussions but simply rejected all attempts to reach a consensus. Let's call this what it really is: your client simply wants another opportunity to grind and chisel down the Base Rent which it has been consistently paying without objection while your client has maintained possession. Previous offers and concessions were made to your client, which were rebuffed. Certainly, they long since have been withdrawn, and absolutely no further negotiations will take place.

Secondly, since you claim that you have familiarized yourself with prior agreements and correspondence, I suggest you once again direct your attention to the letter of August 2, 2016 from your client's prior counsel, Lesley B. Miller, Esq. In that letter, she makes it very clear that JSJBD has exercised its option to renew, and affirmatively indicates that Rent for the 5-year Renewal Term remain the same as 2015/2016 with an increase for each subsequent year equal to the current rate of

increase of \$210.00 per month. Again, please allow me to also direct your attention to your client's prior lawyer's letter dated August 31, 2016 wherein she again reiterates the exercising of the option rights under the Lease to renew for an additional 5-year Term.

Now, as I understand it, and notwithstanding the clarity of the prior letters from your client's lawyer, you have decided to apparently disavow the exercise of the option and wish to now be treated as a holdover Tenant. And, of course, you mischaracterize the contents of my letter dated October 18, 2016 where I merely inquired of Ms. Miller the intentions of your client. I did not state conclusively that your client was a month-to-month holdover Tenant, but only asked for the disposition of the proposed draft written Lease documentation forwarded to her, and requested a clarification of your client's position. It is noteworthy that never once, in well over a year, did you or the prior attorney claim that you were actually holdover Tenants, or claim that contrary to the clear language of the letters from Ms. Miller, your client did not intend to exercise its 5-year option. Your client's changing course is akin to shifting sands.

Indeed, we continue to take the position which is consistent with your client's conduct, and your client's exercise of its option by Ms. Miller's firm on behalf of your client. If you continue to maintain that you are simply a holdover Tenant, then we understand your position, but respectfully disagree with your conclusion in that regard.

Since you accuse me of "parroting" in your December 20, 2017 correspondence, please allow me to include a copy of my letter dated September 6, 2017. Our position has not changed and it will not change. There will be no further negotiations between these parties. While you may think it innovative to have your client refuse to pay the \$210.00 per month increase in Base Rent, and to deposit that into a trust account, the Lease between the parties does not give you any authority whatsoever to do that. In effect, you are taking a position and providing advice contrary to what your client's previous lawyer agreed going forward. In the meantime, please assure your client that the \$210.00 per month Rent deficiency will continue to accrue, along with late charges and interest pursuant to NRS 99.040.

Finally, your client is currently in Default of the Lease dated July 9, 1996 as follows:

1. Paragraph 18. The Tenant is prohibited from permitting any other persons to occupy or use the demised premises without first obtaining the written consent of the Landlord. You have neither sought nor been granted the Landlord's approval in light of the fact that the existing entity, JSJBD has new officers and directors involved in the operation of the business who were not members or managers of J.S.J., LLC. This is in direct violation of the Lease.

2. Your client is also in Default by failure to pay the increase in the amount of the monthly Rent as detailed hereinabove and as agreed to by your client's prior lawyer.

Finally, there are not going to be any further negotiations with respect to the terms of the Lease. Even your own letter of December 20, 2017 admits that the parties spent over a year trying to negotiate the terms of the Lease Agreement. It is puzzling how you can claim that

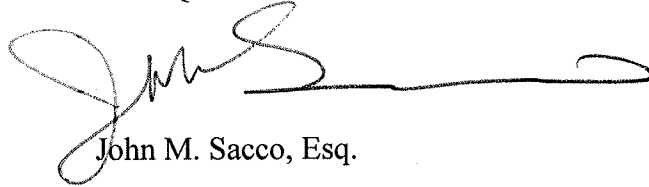
Lucas Grower, Esq.
December 29, 2017
Page 3

Lease negotiations never took place in light of the admission set forth in your letter. And, actually, Lease negotiations went on even longer than that. But, the fact of the matter is that negotiation is a two-way street; it is not simply a matter of your client getting its way.

There are a number of other matters which I could individually address which are inaccuracies in your letter of December 20, 2017, but rather than go through an exhaustive letter writing campaign with you, I will simply close by stating that we respectfully disagree with most of your unfounded conclusions.

Sincerely,

MARQUIS AURBACH COFFING

A handwritten signature in black ink, appearing to read 'John M. Sacco', with a long horizontal flourish extending to the right.

John M. Sacco, Esq.

JMS:ld

Enclosure: Copy of Operating Expense Report for 2015 and 2016; and Copy of
September 6, 2017 Correspondence from John M. Sacco, Esq.

MAC:08732-029 3284667_1

EXHIBIT 33

September 6, 2018

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

RE: Lease Agreement & Rental Increases

Hello Jeff,

The Landlord wanted me to forward this letter to you in the hopes that any past differences can be resolved and thus enable all parties to move forward amicably. As you are aware, you are currently in default of your lease agreement and on a month to month tenancy. Jeff is offering that the past 2 years of unpaid rent increases will be forgiven with the understanding that the rent increase that was due on September 1st, 2018 will be paid and that you continue to pay that amount thru the end of this Term.

If you and Stuart agree to the above, that will leave you with two (2) remaining five (5) year options of which the Landlord would be willing to allow those future options to renew under the same terms and conditions as the current Term which is \$.05 per square foot/per month/per annum which is less than a 2.5% annual rent increase.

Please consider this and discuss it with your partners. It is not intended to be a negotiation but a one-time offer in an effort to resolve our past differences.

Sincerely,



Commercial Investment
Real Estate Services

Danny Velarde
Broker/Salesman

EXHIBIT 34

Mario Lovato

From: Mario Lovato <mpl@lovatolaw.com>
Sent: Monday, October 8, 2018 12:05 PM
To: tmoore@maclaw.com
Cc: jsacco@maclaw.com
Subject: RE: Blue Dogs--lease, options, etc.

Mr. Moore,

It was a pleasure speaking with you just now. This email confirms that I, on behalf of my client, offered to explore various methods for setting reasonable / market rent. One possibility is for the parties to hire a joint appraiser, who would reach a market rent / reasonable rent for the current period.

I also mentioned other methods that are used when the parties are at loggerheads in setting rent, which can include more than one appraiser and/or use an arbitrator.

The point of this is to use a reasonable method for setting rent, rather than having a Landlord (or Tenant) unilaterally set rent at an amount that is not reasonable.

During the call, you made clear that your client would NOT agree to the use of a joint appraiser. You also clarified that you would nevertheless inform your client, but that it was already rather clear that the client would not agree.

As in any case where I am counsel, I remain open to discussing the situation between our clients. Thanks.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

From: Mario Lovato <mpl@lovatolaw.com>
Sent: Monday, October 8, 2018 11:27 AM
To: jsacco@maclaw.com
Subject: RE: Blue Dogs--lease, options, etc.

Mr. Sacco,

I just called your office and, when there was no answer, left a voicemail.

Give me a call so that we can discuss the ongoing situation between our respective clients. Based on the correspondence I received from your office on Friday, it does not appear that Landlord is going to walk back from Landlord's breach in unilaterally setting the amount rent, contrary to the provisions of the Lease and related documents, which require, inter alia, that the amount be negotiated.

On behalf of my client, I am willing to discuss reasonable methods for setting the rent that are commonly used in these types of situations. Give me a call so that you and I can discuss. Thanks.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

From: Mario Lovato <mpl@lovatolaw.com>
Sent: Tuesday, September 25, 2018 9:55 AM
To: jsacco@maclaw.com
Cc: 'Lucas A. Grower, Esq.' <lucas@growerlaw.com>
Subject: Blue Dogs--lease, options, etc.

Mr. Sacco,

See the attached. As referenced in the attached, I plan to follow up with a call.

Thanks.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

EXHIBIT 35



LOVATO
LAW
FIRM

ATTORNEY AT LAW

Via Email (jsacco@maclaw.com)

November 8, 2018

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

Re: JSJBD Corp. ("Blue Dog's Pub") adv. Tropicana Investments, LLC ("Landlord")
Response to October 17, 2018 letter

Dear Mr. Sacco:

This letter is sent on behalf of Blue Dog's Pub, in response to your letter dated October 17, 2018. My client disagrees with your letter. Anyone reading the parties' prior correspondence can see that your letter incorrectly describes the prior dealings. To date, Landlord not responded to the points raised in the September 25, 2018 letter sent on behalf of Blue Dog's.

Your October 17 letter acknowledges that Blue Dog's exercised the option to extend the Lease. Such option rights are irrevocable. Landlord has accepted its exercise two years ago.

Despite this, Landlord states: "[I]t is Landlord's position that there was no meeting of the minds as to the operative terms during the option period." This is contrary to Landlord's own acknowledgement, as well as the 1996 Lease & Option Agreement and related documents.

Next, your letter argues that Landlord "accepted" that monthly rent be \$8,400, which was something you know that Landlord rejected. There is abundant written correspondence regarding the lack of any agreement on the amount of monthly rent. The was also addressed in the September 25 correspondence I sent, to which Landlord has chosen not to respond:

In 2016, my client, through counsel, exercised an option to extend the lease for five years. Unquestionably, Landlord accepted it. In the correspondence exercising the option, my client's then-counsel proposed an amount of rent. Unquestionably, Landlord rejected the amount proposed for the rental amount. This simple concept of "rejection" or non-acceptance is a familiar one to you, as you repeatedly assert the concept when it comes to offers / counteroffers made by Landlord and that were not accepted by the tenant.

Instead of agreeing on a specific amount of rent for the current

option period, Landlord chose to pursue an entirely new lease agreement that would replace prior Lease and related documents. That process of negotiating the terms of the possible new lease agreement extended for a period of months. Ultimately, the parties were unable to agree on a new Lease Agreement, leaving the original Lease and related documents in place. Also as a result, the parties did not agree on the amount of monthly rent that would be due for the current five year option period.

As Landlord knows, the amount of rent is an item that is to be "negotiated," a term that is repeated in the Lease & Option Agreement and the related Lease documents along with similar terms such as "market rate," "to be agreed," and the like. Blue Dog's has made reasonable efforts to negotiate the amount in good faith.

Nevertheless, in the October 17 letter, Landlord, yet again, purports to unilaterally set an amount, which Landlord is not entitled to do.

Most recently, via both telephone call and via email, I have, on behalf of Blue Dog's attempted to resolve the dispute regarding "reasonable" or "market" rent, including:

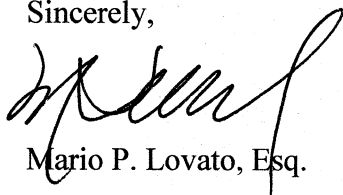
- by proposing to have a joint appraisal.
- by proposing other methods for reaching agreement, for example, by using more than one appraiser and/or by using an arbitrator in conjunction with an appraiser(s).

You, on behalf of Landlord, immediately rejected these even-handed proposals. Landlord's latest correspondence goes even further, threatening eviction.

Blue Dog's has, in good faith, continued paying the rental amount from prior to the exercise of the option while complying with the obligation to negotiate reasonable / market rent. Landlord has refused to even consider a reasonable method for determining reasonable / market rent. Landlord has done this in order to receive and obtain sums that are in excess of what constitutes market / reasonable rent since the date when the option was exercised.

In addition, and has been addressed in prior correspondence, there are continuing issues regarding excessive CAM charges, regarding Landlord's failure to repair the roof and the evaporative cooler, and regarding security and parking issues. Landlord's strategy has been to avoid any reasonable solutions, but rather, to threaten the Blue Dog's use and enjoyment of the premises contrary to the Lease & Option Agreement and the related Lease documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Mario P. Lovato".

Mario P. Lovato, Esq.

EXHIBIT 36



LOVATO
LAW
FIRM

ATTORNEY AT LAW

Via Email (jsacco@maclaw.com)

November 16, 2018

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

Re: JSJBD Corp. ("Blue Dog's Pub") adv. Tropicana Investments, LLC ("Landlord")
Response re Landlord's improper "Thirty Day Notice to Quit the Premises"; Appraisal

Dear Mr. Sacco:

This letter is sent on behalf of Blue Dog's Pub, in response to Landlord's improper "Thirty Day Notice to Quit the Premises" dated November 14, 2018. ***As Landlord knows, in 2016, Blue Dog's exercised an option to extend the lease for a five-year period.*** Landlord has long-since recognized this. In light of the exercise, and the continuing payment of rent in excess of reasonable / market rent by Blue Dog's, Landlord has no right to terminate.

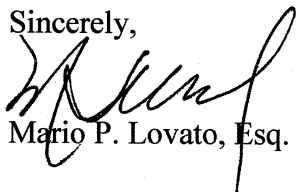
When it comes to the amount of monthly rent, both Landlord and Blue Dog's proposed numerous different amounts over the last two years, with no agreement being reached. More recently, Landlord wrote that it would cease further negotiation, purporting to unilaterally impose an amount contrary to the provision of the Lease & Option Agreement and related lease documents.

Blue Dog's attempted to resolve the issue by proposing reasonable methods for determining the amount of rent, including a joint appraisal. Landlord rejected these reasonable efforts as well.

In light of the above, Blue Dog's requested an appraisal to obtain a reasonable determination of market / reasonable rent. The appraisal is attached.

If you have specific responsive information showing that the appraisal that is attached does not represent a reasonable methodology, please provide the same. Because of the improper actions being taken by Landlord, it is imperative that any such information be promptly provided.

Sincerely,


Mario P. Lovato, Esq.

Enclosure

EXHIBIT 37



Valbridge
PROPERTY ADVISORS

Market Rent Analysis

Blue Dog's Pub
3430 E Tropicana Avenue, Suites 27-29
Las Vegas, Clark County, Nevada 89121

Report Date: October 10, 2018



FOR:

JSJBD Corp. d/b/a Blue Dog's Pub
Mr. Jeff Vincent
Co-owner
3430 E Tropicana Avenue
Las Vegas, NV 89121

**Valbridge Property Advisors |
Las Vegas | Reno**

3034 South Durango Drive, Suite 100
Las Vegas, NV 89117
702-242-9369 phone
702-242-6391 fax
valbridge.com

Valbridge File Number:
NV01-18-0375



3034 South Durango Drive, Suite
100
Las Vegas, NV 89117
702-242-9369 phone
702-242-6391 fax
valbridge.com

October 10, 2018

Matthew Lubawy, MAI
702-242-9369
mlubawy@valbridge.com

Mr. Jeff Vincent
Co-owner
JSJBD Corp. d/b/a Blue Dog's Pub
3430 E Tropicana Avenue
Las Vegas, NV 89121

RE: Appraisal Report
Blue Dog's Pub
3430 E Tropicana Avenue, Suites 27-29
Las Vegas, Clark County, Nevada 89121

Dear Mr. Vincent:

In accordance with your request, we have performed an appraisal of the above referenced property. This appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to our value opinions. This letter of transmittal is not valid if separated from the appraisal report.

The subject property, as referenced above, is located on the east side of Pecos Road, north of Tropicana Avenue and is further identified as Assessor's Parcel Number (APN) 161-19-403-001 (A portion thereof). The subject is a 7.89-acre or 343,688-square-foot site. The subject improvements consist of a 4,200-square-foot tavern located in an end-cap unit with direct frontage along Pecos Road.

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them.

The client in this assignment is JSJBD Corp. d/b/a Blue Dog's Pub and the intended user of this report is Jeff Vincent, Stuart Vincent & JSJBD Corp. dba Blue Dog's Pub and no others. The intended use is for rent negotiation and possible litigation and no other use. The value opinions reported herein are subject to the definitions, assumptions and limiting conditions, and certification contained in this report.

The acceptance of this appraisal assignment and the completion of the appraisal report submitted herewith are subject to the General Assumptions and Limiting Conditions contained in the report. The findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions:

- The fair market rent opinion is based on the extraordinary assumption that the condition of the property observed during the September 20, 2018 inspection is similar to that on the effective date of valuation, September 1, 2016. The use of this extraordinary assumption, if found to be false, might impact the assignment results.

Hypothetical Conditions:

- There are no hypothetical conditions used in this appraisal assignment.

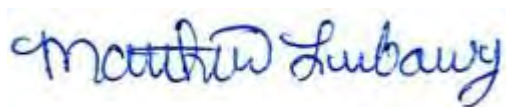
Based on the analysis contained in the following report, our value conclusions are summarized as follows:

Value Conclusions

| Component | Retrospective |
|---------------------------|--------------------|
| Value Type | Annual Market Rent |
| Property Rights Appraised | Leased Fee |
| Effective Date of Value | September 1, 2016 |
| Value Conclusion | \$52,920 |
| Annual Rent/SF | \$12.60 |
| Monthly Rent/SF | \$1.05 |

The above market rent conclusion is based on a minimum 5-year term with 3% annual increases

Respectfully submitted,
 Valbridge Property Advisors | Las Vegas | Reno



Matthew Lubawy, MAI, CVA
 Senior Managing Director
 Nevada License #A.0000044-CG
 License Expires 04-30-2019

Table of Contents

| | |
|---|-----|
| Cover Page | |
| Letter of Transmittal | |
| Table of Contents | i |
| Summary of Salient Facts | ii |
| Aerial and Front Views..... | iv |
| Location Map | vii |
| Introduction..... | 1 |
| Scope of Work..... | 3 |
| Regional and Market Area Analysis..... | 5 |
| City and Neighborhood Analysis | 9 |
| Site Description | 13 |
| Improvements Description | 21 |
| Subject Photos..... | 25 |
| Assessment and Tax Data | 27 |
| Market Analysis | 29 |
| Highest and Best Use..... | 36 |
| Market Rent Analysis | 38 |
| General Assumptions and Limiting Conditions | 51 |
| Certification – Matthew Lubawy, MAI, CVA | 58 |
| Addenda | 59 |
| Subject Photographs..... | 60 |
| Glossary | 62 |
| Qualifications | 68 |

Summary of Salient Facts

Property Identification

| | |
|----------------------|--|
| Property Name | Blue Dog's Pub |
| Property Address | 3430 E Tropicana Avenue, Suites 27-29 Las Vegas, Clark County, Nevada 89121 |
| Latitude & Longitude | 36.100674, -115.100233 |
| Census Tract | 17.17 |
| Tax Parcel Number | 161-19-403-001 (A portion thereof) |
| Property Owner | Tropicana Investments, LLC |

Site

| | |
|--------------------|--------------------------|
| Zoning | General Commercial (C-2) |
| FEMA Flood Map No. | 32003C2580F |
| Flood Zone | X |
| Primary Land Area | 7.890 acres |

Existing Improvements

| | |
|---------------------------|---------------------------------------|
| Property Use | Tavern, Bar, Nightclub, Micro-Brewery |
| Investment Class | C |
| Occupancy Type | Local tenants |
| Gross Building Area (GBA) | 116,235 (Total Shopping Center) |
| Net Rentable Area (NRA) | 4,200 (Subject Unit) |
| Number of Stories | 1 |
| Year Built | 1975 |
| Condition | Average |
| Construction Class | D - Wood Frame |
| Construction Quality | Average |
| Surface Parking | 220 spaces |

Valuation Opinions

| | |
|----------------------------------|-------------------------|
| Highest & Best Use - As Vacant | Development with retail |
| Highest & Best Use - As Improved | Continued tavern |

Value Conclusions

| Component | Retrospective |
|---------------------------|--------------------|
| Value Type | Annual Market Rent |
| Property Rights Appraised | Leased Fee |
| Effective Date of Value | September 1, 2016 |
| Value Conclusion | \$52,920 |
| Annual Rent/SF | \$12.60 |
| Monthly Rent/SF | \$1.05 |

The above market rent conclusion is based on a minimum 5-year lease with 3% annual increases

Our findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions:

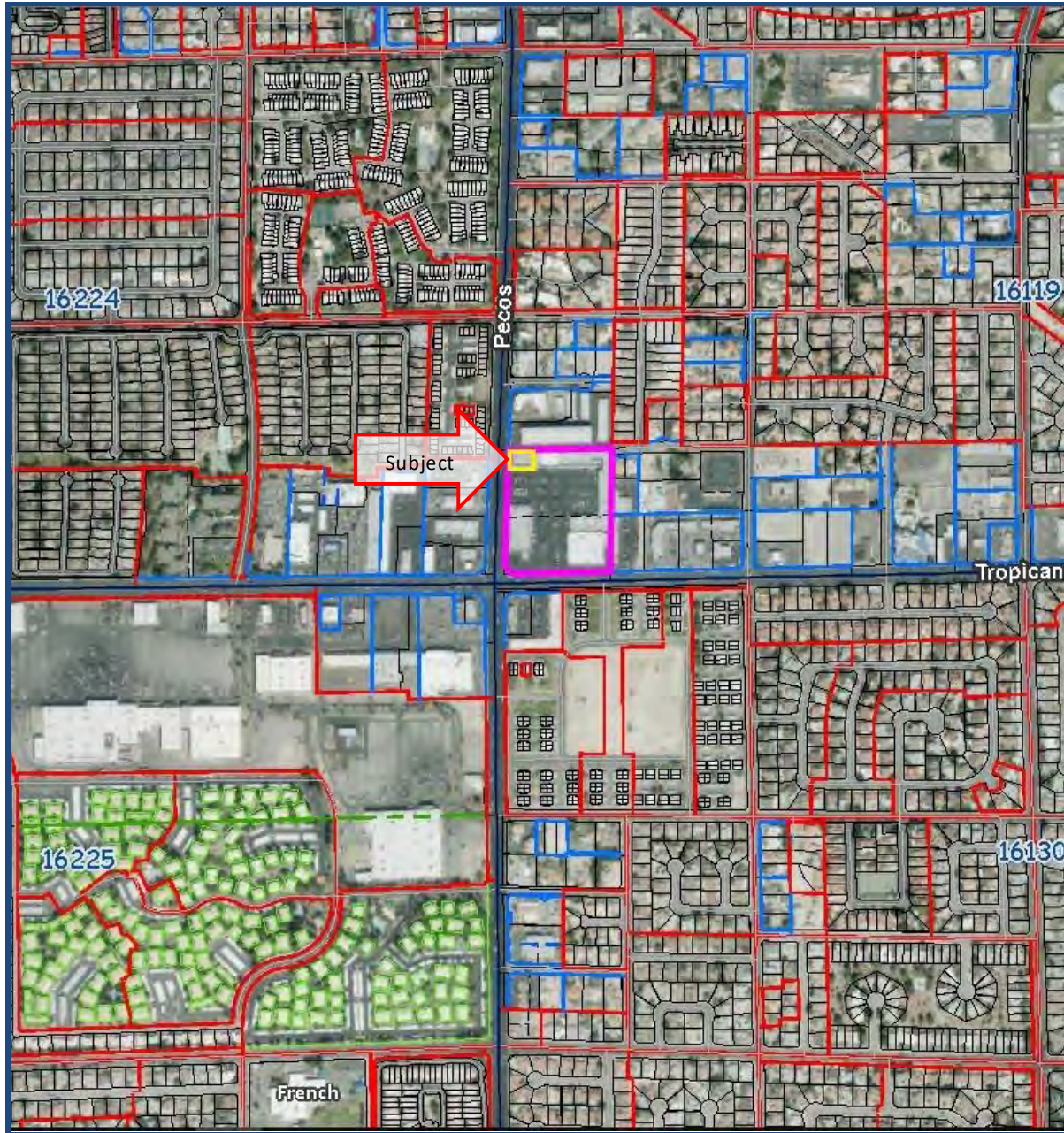
- The fair market rent opinion is based on the extraordinary assumption that the condition of the property observed during the September 20, 2018 inspection is similar to that on the effective date of valuation, September 1, 2016. The use of this extraordinary assumption, if found to be false, might impact the assignment results.

Hypothetical Conditions:

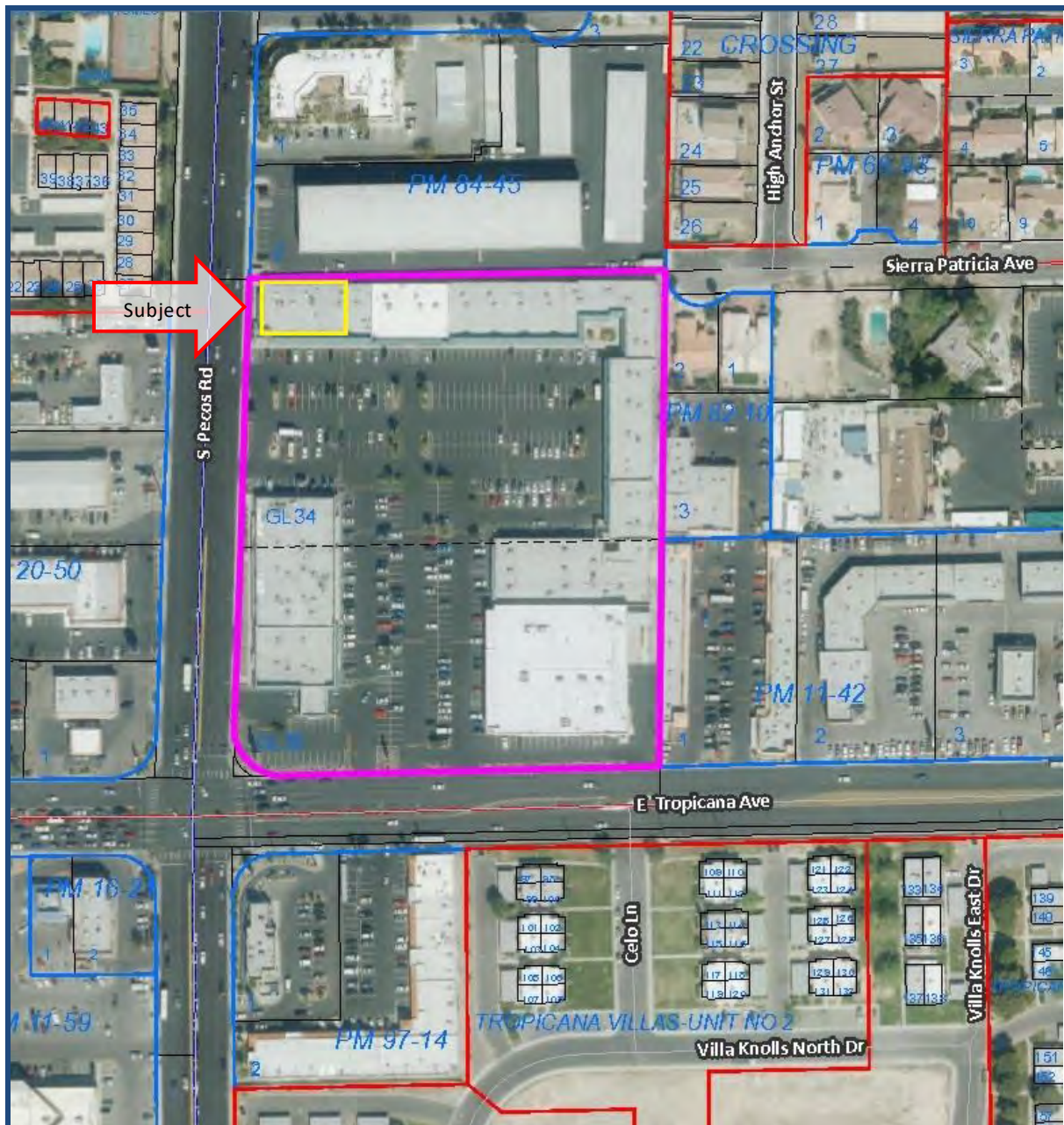
- There are no hypothetical conditions used in this appraisal assignment.

Aerial and Front Views

AERIAL VIEW



AERIAL VIEW CLOSE UP

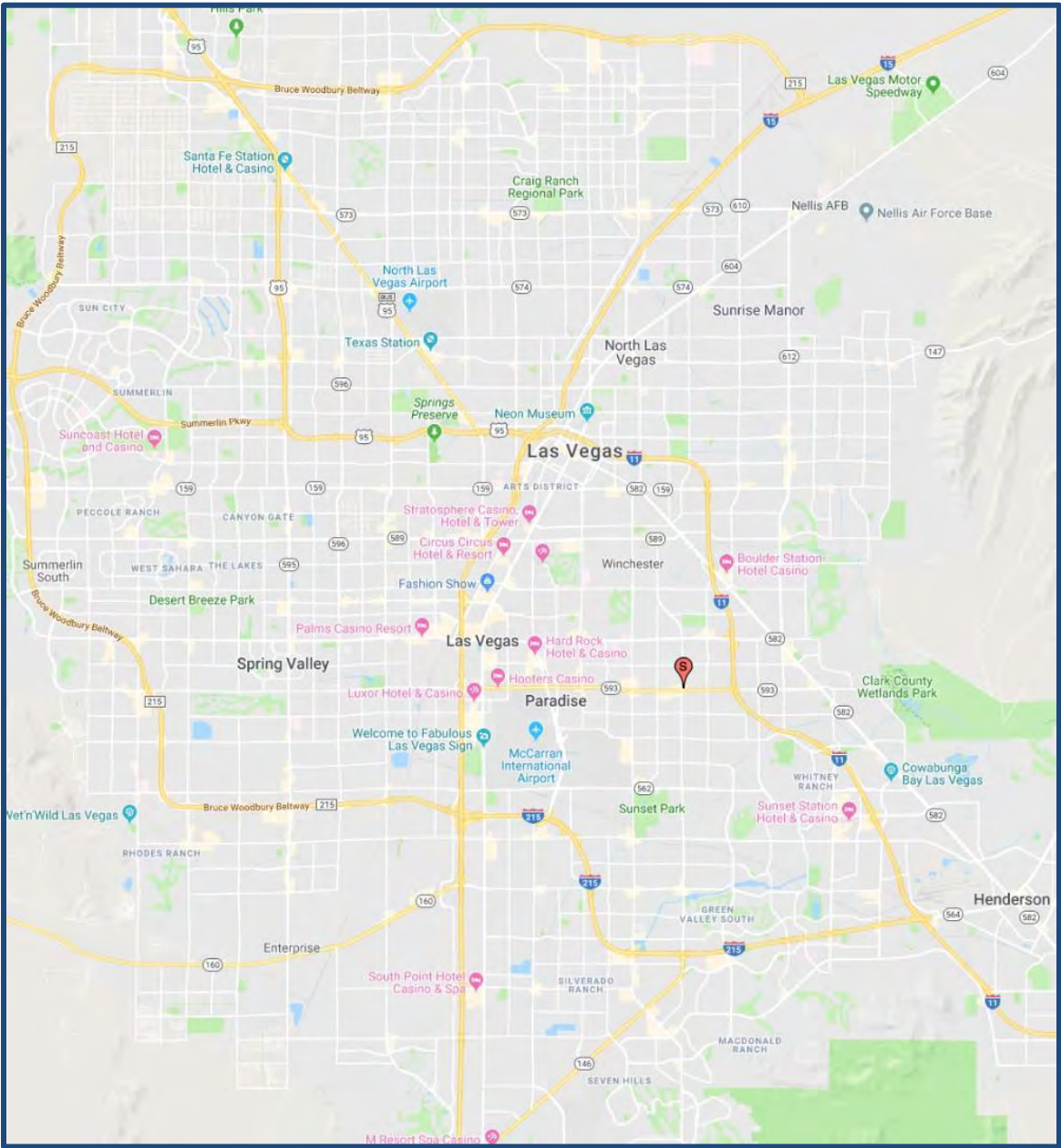


FRONT VIEW





Location Map



Introduction

Client and Intended Users of the Appraisal

The client in this assignment is JSJBD Corp. d/b/a Blue Dog's Pub and the intended user of this report is Jeff Vincent, Stuart Vincent & JSJBD Corp. dba Blue Dog's Pub and no others.

Intended Use of the Appraisal

The intended use of this report is rent negotiation and possible litigation and no other use.

Real Estate Identification

The subject property is located at 3430 E Tropicana Avenue, Suites 27-29, Las Vegas, Clark County, Nevada 89121. The subject property is further identified by Assessor Parcel Number 161-19-403-001 (A portion thereof). The subject improvements consist of a 4,200-square-foot tavern located in an end-cap unit with direct frontage along Pecos Road.

Legal Description

Portion of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 19, Township 21, Range 62.

Use of Real Estate as of the Effective Date of Value

As of the effective date of value, the subject was a bar/restaurant property.

Use of Real Estate as Reflected in this Appraisal

The subject is a tavern, bar, nightclub, micro-brewery property.

Ownership of the Property

According to Clark County Assessor's Records, title to the subject property is vested in Tropicana Investments, LLC.

History of the Property

Ownership of the subject property has not changed within the past three years. The current owner acquired the subject property on August 5, 1999.

Listings/Offers/Contracts

The subject is not currently listed for sale or under contract for sale. There have been no offers to purchase the subject property.

The subject is not under contract for sale.

Market Rent

Market rent is defined as:

"The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including the rental adjustment and revaluation, permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and tenant improvements (TIs)."

Source: The Dictionary of Real Estate Appraisal, Sixth Edition, (Chicago; Appraisal Institute 2015) Page 140.

The value conclusions apply to the value of the subject property under the market conditions presumed on the effective date(s) of value.

Please refer to the Glossary in the Addenda section for additional definitions of terms used in this report.

Valuation Scenarios, Property Rights Appraised, and Effective Dates of Value

Per the scope of our assignment we developed opinions of value for the subject property under the following scenarios of value:

| Valuation Scenario | Effective Date of Value |
|---|-------------------------|
| Retrospective As Is Annual Market Rent of the Leased Fee Interest | September 1, 2016 |

We completed an appraisal inspection of the subject property on September 20, 2018.

Date of Report

The date of this report is October 10, 2018, which is the same as the date of the letter of transmittal.

List of Items Requested but Not Provided

- All information requested for the assignment has been provided.

Assumptions and Conditions of the Appraisal

The acceptance of this appraisal assignment and the completion of the appraisal report submitted herewith are subject to the General Assumptions and Limiting Conditions contained in the report. The findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions

- The fair market rent opinion is based on the extraordinary assumption that the condition of the property observed during the September 20, 2018 inspection is similar to that on the effective date of valuation, September 1, 2016. The use of this extraordinary assumption, if found to be false, might impact the assignment results.

Hypothetical Conditions

- There are no hypothetical conditions used in this appraisal assignment.

Scope of Work

The elements addressed in the Scope of Work are (1) the extent to which the subject property is identified, (2) the extent to which the subject property is inspected, (3) the type and extent of data researched, (4) the type and extent of analysis applied, (5) the type of appraisal report prepared, and (6) the inclusion or exclusion of items of non-realty in the development of the value opinion. These items are discussed as below.

Extent to Which the Property Was Identified

The three components of the property identification are summarized as follows:

- Legal Characteristics - The subject was legally identified via a Clark County Assessor's map, Clark County GIS aerial mapping, and information provided by the client..
- Economic Characteristics - Economic characteristics of the subject property were identified via a comparison to similar properties, as well as a comparison to properties with similar locational and physical characteristics.
- Physical Characteristics - The subject was physically identified via a personal inspection of the property by Monique Beban.

Extent to Which the Property Was Inspected

We inspected the subject on September 20, 2018. The improvements were not measured during the course of the inspection.

Type and Extent of Data Researched

We researched and analyzed: (1) market area data, (2) property-specific market data, (3) zoning and land-use data, and (4) current data on comparable listings and transactions. We also interviewed people familiar with the subject market/property type.

Type and Extent of Analysis Applied (Valuation Methodology)

We observed surrounding land use trends, the condition of any improvements, demand for the subject property, and relevant legal limitations in concluding a highest and best use. We then valued the subject based on that highest and best use conclusion.

Appraisers develop an opinion of property value with specific appraisal procedures that reflect three distinct methods of data analysis: the cost approach, sales comparison approach, and income capitalization approach. One or more of these approaches are used in all estimations of value.

- Cost Approach - In the cost approach, the value indication reflects the sum of current depreciated replacement or reproduction cost, land value, and an appropriate entrepreneurial incentive or profit.
- Sales Comparison Approach - In the sales comparison approach, value is indicated by recent sales and/or listings of comparable properties in the market, with the appraiser analyzing the impact of material differences in both economic and physical elements between the subject and the comparables.

- Income Capitalization Approach - In the income capitalization approach, value is indicated by the capitalization of anticipated future income. There are two types of capitalization: direct capitalization and yield capitalization, more commonly known as discounted cash flow (DCF) analysis.
- Approaches Applied - All of these approaches to value were considered. We assessed the availability of data and applicability of each approach to value within the context of the characteristics of the subject property and the needs and requirements of the client. Based on this assessment the Income Capitalization Approach were developed. The Cost Approach was not used because the cost approach does not provide a meaningful indication of market rent. The Sales Comparison Approach was not used because this is a market rent analysis and an opinion of investment value and the sales comparison approach is not appropriate. Further discussion of the extent of our analysis and the methodology of each approach is provided later in the respective valuation sections.

Appraisal Conformity and Report Type

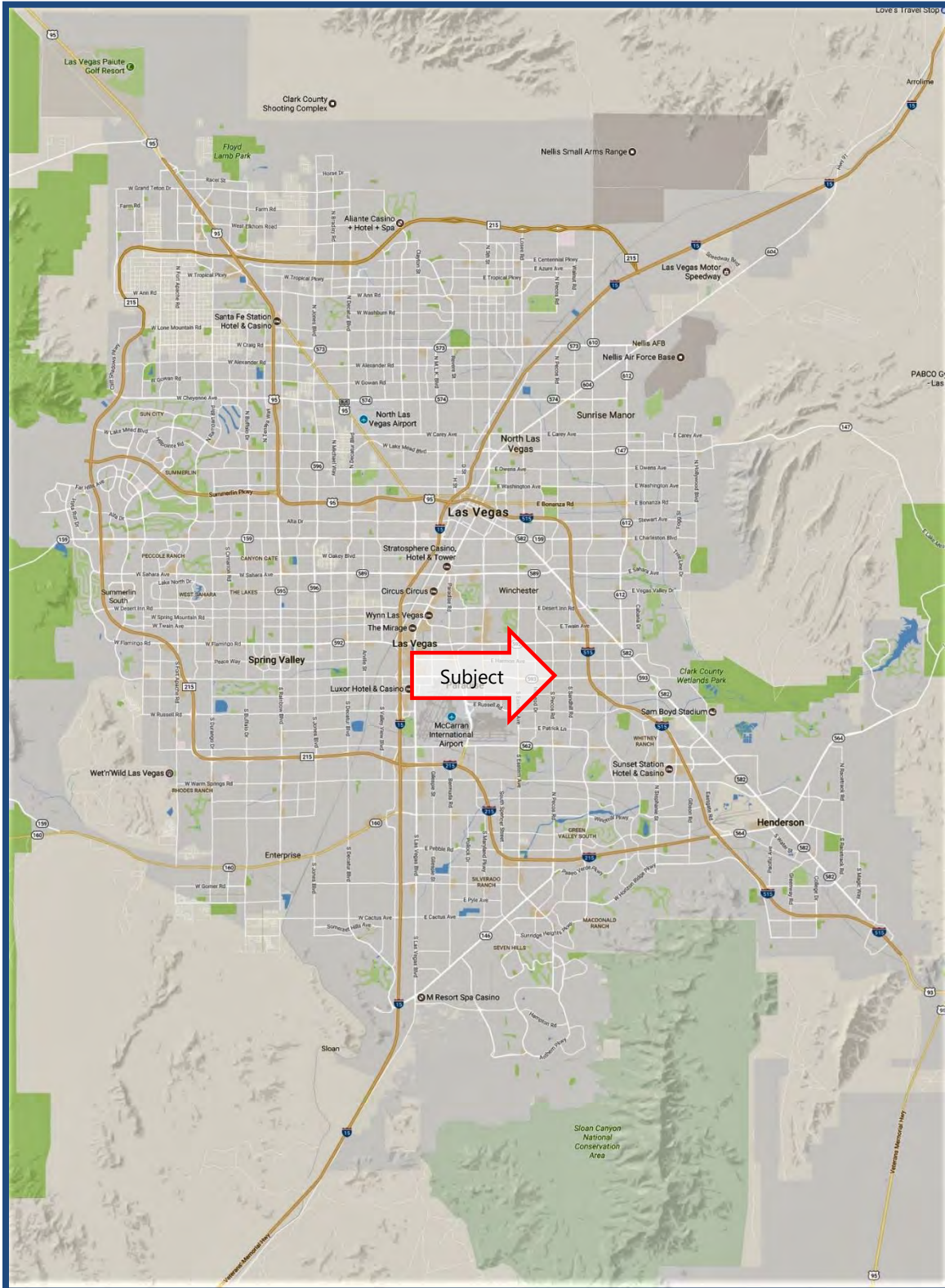
We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them. This is an Appraisal Report as defined by the Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2a.

Personal Property/FF&E

All items of non-realty are excluded from this analysis. The opinion of market value developed herein is reflective of real estate only.

Regional and Market Area Analysis

REGIONAL MAP



Overview

The subject is located in the unincorporated Paradise township within the central east portion of the Las Vegas valley in Clark County.

Summary of Clark County

Until the economic and real estate market collapse in 2008, the Las Vegas MSA (consisting of Clark and Nye counties in Nevada and Mohave County in Arizona) had been rated in the top 10 for annual population growth and near the top in terms of employment increase. According to Valuation International Limited, a market research company, the growth had been primarily attributable to the area's favorable climate. Inc. magazine named Las Vegas the #1 city in America for starting or growing a business in 2000, and Chief Executive Magazine named Nevada number 5 in 2010 on its list of Best States for Business.

Despite an economic slowdown in 2001, and the negative effects of the events of September 11, 2001 on tourism, Southern Nevada's economy demonstrated resilience. In the immediate aftermath of the September 11 attacks, hotels and gaming establishments laid off an estimated 12,000 to 15,000 workers, and other tourism-related businesses such as airlines, curbside baggage handlers, taxicab companies, and Grand Canyon tour operators suffered layoffs. Hotel occupancy rates fell dramatically, and many conventions were cancelled. However, by mid-October 2001, weekend occupancy rates rose to their normal level of approximately 95%, and midweek business improved to the point that one-fourth of the laid-off workers were recalled.

By mid-2002, the consensus among economists was that the trend was for continuing economic strength over the foreseeable future. This optimistic outlook had been supported by strong gaming profits and tourism results reported from 2004 through 2007, and by a moderate unemployment rate. Since 2008, the still recovering national and local economies have cut into the gaming revenues.

As of November 2015, the total labor force for the Las Vegas MSA was 1,051,300, with the unemployment rate at 6.3%. The largest contributor to the labor force is the leisure and hospitality industry (hotels, restaurants, etc.) accounting for 28% of the job force. Leisure and hospitality experienced the greatest employment growth for the year, adding 13,200 jobs, while the construction sector showed the greatest percentage growth at 12.3 percent, adding 7,800 jobs. The median household income for the Las Vegas Valley is \$54,255, and with the ongoing renovations, the planned construction and improving revenues in the gaming industry, the labor market is expected to grow as new resorts and resort expansions move forward in construction.

New home sale closings in the last 12 months was 6,609, compared to resale home sale closings which was 42,231. New home sales set a record in 2005 at 30,750 homes (not including 7,767 apartment-to-condominium conversions), which was 5% higher than the previous record of 29,248 new homes sold in 2004. Sales of existing homes in 2005 reached 54,663, which was 2.3% less than 2004's total. The lower resale number had provided optimism for a more stabilized market. However, the residential market softened in 2006, and by 2011, new home sales totaled just 3,894. Homes available on the resale market increased in 2006 and 2007 to reach nearly 30,000 which is another indication of the soft market. Additionally, the median price of a new home in the Las Vegas Valley is \$321,405 in November 2015, which is up 8.9% YTD from November 2014. The median price of existing homes \$191,289 in November 2015 which is up 6.1% YTD from November 2014. A panel of residential real estate experts at the November 2012 and November 2013 Appraisal Institute Las Vegas Market Symposium indicated

that resale home prices had reached bottom in 2011, and that the prices have steadily been increasing. Home Builders Research continues to project that the long-term health of the Las Vegas housing market should be good as the recovery progresses.

Also, Nevada ranked first nationally in home price increase in 2013, and home prices are expected to continue to increase, although at a slower rate, until the Southern Nevada median resale price of \$191,289 catches up to the national median price of \$222,700 as reported in the fourth quarter of 2015.

The Nevada Department of Employment Training and Rehabilitation (DETR) reported that 23,000 jobs were created in Clark County from November 2014 to November 2015. October 2015 job levels at 1.26 million which is up 30,900 from a year ago, 59 consecutive months of year over year growth. Nevada added close to 100,000 private sector jobs over the 2010-2014 period. Unemployment rate 6.5% in November 2015 which is down from 7.1% a year ago, and is lowest since June 2008, which compared to a 5% rate for the U.S. is 1.5 percentage points higher. Nevada's unemployment rate was 4.4 points higher than the nation's at the height of the recession.

According to the *Lied Institute of Apartment Market Trends*, 1st Quarter 2016, the Las Vegas apartment market saw a slight increase in the average asking rents and a slight decrease in the vacancy rates this quarter. There have been slight increases in the average asking rent for five consecutive quarters. This quarter saw a 1.4% increase in asking rents and the average asking rent is now \$867. Asking rents are up 6.4% since 1st Quarter 2015 (\$815). The average asking rents in Las Vegas remain 1.1% lower than their peak in 2007 (876), but 16.9% higher than their low in 1st Quarter 2013 (\$741). The vacancy rate decreased 0.2 percentage points this quarter and is now 8%. The vacancy rate remains 2.9 percentage points lower than it's peak in 3rd Quarter 2009 (10.96%), but 3.5 percentage points higher than it's low in 1st Quarter 2006 (4.5%). The Las Vegas Metropolitan area saw a wide range of change in asking rents this quarter. Fourteen zip codes saw a decrease in asking rents while 38 zip codes saw an increase in asking rents. Apartments compared to single-family homes often tend to offer shorter lease contracts, smaller deposits, and more common community amenities (i.e., pool, gym, or recreation center). Nevertheless, economic conditions, more than anything will influence the apartment market, especially as residents find better jobs, earn higher income, and recover financially.

According to the First Quarter 2016 Industrial Market Report prepared by Costar the Las Vegas Industrial market ended the first quarter with a vacancy rate of 6.1%, compared to 6.1% at the end of the fourth quarter 2015. Net absorption totaled a positive 360,599 square feet in the first quarter, 2016 compared to positive 836,424 square feet in the fourth quarter 2015. The amount of vacant sublease space in the Las Vegas market increased to 149,325 square feet by the end of the first quarter 2016, from 107,873 square feet at the end of the fourth quarter 2015. Rental rates ended the fourth quarter at \$6.86, an increase of 1.3% over the previous quarter. During the first quarter 2016, one building totaling 450,731 square feet was completed in the Las Vegas market area. This compares to three buildings totaling 867,090 square feet that were completed in the fourth quarter 2015, one building totaling 188,000 square feet completed in the third quarter 2015, and 654,201 square feet in three buildings completed in the second quarter 2015. The Flex building market recorded net absorption of negative (143,043) square feet in the first quarter 2016, compared to positive 152,226 square feet in the fourth quarter 2015, positive 301,932 in the third quarter 2015, and positive 181,856 in the second quarter 2015. The Warehouse building market recorded net absorption of positive 503,642 square feet in the first quarter 2016 compared to positive 684,198 square feet in the fourth

quarter 2015, positive 644,863 in the third quarter 2015, and positive 1,424,328 in the second quarter 2015. The average rental quoted asking rental rate for available industrial space was \$6.77 per square foot per year at the end of the fourth quarter 2015. Total Industrial inventory in the Las Vegas market area amounted to 120,496,689 square feet in 4,118 buildings as of the end of the first quarter 2016. The Flex sector consisted of 21,381,574 square feet in 950 projects. The Warehouse sector consisted of 99,115,115 square feet in 3,168 buildings. Within the Industrial market there were 280 owner-occupied buildings accounting for 14,027,080 square feet of Industrial space. Cap rates have been lower in 2015, averaging 6.62%, compared to the twelve months of last year when they averaged 6.89%.

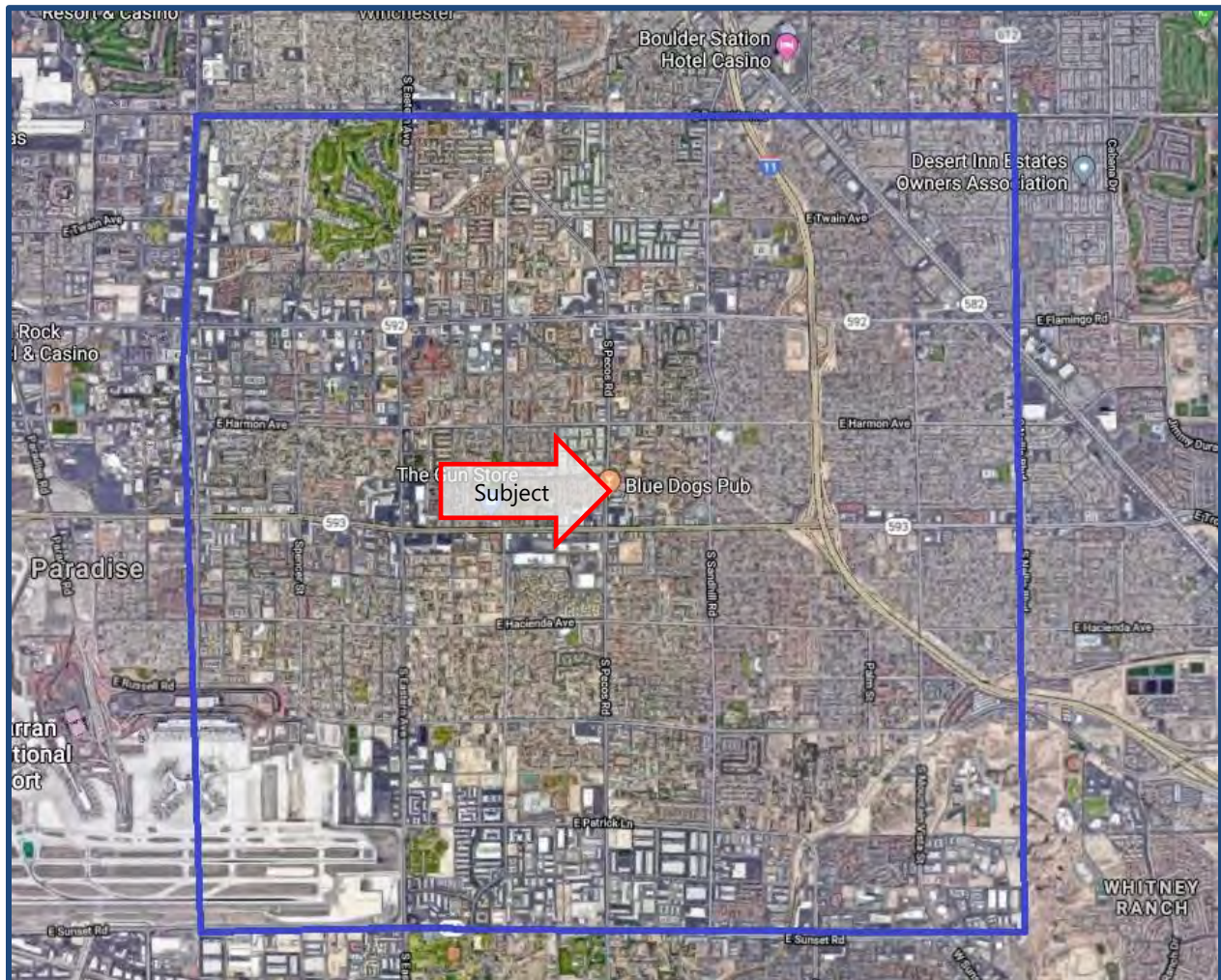
According to the First Quarter 2016 Retail Market Report prepared by CoStar the Las Vegas retail market did not experience much change in the market conditions in the first quarter 2016. The vacancy rate went from 9.4% in the previous quarter to 9.5% in the current quarter. Net absorption was negative (18,149) square feet, and vacant sublease increased by 141,495 square feet. Rental rates increased from fourth quarter 2015 levels, ending at \$16.20 per square foot per year, compared to \$15.76 per square foot in the fourth quarter 2015, and \$15.50 per square foot at the end of the first quarter 2015. This represents a 2.8% increase in rental rates in the current quarter and a 4.5% increase from four quarters ago. There was 90,060 square feet still under construction at the end of the quarter. Retail net absorption was basically flat in Las Vegas first quarter 2016 with negative (18,149) square feet absorbed in the quarter. Over the past four quarters, a total of 476,024 square feet of retail space has been built in Las Vegas. In addition to the current quarter, six buildings with 73,983 square feet were completed in fourth quarter 2015, nine buildings totaling 186,921 square feet completed in third quarter 2015. Cap rates have been lower in 2015, averaging 7.38% compared to the same period in 2014 when they averaged 7.72%.

According to the First Quarter 2016 Office Market Report prepared by Costar the Las Vegas Office Market ended the First Quarter 2016 with a vacancy rate of 16.0%. The vacancy rate was down over the previous quarter, with net absorption totaling a negative 104,404 square feet in the first quarter, compared to 293,194 square feet in the fourth quarter, 2015. Class-A reported vacancy rate of 17.0%, Class-B 16.1%, and Class-C 14.0%. Class-A office market recorded net absorption of positive 100,752 square feet, Class-B office negative 260,231 square feet, and Class-C office positive 55,075 square feet. The amount of vacant sublease space in the Las Vegas market decreased to 293,194 square feet by the end of the first quarter 2016, from 436,471 square feet at the end of the fourth quarter 2015. There was 434,945 square feet vacant at the end of the third quarter 2015 and 442,311 square feet at the end of the second quarter 2015. The quoted rental rate for available office space, all classes was \$20.10 per square foot per year, this represented a 4.3% increase in quoted rental rates from the end of the fourth quarter 2015, when rates were reported at \$19.28 per square foot. The average quoted rate within the Class-A sector was \$26.72, while Class-B was \$18.64, and Class-C was \$13.65. There was a reported 980,562 square feet of office space under construction at the end of the first quarter 2016.

In conclusion, although the local real estate market softened as the economy weakened and financing tightened, the economic and financing conditions have been improving. Additionally, the construction of over 30,000+ hotel rooms a few years ago, along with new hotel construction, expansion, and renovation since then, has helped to soften the local recession, and the Las Vegas metropolitan economy, as a whole, should regain a position as one of the stronger metropolitan economies in the United States when the current economic and construction financing problems are fully resolved.

City and Neighborhood Analysis

NEIGHBORHOOD MAP



Neighborhood Location and Boundaries

The subject neighborhood is located in the Southeast section of Las Vegas. The area is suburban in nature. The neighborhood is bounded by Desert Inn Road to the north, Nellis Boulevard to the east, Russell Road to the south, and Paradise Road to the west.

The area includes a mixture of uses with single-family residences, apartments and condominiums located throughout the area. There are also numerous mobile home parks within the neighborhood boundaries. Commercial development is concentrated along major arterials including Nellis Boulevard, Boulder Highway, Flamingo Road, Tropicana Avenue, Flamingo Road, Maryland Parkway, Eastern Avenue, and Pecos Road.

The U.S. 95 and Boulder Highway provide access to portions of the subject neighborhood. This corresponds with the variety of retail and office buildings along near the major thoroughfares

The southwest portion of the subject neighborhood is generally industrial and includes Del School High School, which later included a specialty for the Performing Arts. To the southeast is the former VOTECH High School later renamed the Southeast Career Technical Academy.

The northeast portion of the subject neighborhood includes some beautification projects as developers have torn down old buildings and have created or include plans for new development. A new charter School named Mater Academy of Nevada was built in the beginning of 2016 at 3445 Mountain Vista Street near Desert Inn Road and Boulder Highway. Adjacent to the site along Boulder Highway, Nevada HAND has publicized plans to build new apartments for low income families and to beautify the area with the new development. Chaparral High School is also located at the northeast portion of the subject neighborhood.

Overall development in the submarket has occurred primarily in the 1960s and 1970s. Most of the housing located in this portion of the neighborhood remains relatively well-maintained, but it does not have the appeal of newer suburban housing constructed since the 1990s in growing neighborhoods elsewhere in the valley.

Major influences of the subject neighborhood include UNLV and McCarran International Airport.

UNLV

Located near the neighborhood is the University of Nevada Las Vegas, a fully accredited University, located south of Flamingo Road, generally between Paradise Road and Maryland Parkway. This university has an enrollment near 25,000 students. Major expansion has occurred at this university over recent years. A recent article stated that UNLV received a \$7 million gift from the Las Vegas Sands Corp for the construction of a new Center for International Gaming and Hospitality building, to be known as "Hospitality Hall" which will be located in the center of the campus. The building will likely include approximately 95,000 square feet of classroom, laboratory and meeting space. The total project is expected to cost \$50 million. UNLV had already received a \$2.5 million gift from Konami Corp. for this project.

Located at the northeast corner of Swenson Avenue and Tropicana Avenue, within the UNLV Campus, is the 18,500 seat Thomas & Mack Center, which is the site of sporting events, concerts and other major shows throughout the year. However, UNLV is considering constructing a stadium. This proposed new stadium is estimated to cost between \$490 million and \$682 million and is expected to consist of 900,000 square feet of space with three tier-stadium seating and 50,000 seats. This would be located on 60 acres northeast of Swenson Street and Harmon Avenue. The estimated costs to not take into consideration the athletic fields currently at the site, construction of 11,000 new parking spaces and traffic improvements. These infrastructure improvements are expected to add an additional \$200 million to the overall stadium cost.

McCarran International Airport

McCarran International Airport is the primary point of entry for most visitors to Las Vegas, being one of the busiest airports in the nation. Numerous airlines service the airport as well as freight companies such as UPS and Federal Express. In addition to the typical passenger terminals are the executive terminal and private aircraft hangers, accessible from primary runways. Primary runways have been improved and extended to accommodate the largest aircraft, with international flights also originating from McCarran International Airport. Expansion continues on the facility; the newest addition

completed was Terminal 3. This new terminal was estimated to cost \$1.6 billion and opened June 2012. It provides 14 additional gates, including six designated for international travelers.

Demographics

The following table depicts the area demographics in Las Vegas within a one-, three-, and five-mile radius from the subject.

Neighborhood Demographics

| Radius | 1 mile | 3 miles | 5 miles |
|---------------------------------------|----------|----------|----------|
| Population Summary | | | |
| 2000 Population | 26,634 | 177,517 | 419,972 |
| 2010 Population | 28,265 | 203,667 | 462,240 |
| 2018 Population | 30,094 | 218,444 | 494,469 |
| 2023 Population Estimate | 31,937 | 232,733 | 526,332 |
| Annual % Change (2018 - 2023) | 1.2% | 1.3% | 1.3% |
| Housing Unit Summary | | | |
| 2000 Housing Units | 11,666 | 70,669 | 169,283 |
| % Owner Occupied | 48.5% | 57.3% | 44.1% |
| % Renter Occupied | 42.3% | 35.5% | 47.7% |
| 2010 Housing Units | 12,011 | 80,536 | 191,794 |
| % Owner Occupied | 39.2% | 49.0% | 38.5% |
| % Renter Occupied | 49.3% | 39.0% | 46.5% |
| 2018 Housing Units | 12,364 | 83,693 | 202,009 |
| % Owner Occupied | 35.5% | 45.6% | 35.6% |
| % Renter Occupied | 54.0% | 43.1% | 48.9% |
| 2023 Housing Units | 13,021 | 88,525 | 214,183 |
| % Owner Occupied | 36.4% | 46.9% | 36.6% |
| % Renter Occupied | 53.2% | 41.8% | 47.7% |
| Annual % Change (2018 - 2023) | 1.0% | 1.1% | 1.2% |
| Income Summary | | | |
| 2018 Median Household Income | \$37,058 | \$43,211 | \$40,078 |
| 2023 Median Household Income Estimate | \$40,829 | \$49,320 | \$45,130 |
| Annual % Change | 2.0% | 2.7% | 2.4% |
| 2018 Per Capita Income | \$18,163 | \$19,762 | \$19,323 |
| 2023 Per Capita Income Estimate | \$20,663 | \$22,590 | \$22,066 |
| Annual % Change | 2.6% | 2.7% | 2.7% |

Source: Site-to-Do-Business (STDB Online)

Transportation Access

Within the immediate area of the subject, transportation access helps define the character of its development. Major travel and commuter routes within the area of the subject include Desert Inn Road, Flamingo Road, Tropicana Ave, Sunset Road, Nellis Blvd, Mountain Vista, Sandhill Road, Pecos Road, Eastern Avenue and Maryland Parkway. Major transportation routes in the larger area include Interstate 15 to the west of the neighborhood and I-215 to the east of the neighborhood. Access to the area is considered good.

Neighborhood Land Use

The subject neighborhood is located in an area with primarily commercial and residential land uses. An approximate breakdown of the development in the area is as follows:

LAND USES

| Use | Percent |
|--------------|---------|
| Built up: | 95% |
| Residential: | 65% |
| Retail: | 15% |
| Office: | 10% |
| Industrial: | 5% |
| Vacant: | 5% |

Conclusions

In conclusion, the area is dominated by residential development with commercial support primarily along the major arterials. The subject area is significantly impacted by the University of Nevada Las Vegas on the west end and Las Vegas McCarran International Airport on the southwest end which provide commuter traffic to the area. The neighborhood is bisected by the U.S. 95 freeway which provides good access. Overall, the subject neighborhood ranges between decline and revitalization in the stage of its life cycle.

Site Description

The subject site of which the subject is a part is located on the east side of Pecos Road, north of Tropicana Avenue. The characteristics of the site are summarized as follows:

Site Characteristics

| | |
|--------------------------|---|
| Location: | East side of Pecos Road, north of Tropicana Avenue |
| Gross Land Area: | 7.89 Acres or 343,688 SF |
| Usable Land Area: | 7.89 Acres or 343,688 SF |
| Usable Land %: | 100.0% |
| Shape: | Square |
| Topography: | Above grade and near level |
| Drainage: | Assumed away from improvements and adequate |
| Grade: | Above Grade |
| Utilities: | All public utilities are available to the site and are assumed adequate |
| Off-Site Improvements: | full off-sites including concrete curbs, gutters and sidewalks, street lights |
| Interior or Corner: | Corner |
| Signalized Intersection: | Yes: Traffic signal at the site that enhances access |
| Excess Land: | None |
| Surplus Land: | None |

Street Frontage / Access

| Frontage Road | Primary | Secondary |
|---------------------------|-----------------------|-----------------------|
| Street Name: | Tropicana Avenue | Pecos Road |
| Street Type: | Section-line arterial | Section-line arterial |
| Frontage (Linear Ft.): | 521 | 604 |
| Number of Curb Cuts: | 3 | 4 |
| Traffic Count (Cars/Day): | 42,000 | 22,000 |

Additional Access

| | |
|---------------|----|
| Alley Access: | No |
| Rail Access: | No |

Flood Zone Data

| | |
|-------------------------|---|
| Flood Map Panel/Number: | 32003C2580F |
| Flood Map Date: | November 16, 2011 |
| Flood Zone: | X |
| | The subject is outside the 0.2% annual chance flood plain |
| Site Area in Flood: | 0.00% |

Other Site Conditions

| | |
|--------------------------|---|
| Soil Type: | Special Geotechnical Consideration Area of solubility, clay swell, corrosion, gypsum salt, expansive or hydro-collapsible potential |
| Environmental Issues: | There are no known adverse environmental conditions affecting the subject property |
| Easements/Encroachments: | Cross access and parking easements assumed |
| Earthquake Zone: | The property is not in a fault, fissure, or earthquake zone |

Adjacent Land Uses

| | |
|--------|---|
| North: | ExtraSpaceStorage on 2.56 acres, zoned C-1, local business, constructed in 1997, followed by Tropicana Business and Wellness Center and other office properties |
| South: | Other restaurants and shops within the same shopping center as the subject followed by Tropicana Avenue |
| East: | Tropicana Gardens commercial center constructed in 1996 also zoned C-1, followed by an automotive repair shops zoned C-2, general commercial |
| West: | Pecos Road followed by retail and commercial businesses zoned C-2 constructed in the mid to late 1980's |

Site Ratings

| | |
|-------------|---------|
| Access: | Average |
| Visibility: | Average |

Zoning Designation

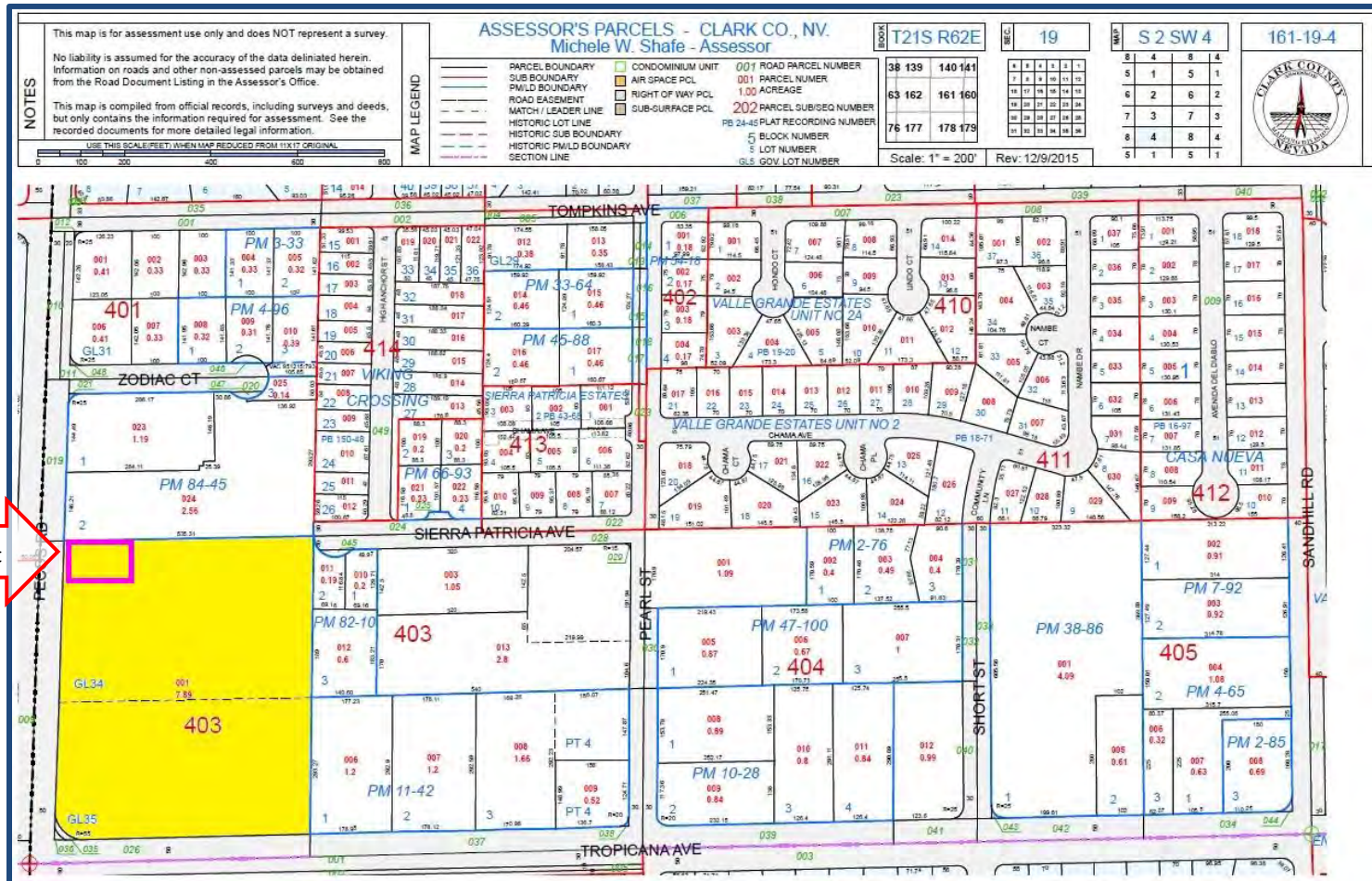
| | |
|------------------------|---|
| Zoning Jurisdiction: | Clark County |
| Zoning Classification: | C-2, General Commercial is established to accommodate a full range of commercial uses, or mixed commercial and residential uses, in a manner that can be located to serve the needs of the entire community yet be buffered from having adverse impacts on any adjacent residential neighborhoods. The intent of the district is for sites which are typically greater than 10 acres. The maximum lot coverage is 50% and the front, rear, and side yard setbacks are all 10 feet with a maximum building height of 50 feet. Parking requirements for a retail use are 4 spaces per 1,000 square feet of building area. |

| | |
|---------------------------|---|
| General Plan Designation: | CG - Commercial General |
| Permitted Uses: | A variety of commercial and professional uses including alcohol sales, beer and wine packaged only; alcohol sales, liquor- packaged only; antiques; arcade, art gallery/studio; billiard hall; body piercing; caterer; communication building; copy center; day spa; diaper service; dry cleaner; dry cleaner office; electronic equipment sales and service; financial services; funeral home; grocery store; gunsmith; hardware store; health club; janitorial service; jewelry repair; jewelry sales-including secondhand sales; laboratory, medical/dental; laundromat; laundry service; library; locksmith; mini-warehouse; monument sales; office; park and ride; parking lot; permanent make-up; personal services; petroleum product storage; photographic studio; postal services; psychic arts; rental store; restaurant; retail sales and services; second hand sales; security services; shoe repair; sporting goods; sporting goods-firearm; tattoo; theater; time share - residential/commercial; training facility, instruction; training facility, minor; video store; watch/small clock repair |
| Zoning Comments: | The subject, as improved, is a legal use of the site per the current zoning code |

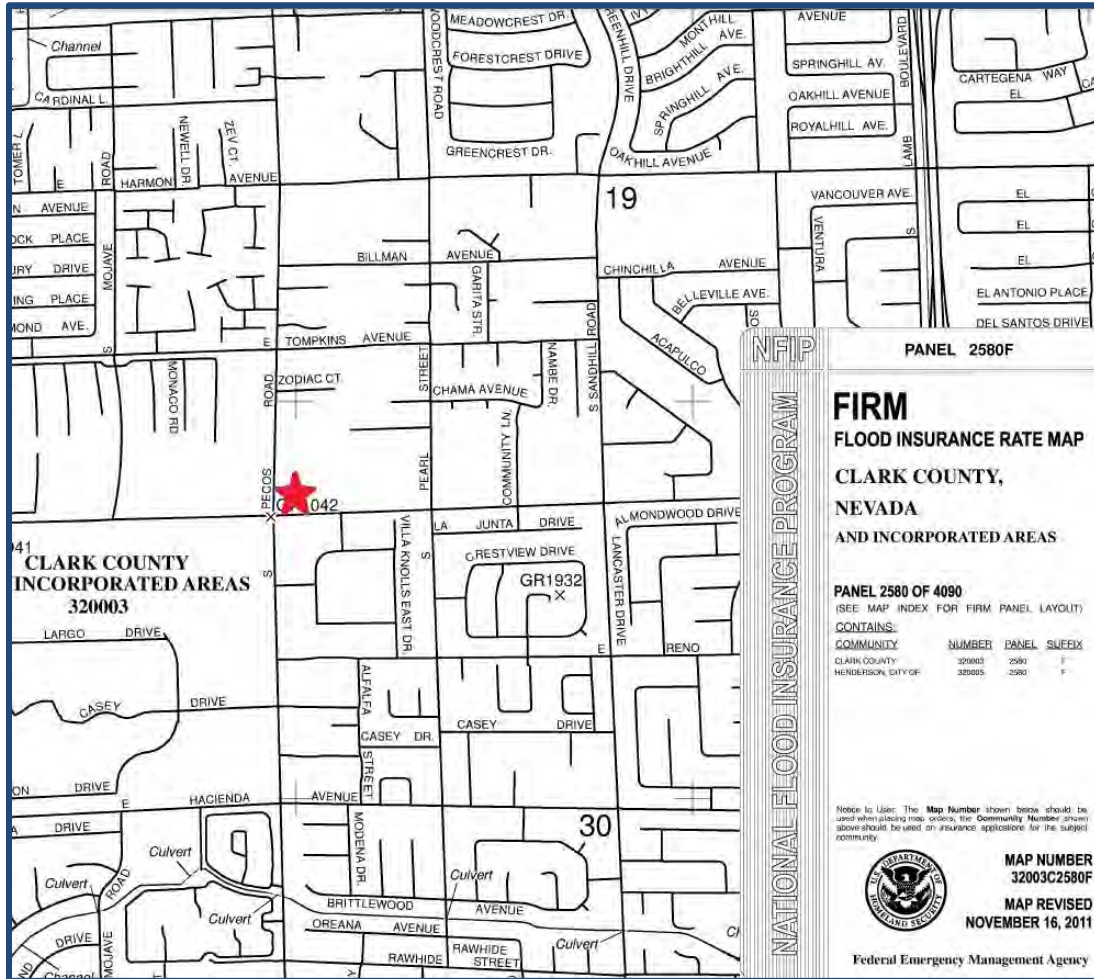
Analysis/Comments on Site

The subject is part of a 7.89-acre parcel located at the northeast corner of Tropicana Avenue and Pecos Road. The subject portion fronts directly on Pecos Road and has good visibility. The site is zoned for commercial use, and all public utilities are available to the site. The parcel is not located in a FEMA-designated special flood hazard area, are there are no known adverse easements, encroachments, or environmental conditions affecting the site.

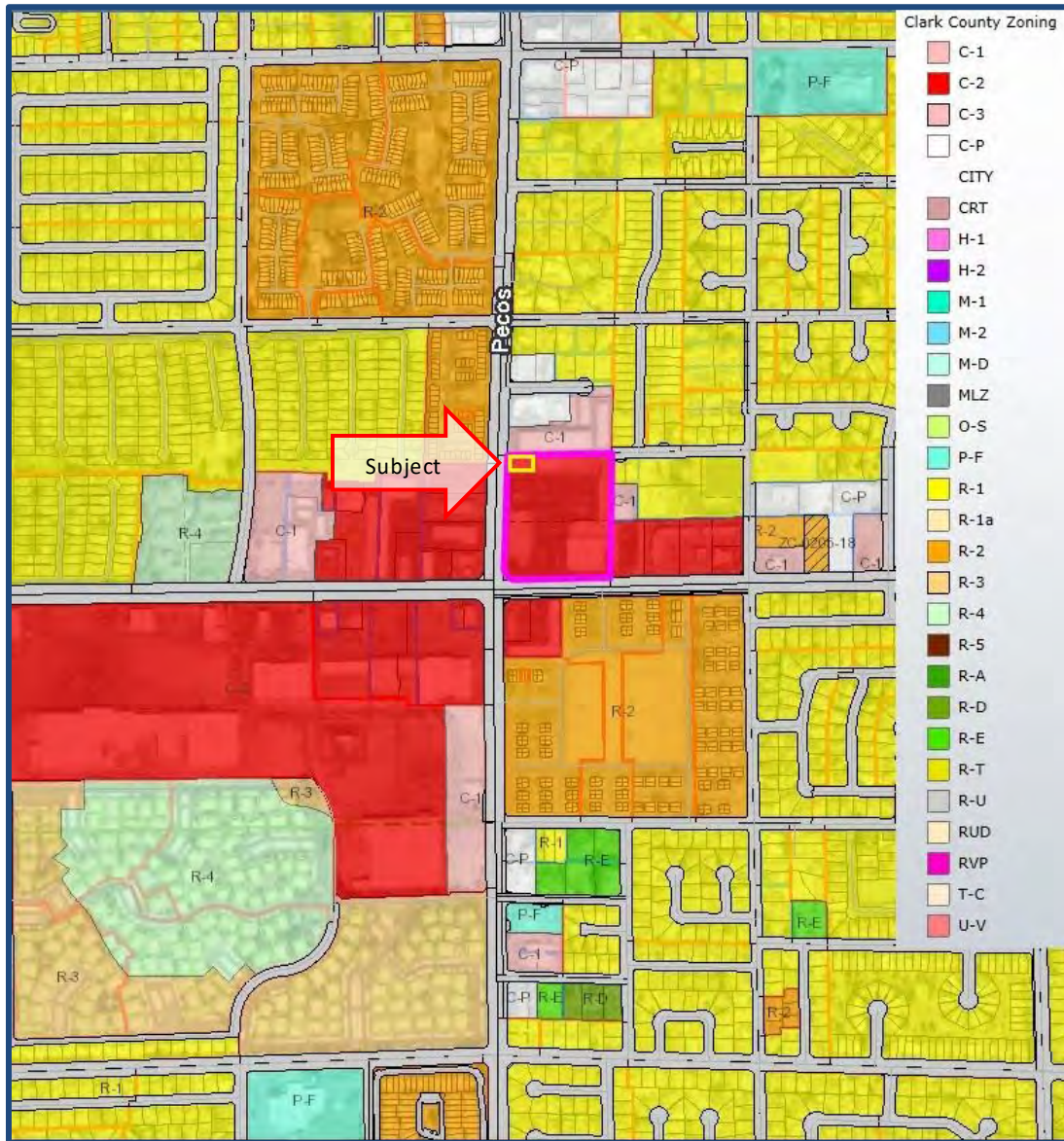
TAX/PLAT MAP



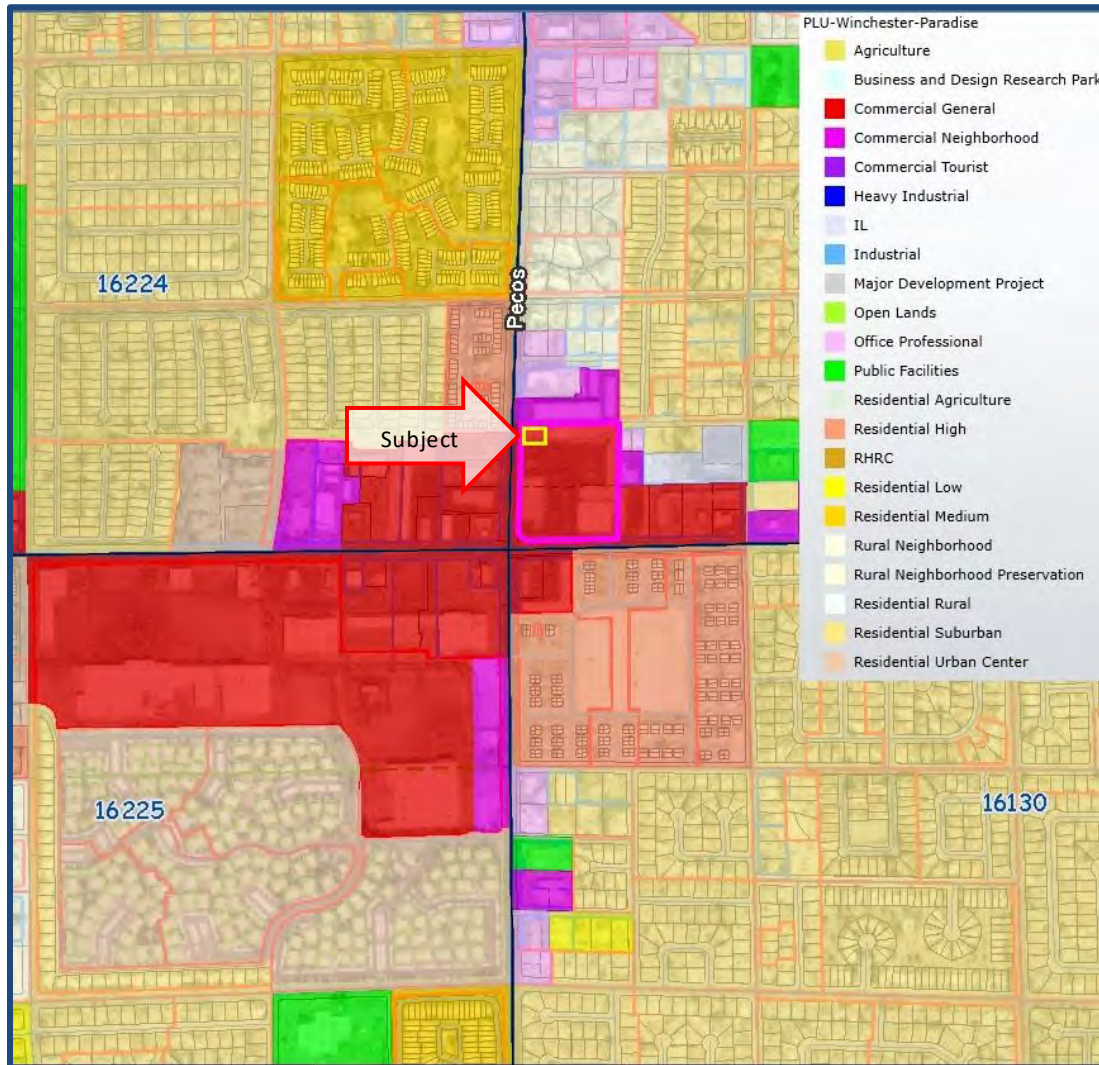
FLOOD MAP



ZONING MAP



PLANNED LAND USE MAP



Improvements Description

The subject improvements consist of a 4,200-square-foot tavern located in an end-cap unit with direct frontage along Pecos Road.

Improvement Characteristics

| | |
|----------------------------|---|
| Property Type: | Retail |
| Property Subtype: | Tavern, Bar, Nightclub, Micro Brewery |
| Occupancy Type: | Local tenants |
| Tenancy: | Multi-Tenant |
| Investment Class: | Class C |
| Number of Buildings: | 2 |
| Number of Stories: | 1 |
| Construction Class: | D - Wood Frame per Marshall Valuation Service |
| Construction Quality: | Average |
| Gross Building Area (GBA): | Entire Center - 116,235 SF (based on CAM Summary) |
| Net Rentable Area (NRA): | Subject Suite - 4,200 SF (based on lease) |

Ratios & Parking

| | |
|-------------------------|-----------------------------|
| Land-to-Building Ratio: | 2.96 to 1 (Usable Land/GBA) |
| Floor Area Ratio (FAR): | 0.34 (based on GBA) |
| Parking Spaces: | 220 for entire complex |
| Parking Ratio: | 1.89 (per 1,000 sf of GBA) |

Age / Life

| | |
|------------------------------|----------------------|
| Year Built: | 1975 |
| Renovated/Yr. Renovated: | Unknown |
| Yr. Blt./Renovated Comments: | No known renovations |
| Condition: | Average |
| Actual Age: | 43 years |
| Effective Age: | 30 years |
| Typical Building Life: | 45 years |
| Remaining Economic Life: | 15 years |

Structural Characteristics

| | |
|-----------------------|-----------------------------|
| Foundation: | Poured concrete slab |
| Building Frame: | Wood frame |
| Exterior Walls: | Painted stucco |
| Roof Type / Material: | Flat / Built up composition |

Interior Characteristics

| | |
|------------|---|
| Floors: | Concrete and Tile |
| Walls: | Painted drywall |
| Ceiling: | A combination of dropped acoustical panels, painted drywall, and exposed beams. |
| Lighting: | A mix of fluorescent and incandescent lighting. |
| Restrooms: | One men's, one women's, and a single employee restroom |

Mechanical Systems

| | |
|-----------------------------|---|
| Electrical: | Assumed adequate |
| Plumbing: | Commercial grade assumed to be adequate |
| Heating: | Central |
| Air Conditioning: | Central air conditioning |
| Fire Protection/Sprinklers: | None / No fire suppression system |
| Number of Elevators: | 0 |

Site Improvements

| | |
|--------------------|--|
| Site Improvements: | concrete curbs, gutters and sidewalks, asphalt paved parking, street lights, trees, bushes, rock |
| Landscaping: | Average landscaping, including trees, bushes, shrubs, and decorative rocks |

Legal, Conforming Status

| | |
|------------------------|--|
| Legally Permitted Use: | Yes |
| Conforms to Parking: | No |
| Conformity Conclusion: | The subject improvements are a legal non-conforming use. |

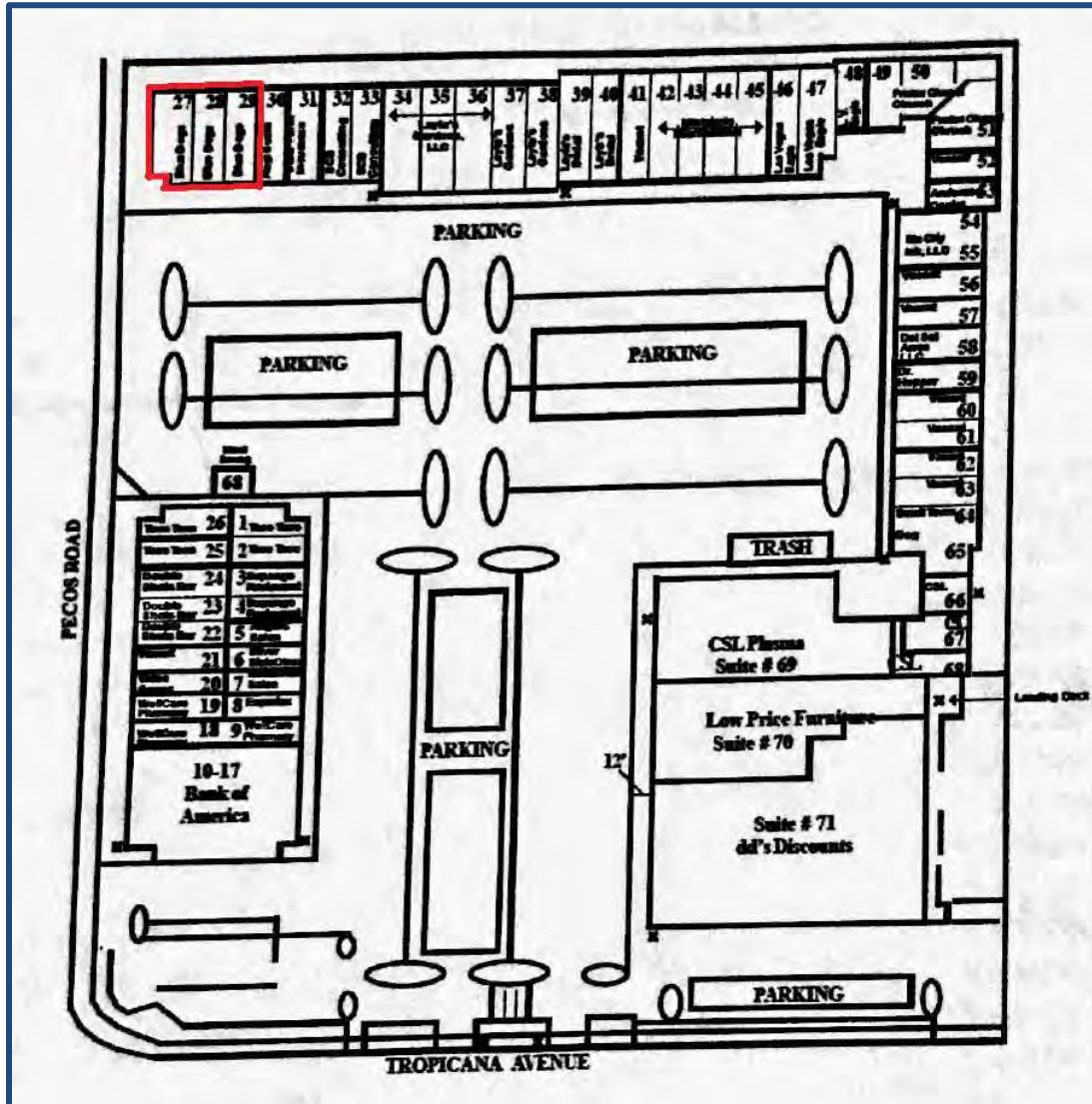
Deferred Maintenance

There were no items of deferred maintenance noted at the time of inspection.

Analysis/Comments on Improvements

The subject is a 4,200-square-foot portion of a 116,235-square foot retail shopping center. The subject suites represent an end cap fronting along Pecos Road. The suite is built out as a tavern with L-shaped bar containing 15 gaming machines. There are two open areas that contain a pool table and another with a small stage area. In addition, there is a restaurant and kitchen area that is not currently in use. Multi-stall men's and women's restrooms are located at the middle north portion of the space, and an additional single restroom is located off of the kitchen/restaurant area. A manager's office and built-in cooler are located north of the bar area. The floors are painted concrete in the bar area and tile in the kitchen and restrooms. The ceiling in the open lounge area is exposed and painted black while above the bar is dropped acoustic panels, and the kitchen, office and restrooms is painted drywall. Lighting is a combination of fluorescent tube lighting and canned incandescent lighting. There are no windows for natural light fenestration. The entry doors are storefront with dual pane glass set in aluminum frames. There is a metal awning covering the walkway and front entrance. The functional utility of the property is average based upon a comparison of similar properties in the market area.

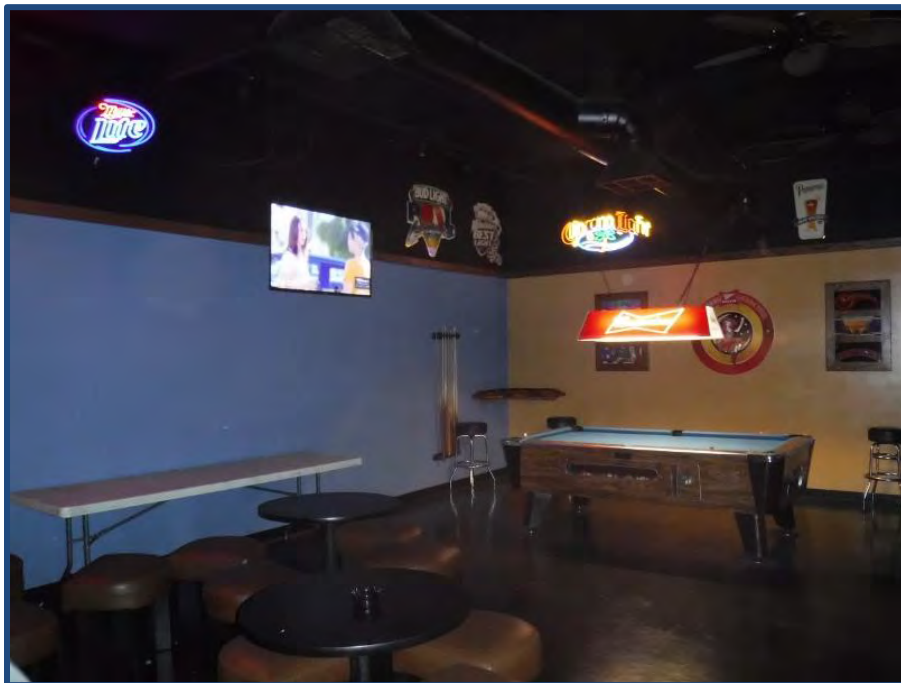
SITE PLAN



Subject Photos



BAR AND GAMING AREA



ONE OF TWO OPEN LOUNGE AREAS



SECOND OPEN LOUNGE AREA WITH STAGE



BAR BACK AREA

Additional photos are included in the Addenda

Assessment and Tax Data

Assessment Methodology

Property taxes are based upon an appraisal of the property performed by the Clark County Assessor's Office. An appraisal is conducted every five years on properties located within Clark County and the values are updated each year by an index computed by the State of Nevada Department of Taxation.

According to personnel at the Assessor's Office, improved properties are appraised for taxable value based upon the cost approach. This approach to value is performed by estimating the replacement cost new of a property less depreciation of 1.5% per year of effective age, up to a maximum of 75%. State Statute 361.227 indicates that the taxable value of the property must not exceed the current market value. Since the cost approach in some instances may provide an indication higher than current market value, the sales comparison approach and/or income capitalization approach may be used to establish the taxable value of the property. Property taxes are calculated by multiplying 35% of the taxable value by the tax rate.

Tax Rates

The subject is within Tax District 470 (PARADISE TOWN), which has a current tax rate of \$2.932800 per \$100.00 of assessed value for the 2016/17 tax year. The fiscal year starts July 1st and ends on June 30th of every year.

| TAX YEAR | TAX RATE |
|----------|----------|
| 2016/17 | \$2.9328 |
| 2015/16 | \$2.9328 |
| 2014/15 | \$2.9328 |
| 2013/14 | \$2.9328 |

Please note that property tax increases were capped by Nevada Legislature Assembly Bill 489, which was passed on April 6, 2005. The tax increase caps are 3% per year for a primary residence and 8% per year on all other properties.

Assessed Values and Property Taxes

The subject's assessed values, applicable tax rates and total taxes, including direct assessments, are shown in the following table:

Ad Valorem Tax Schedule

Tax Parcel Number: 161-19-403-001 (A portion

| Clark County Year | Actual 2017 |
|-------------------------|----------------|
| Appraised Value | |
| Land: | \$2,405,817 |
| Improvements: | \$4,182,883 |
| Total: | \$6,588,700 |
| Per Square Foot: | \$1,568.74 |
| Assessment Ratio | 35.00% |
| Assessed Value | |
| Land: | \$842,036 |
| Improvements: | \$1,464,009 |
| Total: | \$2,306,045 |
| Tax Rate | \$2.930000 |
| Millage Rate | per \$100 |
| Tax Expense | |
| Total: | \$67,567 |
| Per Square Foot: | \$16.09 |

The taxes shown above are for the entire center. The subject is responsible for a pro-rata share of this amount billed through a CAM charge.

Conclusions

According to the Clark County Tax Assessor the subject's property taxes are current as of the date of value.

Market Analysis

Overall Las Vegas Valley Retail Market Conditions

For its *Second Quarter 2016 Retail Report*, CoStar calculated retail statistics using their base of existing, under-construction and under-renovation retail buildings in the Las Vegas metropolitan area. All retail building types are included, including malls, power centers, shopping centers and other general retail. Lease type for buildings are reported as triple net or modified gross.

According to CoStar second quarter report, the Las Vegas Retail Market total 109,660,373 square feet of retail space contained in 7,080 buildings with a vacancy factor of 8.7%. This data indicates the vacancy rate went from 9.3% in the previous quarter to 8.7% in the current quarter. Net absorption was positive 1,038,821 square feet, and vacant sublease space decreased by 138,351 square feet. Quoted rental rates decreased from first quarter 2016 levels, ending at \$1.35 per square foot per month (\$16.14 per square foot per year). A total of 11 retail buildings with 452,665 square feet of retail space were delivered to the market in the quarter, with 660,226 square feet still under construction at the end of the quarter. The historical market statistics are shown below:

Total Retail Market Statistics

Mid-Year 2016

| Period | Existing Inventory | | Vacancy | | | Net Absorption | Deliveries | | UC Inventory | | Quoted Rates |
|---------|--------------------|-------------|------------|------------|-------|----------------|------------|-----------|--------------|-----------|--------------|
| | # Blds | Total GLA | Direct SF | Total SF | Vac % | | # Blds | Total GLA | # Blds | Total GLA | |
| 2016 2q | 7,080 | 109,660,373 | 8,680,617 | 9,585,287 | 8.7% | 1,038,821 | 11 | 452,665 | 24 | 660,226 | \$16.14 |
| 2016 1q | 7,072 | 109,226,746 | 9,147,460 | 10,190,481 | 9.3% | 43,199 | 4 | 94,110 | 33 | 1,084,891 | \$16.19 |
| 2015 4q | 7,070 | 109,243,556 | 9,034,277 | 10,250,490 | 9.4% | (121,502) | 6 | 73,983 | 23 | 863,404 | \$15.79 |
| 2015 3q | 7,065 | 109,172,153 | 9,047,279 | 10,057,585 | 9.2% | 709,011 | 9 | 186,921 | 21 | 817,312 | \$15.57 |
| 2015 2q | 7,056 | 108,985,232 | 9,554,799 | 10,579,675 | 9.7% | (5,204) | 7 | 125,060 | 24 | 973,083 | \$15.47 |
| 2015 1q | 7,050 | 108,861,922 | 9,492,203 | 10,451,161 | 9.6% | (303,410) | 7 | 90,895 | 22 | 627,425 | \$15.24 |
| 2014 4q | 7,043 | 108,771,027 | 9,367,136 | 10,056,856 | 9.2% | 796,897 | 13 | 564,904 | 21 | 578,039 | \$15.58 |
| 2014 3q | 7,032 | 108,213,862 | 9,598,570 | 10,296,588 | 9.5% | 398,289 | 3 | 229,711 | 27 | 1,098,519 | \$15.85 |
| 2014 2q | 7,031 | 107,995,927 | 9,825,272 | 10,476,942 | 9.7% | (74,662) | 4 | 58,085 | 23 | 1,179,605 | \$15.60 |
| 2014 1q | 7,028 | 107,943,382 | 9,789,098 | 10,349,735 | 9.6% | 165,371 | 8 | 116,947 | 16 | 1,024,750 | \$15.52 |
| 2013 | 7,023 | 107,856,785 | 9,890,562 | 10,428,509 | 9.7% | 1,331,916 | 31 | 565,379 | 21 | 960,986 | \$15.47 |
| 2012 | 6,996 | 107,307,976 | 10,706,658 | 11,211,616 | 10.4% | 1,185,292 | 19 | 399,523 | 27 | 880,767 | \$15.98 |
| 2011 | 6,979 | 106,922,611 | 11,395,676 | 12,011,543 | 11.2% | (264,723) | 26 | 259,423 | 15 | 614,256 | \$17.54 |
| 2010 | 6,956 | 106,705,313 | 10,644,075 | 11,529,522 | 10.8% | 451,628 | 50 | 944,329 | 27 | 258,369 | \$18.91 |
| 2009 | 6,910 | 105,766,599 | 10,003,368 | 11,042,436 | 10.4% | 181,870 | 99 | 2,250,228 | 51 | 1,074,739 | \$22.42 |
| 2008 | 6,813 | 103,522,175 | 8,299,084 | 8,979,882 | 8.7% | 976,194 | 329 | 4,909,071 | 89 | 2,003,039 | \$24.45 |

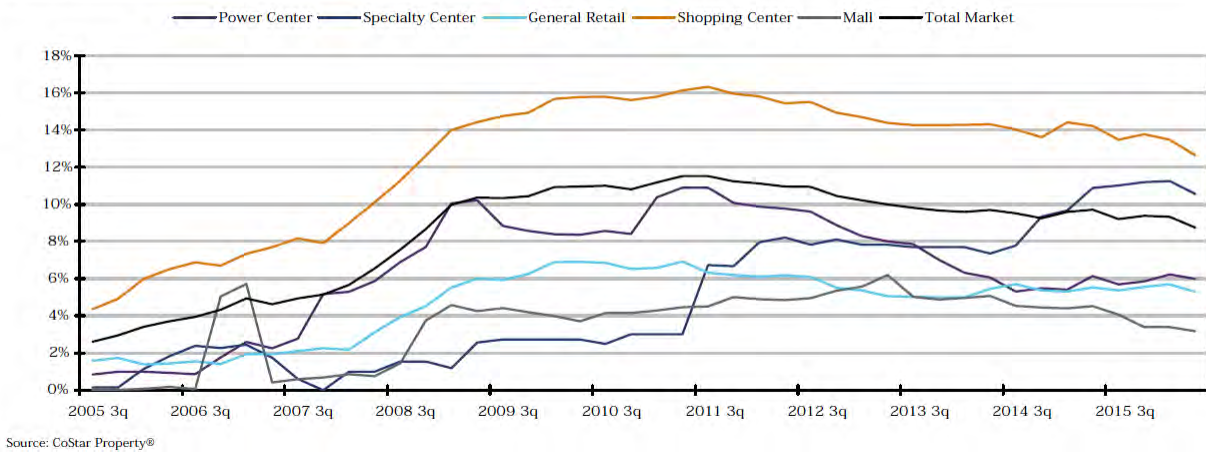
Source: CoStar Property®

According to *Second Quarter 2016 Retail Report* prepared by CoStar Group, the retail vacancy rate in the Las Vegas Valley decreased in the second quarter 2016, ending the quarter at 8.7%. Over the past four quarters, the market has seen an overall decrease in the vacancy rate, with the rate going from 9.2% in the third quarter 2105, to 9.4% at the end rate going from 9.2% in the third quarter 2015, to 9.4% at the end of the fourth quarter 215, 9.3% at the end of the first quarter 2016, to 8.7% in the current quarter.

The amount of vacant sublease space in the Las Vegas market has trended down over the past four quarters. At the end of the third quarter 2015, there were 1,010,306 square feet of vacant sublease space. Currently, there are 904,670 square feet vacant in the market. The vacancy trend by product type is presented in the chart on the following page.

Vacancy Rates by Building Type

2005-2016



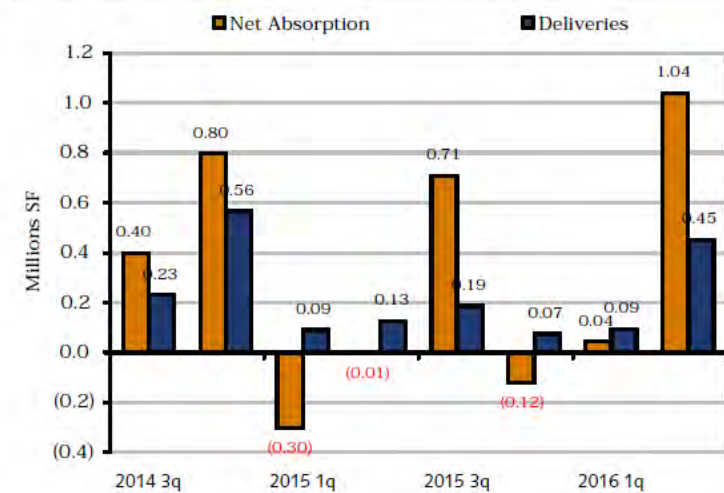
Net absorption was strong in Las Vegas second quarter 2016, with positive 1,038,821 square feet absorbed in the quarter. In first quarter 2016, net absorption was positive 43,199 square feet, while in fourth quarter 2015, absorption came in at negative 121,502 square feet. In third quarter 2015, positive 709,011 square feet was absorbed in the market.

During the second quarter 2016, eleven buildings totaling 452,665 square feet were completed in the Las Vegas Retail Market. Over the past four quarters, a total of 807,679 square feet of retail space has been built in Las Vegas. In addition to the current quarter, four buildings with 94,110 square feet were completed in first quarter 2016, six buildings totaling 73,983 square feet completed in fourth quarter 2015, and 186,921 square feet in nine buildings completed in third quarter 2016.

The net absorption trend vs. deliveries since the third quarter of 2014 is shown below:

ABSORPTION & DELIVERIES

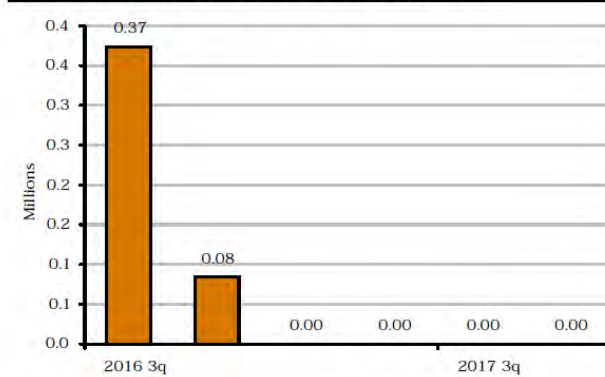
Past 8 Quarters



There were 660,226 square feet of retail space under construction at the end of the second quarter 2016. Some of the notable 2016 deliveries include: 6555 S Durango Dr, a 351,000 square foot facility that delivered in the second quarter 2016 and is now 100 occupied, and 8030 Rafael Rivera Way, a 69,859 square foot building that delivered in first quarter 2016 and is now 100% occupied. The total retail inventory in the Las Vegas market area amounted to 109,660,373 square feet on 7,080 buildings and 1057 center as of the end of the second quarter 2016.

Future Space Available

Space Scheduled to be Available for Occupancy*



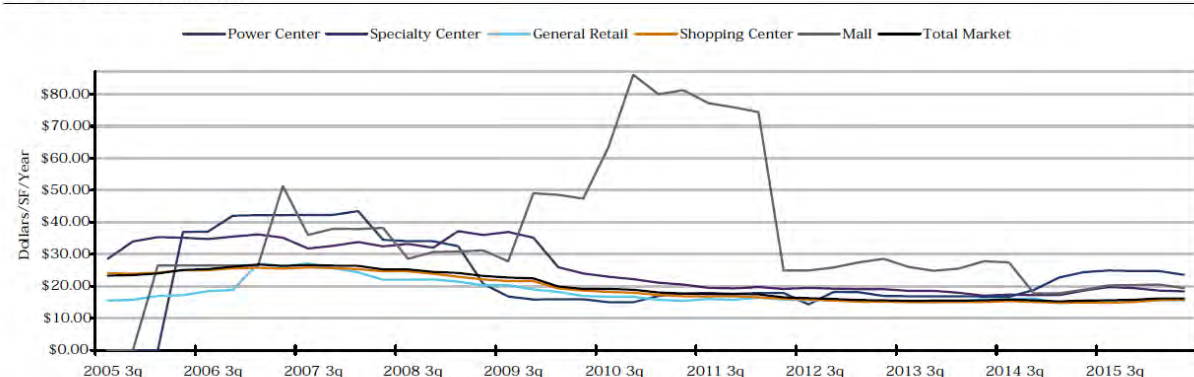
* Includes Under Construction Spaces

Source: CoStar Property®

The average quoted asking rental rates in the Las Vegas retail market are down over previous quarter levels, and up from their levels four quarters ago. Quoted rents ended the second quarter 2016 at \$1.34 per square foot per month (\$16.14 per square foot per year). That compares to \$16.19 per square foot in the first quarter 2016, and \$15.57 per square foot at the end of the third quarter 2015. This represents a 0.3% decrease in rental rates in the current quarter, and a 3.53% increase from four quarters ago.

Historical Rental Rates

Based on NNN Rental Rates



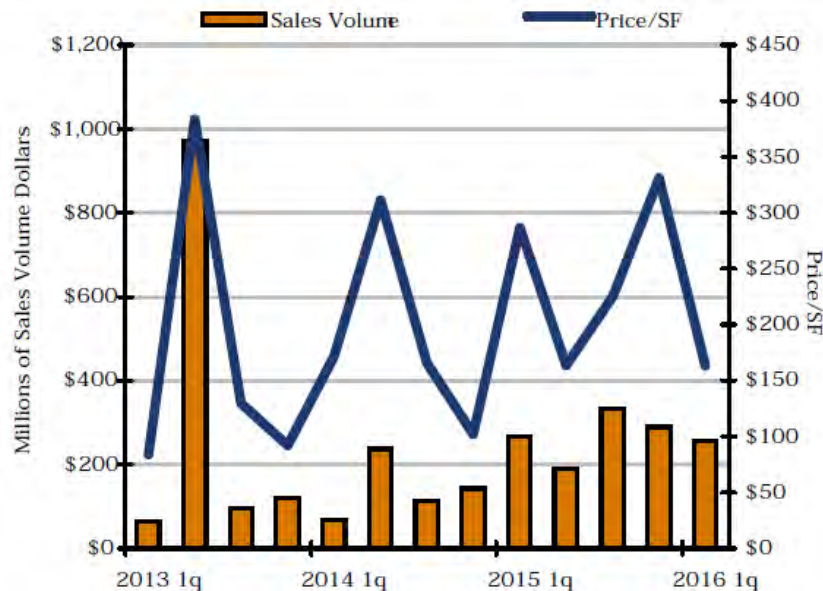
Source: CoStar Property®

Tallying Retail building sales of 15,000 square feet or larger, Las Vegas retail sales figures fell during the first quarter 2016 in terms of dollar volume compared to the fourth quarter of 2015. In the fourth quarter, 21 retail transactions closed with a total volume of \$257,275,384. The 21 buildings totaled

1,576,881 square feet and the average price per square foot equated to \$163.15 per square foot. That compares to 25 transactions totaling \$290,056,740 in the fourth quarter 2015. The total square footage in the fourth quarter was 876,814 square feet for an average price per square foot of \$330.81.

Sales Volume & Price

Based on Retail Building Sales of 15,000 SF and Larger

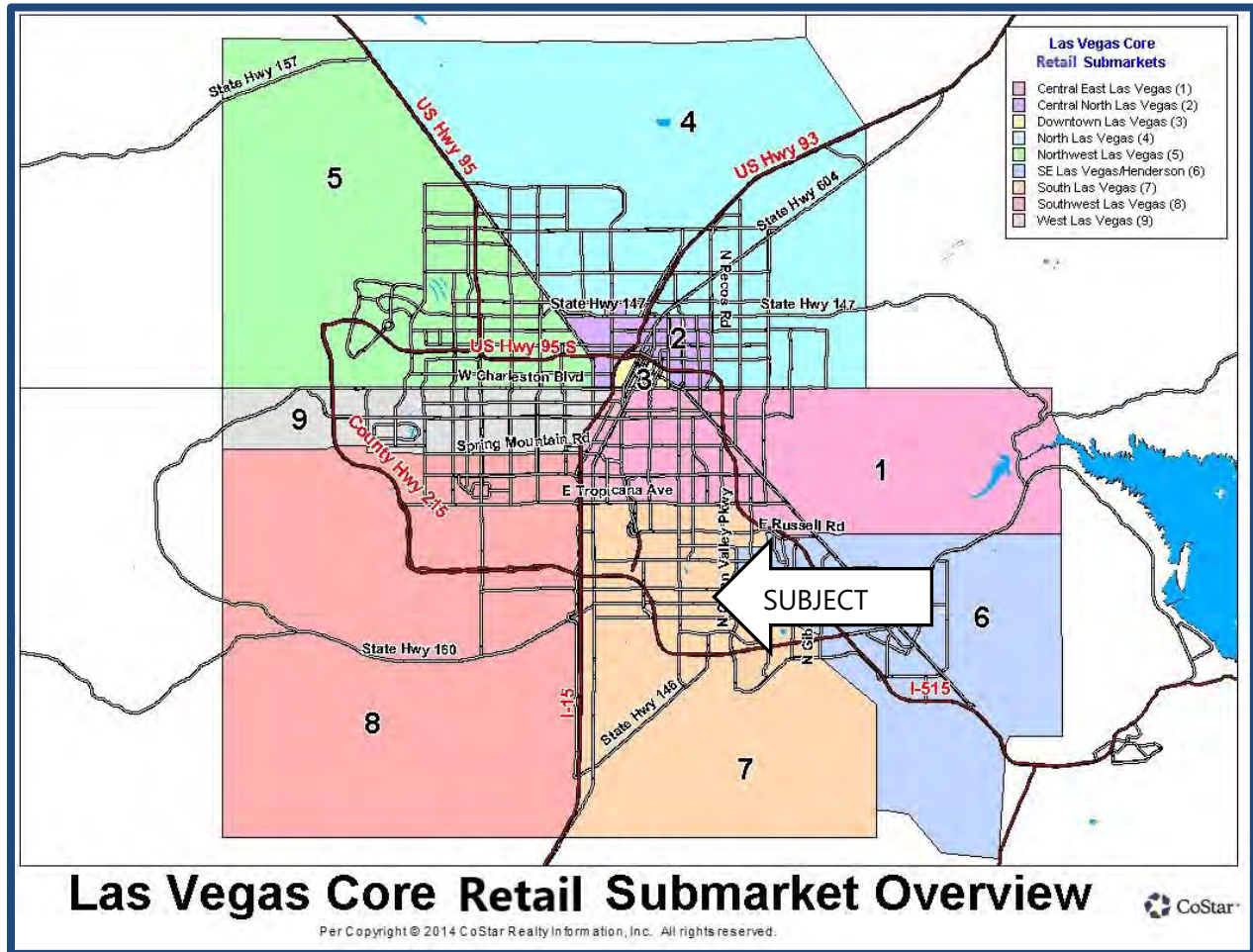


Source: CoStar COMPS®

Cap rates have been lower in 2016, averaging 7.06% compared to the same period in 2015 when they averaged 7.20%. One of the largest transactions that has occurred within the last four quarters in the Las Vegas market is the sale of Shops at Crystals in Las Vegas. This 324,000 square foot retail center sold for \$1,100,000,000, or \$3,395.06 per square foot. The property sold on 4/15/2016, at a 4.09% cap rate.

In analyzing metropolitan areas, CoStar has developed geographic designations to help group properties together, called Markets, Submarket Clusters and Submarkets. Markets are equivalent of metropolitan areas, or areas containing a large population nucleus, that together with adjacent communities have a high degree of economic and social integration. Markets are then divided into Submarket Clusters, which are core areas within a metropolitan area that are known to be competitive with each other in terms of attracting and keeping tenants. CoStar has delineated nine submarkets for the Las Vegas Valley. A map illustrating the submarkets is on the following page.

RETAIL DISTRICT MAP



- 1 Central East Las Vegas
- 2 Central North Las Vegas
- 3 Downtown Las Vegas
- 4 North Las Vegas
- 5 Northwest Las Vegas
- 6 Southeast Las Vegas/Henderson
- 7 South Las Vegas
- 8 Southwest Las Vegas
- 9 West Las Vegas

Subject Submarket Retail Supply and Demand

The subject neighborhood is within the South Las Vegas Retail submarket (District 7). According to the *Second Quarter 2016 Retail Report* prepared by CoStar Group, this submarket contains 15,553,976 square feet of retail space contained in 875 buildings, representing 14.1% of the valley's supply. The historical figures for this district are as follows:

RETAIL SUBMARKET DATA—SOUTH LAS VEGAS

| Period | Existing Inventory | | Vacancy | | Net Absorption | Delivered Inventory | | UC Inventory | | Quoted Rates |
|---------|--------------------|------------|-----------|-----------|----------------|---------------------|-----------|--------------|-----------|--------------|
| | # Bldgs | Total RBA | Vacant SF | Vacancy % | | # Bldgs | Total RBA | # Bldgs | Total RBA | |
| 2016 2q | 875 | 15,553,976 | 1,694,310 | 10.9% | 94,434 | 0 | 0 | 3 | 47,379 | \$16.87 |
| 2016 1q | 875 | 15,553,976 | 1,788,744 | 11.5% | 41,839 | 1 | 4,050 | 2 | 34,379 | \$17.42 |
| 2015 4q | 874 | 15,549,926 | 1,826,533 | 11.7% | (15,835) | 0 | 0 | 1 | 4,050 | \$16.94 |
| 2015 3q | 874 | 15,549,926 | 1,810,698 | 11.6% | 43,930 | 0 | 0 | 0 | 0 | \$17.04 |
| 2015 2q | 874 | 15,549,926 | 1,854,628 | 11.9% | (86,752) | 1 | 6,800 | 0 | 0 | \$16.94 |
| 2015 1q | 873 | 15,543,126 | 1,761,076 | 11.3% | (53,620) | 0 | 0 | 1 | 6,800 | \$16.42 |
| 2014 4q | 873 | 15,543,126 | 1,707,456 | 11.0% | 325,556 | 5 | 278,441 | 0 | 0 | \$16.17 |
| 2014 3q | 868 | 15,264,685 | 1,754,571 | 11.5% | 59,320 | 0 | 0 | 5 | 278,441 | \$15.78 |
| 2014 2q | 868 | 15,264,685 | 1,813,891 | 11.9% | (42,372) | 0 | 0 | 5 | 278,441 | \$16.05 |
| 2014 1q | 868 | 15,264,685 | 1,771,519 | 11.6% | 44,391 | 0 | 0 | 2 | 221,000 | \$15.85 |
| 2013 4q | 868 | 15,264,685 | 1,815,910 | 11.9% | 64,353 | 2 | 9,449 | 1 | 50,000 | \$15.64 |
| 2013 3q | 866 | 15,255,236 | 1,870,814 | 12.3% | 114,776 | 1 | 8,838 | 2 | 9,449 | \$15.59 |
| 2013 2q | 865 | 15,246,398 | 1,976,752 | 13.0% | 57,465 | 3 | 20,906 | 3 | 18,287 | \$16.40 |
| 2013 1q | 862 | 15,225,492 | 2,013,311 | 13.2% | 54,261 | 1 | 8,000 | 4 | 29,744 | \$16.55 |
| 2012 4q | 861 | 15,217,492 | 2,059,572 | 13.5% | 104,489 | 1 | 1,146 | 5 | 37,744 | \$16.64 |
| 2012 3q | 860 | 15,216,346 | 2,162,915 | 14.2% | 43,006 | 1 | 6,643 | 4 | 21,895 | \$17.06 |

Source: CoStar Property®

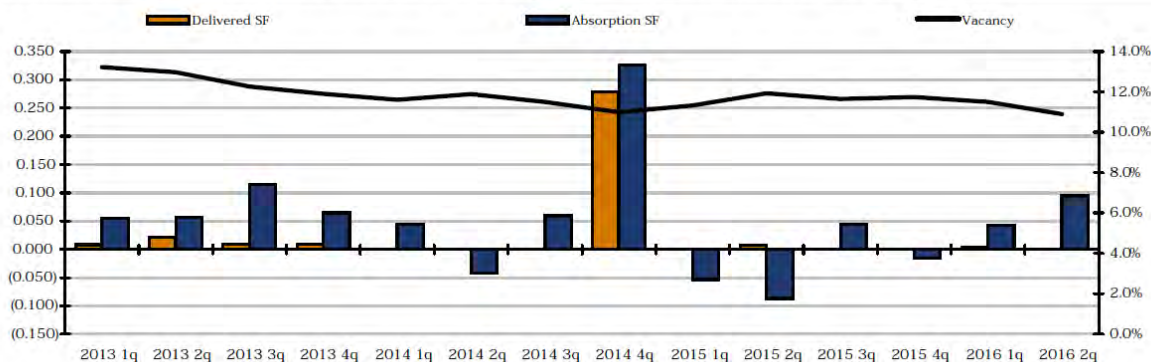
As shown above, the vacancy rate for retail space in the South Las Vegas submarket was 10.9%, which is the second highest vacancy rate in the entire Las Vegas Valley, which is at 8.7%. Vacancy has decreased since the fourth quarter 2015 at 11.7%.

Three new buildings under construction to the market included Town Crossroads containing 20,000 square feet which is 0% preleased and scheduled to be delivered third quarter 2016. Second building is located at 2990 Bicentennial Parkway containing 14,379 square feet which is 100% preleased and set to be delivered in the second quarter 2016. Third building is located at SWC Town Square Pkwy & Las Vegas Blvd. containing 13,000 square feet which is 100% preleased.

One building was delivered in the First Quarter 2016, located at 11271 S. Eastern Ave. containing 4,050 square feet and is 100% occupied.

Deliveries, Absorption & Vacancy

Historical Analysis, All Classes

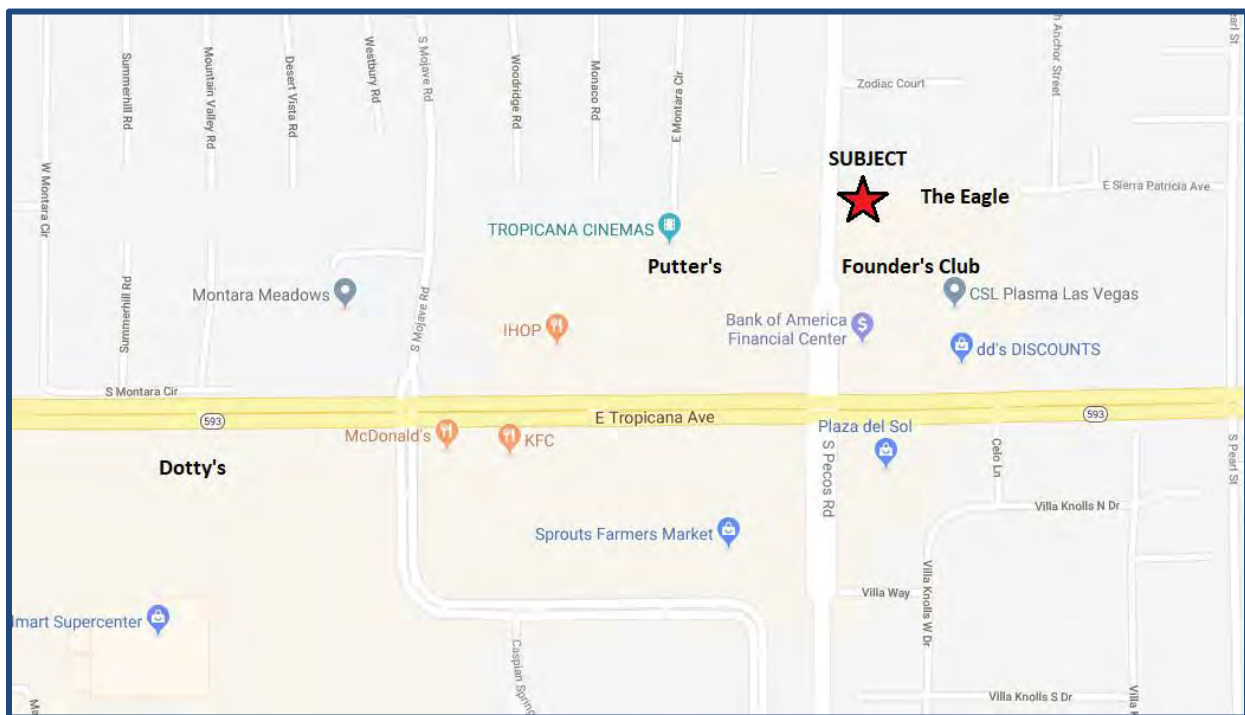


Source: CoStar Property®

The average lease rate in the submarket is \$1.41 per square foot per month (\$16.87 per square foot per year) based on triple net rents. This represents a 2.8% increase over the previous quarter. The area has the third highest rents when compared to the entire Las Vegas Valley, which has an overall average of \$1.35 per square foot per month (\$16.14 per square foot per year).

Location of Competition

County regulations require taverns be located no less than 1,500 feet apart. The subject is located in an older area where competition is immense. In fact, there are two other taverns within the subject's complex and another across the street. A map showing the taverns in the subject's immediate area is below.



Highest and Best Use

The Highest and Best Use of a property is the use that is legally permissible, physically possible, and financially feasible which results in the highest value. An opinion of the highest and best use results from consideration of the criteria noted above under the market conditions or likely conditions as of the effective date of value. Determination of highest and best use results from the judgment and analytical skills of the appraiser. It represents an opinion, not a fact. In appraisal practice, the concept of highest and best use represents the premise upon which value is based.

Analysis of Highest and Best Use As If Vacant

The primary determinants of the highest and best use of the property as if vacant are the issues of (1) Legal permissibility, (2) Physical possibility, (3) Financial feasibility, and (4) Maximum productivity.

Legally Permissible

The subject site is zoned C-2, General Commercial which controls the general nature of permissible uses but is appropriate for the location and physical elements of the subject property, providing for a consistency of use with the general neighborhood. The location of the subject property is appropriate for the uses allowed, as noted previously, and a change in zoning is unlikely. There are no known easements, encroachments, covenants or other use restrictions that would unduly limit or impede development.

Physically Possible

The physical attributes allow for a number of potential uses. Elements such as size, shape, availability of utilities, known hazards (flood, environmental, etc.), and other potential influences are described in the Site Description and have been considered. There are no items of a physical nature that would materially limit appropriate and likely development.

Financially Feasible

The probable use of the site for retail development conforms to the pattern of land use in the market area. A review of published yield, rental and occupancy rates suggest that there is a slight oversupply and demand may be insufficient to support construction costs and ensure timely absorption of additional inventory in this market. Therefore, near-term speculative development of the subject site is marginally financially feasible.

Maximally Productive

Among the financially feasible uses, the use that results in the highest value (the maximally productive use) is the highest and best use. Considering these factors, the maximally productive use as though vacant is for development with retail use once demand warrants and rental rates can support new construction.

Conclusion of Highest and Best Use As If Vacant

The conclusion of the highest and best use as if vacant is for development with retail use once demand warrants and rental rates can support new construction.

Analysis of Highest and Best Use as Improved

In determining the highest and best use of the property as improved, the focus is on three possibilities for the property: (1) continuation of the existing use, (2) modification of the existing use, or (3) demolition and redevelopment of the land.

Retaining the improvements as they exist meets the tests for physical possibility, legal permissibility and financial feasibility. The improvements are in average condition and any alternative use of the existing improvements is unlikely to be economically feasible. The market value of the property as improved exceeds the combination of vacant site value plus cost of demolition of the improvements. Therefore demolition and redevelopment of the site is not maximally productive.

Conclusion of Highest and Best Use As Improved

The highest and best use of the subject property, as improved, is continued tavern use.

Market Rent Analysis

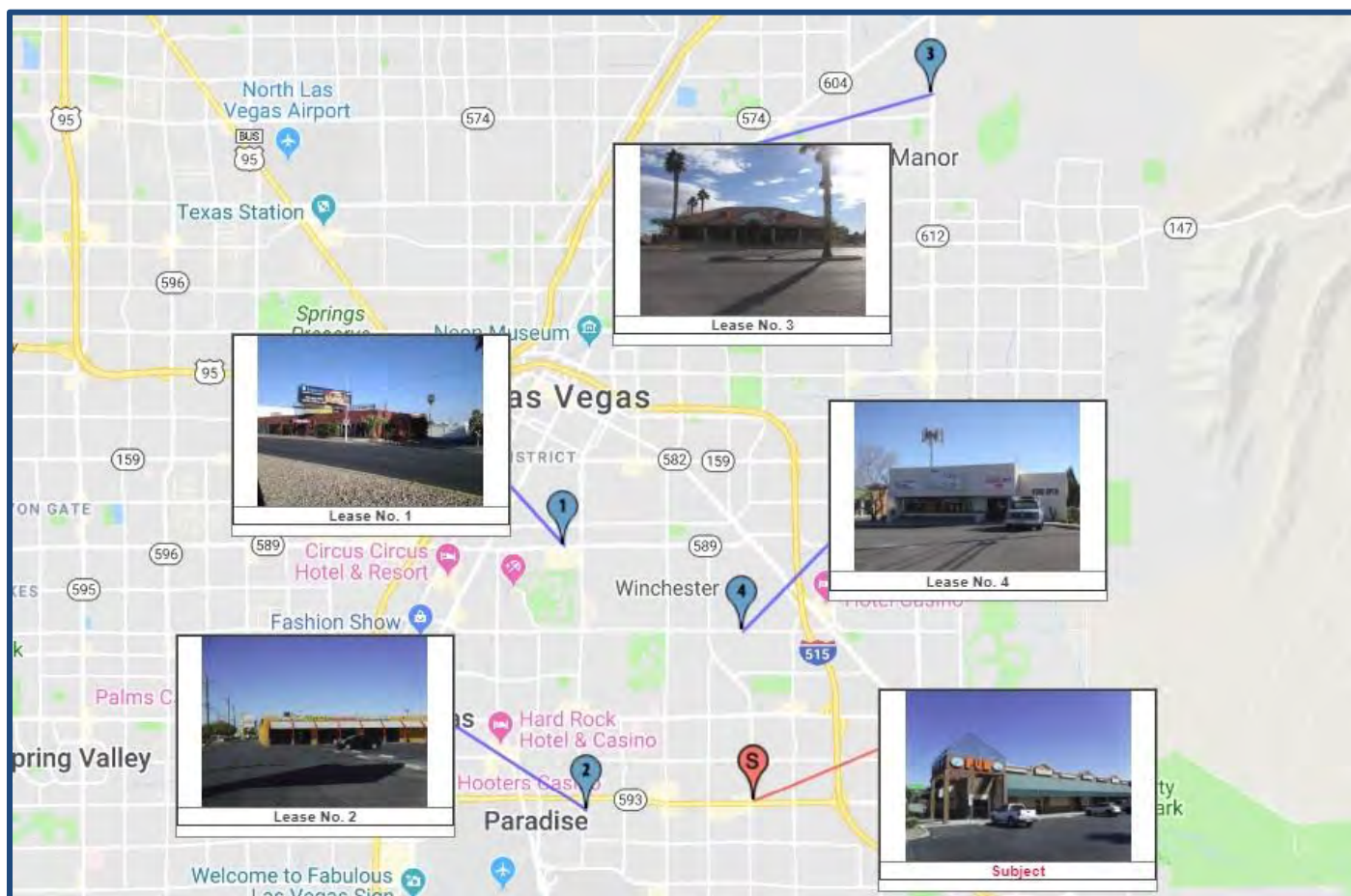
Estimate of Market Rent

To develop an opinion of market rent, we surveyed representatives of comparable and competitive properties in the local market area, focusing on those offering the greatest similarity in terms of location, size and market appeal. We used four rent comparables to derive an appropriate market rent for the subject property. Following is a table summarizing each rent comparable and a map illustrating the location of each comparable in relation to the subject. Details of each comparable follow the location map.

Rent Comparable Summary

| Comp. No. | Date of Survey / Lease | Comp. Type | Property Name | Location | Year Built | Property Occupancy | Rental Rate / SF | Lease Structure |
|-----------|------------------------|------------|-------------------------|--|------------|--------------------|------------------|-----------------|
| 1 | March-13 | Lease | Bar/Tavern on Sahara | 1000 East Sahara Avenue Las Vegas, Nevada | 1970 | 100.0% | \$12.00 | NNN |
| 2 | March-14 | Lease | Camelot Shopping Center | 4972-5006 S. Maryland Pkwy Las Vegas, Nevada | 1974 | 74.0% | \$14.40 | NNN |
| 3 | November-15 | Lease | Three Stars Bar | 3435 N Nellis Boulevard Las Vegas, Nevada | 1989 | 100.0% | \$12.00 | NNN |
| 4 | May-16 | Lease | Elphino Dive & Dine | 3246 E. Desert Inn Road Las Vegas, Nevada | 1979 | 100.0% | \$9.60 | NNN |

RENT COMPARABLE LOCATION MAP



RETAIL IMPROVED RENT COMPARABLE 1



Location Data

| | | | |
|---------------------|-------------------------|---------------------------|------------------------|
| Address | 1000 East Sahara Avenue | Tax ID/APN | 162-03-801-116 |
| City, County | Las Vegas, Clark County | Latitude/Longitude | 36.144498, -115.140877 |
| State/Zip | Nevada 89104 | | |

Verification

| | | | |
|-----------------------|---|---------------------|----------------|
| Confirmed With | Gidget Graham, Crown Point Realty, 702-501-5200 | Confirmed By | Matthew Lubawy |
|-----------------------|---|---------------------|----------------|

Lease Data

| | | | |
|-----------------------|-------------------|-----------------------|------------------|
| Leased Area | 3,000 sf | Initial Rate | \$12.00/sf/year |
| Owner | JG Sahara, LLC | | \$3,000.00/month |
| Lessee | The Sahara Lounge | | \$36,000/year |
| Lease Commence | March 1, 2013 | Effective Rate | \$11.44/sf/year |
| Lease Term | 60 months | Tenancy | N/A |
| Lease Type | NNN | Occupancy Type | N/A |
| | | Occupancy | 100% |

Land Data

| | | | |
|------------------|-----------------------|---------------|---------|
| Land Area | 0.80 acres, 34,848 sf | Access | Average |
|------------------|-----------------------|---------------|---------|

Improvement Data

| | | | |
|----------------------------|----------|-----------------------|------------------|
| Gross Building Area | 9,000 sf | Year Built | 1970 |
| Net Rentable Area | 9,000 sf | Year Renovated | Unknown |
| Construction Type | Brick | Condition | Good |
| No. of Stories | 1 | Effective Age | 30 years |
| Elevator | 0 | Parking Ratio | Assumed adequate |
| Fire Sprinklered | Unknown | | |

Property Description

This is a lease of a tavern/ bar located along Sahara Avenue, west of Maryland Parkway.

Remarks

According to the listing broker, this property had been on the market since November 2012. The current tenant, who was not disclosed, signed a lease to occupy the property as of March 1, 2013. The tenant received one month free rent, 3% rent escalations, and no tenant improvements on a 5-year lease.

RETAIL IMPROVED RENT COMPARABLE 2



Location Data

| | | | |
|---------------------|----------------------------|---------------------------|------------------------|
| Address | 4972-5006 S. Maryland Pkwy | Tax ID/APN | 162-26-101-011 |
| City, County | Las Vegas, Clark County | Latitude/Longitude | 36.099142, -115.136192 |
| State/Zip | Nevada 89119 | | |

Verification

| | | | |
|-----------------------|--------|---------------------|---------------|
| Confirmed With | CoStar | Confirmed By | Monique Beban |
|-----------------------|--------|---------------------|---------------|

Lease Data

| | | | |
|-----------------------|------------------------------|-----------------------|------------------|
| Leased Area | 3,600 sf | Initial Rate | \$14.40/sf/year |
| Owner | Camelot Shopping Center, LLC | | \$4,320.00/month |
| Lessee | Lucky's Gaming & Spirits | | \$51,840/year |
| Lease Commence | May 1, 2014 | Effective Rate | \$14.40/sf/year |
| Lease Term | 60 months | Tenancy | Multi-Tenant |
| Lease Type | NNN | Occupancy Type | Local tenants |
| | | Occupancy | 74% |

Land Data

| | | | |
|------------------|------------------------|---------------|------|
| Land Area | 4.42 acres, 192,535 sf | Access | Good |
|------------------|------------------------|---------------|------|

Improvement Data

| | | | |
|----------------------------|-----------|-----------------------|--------------------------|
| Gross Building Area | 62,300 sf | Year Built | 1974 |
| Net Rentable Area | 62,300 sf | Year Renovated | None known |
| Construction Type | Masonry | Condition | Average |
| No. of Stories | 1 | Effective Age | 30 years |
| Elevator | 0 | Parking Ratio | 124, Open, asphalt-paved |
| Fire Sprinklered | Unknown | | |

Property Description

This unanchored retail center is located along the east side of Maryland Parkway, south of Tropicana Avenue.

Remarks

Attempts to confirm this lease with David Burns of Commercial Specialists (702-364-0909 x. 13) were unsuccessful. CoStar reports the lease is for five years. We have assumed annual increases of 3% and no free rent. This space is an end cap unit with direct frontage along Maryland Parkway.

RETAIL IMPROVED RENT COMPARABLE 3



Location Data

| | | | |
|---------------------|-------------------------|---------------------------|------------------------|
| Address | 3435 N Nellis Boulevard | Tax ID/APN | 140-08-702-004 |
| City, County | Las Vegas, Clark County | Latitude/Longitude | 36.222133, -115.062587 |
| State/Zip | Nevada 89115 | | |

Verification

| | | | |
|-----------------------|----------------------------------|---------------------|---------------|
| Confirmed With | Mike Yamin, Owner (310-858-0130) | Confirmed By | Monique Beban |
|-----------------------|----------------------------------|---------------------|---------------|

Lease Data

| | | | |
|-----------------------|------------------|-----------------------|------------------|
| Leased Area | 5,000 sf | Initial Rate | \$12.00/sf/year |
| Owner | Mansour Yamin | | \$5,000.00/month |
| Lessee | Three Stars Bar | | \$60,000/year |
| Lease Commence | November 1, 2015 | Effective Rate | \$12.00/sf/year |
| Lease Term | 60 months | Tenancy | Single-Tenant |
| Lease Type | NNN | Occupancy Type | Local tenant |
| | | Occupancy | 100% |

Land Data

| | | | |
|------------------|------------------------|---------------|---------|
| Land Area | 3.70 acres, 161,172 sf | Access | Average |
|------------------|------------------------|---------------|---------|

Improvement Data

| | | | |
|----------------------------|------------------------|-----------------------|-------------------------------|
| Gross Building Area | 5,000 sf | Year Built | 1989 |
| Net Rentable Area | 5,000 sf | Year Renovated | None known |
| Construction Type | Stucco over wood frame | Condition | Average |
| No. of Stories | 1 | Effective Age | 20 years |
| Elevator | 0 | Parking Ratio | 35, Open asphalt paved shared |
| Fire Sprinklered | Wet system | | |

Property Description

This building is located on the west side of Nellis Boulevard near the southern end of the Nellis Air Force Base runway in an AE-75 noise zone.

Remarks

This lease is for five years with 3% annual increases. The initial lease rate was \$12.00/SF. The space was leased in "as is" condition with no TI allowances; however, there were 7 months of free rent given in lieu of the TI allowance.

RETAIL IMPROVED RENT COMPARABLE 4



Location Data

| | | | |
|---------------------|-------------------------|---------------------------|------------------------|
| Address | 3246 E. Desert Inn Road | Tax ID/APN | 162-12-803-009 |
| City, County | Las Vegas, Clark County | Latitude/Longitude | 36.129940, -115.102708 |
| State/Zip | Nevada 89121 | | |

Verification

| | | | |
|-----------------------|---|---------------------|---------------|
| Confirmed With | Jordan Wattenbarger, BHHS Nevada Properties (702-734-5555) | Confirmed By | Monique Beban |
|-----------------------|---|---------------------|---------------|

Lease Data

| | | | |
|-----------------------|-------------------------|-----------------------|------------------|
| Leased Area | 2,944 sf | Initial Rate | \$9.60/sf/year |
| Owner | Desert Inn Square, Inc. | | \$2,355.20/month |
| Lessee | The Lucky Liquor | | \$28,262/year |
| Lease Commence | September 1, 2016 | Effective Rate | \$10.80/sf/year |
| Lease Term | 60 months | Tenancy | Single-Tenant |
| Lease Type | NNN | Occupancy Type | Local tenant |
| | | Occupancy | 100% |

Land Data

| | | | |
|------------------|----------------------|---------------|---------|
| Land Area | 0.22 acres, 9,632 sf | Access | Average |
|------------------|----------------------|---------------|---------|

Improvement Data

| | | | |
|----------------------------|------------------------|-----------------------|-------------------------|
| Gross Building Area | 2,944 sf | Year Built | 1979 |
| Net Rentable Area | 2,944 sf | Year Renovated | 2016, Interior |
| Construction Type | Stucco over wood frame | Condition | Average |
| No. of Stories | 1 | Effective Age | 15 years |
| Elevator | 0 | Parking Ratio | 30, Open, asphalt-paved |
| Fire Sprinklered | Unknown | | |

Property Description

This is the former Bottoms Up Sports Bar & Grill located on the north side of Desert Inn Road within the Desert Inn Square. This shopping center is under new ownership as of August 2016 and the owner completely renovated the interior of the building including new air conditioners and condensers.

Remarks

This lease is for 5 years with two, 5-year options to extend. The initial lease rate is \$9.60/SF/Month, NNN and the tenant was granted three months fixturing period plus three months free rent. The annual rent increases are \$0.10/SF, which is higher than typical and after accounting for the free rent and higher bumps, an effective rent of \$10.80/SF is realized. Although this is a former tavern, the tenant did not secure a gaming license. In addition, the landlord was anxious to get this space leased, and rented the space below market. The space does not have a functioning kitchen and is instead serviced by the tenant's food truck business and therefore is limited to evening business hours as the food truck is traveling during the day.

Market Rent Analysis

When necessary, adjustments were made for differences in the various elements of comparison, including lease structure, market conditions, location, size and other relevant factors. If the element in comparison is considered superior to that of the subject, we applied a negative adjustment. Conversely, a positive adjustment is applied if inferior. A summary of the elements of comparison follows.

Transaction Adjustments

Transaction adjustments include: expense structure, concessions, tenant improvement allowances and conditions of lease. These items, which are applied prior to the market conditions and property adjustments, are discussed as follows:

Expense Structure

The market rent estimate is based on a triple net lease structure. As the rent comparables exhibited rental rates negotiated on the same basis, no expense structure adjustments were warranted.

Rental Concessions

Rental 1 was given one month of free rent resulting in a downward adjustment of \$0.56 per square foot.

Rental 2 did not receive any free rent and no adjustment was warranted.

Rental 3 was given seven months of free rent in lieu of a TI allowance. Therefore, no adjustment was warranted.

Rental 4 was given a low introductory rate and an upward adjustment of \$1.20 per square foot was warranted.

Tenant Improvement Allowances

The rent comparables do not include any leases with over-base-level tenant improvement allowances. Therefore, no tenant improvement allowance adjustments were required.

Conditions of Lease

No atypical conditions of lease were noted and no adjustment was warranted.

Market Conditions Adjustment

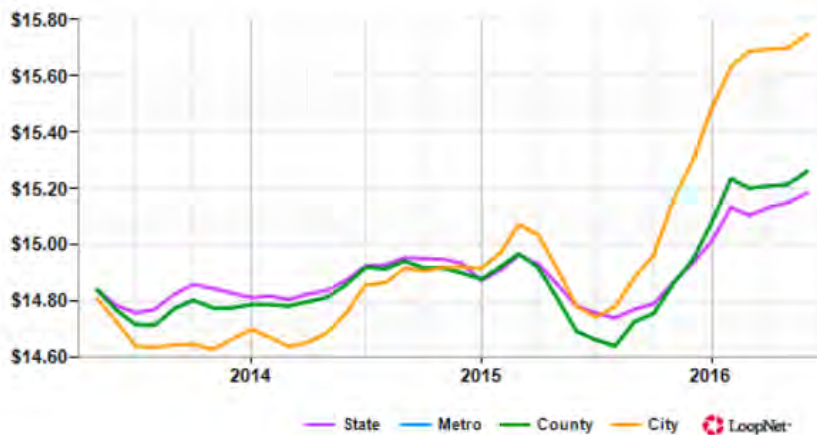
Market conditions change over time because of inflation, deflation, fluctuations in supply and demand, or other factors. Changing market conditions may create a need for adjustment to comparable rent transactions consummated during periods of dissimilar market conditions.

The lease transactions occurred between March 2013 and May 2016. Although rent rates across the valley as a whole have been increasing during this time period, as shown in the graph on the following page, lease rates for the subject's specialty use as a tavern have remained relatively flat, as evidenced by the comparables. Therefore, we have not made a market conditions adjustment.

Retail Property Asking Rent - Lease Trends

[Embed](#)

Asking Rent Retail for Lease Las Vegas, NV (\$/SF/Year)



The average asking rental rate per sq ft/year for Retail Commercial properties in Las Vegas, NV as of Jun 16 was \$15.75. This represents an increase of 0.4% compared to the prior 3 months, with an increase of +6.5% year-over-year. County-wide, average rental rates in Las Vegas are +0.4% higher at \$15.26 per sq ft/year for Retail Commercial properties currently for lease.

Property Adjustments

Property Adjustments are usually expressed quantitatively as percentages or dollar amounts that reflect differences in rental rates attributable to the various characteristics of the property. In some instances, however, qualitative adjustments are used. Property adjustments are based on locational and physical characteristics and are made after the application of transaction and market conditions adjustments.

Our reasoning for the adjustments made, which were based on our market research, best judgement, and experience in the appraisal of similar properties, is discussed below:

Location

Location adjustments may be required when the locational characteristics of a comparable are different from those of the subject. These characteristics can include general neighborhood characteristics, freeway accessibility, street exposure, corner versus interior lot location, neighboring properties, view amenities, and other factors.

The subject property has average access and average visibility. The subject unit has an end cap location along Pecos Road, which is less travelled than Tropicana Avenue. In addition, the subject's tenant does not have signage on the pylon sign fronting on Tropicana Avenue.

Rental 1 is located along Sahara Avenue in an area with inferior demographics and an upward adjustment of 10% was warranted.

Rental 2 has an end cap location along Maryland Parkway that is similar to the subject and no adjustment was warranted.

Rental 3 is a freestanding tavern located along Lamb Boulevard in close proximity to Nellis Air Force Base in an area with inferior demographics and an upward adjustment of 10.0% was warranted.

Rental 4 is a freestanding tavern located along Desert Inn Road, east of Pecos Road in an area of less commercial development and an upward adjustment of 10.0% was warranted.

Tenant Space Size

The size adjustment addresses variance in the rentable area of the comparables and that of the subject, as larger lease space typically commands a lower rental rate per unit than does a smaller space. This inverse relationship is due, in part, to the principle of "economies of scale."

The subject suite is 4,200 square feet while the comparables range from 2,944 to 5,000 square feet bracketing the subject size and no adjustment was warranted.

Age/Condition

The subject property was built in 1975 and, as of the date of value, was in average condition, with an effective age of 30 years. The subject property and the comparables are generally in similar condition but feature effective ages from 15 to 30 years. We have adjusted the comparables based on 1% per year difference in effective age from the subject.

Construction Quality

The subject property consists of average quality frame and stucco construction. The comparables are of a similar quality of construction with no adjustment warranted.

Design/Functional Utility

Rentals 1 through 3 have typical tavern build-out complete with kitchen facilities and no adjustment was warranted.

Rental 4 did not have an on-site kitchen and food service was provided by the tenant's food truck, thus limiting business hours to the evening and an upward adjustment of 20.0% was warranted.

Summary of Adjustments

Presented below is a summary of the adjustments made to the rent comparables. As noted earlier, these quantitative adjustments were based on our market research, best judgment, and experience in the appraisal of similar properties.

RENT COMPARABLE ADJUSTMENT GRID

| | | Rental # 1 | Rental # 2 | Rental # 3 | Rental # 4 |
|---|--|--------------------------------|-----------------------------------|-------------------------------------|-------------------------------------|
| Comparable ID | | 4054 | 9597 | 8025 | 8314 |
| Date of Value & Survey/Lease Date | September-16 | March-13 | March-14 | November-15 | May-16 |
| Property Name | Blue Dog's Pub | Bar/Tavern on Sahara | Camelot Shopping Center | Three Stars Bar | Eliphino Dive & Dine |
| Net Rentable Area | 4,200 sf | 9,000 sf | 62,300 sf | 5,000 sf | 2,944 sf |
| Land Area (acres) | 7.890 | 0.8 | 4.42 | 3.7 | 0.22112 |
| Annual Rental Rate | | \$12.00 | \$14.40 | \$12.00 | \$9.60 |
| Transactional Adjustments | | | | | |
| Expense Structure | <i>Triple Net</i> | <i>NNN</i> | <i>NNN</i> | <i>NNN</i> | <i>NNN</i> |
| Rent Concessions | | <i>1 month of free rent</i> | <i>None</i> | <i>None</i> | <i>Introductory Rate</i> |
| Adjustment | | -\$0.56 | \$0.00 | \$0.00 | \$1.20 |
| Tenant Imp. Allowance - Over Base Amount | | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Adjustment | | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Net Lease Structure Adjustment | | -\$0.56 | \$0.00 | \$0.00 | \$1.20 |
| Effective Rental Rate | | \$11.44 | \$14.40 | \$12.00 | \$10.80 |
| Conditions of Lease | | | | | |
| Adjustment | | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Adjusted Rental Rate | | \$11.44 | \$14.40 | \$12.00 | \$10.80 |
| Market Conditions Adjustments | | | | | |
| Elapsed Time from Date of Value | | <i>3.51 years</i> | <i>2.51 years</i> | <i>0.84 years</i> | <i>0.34 years</i> |
| Market Trend Through | September-16 | - | - | - | - |
| Analyzed Rental Rate | | \$11.44 | \$14.40 | \$12.00 | \$10.80 |
| Property Adjustments | | | | | |
| Location | <i>3430 E Tropicana Avenue, Suites 27-29</i> | <i>1000 East Sahara Avenue</i> | <i>4972-5006 S. Maryland Pkwy</i> | <i>3435 N Nellis Boulevard</i> | <i>3246 E. Desert Inn Road</i> |
| | <i>Las Vegas, Nevada</i> | <i>Las Vegas, Nevada</i> | <i>Las Vegas, Nevada</i> | <i>Las Vegas, Nevada</i> | <i>Las Vegas, Nevada</i> |
| Adjustment | | 10.0% | - | 10.0% | 10.0% |
| Tenant Space Size | <i>4,200 sf</i> | <i>3,000 sf</i> | <i>3,600 sf</i> | <i>5,000 sf</i> | <i>2,944 sf</i> |
| Adjustment | | - | - | - | - |
| Age/Condition | Year Built | <i>1975</i> | <i>1970</i> | <i>1974</i> | <i>1979</i> |
| | Condition | <i>Average</i> | <i>Good</i> | <i>Average</i> | <i>Average</i> |
| | Effective Age | <i>30 years</i> | <i>30 years</i> | <i>20 years</i> | <i>15 years</i> |
| Adjustment | | - | - | -10.0% | -15.0% |
| Construction Quality | <i>Average Class D - Wood Frame</i> | <i>Average Class C - Brick</i> | <i>Average Class C - Masonry</i> | <i>Average Class D - Wood Frame</i> | <i>Average Class D - Wood Frame</i> |
| Adjustment | | - | - | - | - |
| Design/Functional Utility | | | | | <i>No Kitchen</i> |
| Adjustment | | - | - | - | 20.0% |
| Net Physical Adjustment | | 10.0% | 0.0% | 0.0% | 15.0% |
| Adjusted Annual Rental Rate | | \$12.58 | \$14.40 | \$12.00 | \$12.42 |

Conclusions

From the market data available, we used four rent comparables, which were adjusted based on pertinent elements of comparison. The following table summarizes the unadjusted and adjusted rental rates:

Rent Comparable Statistics

| Metric | Unadjusted | Analyzed | Adjusted |
|---------------------|------------|----------|----------|
| Minimum Rental Rate | \$9.60 | \$10.80 | \$11.44 |
| Maximum Rental Rate | \$14.40 | \$14.40 | \$14.40 |
| Median Rental Rate | \$12.00 | \$11.72 | \$12.21 |
| Mean Rental Rate | \$12.00 | \$12.16 | \$12.57 |

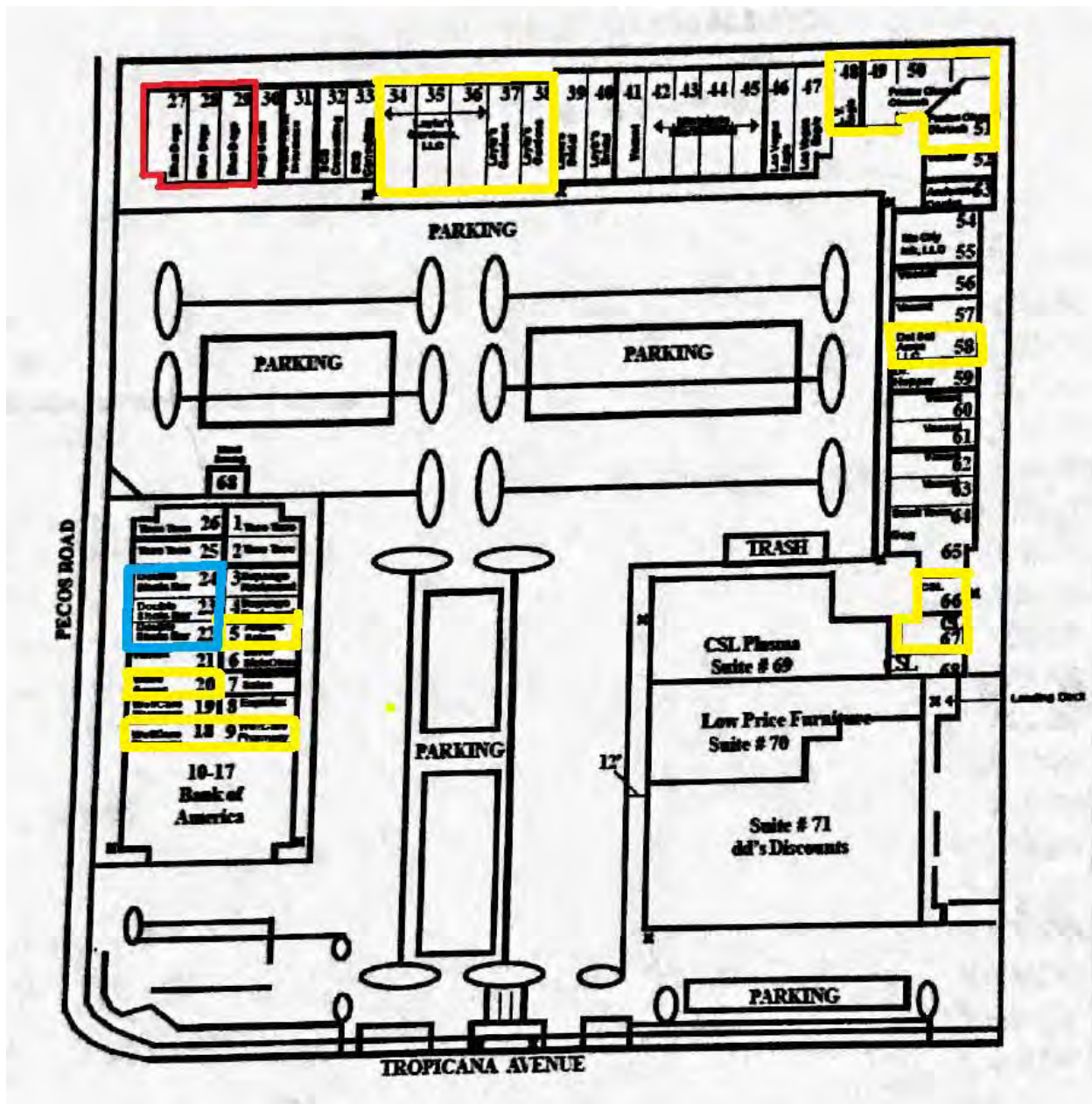
After adjustments the comparables provide a rental rate range for the subject of \$11.44 to \$14.40 per square foot per year with a median of \$12.21 and a mean of \$12.57 per square foot. Rental 2 at the high end of the range did not require any adjustments and is therefore the most similar to the subject. It has an end cap location within a shopping center just off of Tropicana Avenue. However, we were not able to confirm the details of the lease such as free rent or TI allowance and less weight is placed on this comparable.

We also took into consideration a telephone conversation had with a tavern owner in the subject's neighborhood who is familiar with the area and the subject's location. The tavern owner was of the opinion that market rent for the subject would fall into the range of \$1.00 to \$1.25 per square foot per month, or \$12.00 to \$15.00 per square foot per year. This owner also opined that it is not easy to relocate a tavern due to gaming licensing and the limited number of places available to move. Therefore, the tavern operators are at mercy of the landlords. This appears to be the case for Lola's tavern located in the shopping center at the northeast corner of Tropicana Avenue and Eastern Avenue. This in-line space had a lease renewal in April 2016 at a rate of \$2.11 per square foot per month (\$25.32 per square foot per year) compared to the average of the remaining in-line space within the center of \$1.18 per square foot per month (\$14.16 per square foot per year). Our definition of market rent assumes that there is no duress from either the landlord or tenant; therefore, leases signed under duress are not considered to be market transactions.

The shopping center mentioned above at the northeast corner of Tropicana Avenue and Eastern Avenue also provides a guideline for comparing in-line space with end cap or pad buildings with direct arterial frontage. We reviewed the rent roll for this project which reveals that the average in-line space is \$1.18 per square foot (excluding anchor and junior anchor space) while the pad building space has an average rental rate of \$1.35 per square foot. This indicates a premium of 15%.

We took into consideration the leasing activity within the subject's shopping center for the two years preceding the effective date of value along with asking rents from a Property Line survey for the center in July 2016 which indicated 9 spaces available with asking rents of \$0.60 to \$1.10 per square foot per month (\$7.20 to \$13.20 per square foot per year). The leases on the following page were reported in CoStar, and although we were not able to confirm these leases, CoStar is deemed a reliable source. A Site Plan showing the locations of the units within the center is included following the chart.

| Suite | Date | Size (Sq. Ft.) | Rent/SF/Month | Rent/SF/Year |
|--------|---------------|----------------|---------------|--------------|
| 34-38 | March 2014 | 7,398 | \$0.85 | \$10.20 |
| 49-51 | March 2014 | 3,978 | \$0.75 | \$9.00 |
| 58 | March 2014 | 1,133 | \$0.95 | \$11.40 |
| 9 & 18 | May 2015 | 2,700 | \$1.25 | \$15.00 |
| 66-67 | July 2015 | 2,555 | \$1.00 | \$12.00 |
| 5 | August 2015 | 800 | \$1.25 | \$15.00 |
| 20 | February 2016 | 750 | \$1.00 | \$12.00 |



Suite 34-38 is located just east of the subject suites with a rental rate of \$10.20 per square foot per year. This space is larger than the subject and an upward adjustment of 10% is required resulting in a rental rate of \$11.22 per square foot. This space is also in-line and requires a 15% upward adjustment to compare to the subject's end cap space. This results in an adjusted rental rate of \$12.90 per square foot per year.

Suite 49-51 is located in the rear corner of the in-line space which reduces visibility and a 15% upward adjustment is warranted, resulting in a rental rate of \$10.35 per square foot per year. This suite is similar in size to the subject. An additional 15% upward adjustment is also warranted for comparison to the subject's end cap location which equates to \$11.90 per square foot per year.

Suites 9 & 18 front directly on Pecos Road, which is similar to an end-cap location, with a rental rate of \$15.00 per square foot. This space is smaller than the subject and a downward 10% adjustment is required resulting in a rental rate of \$13.50 per square foot.

Based on the above information, the leases within the subject shopping center provide a range for the subject suite between \$12.00 and \$13.50 per square foot per year.

Finally, the space outlined in blue in the above site plan was a vacant tavern as of the effective date of value (former Double Shots Bar). The business was marketed for sale by Andrea Braun with First Choice Business Brokers (702-241-1241) in 2016. The marketing brochure indicated the business was established in 2011 and the lease ends of June 2021, or a 10-year lease. The suite space was reported at 2,451 square feet with a base rental rate of \$3,685 per month indicating a monthly rental rate of \$1.50 per square foot (\$18.00 per square foot per year). We do not know the actual terms of the original lease; however, assuming a typical 3% annual adjustment, a rental rate of \$1.25 per square foot per month, or \$15.00 per square foot per year, is indicated. This amount falls in line with the leases within the subject center for the pad building fronting along Pecos Road, and would likely set the upper limit to rent due to its smaller size.

Therefore, based on the preceding analysis, a market based triple net rental rate near the middle of the range, or \$12.60 per square foot is estimated for the subject property.

The above rental rate equates to a total monthly rent for the subject of \$4,410, or \$52,920 per year starting as of the effective date of September 1, 2016. The rental rate is based on a 5-year lease, which is typical for a tavern, with 3% annual increases.

At the request of the client, we have provided the monthly and annual rental amount for the subject from the effective date through current date is as follows:

| Market Rent | | | | |
|----------------------|------------------------|-----------------------|---------------------|--------------------|
| Rental Period | Monthly Rate/SF | Annual Rate/SF | Monthly Rent | Annual Rent |
| 9/1/16 to 8/31/17 | \$1.05 | \$12.60 | \$4,410 | \$52,920 |
| 9/1/17 to 8/31/18 | \$1.08 | \$12.98 | \$4,542 | \$54,508 |
| 9/1/18 to 8/31/19 | \$1.11 | \$13.37 | \$4,679 | \$56,143 |

General Assumptions and Limiting Conditions

This appraisal is subject to the following limiting conditions:

1. The legal description – if furnished to us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Las Vegas | Reno will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory, or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Las Vegas | Reno is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.

9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.
10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.
11. The information, estimates and opinions, which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise that would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Las Vegas | Reno and Client. The Client shall not include partners, affiliates, or relatives of the party addressed herein. The appraiser assumes no obligation, liability or accountability to any third party.
15. Distribution of this report is at the sole discretion of the client, but third-parties not listed as an intended user on the face of the appraisal or the engagement letter may not rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Las Vegas | Reno.

17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
19. The flood maps are not site specific. We are not qualified to confirm the location of the subject property in relation to flood hazard areas based on the FEMA Flood Insurance Rate Maps or other surveying techniques. It is recommended that the client obtain a confirmation of the subject property's flood zone classification from a licensed surveyor.
20. If the appraisal is for mortgage loan purposes 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income and Expense Projection" are anticipated.
21. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
22. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated. Should the client have concerns in these areas, it is the client's responsibility to order the appropriate inspections. The appraiser does not have the skill or expertise to make such inspections and assumes no responsibility for these items.
23. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.

24. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
25. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire a greater level of measuring detail, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer). We reserve the right to use an alternative source of building size and amend the analysis, narrative and concluded values (at additional cost) should this alternative measurement source reflect or reveal substantial differences with the measurements used within the report.
26. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, we reserve the right to amend this appraisal (at additional cost) if substantial differences are discovered.
27. If only preliminary plans and specifications were available for use in the preparation of this appraisal, then this appraisal is subject to a review of the final plans and specifications when available (at additional cost) and we reserve the right to amend this appraisal if substantial differences are discovered.
28. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.

29. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
30. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

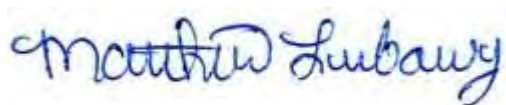
35. You and Valbridge Property Advisors | Las Vegas | Reno both agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Las Vegas | Reno and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury. In the event that the client, or any other party, makes a claim against Las Vegas | Reno or any of its employees in connections with or in any way relating to this assignment, the maximum damages recoverable by such claimant shall be the amount actually received by Valbridge Property Advisors | Las Vegas | Reno for this assignment, and under no circumstances shall any claim for consequential damages be made.
36. Valbridge Property Advisors | Las Vegas | Reno shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Las Vegas | Reno. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Las Vegas | Reno and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment. The client also agrees that in case of lawsuit arising from or in any way involving these appraisal services, client will hold Valbridge Property Advisors | Las Vegas | Reno harmless from and against any liability, loss, cost, or expense incurred or suffered by Valbridge Property Advisors | Las Vegas | Reno in such action, regardless of its outcome.
37. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Lubawy and Associates, Inc.. Neither Valbridge Property Advisors, Inc., nor any of its affiliates has been engaged to provide this report. Valbridge Property Advisors, Inc. does not provide valuation services, and has taken no part in the preparation of this report.
38. If any claim is filed against any of Valbridge Property Advisors, Inc., a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages, and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.

39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.
41. Any use of or reliance on the appraisal by any party regardless of whether the use or reliance is authorized or known by Appraiser, constitutes acceptance of, and is subject to, all appraisal statements, limiting conditions and assumptions stated in the appraisal report.
42. Unless the time frame is shorter under applicable law, any legal action or claim relating to the appraisal or Appraiser's services shall be filed in court (or in the applicable arbitration tribunal, if the parties to the dispute have executed an arbitration agreement) within (2) years from the date of the alleged acts or conduct. The time frame stated in this section shall not be extended by any delay in the discovery or accrual of the underlying claims, causes of actions or damages. The time frame stated in this section shall apply to all non-criminal claims or causes of action of any type.
43. Legal claims or causes of action relating to the appraisal are not transferable or assignable to a third party, except: (i) as the result of a merger, consolidation, sale or purchase of a legal entity, (ii) with regard to the collection of a bona fide existing debt for services but then only to the extent of the total compensation for the appraisal plus reasonable interest, or (iii) in the case of an appraisal performed in connection with an origination of a mortgage loan, as part of the transfer or sale of the mortgage before an event of default on the mortgage or note or its legal equivalent.

Certification – Matthew Lubawy, MAI, CVA

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The undersigned has not performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Matthew Lubawy did not personally inspect the subject property.
10. Monique Beban provided significant real property appraisal assistance to the person signing this certification by inspecting the subject property, researching and analyzing rent comparable data, and writing the report.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, the undersigned has completed the continuing education program for Designated Members of the Appraisal Institute.



Matthew Lubawy, MAI, CVA, CMEA
Senior Managing Director
Nevada License #A.0000044-CG
License Expires 04-30-2019

Addenda

Subject Photos

Glossary

Qualifications

- Monique Beban - Registered Intern
- Matthew Lubawy, MAI, CVA - Senior Managing Director

Information on Valbridge Property Advisors

Office Locations

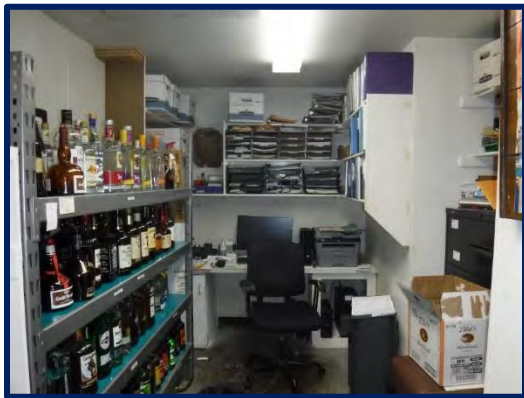
Subject Photographs



WOMEN'S RESTROOM



MEN'S RESTROOM



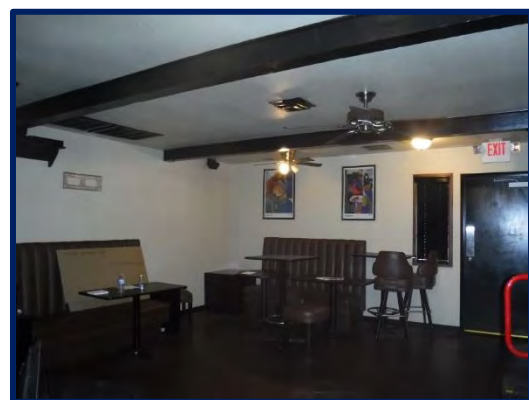
MANAGER'S (OWNER'S) OFFICE



KITCHEN



EMPLOYEE RESTROOM



DINING AREA NOT CURRENTLY IN USE



LOOKING WEST ALONG REAR ALLEY (NOT ACCESSIBLE BY VEHICLES)



LOOKING EAST ALONG REAR ALLEY (NOT ACCESSIBLE BY VEHICLES)



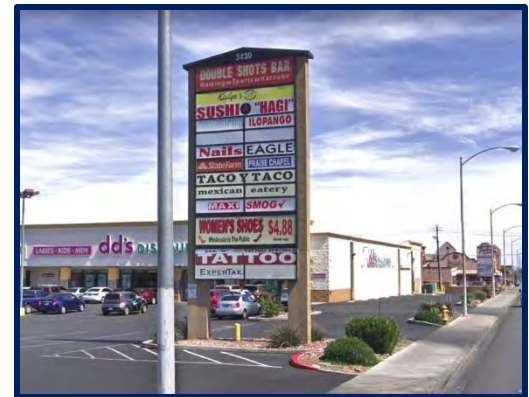
LOOKING NORTHEAST AT MAIN ENTRANCE



LOOKING SOUTH ALONG PECOS ROAD
(SUBJECT UNIT ON LEFT)



LOOKING NORTH ALONG PECOS ROAD
(SUBJECT UNIT ON RIGHT)



PYLON SIGNAGE ALONG TROPICANA AVENUE
(SUBJECT TENANT NOT LISTED)

Glossary

Definitions are taken from The Dictionary of Real Estate Appraisal, 6th Edition (Dictionary), the Uniform Standards of Professional Appraisal Practice (USPAP), and Building Owners and Managers Association International (BOMA).

Absolute Net Lease

A lease in which the tenant pays all expenses including structural maintenance, building reserves, and management; often a long-term lease to a credit tenant. (Dictionary)

Amortization

The process of retiring a debt or recovering a capital investment, typically through scheduled, systematic repayment of the principal; a program of periodic contributions to a sinking fund or debt retirement fund. (Dictionary)

As Is Market Value

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date. (Dictionary)

Base Rent

The minimum rent stipulated in a lease. (Dictionary)

Base Year

The year on which escalation clauses in a lease are based. (Dictionary)

Building Common Area

In office buildings, the areas of the building that provide services to building tenants but which are not included in the office area or store area of any specific tenant. These areas may include, but shall not be limited to, main and auxiliary lobbies, atrium spaces at the level of the finished floor, concierge areas or security desks, conference rooms, lounges or vending areas, food service facilities, health or fitness centers, daycare facilities, locker or shower facilities, mail rooms, fire control rooms, fully enclosed courtyards outside the exterior walls, and building core and service areas such as fully enclosed mechanical or equipment rooms. Specifically excluded from building common area are floor common areas, parking space, portions of loading docks outside the building line, and major vertical penetrations. (BOMA)

Building Rentable Area

The sum of all floor rentable areas. Floor rentable area is the result of subtracting from the gross measured area of a floor the major vertical penetrations on that same floor. It is generally fixed for the life of the building and is rarely affected by changes in corridor size or configuration. (BOMA)

Certificate of Occupancy (COO)

A formal written acknowledgment by an appropriate unit of local government that a new construction or

renovation project is at the stage where it meets applicable health and safety codes and is ready for commercial or residential occupancy. (Dictionary)

Common Area Maintenance (CAM)

The expense of operating and maintaining common areas; may or may not include management charges and usually does not include capital expenditures on tenant improvements or other improvements to the property. (Dictionary)

The amount of money charged to tenants for their shares of maintaining a [shopping] center's common area. The charge that a tenant pays for shared services and facilities such as electricity, security, and maintenance of parking lots. Items charged to common area maintenance may include cleaning services, parking lot sweeping and maintenance, snow removal, security and upkeep. (ICSC – International Council of Shopping Centers, 4th Ed.)

Condominium

A multiunit structure, or a unit within such a structure, with a condominium form of ownership. (Dictionary)

Conservation Easement

An interest in real estate restricting future land use to preservation, conservation, wildlife habitat, or some combination of those uses. A conservation easement may permit farming, timber harvesting, or other uses of a rural nature as well as some types of conservation-oriented development to continue, subject to the easement. (Dictionary)

Contributory Value

A type of value that reflects the amount a property or component of a property contributes to the value of another asset or to the property as a whole.

The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component. Also called deprival value in some countries. (Dictionary)

Debt Coverage Ratio (DCR)

The ratio of net operating income to annual debt service (DCR = NOI/Im), which measures the relative ability of a property to meet its debt service out of net operating income; also called *debt service coverage ratio (DSCR)*. A larger DCR typically indicates a greater ability for a property to withstand a reduction of income, providing an improved safety margin for a lender. (Dictionary)

Deed Restriction

A provision written into a deed that limits the use of land. Deed restrictions usually remain in effect when title passes to subsequent owners. (Dictionary)

Depreciation

- 1) In appraisal, a loss in property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date.
- 2) In accounting, an allocation of the original cost of an asset, amortizing the cost over the asset's life; calculated using a variety of standard techniques. (Dictionary)

Disposition Value

The most probable price that a specified interest in property should bring under the following conditions:

- Consummation of a sale within a specified time, which is shorter than the typical exposure time for such a property in that market.
- The property is subjected to market conditions prevailing as of the date of valuation;
- Both the buyer and seller are acting prudently and knowledgeably;
- The seller is under compulsion to sell;
- The buyer is typically motivated;
- Both parties are acting in what they consider to be their best interests;
- An adequate marketing effort will be made during the exposure time;
- Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Easement

The right to use another's land for a stated purpose. (Dictionary)

EIFS

Exterior Insulation Finishing System. This is a type of exterior wall cladding system. Sometimes referred to as dry-vit.

Effective Date

- 1) The date on which the appraisal or review opinion applies. (SVP)
- 2) In a lease document, the date upon which the lease goes into effect. (Dictionary)

Effective Gross Income (EGI)

The anticipated income from all operations of the real estate after an allowance is made for vacancy and collection losses and an addition is made for any other income. (Dictionary)

Effective Rent

Total base rent, or minimum rent stipulated in a lease, over the specified lease term minus rent concessions; the rent that is effectively paid by a tenant net of financial concessions provided by a landlord. (TIs). (Dictionary)

EPDM

Ethylene Propylene Diene Monomer Rubber. A type of synthetic rubber typically used for roof coverings. (Dictionary)

Escalation Clause

A clause in an agreement that provides for the adjustment of a price or rent based on some event or index. e.g., a provision to increase rent if operating expenses increase; also called *escalator clause*, *expense recovery clause* or *stop clause*. (Dictionary)

Estoppel Certificate

A signed statement by a party (such as a tenant or a mortgagee) certifying, for another's benefit, that certain facts are correct, such as that a lease exists, that there are no defaults, and that rent is paid to a certain date. (Black's) In real estate, a buyer of rental property typically requests estoppel certificates from existing tenants. Sometimes referred to as an *estoppel letter*. (Dictionary)

Excess Land

Land that is not needed to serve or support the existing use. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and is valued separately. (Dictionary)

Excess Rent

The amount by which contract rent exceeds market rent at the time of the appraisal; created by a lease favorable to the landlord (lessor) and may reflect unusual management, unknowledgeable or unusually motivated parties, a lease execution in an earlier, stronger rental market, or an agreement of the parties. (Dictionary)

Expense Stop

A clause in a lease that limits the landlord's expense obligation, which results in the lessee paying operating expenses above a stated level or amount. (Dictionary)

Exposure Time

- 1) The time a property remains on the market.
- 2) The estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market. (Dictionary)

Extraordinary Assumption

An assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions. Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 ed.)

Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Dictionary)

Floor Common Area

In an office building, the areas on a floor such as washrooms, janitorial closets, electrical rooms, telephone rooms, mechanical rooms, elevator lobbies, and public corridors which are available primarily for the use of tenants on that floor. (BOMA)

Full Service (Gross) Lease

A lease in which the landlord receives stipulated rent and is obligated to pay all of the property's operating and fixed expenses; also called a *full service lease*. (Dictionary)

Furniture, Fixtures, and Equipment (FF&E)

Business trade fixtures and personal property, exclusive of inventory. (Dictionary)

Going-Concern Value

An outdated label for the market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; more accurately termed the *market value of the going concern* or *market value of the total assets of the business*. (Dictionary)

Gross Building Area (GBA)

- 1) Total floor area of a building, excluding unenclosed areas, measured from the exterior of the walls of the above-grade area. This includes mezzanines and

basements if and when typically included in the market area of the type of property involved.

- 2) Gross leasable area plus all common areas.
- 3) For residential space, the total area of all floor levels measured from the exterior of the walls and including the superstructure and substructure basement; typically does not include garage space. (Dictionary)

Gross Measured Area

The total area of a building enclosed by the dominant portion (the portion of the inside finished surface of the permanent outer building wall which is 50 percent or more of the vertical floor-to-ceiling dimension, at the given point being measured as one moves horizontally along the wall), excluding parking areas and loading docks (or portions of same) outside the building line. It is generally not used for leasing purposes and is calculated on a floor by floor basis. (BOMA)

Gross Up Method

A method of calculating variable operating expenses in income-producing properties when less than 100% occupancy is assumed. Expenses reimbursed based on the amount of occupied space, rather than on the total building area, are described as "grossed up." (Dictionary)

Gross Retail Sellout

The sum of the separate and distinct market value opinions for each of the units in a condominium, subdivision development, or portfolio of properties, as of the date of valuation. The aggregate of retail values does not represent the value of all the units as though sold together in a single transaction; it is simply the total of the individual market value conclusions. Also called the *aggregate of the retail values*, *aggregate retail selling price* or *sum of the retail values*. (Dictionary)

Ground Lease

A lease that grants the right to use and occupy land. Improvements made by the ground lessee typically revert to the ground lessor at the end of the lease term. (Dictionary)

Ground Rent

The rent paid for the right to use and occupy land according to the terms of a ground lease; the portion of the total rent allocated to the underlying land. (Dictionary)

HVAC

Heating, ventilation, air conditioning (HVAC) system. A unit that regulates the temperature and distribution of heat and fresh air throughout a building. (Dictionary)

Highest and Best Use

- 1) The reasonably probable use of property that results in the highest value. The four criteria that the highest

and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

- 2) The use of an asset that maximizes its potential and that is possible, legally permissible, and financially feasible. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid. (IVS)
- 3) [The] highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future. (Uniform Appraisal Standards for Federal Land Acquisitions) (Dictionary)

Hypothetical Condition

- 1) A condition that is presumed to be true when it is known to be false. (SVP – Standards of Valuation Practice, effective January 1, 2015)
- 2) A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 ed.) (Dictionary)

Industrial Gross Lease

A type of modified gross lease of an industrial property in which the landlord and tenant share expenses. The landlord receives stipulated rent and is obligated to pay certain operating expenses, often structural maintenance, insurance and real property taxes, as specified in the lease. There are significant regional and local differences in the use of this term. (Dictionary)

Insurable Value

A type of value for insurance purposes. (Typically this includes replacement cost less basement excavation, foundation, underground piping and architect's fees). (Dictionary)

Investment Value

The value of a property to a particular investor or class of investors based on the investor's specific requirements. Investment value may be different from market value because it depends on a set of investment criteria that are not necessarily typical of the market. (Dictionary)

Just Compensation

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position pecuniarily as he or she would have been if the property had not been taken. (Dictionary)

Leased Fee Interest

The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires. (Dictionary)

Leasehold Interest

The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease. (Dictionary)

Lessee (Tenant)

One who has the right to occupancy and use of the property of another for a period of time according to a lease agreement. (Dictionary)

Lessor (Landlord)

One who conveys the rights of occupancy and use to others under a lease agreement. (Dictionary)

Liquidation Value

The most probable price that a specified interest in property should bring under the following conditions:

- Consummation of a sale within a short time period.
- The property is subjected to market conditions prevailing as of the date of valuation.
- Both the buyer and seller are acting prudently and knowledgeably.
- The seller is under extreme compulsion to sell.
- The buyer is typically motivated.
- Both parties are acting in what they consider to be their best interests.
- A normal marketing effort is not possible due to the brief exposure time.
- Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto.
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Loan to Value Ratio (LTV)

The ratio between a mortgage loan and the value of the property pledged as security, usually expressed as a percentage. (Dictionary)

Major Vertical Penetrations

Stairs, elevator shafts, flues, pipe shafts, vertical ducts, and the like, and their enclosing walls. Atria, lightwells and

similar penetrations above the finished floor are included in this definition. Not included, however, are vertical penetrations built for the private use of a tenant occupying office areas on more than one floor. Structural columns, openings for vertical electric cable or telephone distribution, and openings for plumbing lines are not considered to be major vertical penetrations. (BOMA)

Market Rent

The most probable rent that a property should bring in a competitive and open market reflecting the conditions and restrictions of a specified lease agreement, including the rental adjustment and revaluation, permitted uses, use restrictions, expense obligations; term, concessions, renewal and purchase options and tenant improvements (TIs). (Dictionary)

Market Value

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Dictionary)

Marketing Time

An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Appraisal Standards Board of the Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions" address the determination of reasonable exposure and marketing time.) (Dictionary)

Master Lease

A lease in which the fee owner leases a part or the entire property to a single entity (the master lease) in return for

a stipulated rent. The master lessee then leases the property to multiple tenants. (Dictionary)

Modified Gross Lease

A lease in which the landlord receives stipulated rent and is obligated to pay some, but not all, of the property's operating and fixed expenses. Since assignment of expenses varies among modified gross leases, expense responsibility must always be specified. In some markets, a modified gross lease may be called a *double net lease*, *net net lease*, *partial net lease*, or *semi-gross lease*. (Dictionary)

Operating Expense Ratio

The ratio of total operating expenses to effective gross income (TOE/EGI); the complement of the net income ratio, i.e., OER = 1 – NIR (Dictionary)

Option

A legal contract, typically purchased for a stated consideration, that permits but does not require the holder of the option (known as the *optionee*) to buy, sell, or lease real estate for a stipulated period of time in accordance with specified terms; a unilateral right to exercise a privilege. (Dictionary)

Partial Interest

Divided or undivided rights in real estate that represent less than the whole, i.e., a fractional interest such as a tenancy in common, easement, or life interest. (Dictionary)

Pass Through

A tenant's portion of operating expenses that may be composed of common area maintenance (CAM), real property taxes, property insurance, and any other expenses determined in the lease agreement to be paid by the tenant. (Dictionary)

Potential Gross Income (PGI)

The total income attributable to property at full occupancy before vacancy and operating expenses are deducted. (Dictionary)

Prospective Future Value Upon Completion

A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report. ... The prospective market value –as completed- reflects the property's market value as of the time that development is expected to be complete. (Dictionary)

Prospective Future Value Upon Stabilization

A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report ...The prospective market value – as stabilized – reflects the property's market value as of the time the property is projected to achieve stabilized occupancy. For an income-producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties. (Dictionary)

Replacement Cost

The estimated cost to construct, at current prices as of a specific date, a substitute for a building or other improvements, using modern materials and current standards, design, and layout. (Dictionary)

Reproduction Cost

The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all of the deficiencies, superadequacies, and obsolescence of the subject building. (Dictionary)

Retrospective Value Opinion

A value opinion effective as of a specified historical date. The term *retrospective* does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of

the type of value with this term is appropriate, e.g., "retrospective market value opinion." (Dictionary)

Sandwich Leasehold Estate

The interest held by the sandwich leaseholder when the property is subleased to another party; a type of leasehold estate. (Dictionary)

Sublease

An agreement in which the lessee in a prior lease conveys the right of use and occupancy of a property to another, the sublessee, for a specific period of time, which may or may not be coterminous with the underlying lease term. (Dictionary)

Subordination

A contractual arrangement in which a party with a claim to certain assets agrees to make his or her claim junior, or subordinate, to the claims of another party. (Dictionary)

Surplus Land

Land that is not currently needed to support the existing use but cannot be separated from the property and sold off for another use. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel. (Dictionary)

Triple Net (Net Net Net) Lease

An alternative term for a type of net lease. In some markets, a net net net lease is defined as a lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management; also called *NNN lease*, *net net net lease*, or *fully net lease*. (Dictionary)

(The market definition of a triple net lease varies; in some cases tenants pay for items such as roof repairs, parking lot repairs, and other similar items.)

Usable Area

The measured area of an office area, store area, or building common area on a floor. The total of all the usable areas for a floor shall equal floor usable area of that same floor. (BOMA)

Value-in-Use

The value of a property assuming a specific use, which may or may not be the property's highest and best use on the effective date of the appraisal. Value in use may or may not be equal to market value but is different conceptually. (Dictionary)

Qualifications

Qualifications of Monique Beban

Registered Intern Appraiser

Valbridge Property Advisors | Las Vegas | Reno



Independent Valuations for a Variable World

State Certifications

State of Nevada License
#A. 0207294-INTR

Appraisal Institute & Related Courses:

| | |
|----------------------------|------|
| Basic Appraisal Principals | 2015 |
| Basic Appraisal Procedures | 2015 |
| Appraisal Law in Nevada | 2015 |
| National USPAP-15 Hour | 2015 |

Education

Bachelor of Arts-
Real Estate Studies
Ashford University,
In Progress

Experience:

Registered Intern Appraiser

Valbridge Property Advisors (2016-Present)

Appraisal Researcher

Valbridge Property Advisors (2013-2016)

Contact Details

702-242-9369 (p)
702-242-6391 (f)

Appraisal Researcher

Lubawy & Associates (2011-2013)

Valbridge Property Advisors
Las Vegas | Reno
3034 S. Durango Dr. #100
Las Vegas, NV 89117

Appraisal Researcher

Montandon Farley Valuation Services - Phoenix, AZ (1999-2010)

www.valbridge.com

mbeban@valbridge.com

APPRAISER REGISTRATION CARD

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE REAL ESTATE DIVISION NOT TRANSFERABLE

This is to Certify That: **MONIQUE BEBAN** Registration Number: **A.0207294-INTR**


Is duly authorized to act as an APPRAISER INTERN from the issue date to the expiration date at the business address stated here in, unless the registration is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: January 30, 2018 Expire Date: January 31, 2020

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in it by Chapter 645C, Nevada Revised Statutes has caused this Registration to be issued with its Seal printed thereon.

FOR: VALBRIDGE PROPERTY ADVISORS REAL ESTATE DIVISION
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

SHARATH CHANDRA
Administrator



Qualifications of Matthew Lubawy, MAI, CVA, CMEA

Senior Managing Director

Valbridge Property Advisors | Las Vegas | Reno



Independent Valuations for a Variable World

State Certifications

Nevada License
A.0000044-CG

Arizona License
#32072

California License
#3029734

Education

Bachelor of Science
Business Administration
University of Nevada,
Las Vegas

Contact Details

702-242-9369 (p)
702-242-6391 (f)

Valbridge Property Advisors |
Las Vegas | Reno
3034 S. Durango Dr. #100
Las Vegas, NV 89117
www.valbridge.com
mlubawy@valbridge.com

Membership/Affiliations:

Member: Appraisal Institute - MAI Designation #10653
Director - (2008 – 2011)
President of Las Vegas Chapter (1998 - 1999)
1st V.P. of Las Vegas Chapter (1997 – 1998)
2nd V.P. of Las Vegas Chapter (1996 – 1997)

Member: NACVA – CVA Designation (Certified Valuation
Analyst for business valuation)

Member: NEBB Institute – CMEA Designation for
Machinery
and Equipment

Board Member: Valbridge Property Advisors -
Vice-Chairman of the Board of Directors
(2011 – Present)

Member: International Right of Way Association

Member: National Association of Realtors

Member: GLVAR

Board Member: Nevada State Development Corporation
Chairman of the Board (2008-Present)

Experience:

Senior Managing Director

ValbridgePropertyAdvisors (2013 to Present)

Principal

Lubawy & Associates (1994-2013)

Independent Fee Appraiser and Real Estate Consultant

Timothy R. Morse and Associates (1992 – 1994)

Staff Appraiser/Assistant Vice President

First Interstate Bank (1988 - 1992)

Independent Fee Appraiser and Real Estate Consultant

The Clark Companies (1987 - 1988)

Appraisal/valuation and consulting assignments include: vacant land; apartment buildings; retail buildings; shopping centers; office buildings; industrial buildings; religious and special purpose properties including schools, churches hotel/casinos air hangars, automobile dealerships, residential subdivisions, and master-planned communities. Other assignments include tax credit valuations, Fannie Mae and Freddie Mac reports, and HUD MAP valuations and market studies, as well as valuation of fractional interests in FLP's, LP's LLC's and/or other business entities.

Appraisal Institute & Related Courses:

| | |
|--|-----------------|
| Eminent Domain 2016, CLE International | September, 2016 |
| Supervisor Trainee Course for Nevada | January, 2016 |
| USPAP 2016/2017 | January, 2016 |
| Small Hotel/Motel Valuation | February 2015 |
| NEBB Institute Machinery & Equipment Certification Training | January 2014 |
| 2014-2015 National USPAP Update Course, Appraisal Institute | January 2014 |
| NACVA Business Valuation Certification and Training Center | December 2013 |
| Fundamentals of Separating Real Property, Personal Property, and Intangible Business Assets, Appraisal Institute | March 2012 |
| 7-Hour National USPAP Update Course, Appraisal Institute | January 2012 |
| 2010-2011 National USPAP Update, Appraisal Institute | January 2010 |
| Appraising Distressed Commercial Real Estate, Appraisal Institute | July 2009 |
| Understanding the Home Valuation Code of Conduct, Appraisal Institute | June 2009 |
| Introduction to Valuation for Financial Reporting, Appraisal Institute | June 2009 |
| Argus Based Discounted Cash Flow Analysis, Appraisal Institute | June 2009 |
| National Uniform Standards of Professional Practice Course 400, Appraisal Institute | April 2009 |
| Online Scope of Work: Expanding Your Range of Services, Appraisal Institute | April 2009 |
| Online Rates and Ratios: Making sense of GIMs, OARs and DCF, Appraisal Institute | April 2009 |
| Forecasting Revenue, Appraisal Institute | October 2008 |
| Law of Easements: Legal Issues & Practical Considerations, Lorman Education | August 2008 |
| Analyzing Operating Expenses, Appraisal Institute | May, 2007 |
| Valuation of Detrimental Conditions in Real Estate, Appraisal Institute | April, 2007 |
| 2007 National USPAP Update, Appraisal Institute | March, 2007 |
| Analyzing Commercial Lease Clauses, Appraisal Institute | February, 2007 |
| Analyzing Distressed Real Estate, Appraisal Institute | February, 2007 |
| Uniform Appraisal Standards for Federal Land Acquisitions, Appraisal Institute | October 2005 |
| Online Analyzing Distressed Real Estate, Appraisal Institute | September 2005 |
| Business Practices and Ethics, Course 420, Appraisal Institute | September 2005 |
| USPAP Update – Course 400, Appraisal Institute | February 2005 |
| Litigation Appraising: Specialized Topics and Applications | October 2004 |
| Separating Real & Personal Property from Intangible Business Assets | September 2003 |
| So. NV Public Land Mgt. Act BLM Appraisal Compliance Workshop | May 2003 |
| Income Capitalization | March 2003 |
| Appraising Non-Conforming and Difficult Properties | March 2003 |
| Appraiser Liability | March 2003 |
| 2003 National USPAP | February 2003 |
| Valuation of Partial Acquisitions, Course 401 through IRWA | October 2000 |
| Partial Interest Valuation – Divided, Course A7414 | April 2000 |
| Highest & Best Use and Market Analysis | March 2000 |

| | |
|---|----------------|
| Subdivision Analysis | January 2000 |
| Writing the Narrative Appraisal Report | November 1999 |
| USPAP 1999 Revisions A7415ES | March 1999 |
| Reporting Sales Comparison Grid Adj. for Residential Properties | March 1999 |
| USPAP 1999 Revisions – A7415ES | March 1998 |
| Litigation Appraisal and Expert Testimony | June 1997 |
| USPAP (Parts A & B) | 1996 |
| Ethics - USPAP Statements | March 1995 |
| Comprehensive Appraisal Workshop | July 1994 |
| Current Issues and Misconceptions in Appraisal | December 1993 |
| Standards of Professional Appraisal Practice, Part B | 1992 |
| Land Faire Nevada | July 1992 |
| Appraising From Blueprints and Specifications | September 1992 |
| Accrued Depreciation | September 1992 |
| Standards of Professional Appraisal Practice, Part A | 1991 |
| Report Writing and Valuation Analysis; Exam 2-2 | June 1991 |
| Case Studies; Exam 2-1 | June 1991 |
| Capitalization Theory and Techniques, Part B; Exam 1-BB | June 1990 |
| Capitalization Theory and Techniques, Part A; Exam 1-BA | June 1990 |
| Basic Valuation; Exam 1A2 | May 1989 |
| Principles of Real Estate Appraisal ; Exam 1A1 | May 1989 |

National Association of Certified Valuers and Analysts (NACVA) Business Valuation Courses:

| | |
|---|------|
| Working Your Way Through the DLOM Minefield | 2017 |
| Valuing Fast-Food Restaurants | 2017 |
| Valuation of Family Limited Partnerships | 2017 |
| Intangible Asset Valuation: Cost Approach Valuation Methods and Procedures | 2017 |
| ESOP Basics | 2017 |
| Common Sense and The S Corp Value Question | 2017 |
| Buy Sell Agreements | 2017 |
| Trust and Estates: S-Corporation Valuation Issues | 2017 |
| Trust and Estates: Gift & Estate Case Law Update | 2017 |
| The Expert's Draft Report and Pre-Trial Communications with Counsel | 2017 |
| Intangible Asset Valuation and Fair Value Accounting | 2017 |
| How and When to Implement a Discount for Lack of Control in Your Valuation | 2017 |
| Federal and State Case Law Update | 2017 |
| Business Valuation, DLOM and Daubert: The Issue of Redundancy | 2017 |
| Intangible Asset Valuation Considerations for Entertainment and Sports Businesses | 2017 |
| Excel- Building Better Budget Spreadsheets | 2017 |
| Excel- Automating Financial Statements | 2017 |
| Valuation and How to Address These Issues | 2017 |
| Automating Financial Statements | 2017 |
| Engagement Risk and Acceptance | 2016 |
| Cost of Capital | 2016 |
| Income Approach | 2016 |
| Guideline Transaction Method | 2016 |
| Guideline Company Method | 2016 |
| Synthesis of Conclusion | 2016 |

| | |
|---|------|
| Valuation Software and Databases | 2016 |
| Asset Approach | 2016 |
| Financial Statement Analysis, Economic, and Industry Overview | 2016 |
| Engagement Letters | 2016 |
| Information Requests and Site Visits | 2016 |
| Report Writing | 2016 |
| Discounts and Premiums | 2016 |

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE REAL ESTATE DIVISION NOT TRANSFERABLE

This is to Certify That : MATTHEW J LUBAWY **Certificate Number:** A.0000044-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: March 7, 2017 **Expire Date:** April 30, 2019

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

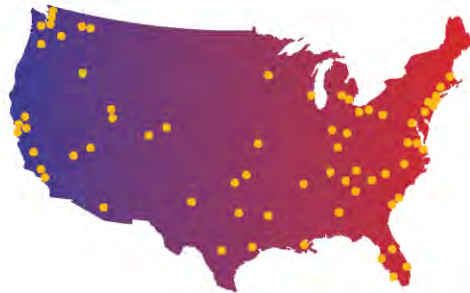
FOR: VALBRIDGE PROPERTY ADVISORS **REAL ESTATE DIVISION**
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

SHARATH CHANDRA
Administrator



Company Information on Valbridge Property Advisors

- Valbridge is one of the Top 3 national commercial real estate valuation and advisory services firms based on:
 - Total number of MAIs (188 on staff)
 - Total number of office locations (68 across the U.S.)
 - Total number of staff (650+ strong)
- Valbridge covers the U.S. from coast to coast.
- Valbridge services all property types, including special-purpose properties.
- Valbridge provides independent valuation services. We are not owned by a brokerage firm or investment company.
- Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.
- Valbridge is owned by our local office leaders.
- Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk-property engagements.





Valbridge
PROPERTY ADVISORS

OFFICE LOCATIONS

ALABAMA

4732 Woodmere Boulevard
Montgomery, AL 36106
334-277-5077

ARIZONA

6061 E. Grant Road
Suite 121
Tucson, AZ 85712
520-321-0000

CALIFORNIA

4915 Calloway Drive
Suite 101
Bakersfield, CA 93312
661-587-1010

1370 N. Brea Boulevard
Suite 255
Fullerton, CA 92835
714-449-0852

2813 Coffee Road
Suite E-2
Modesto, CA 95355
209-569-0450

99 S. Lake Avenue
Suite 21
Pasadena, CA 91101
626-744-0428

10301 Placer Lane
Suite 100
Sacramento, CA 95827
916-361-2509

55 South Market Street
Suite 1210
San Jose, CA 95113
408-279-1520

3160 Crow Canyon Place
Suite 245
San Ramon, CA 94583
925-327-1660

COLORADO

5345 Arapahoe Avenue
Suite 7
Boulder, CO 80303
303-443-9600

562 Highway 133
Carbondale, CO 81623
970-340-1016

CONNECTICUT

6 Central Row
Third Floor
Hartford, CT 06103-2701
860-246-4606

17 High Street
Suite 214
Norwalk, CT 06851
203-286-6520

FLORIDA

2240 Venetian Court
Naples, FL 34109
239-514-4646

FLORIDA (cont'd.)

603 Hillcrest Street
Orlando, FL 32803
407-839-3626

1100 16th Street N
St. Petersburg, FL 33705
727-894-1800

2711 Poinsettia Avenue
West Palm Beach, FL 33407
561-833-5331

GEORGIA

2675 Paces Ferry Road
Suite 145
Atlanta, GA 30339
678-644-4853

IDAHO

1459 Tyrell Lane
Suite B
Boise, ID 83706
208-336-1097

1875 N. Lakewood Drive
Suite 100
Coeur d'Alene, ID 83814
208-292-2965

INDIANA

820 Fort Wayne Avenue
Indianapolis, IN 46204
317-687-2747

KANSAS

10990 Quivira Road
Suite 100
Overland Park, KS 66210
913-451-1451

KENTUCKY

214 South 8th Street
Suite 200
Louisville, KY 40202
502-585-3651

LOUISIANA

512 North Causeway Boulevard
Metairie, LA 70001
504-833-8234

7607 Fern Avenue
Suite 104
Shreveport, LA 71105
318-797-0543

MARYLAND

6240 Old Dobbin Lane
Suite 140
Columbia, MD 21045
410-423-2300

MASSACHUSETTS

21 Muzzey Street
Suite 2
Lexington, MA 02421
781-652-0700

MICHIGAN

1442 Brush Street
Detroit, MI 48226
313-986-3313

2127 University Park Drive
Suite 390
Okemos, MI 48864
517-336-0001

MINNESOTA

120 South 6th Street
Suite 1650
Minneapolis, MN 55402
612-253-0650

NEVADA

3034 S. Durango Drive
Suite 100
Las Vegas, NV 89117
702-242-9369

NEW JERSEY

2740 Route 10 West, Suite 204
Morris Plains, NJ 07950
973-970-9333

2052 Route 35, Suite 104
Wall Township, NJ 07719
732-807-3113

NEW YORK

424 West 33rd Street
Suite 630
New York, NY 10001
212-268-1113

NORTH CAROLINA

412 E. Chatham Street
Cary, NC 27511
919-859-2666

4530 Park Road, Suite 100
Charlotte, NC 28209
704-376-5400

OHIO

1655 W. Market Street
Suite 130
Akron, OH 44313
330-899-9900

1422 Euclid Avenue
Suite 1070
Cleveland, OH 44115
216-367-9690

9277 Centre Point Drive
Suite 350
West Chester, OH 45069
513-785-0820

OKLAHOMA

6525 N. Meridian Avenue
Suite 309
Oklahoma City, OK 73116
405-603-1553

8666 South Sheridan Road
Suite 104
Tulsa, OK 74133
918-712-9992

OREGON

8220 SW Warm Springs Street
Suite 100
Tualatin, OR 97062
503-620-0881

PENNSYLVANIA

150 S. Warner Road
Suite 440
King of Prussia, PA 19406
215-545-1900

4701 Baptist Road
Suite 304
Pittsburgh, PA 15227
412-881-6080

SOUTH CAROLINA

610 N. Main Street
Greenville, SC 29601
864-233-6277

800 Main Street
Suite 220
Hilton Head Island, SC 29926
843-342-2302

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843-884-1266

TENNESSEE

112 Westwood Place
Suite 300
Brentwood, TN 37027
615-369-0670

701 Broad Street
Suite 209
Chattanooga, TN 37402
423-285-8435

213 Fox Road
Knoxville, TN 37922
865-522-2424

6750 Poplar Avenue
Suite 706
Memphis, TN 38138
901-753-6977

TEXAS

Two Energy Square
4849 Greenville Avenue
Suite 1495
Dallas, TX 75206
214-446-1611

974 Campbell Road
Suite 204
Houston, TX 77024
713-467-5858

2731 81st Street
Lubbock, TX 79423
806-744-1188

111 Soledad
Suite 800
San Antonio, TX 78205
210-227-6229

UTAH

260 South 2500 West
Suite 301
Pleasant Grove, UT 84062
801-492-9328

1100 East 6600 South
Suite 201
Salt Lake City, UT 84121
801-262-3388

20 North Main
Suite 304
St. George, UT 84770
435-773-6300

VIRGINIA

656 Independence Parkway
Suite 220
Chesapeake, VA 23320
757-410-1222

7400 Beaufort Springs Drive
Suite 300
Richmond, VA 23225
804-672-4473

5107 Center Street
Unit 2B
Williamsburg, VA 23188
757-345-0010

WASHINGTON

18728 Bothell Way, NE
Suite B
Bothell, WA 98011
425-450-4040

2927 Colby Avenue
Suite 100
Everett, WA 98201
425-258-2611

419 Berkeley Avenue
Suite A
Fircrest, WA 98466
253-274-0099

8378 W. Grandridge Boulevard
Suite 110-D
Kennewick, WA 99336
509-221-1540

506 Second Avenue
Suite 1001
Seattle, WA 98104
206-209-3016

324 N. Mullan Road
Spokane Valley, WA 99206
509-747-0999

WISCONSIN

12660 W. North Avenue
Brookfield, WI 53005
262-782-7990

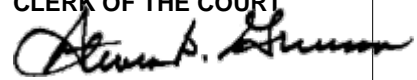
Each Valbridge office is independently owned and operated.

CORPORATE OFFICE

2240 Venetian Court
Naples, FL 34109

239-325-8234 phone
239-325-8356 fax

valbridge.com

**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 Date: July 8, 2019**Hearing Time: 9:00 AM****REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AND
OPPOSITION TO COUNTERMOTION
FOR PARTIAL SUMMARY
ADJUDICATION**

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 its Reply in Support of Motion for Summary Judgment and Opposition to Countermotion for Partial Summary Adjudication. This Reply and Opposition 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 the hearing on this matter.

Dated this 1st day of July, 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

Tenant's opposition goes to great lengths to ignore the plain language of the various agreements between the parties. The original term of the Lease was for 5 years and was to expire in 2001. The Lease, however, continued in effect after 2001 due to the exercising of three five year option periods (2001-2006; 2006-2011; 2011-2016). It is undisputed that the Tenant was given multiple lease extension options over the parties' twenty-year relationship, and that the Tenant clearly exercised each of those options as they became ripe. It also cannot legitimately be disputed that, for each option period the parties agreed that the prior addendums containing the options were superseded by the terms of the subsequent documents that the parties signed for each subsequent option period.

Consequently, despite throwing everything it can think of into its Opposition in the hope that something sticks, the Tenant cannot escape the necessary conclusion that as a matter of law, the option period beginning in September 2016 was to be based on a monthly rent of no less than the amount Tenant was paying prior to that option period.

Further, Tenant has never disclaimed the authority of its attorney and authorized agent Lesley B. Miller, Esq. who in September 2016 agreed to all of the essential terms with the

1 Landlord, nor did the Tenant repudiate the agreement the parties reached in September 2016.
2 Moreover, the Tenant has failed to provide a valid explanation for why it performed in
3 accordance with that agreement by paying the agreed-upon increased rent for two years. That
4 failure is fatal to the Tenant's position in this case and it cannot avoid the consequences of that
5 intentional and deliberate course of conduct. As such, the Tenant should be held to the bargain
6 that it negotiated and agreed to in September 2016. Alternatively, if an agreement does not exist,
7 then the Tenant must be determined to be a holdover month-to-month tenant.

8 While the Court need not venture beyond this analysis, should the Court oblige Tenant's
9 request to determine an appropriate rent for the option period, Nevada law requires that the Court
10 give effect to the intentions of the parties. As the parties did, in fact, state their mutual intention
11 that the present option period must be conditioned on rental "increases," any such determination
12 must begin with that agreement.

13 Tenant's lengthy opposition does not disprove any of the conclusions which Landlord's
14 Motion seeks to have judicially declared, and thus Landlord's Motion must be granted.
15 Moreover, while the Court may conclude that Tenant complied with the requirements for
16 exercising its option rights as the Countermotion requests, the Court must also conclude that the
17 terms of that option were in fact agreed to by the authorized agents of the parties as Landlord has
18 set forth in its Motion.

19 Consequently, Nevada case law does not require this Court to conduct an extensive
20 review of "market conditions" to ascertain a proper rent for the option period, particularly when
21 the parties plainly communicated their intentions for increased rental amounts and then acted
22 consistent therewith. Thus, Tenant's Countermotion must be denied.

23 **II. LEGAL ARGUMENT**

24 **A. OPTIONS ARE NOT EVERGREEN.**

25 The vast majority of Tenant's meandering opposition rests on the erroneous premise that
26 all option agreements in this case are "evergreen," meaning that all of the options that have ever
27 been given by the Landlord to the Tenant remained exercisable in 2016 because the "expiration
28 date" of the Lease was repeatedly extended by amendments. In reality, each option (other than

those provided for in the 2007 Lease Modification) had already been exercised, and there is no logical basis for finding that the options could be executed more than once.

1. Options Expire Once They Are Exercised.

Tenant's argument ignores the obvious indication that the Tenant (and/or its predecessors to the Lease) did in fact exercise each previous option given by the Landlord. The particular titles chosen by the parties for these agreements do not preclude the Court from actually reading the documents and concluding that that they were, in fact, executed to reflect the Tenant's exercising of the applicable options—this is clear from the content of the various agreements.¹

In 1996, Tenant was given options to extend the lease for two distinct five year periods in 2001 and 2006, and the parties executed amendments in 2001 and 2006, each reflecting that the Lease term was being extended for the applicable five year period. *See* Motion at Exs. 2, 3, 4. The 2006 Addendum provided another option to extend the lease term in 2011 for an additional five years, and in 2011, the parties executed an addendum reflecting that the option was being exercised and the term of the Lease was being extended for five years. *See Id.* at Ex. 6.

The clear implication of these undisputed facts is that Tenant exercised each option to extend the term, and the parties chose to memorialize each extended lease term by executing formal amendments or addenda. Tenant cannot ignore the foregoing and unilaterally declare these options (and their respective terms) to be perpetually renewable. Indeed, under the Tenant's tortured reasoning, such a result would moot the entire point of putting a term limit in a lease. Consequently, it cannot seriously be disputed that the only option that could be exercised for the 2016-2021 time frame is what was provided for in the 2007 Lease Modification.

As support for its position, Tenant cites to *McLane & McLane v. Prudential Ins. Co. of Am.*, 735 F.2d 1194 (9th Cir. 1984).² In *McLane*, a tenant and landlord executed a lease for a

¹ The declarations submitted as Exhibits 1 and 2 to the Opposition fail to comply with the requirements of EDCR 2.21, and thus should be disregarded by the Court. *See* EDCR 2.21(b) ("Each affidavit/declaration shall identify the affiant/declarant, the party on whose behalf it is submitted, and the motion or application to which it pertains..."). Thus, Tenant has not provided any admissible evidence to contradict the clear indication that Tenant, and its predecessors, exercised each of their various options.

² Needless to say, as the *McLane* opinion is not binding on this Court, the Court here may simply choose not to follow the Ninth Circuit's reasoning.

1 five-year term, containing an option to extend the term for an additional five years upon the same
2 terms and conditions, with the exception of rent, upon written notice given six months prior to
3 the end of the term of the lease. *Id.* at 1194. When the tenant timely exercised its option to
4 renew, the parties orally agreed that the new term would have another five-year option. Thus,
5 the parties executed an amendment to the lease which amended the “term” paragraph to begin on
6 the day the amendment was executed, and which stated that “[e]xcept as herein expressly and
7 specifically amended and supplemented, the Lease shall remain in full force and effect.” *Id.* at
8 1195. The amended lease in that case did not contain an option provision.

9 Based on all of the facts before the court in that case, the *McLane* Court found that the
10 amendment extended the term of the underlying lease, and the parties intended for another five-
11 year option to be available at the end of the new, extended term. “If [the landlord] had not
12 wished to give [the tenant] another five-year option, it could easily have renewed the original
13 lease by executing a separate renewal letter, or by amending the lease and deleting the option
14 clause.” *Id.* Thus, the Court found that the extended term included an identical option to what
15 was present in the original lease, and the tenant was entitled to extend the lease a second time.

16 This case is entirely distinguishable from *McLane*. *McLane* dealt with an amendment
17 that did not mention any renewal option, and thus left the previous option intact. Here, we have
18 the exact opposite situation. Tenant clearly exercised the prior options, and when those options
19 expired, the parties entered into subsequent Addendums setting forth the agreed upon terms for
20 each option period. For example, in 2006 the parties signed the 2006 Addendum. The pertinent
21 portion of the 2006 Addendum provided that the Tenant was exercising the available option to
22 extend the term from 2006-2011:

23 Provided Tenant is in compliance with each and every term, covenant and
24 condition hereof on it’s (sic) part to be performed during the **extension term** of
25 the lease (9/1/2006-8/31/2011), Tenant shall have the option to extend the lease
26 term for **one (1) final extension term** of five (5) years, commencing on the
27 expiration date hereof.³

28 ³ Mot. at Ex. 4 (2006 Addendum) at ¶ 4 (emphasis added).

One year later the Parties entered into the 2007 Lease Modification which further modified the Lease and provided that:

Landlord agrees to conditionally grant the 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.

Moreover, the single option provided by the 2006 Addendum for the 2011-2016 period was exercised in 2011, leading to the 2011 Addendum, and therefore in 2016 the only option Tenant could have exercised was the first of the three conditional options provided for in the 2007 Lease Modification.

In sum, the Tenant exercised three separate option terms from 2001 through 2016. The Tenant certainly did not have the option of re-exercising the options provided by previous lease agreements, amendments, or addenda, as those options were already exercised and were subsequently superseded by the 2007 Lease Modification.

B. THE OPTION TERMS UNAMBIGUOUSLY MANDATE THAT RENT FOR THE OPTION PERIOD BE SUBJECT ONLY TO NEGOTIATED INCREASES, NOT DECREASES

The terms of the option provision contained in the 2007 Lease Modification (which was the only option provision that the Tenant was able to exercise in 2016) are not ambiguous, and thus the Court must enforce the option provision under its plain meaning. As described in detail in the Motion, the 2007 Lease Modification provided that, upon expiration of the Lease in August 2016, Tenant had the option to renew the term of the Lease for five years, “under terms and conditions, including but not limited to rental increases, to be negotiated.”

The Court must not “artificially create ambiguity where none exists” and where a reasonable interpretation is available and any other interpretation would be strained, “no compulsion exists to torture or twist the language” to find ambiguity. *Evans v. Safeco Life Ins. Co.*, 916 F.2d 1437, 1441 (9th Cir. 1990). Indeed the Nevada Supreme Court has previously rejected parties resorting to “ingenuity to create ambiguity that does not exist.” *Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. 72, 79, 81, 249 P.3d 501, 506 (2011).

1 Here, the meaning of “terms and conditions, including but not limited to rental increases,
2 to be negotiated” is not ambiguous. The sentence consists of a core sentence (“terms and
3 conditions to be negotiated”) with an inserted clause that adds detail to that sentence (“including
4 but not limited to rental increases”). Further, the inserted clause describes rental increases as one
5 term that is “included” in “terms and conditions to be negotiated,” denoting that rental increases
6 must be negotiated, even if no other terms are. In sum, the plain language expresses an
7 agreement that the terms of the new option period were to be negotiated, and that the terms to be
8 negotiated must include “rental increases.”

9 While Tenant is correct that the use of “but not limited to” signifies that other terms may
10 also be negotiated, such other terms necessarily cannot include rental decreases, as this would
11 directly contradict the one term that is required to be included in any agreement. An agreement
12 cannot cause rent to both increase and decrease at the same time, and no reasonable person
13 would interpret this provision to require such a paradoxical outcome. Rather, the plain meaning
14 of the option provision is simply that the parties agreed that, at a minimum, the rent would be
15 increased during the term and that changes to other non-rent lease terms may arise which the
16 parties could also negotiate.

17 Because the language of this option provision requires rental increases—and
18 consequently prohibits rental decreases—the Court must conclude that, if the Tenant exercised
19 the option properly, the rent for the ensuing option period must increase and be no less than the
20 amount of rent immediately prior to the exercise of the option. As such, the Court should grant
21 Landlord’s motion on this issue.

22 **C. THE PARTIES AGREED UPON THE RENT THAT WOULD GOVERN**
23 **THE OPTION PERIOD**

24 Tenant’s Opposition also attempts to complicate the simple contractual analysis of
25 whether the parties reached an enforceable agreement during negotiations. As stated in the
26 Motion, an enforceable contract requires the parties agree to the essential terms, which in the
27 case of a lease means agreeing to (1) the names of the parties, (2) a description of the property,
28 (3) the amount of rent, (4) when rent is payable, and (5) the duration of the lease. *Reno Club v.*

1 *Young Inv. Co.*, 64 Nev. 312, 330, 182 P.2d 1011, 1012 (1947). Elements 1, 2, 4 and 5 of these
2 essential terms have never been disputed throughout the amendments and addenda to the Lease,
3 and thus the only essential term that remained to be agreed upon prior to the commencement of
4 the option term in September 2016 was the amount of the rent.

5 The amount of the rent that would apply to the 2016-2021 option period was thereafter, in
6 fact, agreed to by the parties and confirmed by their respective counsel of record. On August 2,
7 2016, Tenant's attorney and duly authorized agent, Lesley B. Miller, Esq., offered that the option
8 period would be governed by the terms offered by Landlord in June 2016, except that rent would
9 thereafter increase at the historical rate of \$210 per month every year instead of 3% annual
10 increases.

11 On August 31, 2016, Ms. Miller sent Landlord a proposed Amendment setting forth these
12 terms. On September 7, 2016, Landlord's attorney, John M. Sacco, Esq., confirmed that the
13 Landlord accepted the proposed rent, and only suggested a few other non-rent related "final
14 matters" that the parties needed to discuss. At this point a meeting of the minds existed as the
15 two parties had reached an agreement as to all essential terms of the option period, of course
16 including rent, and both parties thereafter acted consistent with the mutual understanding that the
17 material terms of the option period were fully agreed upon. .

18 Notably, the Tenant has never disclaimed Ms. Miller's authority to represent Tenant in
19 this negotiation, nor has Tenant repudiated its acceptance of the terms that the parties' attorneys
20 reached on September 7, 2016. Moreover, it cannot be understated that the Tenant began
21 performing consistent with and in accordance with those terms, when Tenant began paying the
22 \$8,400 per month rent consistent with the parties' agreement, without dispute or objection.
23 There can be no question that an enforceable agreement existed as of September, 2016 when the
24 option period commenced.

25 **D. THE COURT NEED NOT DETERMINE A REASONABLE RENT**
26 **BECAUSE TENANT FAILED TO NEGOTIATE IN GOOD FAITH AND**
TO TIMELY SEEK JUDICIAL INTERVENTION

27 Notwithstanding the foregoing, if the Court however finds that no meeting of the minds
28 was reached in September 2016 based on the above, then the Court must find that no agreement

1 was ever reached, rendering Tenant a holdover tenant. While Tenant desires for the Court to
2 inject itself into the morass of determining “market conditions” for appropriate rent of a tavern
3 and gaming establishment, the Court has no need to do so as Tenant has failed to conduct itself
4 in a manner warranting such an extraordinary remedy.

5 A similar “to-be-negotiated” option clause was examined by the Nevada Supreme Court
6 in *Charter Medical Corp. v. Bealick*, 103 Nev. 368, 741 P.2d 1359 (1987). In *Bealick*, the
7 parties executed a lease containing an option stating that the option term would be based on the
8 same terms as the original lease, except for rent which was to be negotiated. Additionally, the
9 option contained an “escape clause” whereby the lessee could exercise the option in a 90-day
10 window—by January 1, 1980—then would have until January 25, 1980 to terminate the exercise
11 of the option.

12 The *Bealick* lessee communicated its intent to execute the option, but the parties were
13 unable to agree on rent for the option term despite negotiations continuing for several months
14 after the “escape” window. In April 1980, the lessor sent a notice to quit based on nonpayment
15 of rent. The lessee sued claiming the lessor breached the lease by not honoring the properly
16 executed option, and the lessor took the position that the option was not properly executed and
17 the option period could not go into effect until new rent was agreed upon.

18 The *Bealick* Court held that the threshold obligation of the parties was to negotiate in
19 good faith. Then, if no agreement could be reached on the rent within a reasonable time, or if
20 one of the parties did not timely seek a judicial determination regarding rent under *Cassinari v.*
21 *Mapes*, 91 Nev. 778 (1975), the option would expire.

22 In other words, *Bealick* contemplates a two-pronged analysis:

23 (1) The threshold determination that must first be made is whether the parties
24 negotiated in good faith, and that must include an analysis whether the parties negotiated in
25 accordance with the express terms specified in the relevant option provision; and

26 (2) If they did negotiate in good faith then the second question is whether the
27 aggrieved party timely requested a judicial determination of reasonable rent.
28

1 Accordingly, the first question before the Court now is whether the parties here
2 negotiated in good faith. As in *Bealick*, this determination can only be made by looking at the
3 situation as defined by the express language of the document containing the option period, to wit,
4 here the 2007 Lease Modification.

5 More specifically, the option language in the 2007 Lease Modification specifically
6 requires increases to the monthly base rent, and precludes decreases to the monthly base rent.
7 The option language therefore does not (1) contemplate the possibility of decreases in base rent,
8 nor does it (2) contemplate or require adjustments being made to the base rent based on fair
9 market rental value. Any conclusion to the contrary would yield a result that is diametrically
10 opposed to what the 2007 Lease Modification expressly specifies— rental increases; and would
11 ignore the parties' 20 year course of conduct when it came to negotiating rental increases during
12 the option terms.

13 Landlord submits that the Court is not obligated to analyze the second step of this process
14 because the Tenant cannot, as a matter of law, be said to have negotiated in good faith by
15 demanding rent decreases (and specifically demanding rent be decreased from \$1.95/sq. ft to
16 \$1.05/sq. ft, a 46% decrease in the rent), while the option specifically requires rent increases.

17 Nevertheless, if the Court were to consider the second prong of the analysis, judgment in
18 favor of the Landlord is still appropriate. As the Court clearly stated in *Bealick*, “The only
19 obligation of the parties was to negotiate in good faith, and if no agreement could be reached
20 within a reasonable time, absent action under *Cassinari*, the option would expire.” *Id.* At 103
21 Nev. at 372, 741 P.2d at 1362 (emphasis added). In other words, the Nevada Supreme Court
22 confirmed that if no agreement could be reached within a reasonable time the option would
23 expire and the only way to keep it from expiring would be for the Tenant to timely file an action
24 under *Cassinari* prior to the option expiring. *Id.* (“Absent an agreement on the rent within a
25 reasonable time (or a judicial determination of reasonable rent), there was no option, there was
26 no new lease, there was no breach of contract.”). The Tenant here did not comply with this
27 requirement.
28

1 Rather, despite the option term being set to commence September 1, 2016, the Tenant did
2 not sue for declaratory relief until more than two years after the option period was supposed to
3 begin and after paying the agreed upon rent for two years.⁴ Just as the Court found that the
4 *Bealick* option was unenforceable when the parties failed to agree to rent within a reasonable
5 time, this Court should also rule that since an agreement was not reached as to rent for the option
6 period beginning in 2016, the option was not exercised, and there is no lease currently in effect,
7 which necessarily means Tenant is a holdover month-to-month tenant.

8 Landlord's primary request is for the Court to determine that the parties agreed to the
9 amount of rent during the 2016-2021 option period. However, if the Court finds that the
10 undisputed communications and conduct of the parties did not result in such an agreement, then
11 the necessary result, as a matter of law, is that there is no lease in effect and Tenant is a holdover
12 month-to-month tenant.

13 **E. IF THE COURT ENFORCES THE OPTION AGREEMENT AND**
14 **DETERMINES AN APPROPRIATE RENT, THE APPROPRIATE RENT**
15 **MUST BE BASED ON THE INTENT OF THE PARTIES**

16 Finally, in the event the Court concludes (1) the parties did not reach an agreement as to
17 the rent for the option period and did not subsequently perform in accordance with that term; (2)
18 that the Tenant did negotiate in good faith; (3) that the Tenant did timely seek judicial
19 determination of a reasonable rent within a reasonable time; and (4) that the Court must
20 determine what rent is reasonable based on the intent of the parties, then the Court must make
21 this determination based on the history of the parties' landlord-tenant relationship and their
22 expressed intentions in entering into the 2007 Lease Modification.

23 As support for the Tenant's request that the Court investigate and declare what rent is
24 "reasonable" in this case, Tenant relies heavily on *Cassinari*. The *Cassinari* Court addressed an
25 option provision of a lease which contained all essential terms except for rent, to which it stated
26 that the option term would be based on "a monthly rental to be determined at that time."

27 ⁴ It also cannot be emphasized enough that the Tenant never even disputed that it had not agreed to the
28 rental amounts until its second lawyer, Lucas Grower, Esq., entered the picture in August 2017 – 12
months after the option term had commenced.

1 *Cassinari v. Mapes*, 91 Nev. 778, 780, 542 P.2d 1069, 1070 (1975). When the Cassinari tenant
2 attempted to exercise the option, the parties negotiated, but were unable to come to an agreement
3 as to rent. Notably, a distinguishing facet of *Cassinari* is that prior to the expiration of the
4 original lease term, the President of the United States issued an executive order freezing all rent
5 increases for 6 months. *Id.*.

6 While in *Cassinari* the parties gave no indication of what rent would be appropriate for
7 the option period, here the Court has significantly more information as to the “true intention of
8 the parties” from which the Court may arrive at an appropriate rent amount. Specifically, the
9 Court has knowledge of the undisputed history of the parties’ agreed upon rent increases for the
10 property over the past twenty years, as well as the parties’ agreement that the rental amount for
11 this option period would have to include “rental increases” over and above the existing rent at the
12 time the option was exercised.

13 Historically, the parties had increased monthly rent every year by \$210 per month, and in
14 the last year of the Lease prior to the current option period, the rent was \$8,190 per month. As
15 such, to carry out the true intention of the parties as *Cassinari* contemplates, the Court must take
16 these facts into account, and conclude that the appropriate rent for the option period beginning on
17 September 1, 2016 was \$8,400 per month, with annual \$210 per month rent increases thereafter –
18 which coincidentally is exactly what the Tenant’s first attorney agreed to in September 2016.

19 **III. CONCLUSION**

20 Tenant cannot establish that it is entitled to exercise its options in perpetuity, nor can
21 Tenant avoid its prior agreement to pay increased rent if it chose to exercise the option provision
22 in 2016. Moreover, Tenant does not dispute that its attorney acted with the requisite authority to
23 reach an agreement as to the essential terms of the option term, thereby forming an enforceable
24 contract with a rental rate beginning at \$8,400 per month with annual “rental increases.”

25 Finally, if no agreement was reached, the Tenant is a holdover month-to-month tenant,
26 or, if the Court feels it must impose an appropriate rent for the option period, that calculation
27 must take into account the history and stated intentions of the parties in relation to the rent that
28

1 would apply to this option period. All things considered, the Court should grant Landlord's
2 Motion, and deny Tenant's counter motion in its entirety.

3 Dated this 1st day of July, 2019.

4
5 MARQUIS AURBACH COFFING

6
7 By /s/ Terry A. Moore
8 Terry A. Moore, Esq.
9 Nevada Bar No. 7831
10 10001 Park Run Drive
11 Las Vegas, Nevada 89145
12 *Attorneys for Defendant*
13 *Tropicana Investments, LLC*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

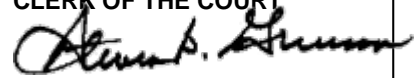
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTERMOTION FOR PARTIAL SUMMARY ADJUDICATION** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 1st day of July, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁵

Mario Lovato mpl@lovatolaw.com

/s/ Cally Hatfield
An employee of Marquis Aurbach Coffing

⁵ 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).



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 REPLY IN SUPPORT OF
COUNTERMOTION FOR PARTIAL SUMMARY ADJUDICATION**

Plaintiff JSJBD Corp, d/b/a Blue Dogs Pub ("Blue Dogs") replies in support of its countermotion for partial summary adjudication, requesting declaratory relief such 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.

LOVATO LAW FIRM, P.C.

/s/ Mario Lovato

MARIO P. LOVATO, ESQ.
Nevada Bar No. 7427
Attorney for Blue Dogs Pub

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM

I.

REPLY TO LANDLORD’S “INTRODUCTION” ARGUMENTS

1. **Amendment vs. Exercise of Option:** An exercise of option occurs via renewal correspondence that provides notice of exercise of option, as occurred in February of 2016. In 2001, 2006, and 2011, the Lease was amended by a document called an “Amendment” or an “Addendum.” Those amendments to the Lease expressly changed the term of the Lease, including the expiration. They kept all prior Lease documents, including the options, in full force and effect.

2. **Landlord’s meritless arguments that any option was exercised prior 2016.** Landlord argues that “Tenant clearly exercised the each of those options as they became ripe,” yet, Landlord has zero evidence that any option was exercised prior to 2016. As the Ninth Circuit held in *McLane*, an exercise of option is entirely different from an amendment that amends the term of the Lease. The plain language of the Amendment / Addenda are that the Lease was amended and the term of the Lease was changed. The only exercise of option is shown by the February 2016 Letter from Blue Dog’s that exercised the first of the options that were granted.

3. **Landlord unsupported “superseded” arguments.** Landlord claims that “the parties agreed that the prior addendums containing the options were superseded by the terms of the subsequent documents that the parties signed” The Amendment / Addenda plainly state the opposite. They do not have any “superseded” terminology. They plainly state that all prior Lease documents remain “in full force and effect.”

4. **Landlord ignores the Mirror Image Rule of basic Contract Law.** The Mirror Image Rule states that an offer must be accepted exactly with no modifications. Restatement (Second) of Contracts § 59. An attempt to accept the offer on different terms instead creates a counter-offer, and this constitutes a rejection of the original offer. *Id.* Second, when it comes to commercial lease negotiations, a negotiating attorney merely attempts to finalize a draft lease that

must thereafter be signed by the parties. Despite these two basic concepts, Landlord presents bizarre arguments such as “Tenant has never disclaimed the authority of its attorney”—despite Landlord’s owner, Jeff Chauncey, directly rejecting all negotiating points presented by Leslie Miller. Landlord also states that Miller “agreed to all of the essential terms”—even though what Miller actually did was raise various new negotiating points that were immediately rejected by the Landlord’s owner. Landlord even argues, “Nor did the Tenant repudiate the agreement the parties reached in September 2016”—even though anyone reading the correspondence can see that the Landlord’s owner rejected all negotiating points that Miller presented.

5. **Blue Dogs' payment of old 2016 rent to preserve option rights.** Landlord ignores that Blue Dogs paid old 2016 rent to preserve option rights, just as the tenant in *Cassinari* paid the former rent during three years of fruitless negotiations.

6. **Each of the options were paid-for and are valuable to Blue Dogs.** All of the options are supported by substantial consideration in form of not just payment of rent, but rental payments far in excess of the market, and even \$50,000.00 to which Landlord is not entitled. They certainly have been purchased at great expense to Blue Dogs. Rather than confront the terms of the options, beginning with those granted in 1996, including that rent must be reset at a “market rental rate” a “reasonable” or a “negotiated” rate, Landlord has chosen to defer the matter by five year periods until 2016 when the first option was exercised. All of the options have an open price term and consistently refer to a resetting of the rent.

II.

ARGUMENT

A. LANDLORD’S ARGUMENT REGARDING “PERPETUAL” OPTIONS WAS REJECTED BY THE NINTH CIRCUIT IN *McLANE*—AS ALREADY POINTED OUT IN BLUE DOGS’ COUNTERMOTION—AND FAILS TO HONESTLY ADDRESS BLUE DOGS’ ARGUMENTS.

Here, the Landlord has granted and sold options to Blue Dogs and its predecessor three separate times. Such options are critical to a tenant tied to the location. The Landlord used the

1 options as an incentive to sign the original Lease, the Addendum II, and the Lease Assignment &
2 Modification. Prior to 2016, no option had ever been exercised, but rather, all Lease and related
3 documents had been kept “in full force and effect” with the Lease term (and expiration date)
4 repeatedly moved.

5 Blue Dogs has not argued that options are “perpetual.” It already addressed this argument
6 in its Countermotion by quoting the Ninth Circuit when the landlord made the same argument:
7

8 This case, unlike Tucker, does not involve the enforcement of a
9 perpetual lease. McLane & McLane does not argue that it has the
10 right, *ad infinitum*, to renew the lease. Even as amended, the lease
provision conferring the option to renew, unlike the provision in
Tucker, did not state that it was itself renewable.

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

12 Landlord also misuses the term “evergreen.” In the Countermotion, it refers to the three
13 options granted in the 2007 Lease Assignment and Modification being *self-renewing* when the
14 time comes to use each of those particular options, which in contrast to the prior options that were
15 granted in 1996 and 2006, which required correspondence providing notice of exercise of an option
16 either 90 days or 6 months prior to expiration.
17

18 **B. LANDLORD HAS CITED ZERO EVIDENCE OF ANY OPTION BEING**
19 **EXERCISED PRIOR TO 2016—AND LANDLORD EVEN RESORTS TO**
20 **ARGUING THAT THE COURT SHOULD IGNORE THE PLAIN**
LANGUAGE OF THE AMENDMENTS DRAFTED BY THE LANDLORD.

21 Throughout Landlord’s reply brief, Landlord employs circular reasoning in requesting that
22 the Court just assume that an option was exercised prior to 2016. Landlord does not cite a single
23 item of correspondence that purportedly exercises an option. Landlord does not present any other
24 evidence of an option being used.

25 In a footnote, Landlord appears to recognize that the declarations in the Countermotion are
26 fatal to Landlord’s arguments. Landlord requests the Court ignore the declarations, which are
27 un rebutted by Landlord, making the spurious argument that they must state the motion that they
28 relate to—even though the declarations are attached to the motion, the motion refers to the

1 declarations by name and number, and there is an exhibit list that further incorporates the
2 declarations. The rule referenced by Landlord applies to the markedly different situation where
3 declarations are filed separately from the motion, opposition, or reply to which they relate, and
4 exists to make it easier for the Court to determine what filing relate to one another, which is not
5 an issue here.

6
7 No doubt realizing that the plain language of each Amendment / Addenda kept the options
8 in full force and effect, and continued the term of the Lease and related documents by successive
9 five year periods, Landlord repeatedly requests that the Court ignore the plain language of the
10 Amendment / Addenda. Landlord does this when Landlord requests that the Court enforce “the
11 obvious indication” rather than the plain language.¹ Reply at 4. Landlord does this again when
12 Landlord argues that “[t]he particular titles chosen for these agreements” should be ignored by the
13 Court, claiming they do not “preclude the Court” from concluding something contrary to the titles.
14
15 *Id.* Landlord argues that the Court should follow the “clear implication” of the Amendment /
16 Addenda, rather than following their plain language. *Id.* Finally, in a footnote, Landlord suggests
17 that the Court “simply choose not to follow the Ninth Circuit’s reasoning,” conceding that the
18 Ninth Circuit’s plain language analysis in *McLane* is fatal to Landlord.

19 After already conceding *McLane*’s rejection of the same arguments Landlord makes here,
20 Landlord attempts to distinguish *McLane*. Landlord argues that the present case is different
21 because the Amendment in *McLane* did not reference the prior option that was granted as part of
22 the original Lease.
23

24
25
26 ¹ There is no legal doctrine, and Landlord does not cite any, that permits a Landlord who drafts
27 such Amendment / Addenda to avoid the plain language of those documents, especially where the
28 Landlord has profited mightily for 20 years by receiving rent that is far in excess of market rates.
See, e.g., *Campanelli v. Altamira*, 86 Nev. 838, 841, 477 P.2d 870, 872 (1970) (declaring that
“when a party to a written contract accepts it as a contract he is bound by the stipulations and
conditions expressed in it whether he reads them or not. ***Ignorance through negligence*** or
inexcusable trustfulness ***will not relieve a party from his contract obligations.***”).

1 Such argument utterly fails to distinguish *McLane* from the case here. None of the
2 Amendment / Addenda drafted by Landlord make any reference to prior options that were granted
3 and sold by Landlord. Rather, each and every Amendment / Addenda states that all prior Lease
4 and related documents remain “in full force and effect.”

5 Landlord’s argument about the “one final extension of five years” granted in 2006 fails to
6 follow the plain meaning of the phrase, including its subsequent reference to “expiration date” of
7 the Lease. “[F]inal” plainly communicates that there are *prior options* that have been granted.
8 The language of the option granted in 2006 does not exclude the prior options, does not reference
9 them by name or otherwise, and does not state that they have been used. The 2006 option’s
10 reference to “expiration” is a reference to the same “expiration date” that was repeatedly amended
11 and changed to a later date. Starting with the options granted in 1996, the parties have always
12 recognized that the expiration date of the Lease will change every five years and that options that
13 are granted can be used successively until they have actually been exercised and used. The
14 Amendment / Addenda plainly did not “exercise” any of the valuable options that had been granted
15 and sold to Blue Dogs.
16

17
18 **C. LANDLORD EMPLOYS CIRCULAR REASONING IN REGARD TO THE**
19 **THREE OPTIONS GRANTED, AND SOLD, BY LANDLORD TO BLUE**
20 **DOGS IN 2007.**

21 In its Reply, Landlord recognizes that the controlling phrase in the options granted in 2007
22 is “terms and conditions to be negotiated,” describing such phrase as the “core sentence.” Reply
23 at 7. That concedes that the “included by not limited to” terminology is not the controlling
24 terminology. Further, Landlord concedes that “including but not limited to” is terminology that
25 does not present an exclusive list. *Id.* That leaves the 2007 options as having an open price term,
26 which, under *Cassinari*, can be determined by the Court by looking to market conditions.

27 Despite making these concessions that are critical to the plain language analysis, Landlord
28 resorts to circular arguments when Landlord asserts that the 2007 options supposedly mean

1 “increases must be negotiated” and “must include rental increases.” Landlord even underlines the
2 word “must” each time Landlord makes these arguments. The plain language of the 2007 options
3 does not, however, have such terminology. It certainly does not have the “must” that Landlord
4 repeatedly underlines in his Reply.

5 Landlord makes no effort to cite any legal authority to support its interpretation. Landlord
6 does not reference the parties’ other writings, including, for example: the parties’ “market rental
7 rates” terminology in the 1996 options, the “reasonable” terminology used, or the “negotiated”
8 terminology the parties repeatedly used. Landlord does not reference the Landlord’s own
9 interpretation of “negotiation” as communicated in writing to Blue Dogs in 2007 that Landlord
10 always negotiates at “market rates” or “below market rates.”

12 Landlord even resorts to arguing that the 2007 options “cannot cause rent to both increase
13 and decrease at the same time,” ignoring that a non-exclusive list of Lease terms would permit rent
14 to either increase **OR** decrease depending on what market conditions cause to be reasonable.

16 **D. LANDLORD CONTINUES PRESENTING MERITLESS ARGUMENTS IN**
17 **REGARD TO LESLIE MILLER’S 2016 CORRESPONDENCE, IN**
COMPLETE IGNORANCE OF THE FACTS.

18 In Landlord’s motion, Landlord claims that an **August 2, 2016** letter from Leslie Miller
19 made an offer that Landlord accepted. *See* Landlord’s Motion at 15 (citing Ex. 9 to the motion).
20 The argument is meritless. Anyone reading the letter would see that it merely presented various
21 negotiating points after disagreeing with Landlord’s arguments about an alleged violation of an
22 anti-assignment provision.

24 In Landlord’s motion, Landlord neglected to inform the Court that Landlord’s principal,
25 Jeff Chauncey, responded the very next day directly to Leslie Miller and rejected all the negotiating
26 points presented by Miller. Landlord further communicated that Miller was not even aware that
27 Landlord demanded entirely new lease documents to replace prior lease documents.

1 On page 2 of the Reply, Landlord claims that Leslie Miller entered into an agreement with
2 Landlord in “**September 2016**” even though there is no such “agreement,” let alone a signed Lease
3 that purportedly replaces prior lease documents.

4 On page 8 of the Reply, Landlord claims that the key correspondence from Leslie Miller
5 is actually dated **August 31, 2016**, and that such correspondence is an “**Amendment**” that the
6 parties supposedly agreed-to. Yet, there is no signed Amendment. Again, anyone reading the
7 August 31, 2016 correspondence would see that there is no agreement. The argument is utterly
8 devoid of any merit.

10 On page 8, of the Reply, Landlord now claims that Landlord’s attorney “confirmed” an
11 acceptance on **September 7, 2016**. Yet, the opening paragraph of the September 7, 2016
12 correspondence patently says nothing about any agreement. Rather, it says that attorney Sacco is
13 “commencing a dialogue,” states that certain negotiating points are “not acceptable,” demands that
14 terminology proposed by Miller be “deleted,” demands that a new paragraph from Landlord be
15 inserted, demands personal guaranties, and demands other terminology that has not even been
16 drafted. The letter does not make any agreement regarding anything. It also expressly states that
17 there no new Lease document, as that remains to be drafted. It concludes by stating: “I look
18 forward to discussing these points with you and attempting to work through these final matters.
19 Please feel free to call me on my direct line . . .” There si no good reason for an attorney to claim
20 that such correspondence represents a binding lease document.

23 In the Opposition and Countermotion that Blue Dogs filed, Landlord’s false claim about
24 an “agreement” required Blue Dogs to provide a lengthy description of the parties’ fruitless
25 negotiations and to attach a dozens of exhibits to show the Court what actually occurred. An
26 attorney who persists in claiming there is an agreement in complete ignorance of the Mirror Image
27 Rule (and that the attorneys here were attempting to draft lease documents that would not be
28 binding unless the clients signed) is presenting an argument that wholly disregards his own

1 credibility. These continued arguments by Landlord that an agreement has been reached regarding
2 post-2016 rent is entirely without merit.

3 **E. LANDLORD CITES *CHARTER MEDICAL CORP. V. BEALICK* FOR A**
4 **PROPOSITION FOR WHICH IT DOES NOT STAND.**

5 In *Cassinari*, the tenant affirmed the option, remained in possession from 1971 to 1974
6 while paying the old rent, and, when the parties after three years of negotiations still could not
7 agree on new rent for the five year option, the tenant applied to the Court to enforce the option and
8 determine the reasonable rental rate. The Nevada Supreme Court held in favor of the tenant, held
9 that options that are affirmed by the tenant are enforceable despite not containing a set rental rate,
10 and held that the rental rate can be determined by the court by looking at market conditions.

11
12 In *Cassinari*, the Nevada Supreme Court discussed that the option term commenced at the
13 same time that the Nixon administration imposed a temporary freeze on prices that lasted six
14 months. The Court referenced this, however, to emphasize that such freeze was one of the reasons
15 the parties were unable to agree on a new rental rate. Despite the temporary freeze that existed for
16 6 months of the five year option period, the Court held that the District Court would look to market
17 conditions in determining the reasonable rent that would apply. The Nixon administration's 6
18 month price freeze does nothing to distinguish *Cassinari* from the present case.

19
20 In *Charter Medical Corp. v. Bealick*, the Nevada Supreme Court repeatedly stated that the
21 result would have been the same for the tenant as it had been in *Cassinari* ***if the tenant had***
22 ***affirmed the lease*** and applied to the Court to determine reasonable rent. It stated this early in the
23 opinion when it first cited the *Cassinari* decision. It stated it again later in the decision when it
24 stated: ***“As stated, the doctors could have chosen to pursue their lessees’ interest and ask the***
25 ***court to set a reasonable rent. Instead, they decided to move.”*** *Id.* at 372.

26
27 The Court did not set a “reasonable time” rule when a lessee affirms the lease, as the option
28 in that circumstance has already been affirmed, and there unquestionably needs to be a
determination of the rent that applies to the option that is being performed by the parties. The

1 statute of limitations governing written contracts is what applies to timeliness of filing a complaint
2 with the court where a party affirms the lease option and maintains possession. *See* NRS 11.190.

3 In *Bealick*, the tenant-doctors chose not to affirm the option. Instead, the option had an
4 “escape clause” where the doctor-tenants could terminate the option and move out if a rental rate
5 were not agreed-upon within a certain time after the new lease term commenced, the doctors
6 stopped paying rent entirely, and when the landlord served a notice to vacate the doctors chose to
7 move out of the premises entirely. On these dramatically different facts, the Court made clear that
8 “a jury could have found that negotiations had failed, that the option had died and that the parties
9 should be left to their own resources.” In essence, such facts could be interpreted to mean that the
10 doctors had terminated the Lease and the option. Obviously, that cannot be the result when the
11 tenant has affirmed the Lease, continued paying the prior rent as the tenant in *Cassinari* did, and
12 has applied to the Court within the time of the statute of limitations to obtain a determination of
13 reasonable rental rate.
14
15

16 III.

17 CONCLUSION

18 Plaintiff Blue Dogs’ counter-motion for partial summary judgment should be granted.

19 LOVATO LAW FIRM, P.C.

20 /s/ Mario Lovato

21 MARIO P. LOVATO, ESQ.

22 Nevada Bar No. 7427

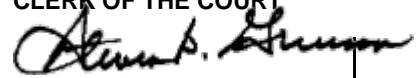
23 Attorney for Blue Dogs
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED that, on July 3, 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 REPLY IN SUPPORT OF COUNTERMOTION**
5 **FOR PARTIAL SUMMARY ADJUDICATION** was served via the Court's system of electronic
6 service on all parties registered and listed for such service, including upon by the following:
7

8
9 Terry A. Moore
10 Marquis Aurbach Coffing
11 10001 Park Run Dr.
12 Las Vegas, NV 89145
Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC

13
14 /s/ Mario Lovato
15
16
17
18
19
20
21
22
23
24
25
26
27
28



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | | |
|---------------------------|---|------------------------|
| JSJBD CORP. | . | |
| | . | |
| Plaintiff | . | CASE NO. A-18-785311-B |
| | . | |
| vs. | . | |
| | . | DEPT. NO. XI |
| TROPICANA INVESTMENTS LLC | . | |
| | . | |
| Defendant | . | Transcript of |
| | . | Proceedings |
| | . | |

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION FOR SUMMARY JUDGMENT

MONDAY, JULY 8, 2019

APPEARANCES:

| | |
|---------------------|-------------------------|
| FOR THE PLAINTIFF: | MARIO P. LOVATO, ESQ. |
| FOR THE DEFENDANTS: | TERRY A. MOORE, ESQ. |
| COURT RECORDER: | TRANSCRIPTION BY: |
| JILL HAWKINS | FLORENCE HOYT |
| District Court | Las Vegas, Nevada 89146 |

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, MONDAY, JULY 8, 2019, 9:46 A.M.

2 (Court was called to order)

3 THE COURT: JSJBD Corp. versus Tropicana
4 Investments. These are the competing motions for summary
5 judgment, gentlemen.

6 MR. MOORE: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. LOVATO: 'Morning. Mario Lovato on behalf of
9 plaintiff JSJBD Corp. d/b/a Blue Dog's. I also have three
10 principals present, Jeff Vincent, Stuart Vincent, and Bruce
11 Eisen [phonetic].

12 THE COURT: 'Morning.

13 MR. MOORE: 'Morning. Terry Moore on behalf of the
14 landlord defendant, Tropicana Investments.

15 THE COURT: Okay. You started this mess.

16 MR. MOORE: Good morning.

17 THE COURT: Good morning, Mr. Moore.

18 MR. MOORE: Your Honor, I'll try and be as brief as
19 I can. This is a commercial lease dispute, obviously, where
20 the tenant and the landlord have what is very clear from the
21 briefing to be diametrically opposed views of how the lease
22 has evolved over the past 20 years.

23 I think it's important to realize at the beginning
24 this was a five-year, five-month lease term that expired
25 August 31, 2001. That's it. The lease provided in a separate

1 stand-alone document for two options that could be exercised
2 in 2001 and 2006. In 2001 if those options weren't exercised,
3 the lease expired. I think that's pretty clear from the
4 document. Not surprisingly, in 2001 that first option was
5 exercised, and the lease was extended from 2001 to 2006.

6 THE COURT: Through some other document other than
7 just an option.

8 MR. MOORE: Through a 2001 addendum, yes. And then
9 in 2006, when that term -- option term expired, the parties
10 exercised -- the tenant exercised the second option that was
11 provided for from 2006 to 2011, and the parties entered into
12 the 2006 addendum extending the term through 2011.

13 Then in 2007 the parties entered into the 2007 lease
14 modification that provided three extensions -- again, three
15 options that would begin in 2016. There was also another part
16 of the 2006 addendum that granted yet a third option period,
17 five years, from 2011 to 2016. The tenant exercised that
18 option, and that's why the term was extended from 2011 to
19 2016. And I think this is what underlies the fatal flaw of
20 the tenant's argument. They're claiming that these options
21 were never exercised. Well, that's just absurd, because my
22 client had no reason to simply extend the term on its own.
23 The only reason the terms were extendable was because of the
24 options being exercised.

25 So when their options were exercised they were used,

1 they were done, and then they were superseded by the
2 successive documents that the parties agreed to. That's the
3 2001 amendment, 2006 amendment, the 2011 amendment. And
4 again, I think it's important to realize the language. In
5 looking at the language of the documents that the parties
6 agreed to, the 1996 option agreement said, "Option to renew
7 for five years commencing September 1, 2001."

8 THE COURT: So can I skip ahead.

9 MR. MOORE: You may.

10 THE COURT: I'm in paragraph 8 of the most recent
11 agreement. Why do you think that rental decreases or other
12 terms could not be negotiated as part of that, since it only
13 says, "including, but not limited to, rental increases"?

14 MR. MOORE: By virtue of strict contractual
15 construction, Your Honor. The parties specifically negotiated
16 in that document the -- under "Terms and conditions,
17 including, but not limited to, rental increases, to be
18 negotiated."

19 THE COURT: Sure. Which means you have other
20 conditions you can negotiate, too --

21 MR. MOORE: You can. You can.

22 THE COURT: -- including credits, all sorts of
23 things could be part of it.

24 MR. MOORE: You could. But the baseline controlling
25 factor there is the minimum requirement --

1 THE COURT: Then why on earth didn't they put in the
2 schedule of what the rent would be?

3 MR. MOORE: Because they hadn't done that at any
4 point in any of the others.

5 THE COURT: I know. I looked at it.

6 MR. MOORE: That's just how they were doing things
7 back then, Your Honor.

8 THE COURT: Yeah.

9 MR. MOORE: But, again, I think it's important that
10 you look at the course of conduct. The rent never decreased.
11 The parties always increased the rent.

12 THE COURT: Well, the rent stayed the same a couple
13 of times.

14 MR. MOORE: 2011 to 2013, one -- one two-year
15 period, yes. But other than that, the rent always increased.
16 And that's why the landlord specifically negotiated,
17 including, but not limited to, rental increases. The tenant
18 was free to negotiate for rental decreases or whatever
19 language it wanted to. It didn't. The parties specifically
20 agreed -- and I think that's the alpha and the omega of this
21 determination. By virtue of that language they said and
22 agreed rental increases have to be provided for. And that's
23 consistent with the parties' prior conduct throughout the
24 entire preceding 15 years. They always increased it, other
25 than the 2011 to '13 halt where it stayed the same. But then

1 it increased.

2 And I think when you look at that kind of conduct,
3 that's demonstrative of what they were doing. And I think
4 that's why the arguments from the tenant that the options are
5 still somehow sitting out there and that market rent from 1996
6 is somehow applicable here, you don't even need to go there.
7 I don't think it is applicable. And I think it's been
8 superseded by the very terms of the documents the parties both
9 signed in the preceding 15 years.

10 THE COURT: Thanks.

11 MR. MOORE: The third point I wanted to make, Your
12 Honor, was simply that, Your Honor, if you wanted the terms of
13 the '96 option and the other options to those particular
14 terms, you come to the 2016 term. And we've got alternative
15 arguments that we've presented. One, if the parties reached
16 an agreement based upon Ms. Miller's letter from August 31st
17 where she set forth the term --

18 THE COURT: Then you wouldn't have rejected it,
19 would you?

20 MR. MOORE: We didn't reject the August 31st, Your
21 Honor. The tenant's opposition and reply spent a lot of time
22 pointing out the August 2nd letter and the August 3rd response
23 from Mr. Chauncey. They ignored the August 31st where Ms.
24 Miller says, here's the proposal, here's our addendum. And
25 then Mr. Sacco responds to it and says -- he doesn't even

1 address the rent. He's fine with the rent that they proposed,
2 and he has a couple little non-material things that he's
3 changing.

4 THE COURT: Because they've got a 25-year-old lease
5 form and somebody wanted to update it.

6 MR. MOORE: He wanted to update it.

7 THE COURT: But that's not necessarily what an
8 option is for.

9 MR. MOORE: I agree with you. It's not. And --

10 THE COURT: And so when you start doing that you
11 create a new agreement.

12 MR. MOORE: And that's what I was saying. We had an
13 agreement on the operative five points, name of the parties,
14 the location. The only thing we didn't have an agreement on
15 was the amount of rent. And then when she proposed her
16 proposal with the proposed schedule of 8400, 8400, and then it
17 goes up 210, Mr. Sacco agreed with that, and they began to pay
18 consistent with it, which I think is an absolute critical
19 point, Your Honor. They never once in 2016 to 2017 disputed
20 that they should be paying less. They never once claimed,
21 we're paying this under protest. They never once said, we're
22 doing this so that we're in not default. They paid it
23 consistent with what their attorney proposed and that the
24 landlord agreed to. That's our position, and that's based on
25 their own actions. Never once did they dispute it until Lucas

1 Grower, the second attorney, came in 2017 after the option had
2 already expired -- or the second year of the option. And then
3 he started bringing up questions of whether they wanted to
4 renegotiate. And --

5 THE COURT: In a holdover tenancy.

6 MR. MOORE: And even he admitted they were a
7 holdover tenant, which, hey, that's fine, if you want to --
8 that's our fallback position. If there was no agreement, then
9 they're a holdover tenant based upon the admission of their
10 own attorney. We're fine with it. But even if you get past
11 all of those points, whether, you know, their first attorney's
12 conduct -- and I think it's particularly relevant to put they
13 didn't submit anything from Ms. Miller refuting our positions
14 or disputing the agreement was reached. And you then have Mr.
15 Grower's statements, admissions that I think are binding on
16 them, as well. But even if you move past those
17 [unintelligible] and you get to the question of there was a
18 proper, timely exercising of the option and you get into the
19 whole Cassinari and Bealick analysis I think it's important to
20 realize that under Bealick they had a duty to negotiate in
21 good faith. And, again, I think, as I said at the beginning,
22 we have diametrically opposed positions here. You can't
23 negotiate in good faith when you start from saying, we want a
24 45 percent decrease in the rent when the lease document itself
25 says, including, but not limited to, rental increases. You

1 can't under Bealick be considered to have acted in good faith
2 and negotiated in good faith. And even if you say that, you
3 know what, I could terminate, then I think that they didn't
4 timely initiate this action under Bealick for a judicial
5 determination until 45 percent of the option term had already
6 been used. And I think that's fatal to their position at this
7 point, Your Honor.

8 I'd like to reserve the rest of my time for
9 rebuttal.

10 THE COURT: Thanks.

11 Mr. Lovato.

12 MR. LOVATO: Well, this is obviously a situation
13 where the parties have not agreed on rent. The argument that
14 there's an agreement just makes no sense. It forced me to put
15 together a long description with about 30 exhibits showing the
16 back and forth here.

17 Where the parties have an option where all the terms
18 are there except for rent Cassinari applies. And Cassinari
19 just adopted what was the rule that's the modern rule. It's
20 also the rule from the UCC, 2-305, that we have for sales and
21 leases of goods. There's an open price term. Where there's
22 an open price term that can be ascertained and determined by
23 the Court. So this case was filed and was timely filed.

24 These are valuable options. Van Aken attests to
25 that. Obviously Jeff Fisher -- Jeff Vincent also attests to

1 that. And the reason why is because they have gaming and
2 licensing at the location. When these options are negotiated
3 they say things such as, to be negotiated, market rates. When
4 the negotiation winds up happening we see I believe it's
5 Exhibit 25, where the landlord says, market rental rates and
6 what other tenants are paying doesn't matter because your
7 location and type of use are unique. So when it comes time to
8 actually negotiate, he's not going to negotiate market rates.

9 We attached the appraisal that we obtained before
10 this case was filed. We offered to do a joint appraisal, we
11 offered other joint and neutral methods, and they were all
12 rejected. The market rate in the center is about 85 cents per
13 square foot. Over these 20 years the rent's gone up to over
14 \$2 per square foot. Over the course of these negotiations the
15 landlord's gone a little bit below \$2 per square foot, but he
16 obviously doesn't want to go down. That's just his bargaining
17 position. But we're at a situation where the rent is far in
18 excess of the market rate.

19 Okay. Amendments. Do amendments get rid of
20 options? Of course not. Why is that? These options are
21 supported by consideration. Where they're supported by
22 consideration they're irrevocable. They're valuable options.
23 There are a number of cases that address this issue, and I
24 cited the McClain case because that's the most Nevada
25 oriented. Comes from the Ninth Circuit. Obviously it's not

1 binding, but those are the same guys who often talk about
2 Nevada law. And they're applying general contract principles.
3 An amendment that extends the term of the lease and does not
4 expressly exclude prior options doesn't eliminate prior
5 options. When you do that research you often run into
6 practice guides for transactional attorneys. If you draft an
7 amendment, you need to expressly exclude options, or else they
8 will continue.

9 There are other cases that are out there. There's
10 one, for example, from a Michigan Court of Appeals, America
11 Bank versus Harbor Northwest-38,000, 2003 Westlaw 228, 51650.
12 That's the same ruling as the McClain court, which is you
13 didn't expressly exclude the option so it's still there. And
14 of course it would still be there. It's irrevocable by the
15 landlord. If you don't expressly exclude it, it's still
16 there.

17 So what happened is every five years the landlord,
18 rather than dealing with this 1996 option and the other one
19 that would come after that, simply entered into an amendment
20 that kicked the can down the road by another five years,
21 deferred the issue. And the tenant knows from the
22 negotiations and discussions that happened before that that
23 the landlord's going to force litigation. And this continues
24 on for 20 years until we get to the point where we are. The
25 only time that there's been an exercise of an option, and it

1 was admitted in the answer, is the February 2016 letter of
2 renewal from Jeff Vincent to the landlord. That exercised an
3 option. It was timely. It was more than 90 days in advance,
4 it was more than six months in advance. That is the only
5 exercise of option. Everything else has simply been an
6 amendment that amends the term. You amend the term, you amend
7 the expiration date. The options that expire on the
8 expiration date continue because they haven't expired anymore.

9 When you look at the terminology of these options,
10 and that was one of the questions that you asked, was the
11 terminology of the most recent options, again and again they
12 leave an open price term. If there's an open price term, it
13 doesn't say what the rent is, then if the parties can't agree,
14 that can be determined by the Court by looking at market
15 conditions. The first option said market rental rates. It
16 also said, to be negotiated. The next options said, to be
17 negotiated, and then it said one final option was being
18 granted. What exactly that means isn't clear. It didn't
19 expressly exclude the prior options. It seems to acknowledge
20 that there are prior options. It seems to be saying the
21 landlord is never going to grant another one. But we know
22 that's not true, because the next year he granted three more.
23 So it's not final, either. Instead, it's simply that there's
24 another option to be negotiated. That goes into the tenant's
25 pocket. A year later the landlord, looking to get \$50,000,

1 which he's not entitled to, as part of consenting to an
2 assignment, grants three more options. The controlling
3 language again is "to be negotiated." That's what controls.

4 The landlord drafted up this assignment document and
5 then it includes the phraseology, "including, but not limited
6 to, rental increases." He wants to interpret that as limited
7 to rental increases. But that's not what it says.
8 "Including, but not limited" doesn't mean that it only could
9 be rental increases.

10 Also, you saw at the same time that that negotiation
11 about that phraseology was going on Jeff -- excuse me, one of
12 the principals of Blue Dog's wanted it changed to some of that
13 terminology. The landlord said that he doesn't consent to the
14 change. But when he negotiates these he negotiates that
15 market rates and below market rates. So when he uses that
16 term "negotiates," says what it means, and it means market
17 rates and below market rates, he can't then later say, that
18 only means rates that are far in excess of the market.

19 I think the Court understands the issues here.
20 There's simply an open price term. We're asking for
21 declaratory relief, an order from the Court that says, this is
22 an enforceable option, whichever one it is, and the rental
23 rate will be determined by the Court per Cassinari and its
24 progeny, the subsequent case, the Charter Hospital case. And
25 that will be done according to further proceedings before this

1 Court.

2 THE COURT: Thank you.

3 Mr. Moore, anything else?

4 MR. MOORE: Very briefly. We have Section 34 of the
5 -- how much time do I have, Your Honor?

6 THE COURT: Three.

7 MR. MOORE: Three. Section 34 of the Restatement
8 pretty much supports the landlord's position here that prior
9 performance is indicative of the parties' agreement. And I
10 believe that's exactly what happened here. When you saw the
11 tenant pay consistent with the agreement reached by its
12 lawyer, Leslie Miller. When they paid 8400 a month without
13 ever complaining, without ever objecting, without ever
14 reserving any rights, without ever doing anything, but it was
15 absolutely consistent with the agreement that was reached
16 between Ms. Miller and Mr. Sacco in September of 2016, I think
17 that is critical to determining the parties even had
18 agreement. Now, again, if the argument is then that they did
19 not have an agreement, then, as Mr. Grower said in his letter
20 to Mr. Sacco from a year later, the tenant's pattern of
21 conduct is consistent with its position as a holdover tenant
22 and nothing more.

23 So they want to have their cake and eat it, too.
24 It's either one or the other. Either you're a holdover, or
25 you exercised the option and entered into an agreement. And

1 we think based upon the documentation from Ms. Miller, they
2 entered into an agreement on the rent for 8400, 8400, 8610,
3 and so on for that five-year period of time. Nothing in any
4 of these documents since 1996 has ever referenced market rent,
5 market rate, none of that. It says, to be negotiated. And
6 that's exactly what the parties did. I can't emphasize that
7 enough. In 2001, 2006, 2011 they negotiated and came to an
8 agreement on the amounts of rents that were going to be paid.
9 So they can't go back and retroactively change that. I'm not
10 really sure if that's what they were trying to say in their
11 brief or not. But I think it's an important distinction to be
12 made. I also think that when you consider the argument that
13 even the 2006 addendum confirmed that they exercised the
14 option, when the landlord said, you're granted one final
15 extension term, that's connotating that there were other
16 extension terms that were exercised.

17 So I think when we're here, we're focusing on the
18 2016 term, I still think the Bealick analysis comes in. I
19 don't think that they negotiated in good faith based upon the
20 terms of that document. And even if they did, I don't believe
21 waiting 45 percent of the option term to be used before filing
22 suit is a timely exercise of the Cassinari motion to seek
23 judicial intervention.

24 THE COURT: Thank you.

25 MR. MOORE: Thank you.

1 THE COURT: So the countermotion is granted in part.
2 The option under the 2007 agreement was properly executed.
3 However, since the option does not include an amount of rent,
4 the Court will need to make a determination at an evidentiary
5 hearing or bench trial related to the appropriate amount of
6 that, including whether the tenant waived any claim for lower
7 rent and whether market conditions should influence the
8 Court's determination of rent and whether partial performance
9 has waived a claim to lower rent.

10 Anything else? We have a trial already set in
11 November.

12 MR. LOVATO: I'll draft the order.

13 THE COURT: Sure.

14 THE PROCEEDINGS CONCLUDED AT 10:05 A.M.

15 * * * * *

16

17

18

19

20

21

22

23

24

25

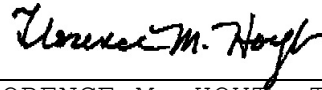
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

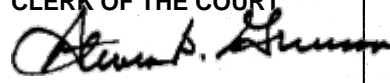
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

7/25/19

DATE



MARIO P. LOVATO, ESQ.
Nevada Bar No. 7427
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd. Ste. 100
Las Vegas, Nevada 89128
TEL: (702) 979-9047
mpl@lovatolaw.com
Attorney for Plaintiff / Counterdefendant
JSJBD Corp dba Blue Dogs Pub and
the individual Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

AND COUNTERCLAIMS.

Case No.: A-18-785311-B

BUSINESS COURT

ORDER

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

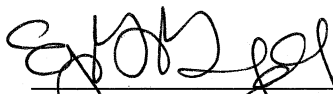
1 THE COURT HEREBY FINDS that Plaintiff / Counterdefendant JSJBD Corp has an
2 enforceable option to renew / extend the Lease for the current option period of September 1, 2016
3 to August 31, 2021, that the parties have not been able to agree on an amount for the rent for such
4 option period, and that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

9 IT IS HEREBY ORDERED, ADJUDGED, DECREED that:

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

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

18 DATED: July 23rd, 2019.

19 
20 DISTRICT COURT JUDGE
21 *W. Intelment*

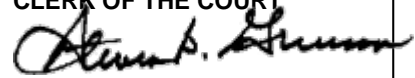
21 Submitted by:

22 LOVATO LAW FIRM, P.C.

23 
24 MARIO P. LOVATO

Nevada Bar No. 7427

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



MARIO P. LOVATO, ESQ.
Nevada Bar No. 7427
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd. Ste. 100
Las Vegas, Nevada 89128
TEL: (702) 979-9047
mpl@lovatolaw.com
Attorney for Plaintiff / Counterdefendant
JSJBD Corp dba Blue Dogs Pub and
the individual Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|---|---|-------------------------|
| JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada corporation, |) | Case No.: A-18-785311-B |
| |) | |
| Plaintiff, |) | |
| |) | BUSINESS COURT |
| vs. |) | |
| |) | |
| TROPICANA INVESTMENTS, LLC, a California limited liability company, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |
| AND COUNTERCLAIMS. |) | |
| |) | |

NOTICE OF ENTRY OF ORDER

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

LOVATO LAW FIRM, P.C.

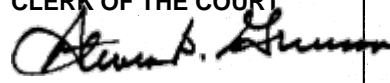
/s/ Mario Lovato
MARIO P. LOVATO
Nevada Bar No. 7427
Attorney for Plaintiff / Counterdefendant
JSJBD Corp dba Blue Dogs Pub

1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED that, on July 24, 2019, and after being granted an extension
3 and stipulating to continuance of the hearing by two weeks, the above and foregoing **NOTICE**
4 **OF ENTRY OF ORDER** was served via the Court's system of electronic service on all parties
5 registered and listed for such service, including upon by the following:
6

7
8 Terry A. Moore
9 Marquis Aurbach Coffing
10 10001 Park Run Dr.
11 Las Vegas, NV 89145
12 Attorneys for Defendant / Counterclaimant
13 Tropicana Investments, LLC
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/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 / Counterdefendant
JSJBD Corp dba Blue Dogs Pub and
the individual Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

AND COUNTERCLAIMS.

Case No.: A-18-785311-B

BUSINESS COURT

ORDER

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


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

9 IT IS HEREBY ORDERED, ADJUDGED, DECREED that:

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

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

18 DATED: July 23rd, 2019.

19 
20 DISTRICT COURT JUDGE
21 *W. Intelment*

21 Submitted by:

22 LOVATO LAW FIRM, P.C.

23 
24 MARIO P. LOVATO

Nevada Bar No. 7427

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

JSJBD Corp., et al. vs Tropicana Investments, LLC, et al.

Deposition of

JEFFREY VINCENT

September 19, 2019



888.832.0050

www.RocketReporters.com

Jeffrey Vincent
JSJBD Corp., et al. vs Tropicana Investments, LLC, et al.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability
company,

Defendant.

CASE NO. A-18-785311-B

DEPT. NO. XI

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.

DEPOSITION OF JEFFREY VINCENT

Taken on Thursday, September 19, 2019

At 9:38 o'clock a.m.

At 10001 Park Run Drive

Las Vegas, Nevada 89145

REPORTED BY: MARY DANE MCCOY, CCR NO. 219

| page 2 | | | page 4 | | |
|--------|--------------------------------------|--|--------|---------------------|---|
| 1 | APPEARANCES | | 1 | EXHIBITS (CONT.) | |
| 2 | For the Plaintiff/Counterdefendants: | | 2 | MARKED | PAGE |
| 3 | Mario P. Lovato, Esq. | | 3 | Exhibit 15 | 8/31/16 letter w/attachments from L. Miller to J. Chauncey 134 |
| 4 | Lovato Law Firm | | 4 | Exhibit 16 | 9/7/16 letter from J. Sacco to L. Miller 142 |
| 5 | 7465 W. Lake Mead Blvd., Ste. 100 | | 5 | Exhibit 17 | 9/16/16 letter from L. Miller to J. Sacco 147 |
| 6 | Las Vegas, Nevada 89128 | | 6 | | |
| 7 | 702.979.9047 | | 7 | Exhibit 18 | 9/23/16 letter w/attachments from J. Sacco to L. Miller 149 |
| 8 | 702.554.3858 Fax | | 8 | Exhibit 19 | Email chain, top email 11/22/16 from R. Sully to J. Sacco 152 |
| 9 | mpl@lovatolaw.com | | 9 | | |
| 10 | For the Defendants/Counterclaimant: | | 10 | Exhibit 20 | 9/22/16 Tropicana Plaza Shopping Center Lease w/redline changes 156 |
| 11 | Terry A. Moore, Esq. | | 11 | Exhibit 21 | 8/7/17 letter from L. Grower to J. Sacco 158 |
| 12 | Marquis Aurbach Coffing | | 12 | | |
| 13 | 10001 Park Run Drive | | 13 | Exhibit 22 | 8/31/17 letter from L. Grower to J. Sacco 159 |
| 14 | Las Vegas, Nevada 89145 | | 14 | Exhibit 23 | Plaintiff JSJBD Corp.'s Response to Request for Admissions 165 |
| 15 | 702.382.0711 | | 15 | | |
| 16 | 702.382.5816 Fax | | 16 | Exhibit 24 | Counterdefendants' Answers to Interrogatories 166 |
| 17 | tmoore@macclaw.com | | 17 | Exhibit 25 | Tropicana Investments, LLC's Operating Expenses for 2013-2018 171 |
| 18 | | | 18 | | |
| 19 | | | 19 | | |
| 20 | | | 20 | CONFERENCE CALL | LINE PAGE |
| 21 | | | 21 | WITH JUDGE GONZALEZ | 19 123 |
| 22 | | | 22 | | |
| 23 | | | 23 | | |
| 24 | | | 24 | | |
| 25 | | | 25 | | |

| page 3 | | | page 5 | | |
|--------|--------------------------|---|--------|--|--|
| 1 | INDEX | | 1 | LAS VEGAS, NEVADA; SEPTEMBER 19, 2019 | |
| 2 | JEFFREY VINCENT | PAGE | 2 | 9:38 A.M. | |
| 3 | Examination by Mr. Moore | 5 | 3 | -o0o- | |
| 4 | | | 4 | JEFFREY VINCENT, | |
| 5 | EXHIBITS | | 5 | having been first duly sworn to testify to the truth, | |
| 6 | MARKED | PAGE | 6 | testified as follows: | |
| 7 | Exhibit 1 | Notice of Subpoena 5 | 7 | EXAMINATION | |
| 8 | Exhibit 2 | Addendum to Retail Building Lease 43 | 8 | BY MR. MOORE: | |
| 9 | Exhibit 3 | Lease Assignment & Modification 46 | 9 | Q. Good morning, Mr. White, my name is Terry | |
| 10 | Exhibit 4 | Addendum II to Retail Building Lease 66 | 10 | Moore -- I'm sorry, Mr. Vincent -- my name is Terry | |
| 11 | Exhibit 5 | Undated letter from S. Vincent to J. Chauncey 78 | 11 | Moore, I'm the attorney for Tropicana Investments. Can | |
| 12 | Exhibit 6 | 4/6/16 email w/attachments from J. Velarde to J. Chauncey 86 | 12 | you please state your name and spell your last name. | |
| 13 | Exhibit 7 | Email chain, top email 4/20/16 from J. Velarde to S. Vincent 86 | 13 | A. Jeffrey Vincent, V-I-N-C-E-N-T. | |
| 14 | Exhibit 8 | Document Bate stamped TROP 097 96 | 14 | Q. Mr. Vincent, you are appearing here today as | |
| 15 | Exhibit 9 | 4/28/16 email w/attachments from J. Velarde to S. Vincent 100 | 15 | the 30(b)(6) designee of JSJBD Corp.; is that correct? | |
| 16 | Exhibit 10 | 5/19/16 letter from J. Velarde to J. Vincent 103 | 16 | A. Yes. | |
| 17 | Exhibit 11 | 5/26/16 email from J. Vincent to J. Velarde, etc. 107 | 17 | Q. All right. Let's mark this as Exhibit 1 | |
| 18 | Exhibit 12 | 6/15/16 letter from D. Velarde to S. Vincent 108 | 18 | please. | |
| 19 | Exhibit 13 | 8/2/16 letter from L. Miller to J. Chauncey 110 | 19 | (Defendant's Exhibit 1 was marked.) | |
| 20 | Exhibit 14 | Email chain, top email 9/6/16 from J. Velarde to J. Sacco 121 | 20 | BY MR. MOORE: | |
| 21 | | | 21 | Q. Mr. Vincent, have you ever had your | |
| 22 | | | 22 | deposition taken? | |
| 23 | | | 23 | A. No. | |
| 24 | | | 24 | Q. Well, then before we get into Exhibit 1, I | |
| 25 | | | 25 | just want to make sure we lay some ground rules. You | |

| | |
|---|---|
| <p style="text-align: right;">page 6</p> <p>1 were present yesterday for Mr. Eisman's deposition, 2 correct? 3 A. Yes. 4 Q. The admonitions I'm about to give you are the 5 same ones I gave him which is basically that the 6 purpose of this deposition is for me to obtain whatever 7 information I can from what you know about the 8 questions I'm going to be asking. In particular, those 9 questions will be related to the items identified in 10 Exhibit 1 as the topics that JSJBD was to produce 11 somebody with the most knowledge about. 12 Before we begin getting into that, 13 Mr. Vincent, if you could, to your left is the court 14 reporter taking down everything we're saying. In order 15 to maintain a clear record, please allow me to finish 16 my question, and I will extend you the same courtesy to 17 let you finish your answer so we don't talk over one 18 another. Okay? 19 A. Okay. 20 MR. LOVATO: Objection regarding most 21 knowledge, misleading. 22 BY MR. MOORE: 23 Q. That leads to the next admonition which is 24 Mr. Lovato is going to be making objections today, and 25 he is doing that for purposes of the record. Unless he</p> | <p style="text-align: right;">page 8</p> <p>1 30(b)(6) deposition notice. It lists eight topics that 2 JSJBD Corp. was to identify somebody who could testify 3 on behalf of the company as to those topics. Have you 4 seen that document before today? 5 A. This? 6 Q. In Exhibit 1. 7 A. Yes, I've looked at it. 8 Q. Are you the person most knowledgeable for the 9 30(b)(6) designee who can testify on behalf of the 10 company as to each of these eight topics? 11 MR. LOVATO: Objection, misleading regarding 12 the term most knowledgeable. 13 THE WITNESS: I have knowledge, yes. 14 BY MR. MOORE: 15 Q. Are you the person who -- is there anybody 16 else who has more knowledge than you about those 17 topics? 18 A. I don't know. 19 Q. Is there anybody who would have different 20 knowledge about these items other than yourself on 21 behalf of the company? 22 A. I wouldn't know that either. 23 Q. Is Stuart Vincent your brother? 24 A. Yes. 25 Q. Would he have knowledge about these various</p> |
| <p style="text-align: right;">page 7</p> <p>1 instructs you not to answer, I am entitled to an answer 2 to my question. Do you understand that? 3 A. Yes. 4 Q. For purposes of this deposition, for purposes 5 of this, when she is done, the court reporter will be 6 transcribing this and putting everything into a booklet 7 which then will be sent to you to provide you with an 8 opportunity to review it. You can then make changes to 9 that testimony, however, I would caution you, if you 10 make substantive changes to that testimony, myself or 11 another attorney could comment about your truth or 12 veracity at the time of the deposition today. Do you 13 understand that? 14 A. Yes. 15 Q. Is there any reason you cannot give your best 16 testimony today? 17 A. No. 18 Q. Are you under any medication which affects 19 your abilities to recall dates or events? 20 A. No. 21 Q. Are you under the influence of alcohol or 22 drugs that affect your memory or ability to recall 23 events? 24 A. No. 25 Q. So in front of you is Exhibit 1 which is the</p> | <p style="text-align: right;">page 9</p> <p>1 topics as well? 2 A. He could. I don't know. 3 Q. Well, as long as we understand, you have been 4 designated by the company to come in and talk about 5 these topics as the 30(b)(6) designee. You don't 6 dispute that you are that person for these eight 7 topics, correct? 8 A. Yes. 9 Q. Okay. What is your role with JSJBD? 10 A. Secretary. 11 Q. How long have you been the secretary? 12 A. Since 2007. 13 Q. Do you know why you have been designated as 14 the person with the -- the 30(b)(6) designee for these 15 topics as opposed to somebody else? 16 A. I -- I don't know really. 17 Q. As you sit here today, do you know if there 18 is anyone who has more knowledge on these topics than 19 you? 20 A. I couldn't answer that. 21 Q. What did you do to prepare for your 22 deposition today? 23 A. Looked at this. 24 Q. Did you meet with anybody? 25 A. No.</p> |

| | |
|---|--|
| <p style="text-align: right;">page 10</p> <p>1 Q. Did you review any documents?</p> <p>2 A. Just this part.</p> <p>3 Q. Just Exhibit 1?</p> <p>4 A. Well, 1, 2, 3.</p> <p>5 Q. Well, this is Exhibit 1.</p> <p>6 A. Yes, yes.</p> <p>7 Q. So other than looking at this subpoena, you</p> <p>8 didn't look at any other documents in preparation for</p> <p>9 today?</p> <p>10 A. Well, looked at documents that basically have</p> <p>11 to do with this, yes, of course.</p> <p>12 Q. What documents did you look at then?</p> <p>13 A. A variety of documents that -- to this, I</p> <p>14 don't know. I can't basically tell you every document.</p> <p>15 Q. When did you review those?</p> <p>16 A. Over lengths of time.</p> <p>17 Q. When is the last time you looked at</p> <p>18 documents?</p> <p>19 A. This morning.</p> <p>20 Q. What documents did you look at this morning?</p> <p>21 A. The interrogatories.</p> <p>22 Q. Is that it?</p> <p>23 A. Yes.</p> <p>24 Q. All right, so to make sure we are going</p> <p>25 forward on the same basis here, if I refer to Blue</p> | <p style="text-align: right;">page 12</p> <p>1 Q. Have you ever spoken to him over the phone?</p> <p>2 A. No.</p> <p>3 Q. Have you emailed with him?</p> <p>4 A. Yes.</p> <p>5 Q. Approximately how many times?</p> <p>6 A. Two to three.</p> <p>7 Q. When was the last time you emailed him?</p> <p>8 A. It was 2017.</p> <p>9 Q. What was that related to?</p> <p>10 A. The lease and the negotiations.</p> <p>11 Q. Do you know if anybody else on behalf of</p> <p>12 JSJBD emailed Mr. Chauncey?</p> <p>13 A. Not that I know of.</p> <p>14 Q. Where do you presently live?</p> <p>15 A. Austin, Texas.</p> <p>16 Q. How long have you lived in Austin?</p> <p>17 A. I think that's kind of personal really. Does</p> <p>18 it matter?</p> <p>19 Q. Just trying to get an idea how long you have</p> <p>20 lived there.</p> <p>21 A. It's personal.</p> <p>22 Q. You don't want to answer?</p> <p>23 A. No.</p> <p>24 Q. Okay.</p> <p>25 A. It's personal.</p> |
| <p style="text-align: right;">page 11</p> <p>1 Dog's Pub or Blue Dog's, I'm referring to the bar that</p> <p>2 is involved in this case. Do you understand that?</p> <p>3 A. Yes.</p> <p>4 Q. Same thing with the landlord. If I refer to</p> <p>5 the landlord, who do you construe that to mean?</p> <p>6 A. The --</p> <p>7 Q. The landlord.</p> <p>8 A. The building manager?</p> <p>9 Q. Well, okay, that's a good clarification. Who</p> <p>10 do you understand your landlord to be?</p> <p>11 A. The building manager and property manager</p> <p>12 would be Jeffrey Chauncey.</p> <p>13 Q. Okay. Who is the landlord? Who is the owner</p> <p>14 of the property?</p> <p>15 A. Tropicana Investments.</p> <p>16 Q. Do you understand that Mr. Chauncey has an</p> <p>17 ownership interest in Tropicana Investments?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Okay. So is it fair if I refer to the</p> <p>20 landlord, I'm referring to Mr. Chancey or Tropicana</p> <p>21 Investments interchangeably; is that fair?</p> <p>22 A. That's fine.</p> <p>23 Q. Okay. Have you ever met Mr. Chauncey?</p> <p>24 A. Once in 2007, and I saw him in court. That's</p> <p>25 it.</p> | <p style="text-align: right;">page 13</p> <p>1 Q. Have you lived in Las Vegas?</p> <p>2 A. Yes.</p> <p>3 Q. When is the last time you lived in Las Vegas?</p> <p>4 A. It's personal, sorry. It doesn't deal with</p> <p>5 the business.</p> <p>6 Q. Okay. Do you have any professional licenses?</p> <p>7 A. Yes.</p> <p>8 Q. What professional licenses do you have?</p> <p>9 A. A real estate license in Texas.</p> <p>10 Q. How long have you been a licensed real estate</p> <p>11 agent in Texas?</p> <p>12 A. Three years.</p> <p>13 Q. What do you do for a living?</p> <p>14 A. I work at bars. I work for Chaser's Pub.</p> <p>15 Q. Chaser's Pub is located here in Las Vegas?</p> <p>16 A. Yes.</p> <p>17 Q. What do you do for Chaser's Pub?</p> <p>18 A. Manage it.</p> <p>19 Q. If you live in Austin, Texas, how often do</p> <p>20 you come to Las Vegas?</p> <p>21 A. Personal.</p> <p>22 Q. Does JSJBD own any businesses?</p> <p>23 A. No.</p> <p>24 Q. Does it only operate one bar?</p> <p>25 A. Yes.</p> |

| page 14 | page 16 |
|---|---|
| <p>1 Q. Blue Dog's?</p> <p>2 A. Yes.</p> <p>3 Q. It doesn't own any other businesses?</p> <p>4 A. No.</p> <p>5 Q. Does JSJBD have an ownership interest in any</p> <p>6 other bars or taverns?</p> <p>7 A. No.</p> <p>8 Q. What does JSJBD stand for?</p> <p>9 A. JSJBD.</p> <p>10 Q. Is it an acronym for something?</p> <p>11 A. No.</p> <p>12 Q. You are presently a shareholder of JSJBD?</p> <p>13 A. Yes.</p> <p>14 Q. Are the other shareholders the individuals,</p> <p>15 Stuart Vincent, Bruce Eisman and Bruno Mark?</p> <p>16 A. Yes.</p> <p>17 Q. Do you each own 25 percent of JSJBD?</p> <p>18 A. Yes.</p> <p>19 Q. Who are the other officers of JSJBD?</p> <p>20 A. You just said them.</p> <p>21 Q. What are the -- who is which?</p> <p>22 A. Oh, I believe Stuart Vincent is president,</p> <p>23 Bruno Mark is treasurer, I am secretary, and Bruce</p> <p>24 Eisman is director.</p> <p>25 Q. How long has JSJBD Corp. been in existence?</p> | <p>1 A. I don't believe so. I don't know.</p> <p>2 Q. So if I understand your testimony then, is</p> <p>3 the relationship between JSJ, LLC and JSJBD, Corp., is</p> <p>4 it is the same company?</p> <p>5 MR. LOVATO: Objection, misleading.</p> <p>6 THE WITNESS: The same entity, we are the</p> <p>7 same entity.</p> <p>8 BY MR. MOORE:</p> <p>9 Q. Okay. Was JSJ converted into JSJBD?</p> <p>10 MR. LOVATO: Objection, calls for a legal</p> <p>11 conclusion, vague.</p> <p>12 THE WITNESS: The name changed, no</p> <p>13 conversion.</p> <p>14 BY MR. MOORE:</p> <p>15 Q. Who made the decision to change the name?</p> <p>16 A. I don't know on that one.</p> <p>17 Q. Do you know when the name was changed?</p> <p>18 A. My best -- 200 -- there is a big range, 2014</p> <p>19 to 2017. I don't know exactly the dates.</p> <p>20 Q. Were you involved in the decision to change</p> <p>21 the name?</p> <p>22 A. No.</p> <p>23 Q. Who made that decision?</p> <p>24 A. That would have to be with -- I'm not quite</p> <p>25 sure on that one, no, I don't know.</p> |
| page 15 | page 17 |
| <p>1 MR. LOVATO: Objection, misleading.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: I believe 2007.</p> <p>4 BY MR. MOORE:</p> <p>5 Q. Was it previously another -- named another</p> <p>6 entity?</p> <p>7 MR. LOVATO: Objection, misleading, another</p> <p>8 entity.</p> <p>9 THE WITNESS: It has always been the same</p> <p>10 entity.</p> <p>11 BY MR. MOORE:</p> <p>12 Q. Was it previously known as JSJ, LLC?</p> <p>13 A. The name was at that time, yes.</p> <p>14 Q. And JSJ, LLC, was that formed in 2007?</p> <p>15 A. Yes.</p> <p>16 Q. Who were the members of JSJ when it was</p> <p>17 formed?</p> <p>18 A. It would be Stuart Vincent, Jeff Vincent, and</p> <p>19 Bruno Mark.</p> <p>20 Q. Again, was JSJ --</p> <p>21 A. I'm sorry, not Bruno Mark, my apologies. It</p> <p>22 was Stuart Vincent, Jeff White, and Stuart Vincent. My</p> <p>23 apologies.</p> <p>24 Q. Is JSJ an acronym for the initials of those</p> <p>25 three individuals?</p> | <p>1 Q. Well, there were two other individuals, Jeff</p> <p>2 White and Stuart, right, at the time when it changed</p> <p>3 the name?</p> <p>4 A. No.</p> <p>5 Q. So when it changed the name, who were the</p> <p>6 members or shareholders?</p> <p>7 A. Shareholders were Bruno Mark.</p> <p>8 Q. When did Mr. Mark came in?</p> <p>9 A. I think it could be 2010.</p> <p>10 Q. What is the extent of your involvement in any</p> <p>11 decision to change the name?</p> <p>12 A. Not much honestly.</p> <p>13 Q. Are you aware that there were articles of</p> <p>14 conversion filed with the secretary of state's office</p> <p>15 for the company?</p> <p>16 MR. LOVATO: Objection, assumes facts.</p> <p>17 You don't have to agree with his</p> <p>18 representations, testify from your knowledge.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. MOORE:</p> <p>21 Q. You just believe it was a name change?</p> <p>22 A. Yes.</p> <p>23 Q. What is Bruno Mark's role with JSJBD</p> <p>24 presently?</p> <p>25 A. Bruno Mark?</p> |

| | |
|--|---|
| <p style="text-align: right;">page 18</p> <p>1 Q. Yeah. 2 A. He is a passive investor. 3 Q. You heard Mr. Eisman testify to that 4 yesterday? 5 A. Yes. 6 Q. Would you agree with that? 7 A. Yes. 8 Q. Does Jeff White have a role with JSJBD any 9 longer? 10 A. No. 11 Q. Is he a shareholder? 12 A. No. 13 Q. When did he stop being a shareholder? 14 A. 2014 to 2017. 15 Q. Why did he stop being a shareholder, if you 16 know? 17 A. I don't know. 18 Q. Was his interest bought out? 19 A. No. 20 Q. What happened to his interest? 21 A. It dissolved. 22 Q. What do you mean it dissolved? 23 A. He no longer wanted to be part of the 24 company. 25 Q. So did he sell his interest to somebody else,</p> | <p style="text-align: right;">page 20</p> <p>1 Q. Is he physically present in the bar -- 2 A. Yes. 3 Q. -- on a day-to-day basis? 4 A. Yes. 5 Q. Try to let me finish my questions so we don't 6 talk over one another, please. 7 Have you ever been involved in the day-to-day 8 operations of the Blue Dog's Pub? 9 A. No. 10 Q. How often would you say you go to Blue Dog's 11 Pub? 12 A. Maybe 12 times a year. 13 Q. When is the last time you were there? 14 A. I think 45 days ago. 15 Q. So do you have any role as it relates to the 16 day-to-day operations of the bar at all? 17 A. No. 18 Q. How many employees does JSJBD have? 19 A. Nine. 20 Q. Do they all work at the bar? 21 A. Yes. 22 Q. Have you been involved with maintenance- 23 related matters in the bar? 24 A. Yes. 25 Q. How?</p> |
| <p style="text-align: right;">page 19</p> <p>1 or what happened with his interest in the company? He 2 had shares, right? 3 A. His shares went to -- basically his shares 4 went to -- I'm sorry, I can't really -- I really don't 5 know how to explain it. But he dissolved his interest 6 basically. His shares went to whatever you want to 7 call a -- I don't know the terminology, I'm sorry. 8 Q. Was he paid for his interest? 9 A. Yes. 10 Q. Do you recall how much? 11 A. 30,000. 12 Q. Do you recall how much -- 13 A. I'm sorry, 15,000. 15,000. 14 Q. 15? 15 A. Yes. 16 Q. Do you recall how much he initially invested? 17 A. No. 18 Q. Are you involved in the day-to-day operations 19 of Blue Dog's? 20 A. No. 21 Q. Who is? 22 A. Stuart Vincent. 23 Q. Does Stuart work at the bar? Does Stuart 24 work at the bar? 25 A. Yes, he works for the bar.</p> | <p style="text-align: right;">page 21</p> <p>1 A. I have seen the swamp cooler, I've been up on 2 the roof, reviewed some damages. 3 Q. When was the last time you did any of those 4 three things? 5 A. At least two years ago. 6 Q. When you say you have seen the swamp cooler, 7 what exactly does that mean? 8 A. Dismantled on the other side, stripped from 9 its location on the roof, dented, and left on the side 10 of the hole cover for the exhaust, outlet exposed, and 11 it's left on the side of our -- of the roof. 12 Q. That was two years ago or was that in 2016? 13 A. It was probably close to three years ago. I 14 couldn't do it in 2017. 15 Q. Why is that? 16 A. Heart surgery. 17 Q. I hope you are doing well. So is it fair to 18 say that in light of what you just testified to, you 19 did not have anything to do with any maintenance- 20 related matters after 2016? 21 A. No. 22 Q. Okay, so you were out of commission in 2017? 23 A. Yes. 24 Q. Were you back involved in maintenance-related 25 matters after that?</p> |

page 22

1 **A. I review, Stuart and I discuss that on the**
2 **phone. That's it.**
3 Q. When you say Stuart and I discussed that, you
4 mean maintenance-related matters?
5 **A. Correct, we did discuss it.**
6 Q. Does that discussion occur often?
7 **A. By phone, yes.**
8 Q. Are there presently any maintenance matters
9 with the bar that have not been addressed?
10 **A. Of course, the swamp cooler, yes.**
11 Q. Is that the only thing that has not been
12 addressed as you sit here?
13 **A. Maintenance or CAM matters.**
14 Q. Maintenance?
15 **A. Maintenance, lately, let me see, we are still**
16 **having roof problems, still got some leaks in the roof**
17 **that have not been resolved. Let me see, there's**
18 **possibly -- think what else. That's all I can really**
19 **think of right now.**
20 Q. When was the last roof leak?
21 **A. I don't know, the last storm.**
22 Q. Do you know if JSJBD notified the landlord of
23 that at that time?
24 **A. I don't know, I can't answer that one.**
25 Q. Who would be able to answer that question?

page 23

1 **A. Stuart.**
2 Q. Do you have any service records for the swamp
3 cooler that you were talking about?
4 **A. Service records?**
5 Q. Yeah, maintenance records for it.
6 **A. Honest, not that I know of, no.**
7 Q. Do you know if it was ever serviced by JSJBD
8 prior to 2016?
9 **A. I believe it was, yes.**
10 Q. Was it working prior to 2016 when it was
11 apparently moved?
12 **A. I don't know. I believe so.**
13 Q. Who would know that, whether or not it was
14 working?
15 **A. Probably Stuart.**
16 Q. I'm going to go back. Do you know why you
17 are here instead of Stuart if Stuart was handling the
18 day-to-day operations?
19 **A. You're asking for more the corporate, is that**
20 **correct, JSJBD? It says here -- I'm better -- I**
21 **handled the lease more than he does.**
22 Q. Okay. One of the topics here was any issues
23 involving maintenance, No. 7, Any issues involving
24 maintenance of the premises at issue in this
25 litigation.

page 24

1 Is it your testimony that Stuart is the
2 person who would be more knowledgeable than you?
3 **MR. LOVATO: Argumentative, misleading**
4 **regarding more knowledge.**
5 **BY MR. MOORE:**
6 Q. You can answer.
7 **A. I don't know.**
8 Q. You don't know if he would have more
9 knowledge than you?
10 **A. Huh-uh.**
11 Q. You just said, you just told me he would have
12 more knowledge than you.
13 **MR. LOVATO: Same objection and misstates the**
14 **testimony.**
15 **THE WITNESS: I said I don't know.**
16 **BY MR. MOORE:**
17 Q. Okay. So who would know whether or not you
18 had service records for that swamp cooler prior to
19 2016?
20 **A. It would probably be Stuart Vincent.**
21 Q. Who would be the person that handled setting
22 up regular maintenance for the swamp cooler prior to
23 2016?
24 **A. That would be Stuart.**
25 Q. Would Stuart be the one who handled any

page 25

1 issues involving maintenance of the swamp cooler after
2 2016?
3 **A. There wasn't -- excuse me?**
4 Q. There was none, is that basically what you
5 were saying?
6 **A. It was destroyed by John Scanlon.**
7 Q. By who?
8 **A. John Scanlon.**
9 Q. Can you spell the last name?
10 **A. S-C -- Let It Rain Roofing, John Scanlon.**
11 Q. Let it Rain, got it. And you're saying that
12 he destroyed it?
13 **A. He removed it.**
14 Q. Do you know why he removed it?
15 **A. No. Process of -- he was the roofer hired by**
16 **the landlord.**
17 Q. To fix the roof?
18 **A. Uh-huh.**
19 Q. Was the roof fixed?
20 **A. No.**
21 Q. It has never been fixed?
22 **A. As I said, it still has leaks.**
23 Q. And Mr. Stuart Vincent would be the one to
24 know whether or not he has notified the landlord of
25 that; is that fair to say?

| | |
|--|---|
| <p>page 26</p> <p>1 A. Yes.</p> <p>2 Q. Not you?</p> <p>3 A. Yes.</p> <p>4 Q. Are there any other maintenance issues</p> <p>5 besides the swamp cooler and the roof leaks that you</p> <p>6 are aware of?</p> <p>7 A. No.</p> <p>8 Q. There has been a video produced by your</p> <p>9 attorney in this case, somebody took a video of the</p> <p>10 roof. Are you aware of that?</p> <p>11 A. Yes.</p> <p>12 Q. Did you take that video?</p> <p>13 A. No.</p> <p>14 Q. Who did?</p> <p>15 A. An employee at the time.</p> <p>16 Q. That was my next question, when was that</p> <p>17 taken?</p> <p>18 A. I believe it was around March of 2016.</p> <p>19 Q. What is the name of the employee that took</p> <p>20 the video?</p> <p>21 A. I think that was either Martine or --</p> <p>22 Q. Can you speak up, please.</p> <p>23 THE COURT REPORTER: Pardon me?</p> <p>24 THE WITNESS: I'm trying to think, I'm sorry.</p> <p>25 My apologies, I'm trying to think. It was one of two</p> | <p>page 28</p> <p>1 Q. Are you aware of whether the landlord has</p> <p>2 been provided with videos since 2016 of the roof from</p> <p>3 JSJBD?</p> <p>4 A. Videos?</p> <p>5 Q. Yes.</p> <p>6 A. Not that I know of.</p> <p>7 Q. Who would be the person who would know</p> <p>8 whether or not that sort of information had been</p> <p>9 conveyed to the landlord?</p> <p>10 A. That would be Stuart. He sent it to them.</p> <p>11 Q. Do you know who Danny Velarde is?</p> <p>12 A. Leasing agent.</p> <p>13 Q. Do you know who Joe Velarde is?</p> <p>14 A. A leasing agent.</p> <p>15 Q. They are leasing agents for the landlord?</p> <p>16 A. Yes.</p> <p>17 Q. Have you ever interacted with either of them?</p> <p>18 A. Limited.</p> <p>19 Q. Have you ever met them in person?</p> <p>20 A. Once or twice.</p> <p>21 Q. Have you ever communicated any maintenance-</p> <p>22 related issues to them?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of whether JSJBD has</p> <p>25 communicated any maintenance-related issues to them?</p> |
| <p>page 27</p> <p>1 people, my apologies. Martine Rincon.</p> <p>2 BY MR. MOORE:</p> <p>3 Q. Can you spell his last name, please.</p> <p>4 A. R-I-N-C-O-N.</p> <p>5 Q. Your counsel has produced a number of photos</p> <p>6 of the roof as well. Are you aware of that?</p> <p>7 A. Yes.</p> <p>8 Q. Who took those photos?</p> <p>9 A. I believe Stuart Vincent.</p> <p>10 Q. Do you recall when he took those?</p> <p>11 A. Probably near the same timeframe.</p> <p>12 Q. Are you aware of whether any photos or videos</p> <p>13 have been taken of the roof since then?</p> <p>14 A. Since 2016 March?</p> <p>15 Q. Yes, the date you just gave me.</p> <p>16 A. Yes.</p> <p>17 Q. There have been?</p> <p>18 A. Yes.</p> <p>19 Q. Have those been produced in the case?</p> <p>20 A. I don't know that.</p> <p>21 Q. Okay. Are you aware of other videos that</p> <p>22 have been taken since March of 2016 of the roof?</p> <p>23 A. No.</p> <p>24 Q. No, you are not aware, or they haven't been?</p> <p>25 A. I'm not aware.</p> | <p>page 29</p> <p>1 A. I believe they have, yes.</p> <p>2 Q. Do you know who Mark Van Aken is?</p> <p>3 A. Yes.</p> <p>4 Q. Who is he?</p> <p>5 A. Previous owner.</p> <p>6 Q. Have you ever spoken with him?</p> <p>7 A. Limited.</p> <p>8 Q. When is the last time you spoke to him?</p> <p>9 A. 2007.</p> <p>10 Q. Was that when you bought the bar?</p> <p>11 A. Yes.</p> <p>12 Q. Were communications in 2007 about buying the</p> <p>13 bar?</p> <p>14 A. Yes.</p> <p>15 Q. How did you come to learn that the bar was</p> <p>16 for sale?</p> <p>17 A. I don't know. I don't remember.</p> <p>18 Q. There came a point in time where the company</p> <p>19 decided it wanted to buy the bar though, right?</p> <p>20 A. Yes.</p> <p>21 Q. Why did you decide to buy the bar?</p> <p>22 A. It was -- we felt it was a decent location at</p> <p>23 the time.</p> <p>24 Q. Is that the only reason?</p> <p>25 A. Yeah. Pretty much.</p> |

page 30

1 Q. What due diligence did you do, did the
2 company do prior to buying the bar?
3 A. **We drove the neighborhoods, we had a**
4 **inspector, inspection, we looked at the financials, we**
5 **walked the plaza. That's about it really. Just**
6 **talking amongst each other.**
7 Q. Again, who was involved when you say
8 discussing amongst each other?
9 A. **It would be Stuart, myself, and Jeff White.**
10 Q. How much did you pay for the bar?
11 A. **500,000.**
12 Q. Did you review the lease documents prior to
13 buying the bar?
14 A. **Yes.**
15 Q. Did you speak with the landlord prior to
16 buying the bar?
17 A. **No.**
18 Q. Why not?
19 A. **The landlord doesn't contact us, only the**
20 **leasing agents. The landlord doesn't talk to us. The**
21 **building manager doesn't talk to us.**
22 Q. I'm sorry, what did you say?
23 A. **The building manager doesn't talk to us too.**
24 Q. Mr. Chauncey is who you are referring to?
25 A. **Yes.**

page 31

1 Q. I want to clarify that that is the second
2 time you have referred to him as the building manager.
3 Do you have in your mind a distinction between him
4 being a building manager and him having any ownership
5 interest in Tropicana Investments, LLC?
6 A. **Well, he manages the property. It is written**
7 **down on the lease he is the building manager on his**
8 **correspondence, yes.**
9 Q. Do you understand that Tropicana Investments
10 is the owner of the property, right?
11 A. **Yes.**
12 Q. They are the landlord?
13 A. **Yes.**
14 Q. Do you equate Mr. Chauncey with being the
15 landlord or is he something different?
16 A. **He's the, as I say, the building manager.**
17 **Tropicana Investments is the entity; is that correct?**
18 Q. Yes.
19 A. **Okay. Somebody has to be the building**
20 **manager or property manager, correct? So who is the**
21 **property manager?**
22 Q. That is what I'm asking you. Are you
23 equating him to being the property manager?
24 A. **Yes. The building manager, that's what he**
25 **states himself as.**

page 32

1 Q. Where does he state himself as that?
2 A. **I have -- I have to find correspondence, but**
3 **I'd be glad to get it to you.**
4 Q. So it's your intention it's in correspondence
5 he has called himself that?
6 A. **Yes.**
7 Q. Do you know who -- have you spoken with
8 anybody else associated with the bar prior to -- other
9 than Mr. Van Aken prior to 2007?
10 A. **That's -- I don't understand the question.**
11 Q. When you were contemplating purchasing the
12 bar, did you speak to anybody other than Mark Van Aken
13 about buying the bar?
14 A. **His son was involved, Kelly Van Aken.**
15 Q. How was he involved?
16 A. **He helped with the sale, with his father's**
17 **sale of the bar.**
18 Q. Did you have any discussions with Mr. Van
19 Aken, either of the Van Aken's about the lease?
20 A. **I don't remember.**
21 Q. Did you have any discussion with them about
22 the options provided in the option agreement?
23 A. **I don't remember that one either.**
24 Q. Was the option agreement something that you
25 considered prior to purchasing the bar?

page 33

1 A. **Yes.**
2 Q. Why was that something you factored in your
3 consideration?
4 A. **We had a considerable investment of**
5 **improvements in the bar, plus the price of the bar, we**
6 **wanted to make sure that we had options available.**
7 Q. What investment in improvements did you have?
8 A. **350,000.**
9 Q. You put \$350,000 into the bar after you
10 bought it?
11 A. **Yes.**
12 Q. Do you know who an attorney named Lesley
13 Miller is?
14 A. **Yes.**
15 Q. Are you familiar with the law firm of
16 Kaempfer Crowell?
17 A. **Yes.**
18 Q. Did JSJBD engage that firm in this case or in
19 2016?
20 A. **Engaged, we hired them.**
21 Q. Hired her?
22 A. **Yes.**
23 Q. Okay.
24 A. **Hired the firm.**
25 Q. I'm sorry?

| | |
|---|--|
| <p>page 34</p> <p>1 A. We hired the firm, yes.</p> <p>2 Q. Are you aware that -- you are aware she and</p> <p>3 her firm represented JSJBD in 2016 and 2017?</p> <p>4 A. Excuse me?</p> <p>5 Q. You are aware that Lesley Miller and Kaempfer</p> <p>6 Crowell represented JSJBD in 2016 and 2017?</p> <p>7 MR. LOVATO: Objection, misleading. Even</p> <p>8 though he says that you are aware, you don't have to</p> <p>9 rely on what he is saying. Just testify from your own</p> <p>10 knowledge.</p> <p>11 THE WITNESS: She -- represented -- no, she</p> <p>12 wrote documents for us, she communicated with the other</p> <p>13 side, opposing counsel. That's it.</p> <p>14 BY MR. MOORE:</p> <p>15 Q. Well, you hired them in 2016, right?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. So they were your legal counsel, they were</p> <p>18 JSJBD's legal counsel during that period of time?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Had JSJBD ever used Kaempfer Crowell</p> <p>21 prior to retaining them in 2016?</p> <p>22 A. No.</p> <p>23 Q. Who was the primary person at JSJBD that</p> <p>24 communicated with Ms. Miller and Kaempfer Crowell?</p> <p>25 A. Me.</p> | <p>page 36</p> <p>1 not to answer.</p> <p>2 BY MR. MOORE:</p> <p>3 Q. Do you know who an attorney named Lucas</p> <p>4 Grower is?</p> <p>5 A. Yes.</p> <p>6 Q. Are you aware that Mr. Grower was retained as</p> <p>7 the attorney for JSJBD after Ms. Miller?</p> <p>8 A. Yes.</p> <p>9 Q. Who at JSJBD decided to hire Mr. Grower?</p> <p>10 A. The entity did basically, and I did too.</p> <p>11 Q. Were you the person that was primarily</p> <p>12 responsible for that decision?</p> <p>13 A. Yes.</p> <p>14 Q. And you are aware that Mr. Lovato replaced</p> <p>15 Mr. Grower?</p> <p>16 A. Yes.</p> <p>17 Q. Who at JSJBD was involved in making that</p> <p>18 decision?</p> <p>19 A. All of us.</p> <p>20 Q. What is your understanding of why this</p> <p>21 lawsuit was brought by JSJBD?</p> <p>22 A. Why it was brought? Can you rephrase that?</p> <p>23 Q. You are aware that JSJBD is the plaintiff in</p> <p>24 this lawsuit, right?</p> <p>25 A. Yes.</p> |
| <p>page 35</p> <p>1 Q. Why was it you as opposed to Stuart?</p> <p>2 A. I knew more about real estate.</p> <p>3 Q. Again, are you aware that Ms. Miller stopped</p> <p>4 being JSJBD's attorney at some point in 2017?</p> <p>5 A. Yes.</p> <p>6 Q. Were you involved in that decision to stop</p> <p>7 using Ms. Miller as JSJBD's counsel?</p> <p>8 A. Yes.</p> <p>9 Q. Why did you decide to stop using her?</p> <p>10 MR. LOVATO: Don't answer that.</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. LOVATO: Work product immunity, instruct</p> <p>13 him not to answer, and the applicable attorney/client</p> <p>14 privilege.</p> <p>15 BY MR. MOORE:</p> <p>16 Q. I'm not asking about the substance of any</p> <p>17 conversations you had with counsel, I'm simply asking</p> <p>18 why the decision was made by JSJBD to terminate that</p> <p>19 retention.</p> <p>20 MR. LOVATO: I didn't just say</p> <p>21 attorney/client privilege, I also said work product</p> <p>22 immunity. It also starts to get into certain other</p> <p>23 doctrines such as client confidentiality with</p> <p>24 attorneys. It's also completely irrelevant on a</p> <p>25 discovery basis in this case. I instruct the witness</p> | <p>page 37</p> <p>1 Q. Why did JSJBD file this lawsuit?</p> <p>2 A. Because we couldn't -- failure to negotiate</p> <p>3 with the landlord, the landlord would not negotiate,</p> <p>4 unilaterally trying to set the rent, and other damages</p> <p>5 with the CAM cost. Basically they are all in the</p> <p>6 interrogatories, all these complaints that we answered</p> <p>7 with.</p> <p>8 Q. Have you looked at any communications that</p> <p>9 JSJBD's other principals have exchanged with the</p> <p>10 landlord?</p> <p>11 A. Other principals -- please rephrase it.</p> <p>12 Q. Other principals, meaning Stuart Vincent,</p> <p>13 Bruno Mark, Bruce Eisman?</p> <p>14 A. Yes.</p> <p>15 Q. You have looked at communications from them</p> <p>16 to the landlord?</p> <p>17 A. Yes.</p> <p>18 Q. As you sit here today, do you recall what</p> <p>19 communications you've seen?</p> <p>20 A. No, I cannot.</p> <p>21 Q. Did you generally review those communications</p> <p>22 contemporaneously when they were sent?</p> <p>23 A. Please rephrase.</p> <p>24 Q. You have seen communications that other</p> <p>25 members of JSJBD have had with the landlord, right?</p> |

| | |
|--|--|
| <p style="text-align: right;">page 38</p> <p>1 A. Yes.</p> <p>2 Q. Did you review those communications</p> <p>3 contemporaneously when they were sent?</p> <p>4 A. I'm a little confused with contemporaneously.</p> <p>5 I really don't understand what you are trying to say.</p> <p>6 Q. Meaning if Stuart Vincent sent an email on</p> <p>7 August 6 to the landlord, did you generally review it</p> <p>8 right around the same time it was sent?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Would you, Jeff Vincent, have been</p> <p>11 consulted prior to those communications from the other</p> <p>12 principals being sent to the landlord?</p> <p>13 A. Yes.</p> <p>14 Q. Why would you have been consulted before they</p> <p>15 were sent?</p> <p>16 A. All members are consulted.</p> <p>17 Q. You heard Mr. Eisman yesterday, he indicated</p> <p>18 he wasn't really aware -- and I'm paraphrasing --</p> <p>19 wasn't really aware of communications that were going</p> <p>20 on about the lease. Was that inaccurate?</p> <p>21 MR. LOVATO: Objection, misstates testimony.</p> <p>22 THE WITNESS: I don't know.</p> <p>23 BY MR. MOORE:</p> <p>24 Q. I'm sorry?</p> <p>25 A. I don't know.</p> | <p style="text-align: right;">page 40</p> <p>1 rather?</p> <p>2 A. Excuse me, to the landlord?</p> <p>3 Q. Yes.</p> <p>4 A. Can you repeat that question?</p> <p>5 Q. Certainly. Did you have an occasion to</p> <p>6 review the communications that were sent by JSJBD's</p> <p>7 lawyers to the landlord before they were sent?</p> <p>8 A. I don't recall any communications sent</p> <p>9 directly to the landlord.</p> <p>10 Q. By JSJBD's lawyers, you don't recall that?</p> <p>11 A. To the landlord?</p> <p>12 Q. Yes, Tropicana Investments.</p> <p>13 A. Oh, okay.</p> <p>14 Q. Or Jeff Chauncey.</p> <p>15 A. I believe it was sent to counsel, wasn't it?</p> <p>16 Q. Well, we're going to get into some of the</p> <p>17 documents.</p> <p>18 A. No, it was sent to counsel you are talking</p> <p>19 about. You are talking about individually it was sent</p> <p>20 to Mr. Chauncey or to Tropicana Investments?</p> <p>21 Q. Let me back up. Let me clarify, ask a</p> <p>22 different question.</p> <p>23 A. I'm confused on that one.</p> <p>24 Q. Let me try to clear up the confusion. Are</p> <p>25 you aware that -- we'll just start with Lesley Miller</p> |
| <p style="text-align: right;">page 39</p> <p>1 Q. When you say all members are consulted prior</p> <p>2 to communications being sent to the landlord, how are</p> <p>3 they consulted?</p> <p>4 A. Verbally.</p> <p>5 Q. Meaning what? You guys ever call and talk</p> <p>6 about it?</p> <p>7 A. Yes. We talked. Everybody talks on the</p> <p>8 phone.</p> <p>9 Q. How often did the members -- all the members</p> <p>10 have these types of calls?</p> <p>11 A. There is no conference call. Just everybody</p> <p>12 talks to every individual. Either personally or by</p> <p>13 phone. I can't answer that question, I don't know.</p> <p>14 Q. Are you the primary person that is calling</p> <p>15 the other shareholders?</p> <p>16 A. No.</p> <p>17 Q. Who is?</p> <p>18 A. Stuart.</p> <p>19 Q. Were you provided with copies of each</p> <p>20 communications sent by the law firm of Kaempfer Crowell</p> <p>21 on behalf of JSJBD?</p> <p>22 A. Yes.</p> <p>23 Q. Did you have occasion to review the</p> <p>24 communications sent by JSJBD's various lawyers before</p> <p>25 they were sent to the lawyers or to the landlord</p> | <p style="text-align: right;">page 41</p> <p>1 -- that Lesley Miller sent letters to Mr. Chauncey?</p> <p>2 MR. LOVATO: Objection, vague, confusing,</p> <p>3 failing to identify, compound.</p> <p>4 THE WITNESS: I don't -- I don't know.</p> <p>5 BY MR. MOORE:</p> <p>6 Q. You are not aware of whether Ms. Miller</p> <p>7 communicated in writing to Mr. Chauncey?</p> <p>8 A. No.</p> <p>9 Q. Okay. Are you aware that Mr. Grower</p> <p>10 communicated in writing to the landlord's attorneys?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did you have an occasion to review</p> <p>13 those communications from Mr. Grower to the landlord's</p> <p>14 lawyers before they were sent?</p> <p>15 A. Yes.</p> <p>16 Q. Was that your standard practice?</p> <p>17 A. Yes.</p> <p>18 Q. Are you aware that Ms. Miller sent written</p> <p>19 correspondence to the landlord's lawyers?</p> <p>20 A. Yes.</p> <p>21 Q. Did you have occasion to review her written</p> <p>22 communications before they were sent to the landlord?</p> <p>23 MR. LOVATO: Don't answer.</p> <p>24 Work product immunity, attorney/client</p> <p>25 privilege.</p> |

| | | | |
|--|---|---|--|
| <p>page 42</p> <p>1 BY MR. MOORE: 2 Q. To the best of your knowledge, was anyone at 3 JSJBD consulted with prior to letters being sent to the 4 landlord by JSJBD's lawyers? 5 MR. LOVATO: Don't answer. 6 Attorney/client privilege, work product 7 immunity. 8 BY MR. MOORE: 9 Q. Have you personally ever sent communications 10 to the landlord? 11 A. Yes. 12 Q. Why would you send those communications 13 instead of Stuart? 14 A. I'm a better writer. 15 Q. Who is the person that usually interacted 16 with the landlord on behalf of JSJBD? 17 A. I'm kind of confused. We only had two or 18 three correspondences with the landlord. That would be 19 me, I usually write them. 20 Q. Would you keep the other shareholders in the 21 loop regarding your communication with the landlord? 22 A. Yes. 23 Q. How would you do that? 24 A. Talk or meet in person with them, phone or 25 meet in person.</p> | <p>page 43</p> <p>1 Q. Were you represented by -- was JSJBD or JSJ 2 represented by counsel in connection with the purchase 3 of the bar? 4 A. No. 5 Q. Do you recall how much the rent was in 2007 6 when you bought it? 7 A. No. 8 Q. Did the amount of rent factor into your 9 consideration in deciding to buy the bar? 10 A. Yes. 11 Q. Why was that a factor? 12 A. Profit. 13 Q. So you thought it was a fair amount of rent 14 to be paying when you bought it? 15 MR. LOVATO: Objection, calls for a legal 16 conclusion. 17 THE WITNESS: I don't know. 18 BY MR. MOORE: 19 Q. You don't know if you thought it was a fair 20 amount of rent when you bought it? 21 MR. LOVATO: Same objection. 22 MR. MOORE: Let's mark this as Exhibit 2, 23 please. 24 (Defendant's Exhibit 2 was marked.) 25 ///</p> | <p>page 44</p> <p>1 BY MR. MOORE: 2 Q. Showing you a document that is entitled 3 Addendum to Retail Building Lease. Have you seen this 4 document before? 5 A. Yes. 6 Q. When was the first time you saw this 7 document? 8 A. When we purchased the bar. 9 Q. Did you say when you purchased the bar? 10 A. Uh-huh. 11 Q. Is that yes? 12 A. Yes. 13 Q. This was entered into shortly before you 14 purchased the bar, correct? 15 A. About a year. 16 Q. 2006, right? 17 A. Uh-huh. 18 Q. Is that yes? 19 MR. LOVATO: Make sure to testify from your 20 knowledge, not knowledge reading the document. 21 THE WITNESS: I don't know. 22 BY MR. MOORE: 23 Q. Look at the very first sentence at the top of 24 the first page. It says this is entered into on the 25 7th day of March 2006. Right?</p> | <p>page 45</p> <p>1 A. Yes, it says that. 2 Q. Approximately a year before you purchased the 3 bar, right? 4 A. I guess, yes. 5 Q. Okay. This document appears to indicate that 6 the rent in Paragraph 3 provides a rent scale? 7 A. There is a rent schedule, yes. 8 Q. Now do you recall what month you purchased 9 the bar in in 2007? 10 A. No. 11 Q. Do you have any reason to dispute that the 12 amount of rent that the bar was paying when you 13 purchased it is consistent with what is set forth in 14 this addendum? 15 MR. LOVATO: Objection, misleading, 16 argumentative. 17 THE WITNESS: I don't know. 18 BY MR. MOORE: 19 Q. Do you recall if when you purchased the bar 20 you were paying \$6,720 per month? 21 A. I don't know. 22 Q. As you sit here today, are you aware of 23 anything that would dispute that you were paying either 24 \$6,720 or \$6,930 a month as indicated in this document? 25 MR. LOVATO: Objection, vague and confusing.</p> |
|--|---|---|--|

| | |
|--|---|
| <p>page 46</p> <p>1 THE WITNESS: I don't know. 2 BY MR. MOORE: 3 Q. Do you remember -- is it easier for you to 4 remember like by whatever per square foot you were 5 paying when you bought the bar? 6 A. It was 2006. I don't know. 7 Q. Do you recall if you were paying \$1.65 or 8 \$1.75 when you bought the bar, per square foot? 9 A. No, I don't know. 10 Q. How many square feet is the bar? 11 A. I believe it's 4200 square feet. 12 Q. So if we take -- let's mark this as 13 Exhibit 3, please. 14 (Defendant's Exhibit 3 was marked.) 15 BY MR. MOORE: 16 Q. I'm showing you what has been marked as 17 Exhibit 3. This is a Lease Assignment and 18 Modification. Have you ever seen this document before? 19 MR. LOVATO: It appears this is actually more 20 than one document, it looks like it might be several 21 documents. 22 MR. MOORE: Well, the first four pages is 23 what I'm referring to. 24 Q. Have you seen that, the first four pages? 25 Have you ever seen that document before, the first four</p> | <p>page 48</p> <p>1 89121(Premises)as further described in said lease. 2 Does that refresh your memory that this 3 relates to when JSJ was being assigned the lease as 4 part of this purchase? 5 A. I don't know. 6 Q. When was the first time you saw this 7 document? 8 A. I don't remember. 9 Q. Well, if you look at Exhibit 2, which is 10 right here in front of you, what was the amount of rent 11 that was being paid in June of 2007? 12 MR. LOVATO: You mean what the document says? 13 MR. MOORE: Yes. 14 THE WITNESS: I can read the document. 15 BY MR. MOORE: 16 Q. I'm asking you what does it say the amount of 17 rent that was being paid in June of 2007? 18 A. I'll read the document. June of 2007? 19 Q. Yes. 20 A. 6720 per month. 21 MR. LOVATO: Counsel has a calculator on the 22 table that he is using from time to time. 23 BY MR. MOORE: 24 Q. And if I divide 6,720 by 4200 square feet, 25 that equals \$1.60 a square foot. Do you disagree that</p> |
| <p>page 47</p> <p>1 pages? 2 A. I'm reviewing it. Yes. 3 Q. This document was signed apparently by Jeff 4 White on behalf of JSJ. Is that his signature on the 5 fourth page? 6 A. On the fourth page? 7 Q. Yes, sir. 8 A. I don't know. 9 Q. Does that appear to be his signature to the 10 best of your knowledge? 11 A. Appeared, I don't know. 12 Q. This document was signed by the parties it 13 appears in June of 2007. Does that refresh your memory 14 as to when you consummated your purchase of the bar? 15 A. I don't know. 16 Q. Is there something that would refresh your 17 memory other than this document as to when you 18 purchased the bar? 19 A. I don't know. 20 Q. Well, if you look on the first page, it 21 indicates under the Recitals, Whereas Mark S. Van Aken 22 (Tenant) desires to assign all of its rights, title and 23 interests in the lease unto J.S.J., LLC(Assignee)for 24 the premises located at 3430 East Tropicana Avenue, 25 Suites 27, 28, and 29, Las Vegas, Nevada,</p> | <p>page 49</p> <p>1 in June of 2007 the amount of rent that was being paid 2 was \$1.60 per square foot? 3 MR. LOVATO: Objection, argumentative. 4 Counsel is using a calculator, the deponent doesn't 5 have a calculator. 6 THE WITNESS: I don't know. 7 BY MR. MOORE: 8 Q. I can give you my calculator if you would 9 like to do the math. 10 MR. LOVATO: It's your calculator. Doing the 11 math isn't using your calculator. 12 BY MR. MOORE: 13 Q. Do you disagree that that math equation I 14 just did, laid out is \$1.60 a square foot? 15 A. I do not know. 16 Q. Okay. Do you have any reason to believe that 17 the amount of rent that is set forth in this addendum, 18 Exhibit 2, is not what you were paying when you 19 purchased the bar? 20 A. I do not know. 21 Q. Why don't you know that? One of the 22 questions that you were asked to be here is that you're 23 the 30(b)(6) designee for the lease at issue, right? 24 MR. LOVATO: Objection, argumentative. 25 MR. MOORE: Is that a yes? You nodded your</p> |

| | |
|--|---|
| <p>1 head.</p> <p>2 THE WITNESS: What is the question?</p> <p>3 BY MR. MOORE:</p> <p>4 Q. I said one of the categories is you have been</p> <p>5 designated as the 30(b)(6) designee as the person who</p> <p>6 can testify concerning JSJBD's lease for the premises</p> <p>7 at issue.</p> <p>8 MR. LOVATO: Same objection.</p> <p>9 THE WITNESS: Yes, I'm here to.</p> <p>10 BY MR. MOORE:</p> <p>11 Q. And I'm asking you about this addendum which</p> <p>12 is a part of the lease, right?</p> <p>13 MR. LOVATO: The question is you are asking</p> <p>14 about an addendum?</p> <p>15 BY MR. MOORE:</p> <p>16 Q. Yes, the addendum to the lease.</p> <p>17 MR. LOVATO: Answer if you are asking about</p> <p>18 the addendum.</p> <p>19 THE WITNESS: Yes, you are asking about an</p> <p>20 addendum.</p> <p>21 BY MR. MOORE:</p> <p>22 Q. The addendum is to the lease, correct?</p> <p>23 A. I don't know.</p> <p>24 Q. Well, it's stated in here, Addendum to Retail</p> <p>25 Building Lease To Lease dated July 9, 1996. The lease</p> | <p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. MOORE:</p> <p>3 Q. You don't know, okay. Would JSJBD have</p> <p>4 bought the bar if it thought it was paying too much</p> <p>5 rent?</p> <p>6 A. I don't know.</p> <p>7 Q. Would that have been a deterrent to buying</p> <p>8 the bar?</p> <p>9 A. I don't know.</p> <p>10 Q. Would that have affected the profitability?</p> <p>11 A. I don't know. Too vague.</p> <p>12 Q. Do you know if you were provided with a copy</p> <p>13 of this addendum before you purchased the bar,</p> <p>14 Exhibit 2?</p> <p>15 A. I don't know.</p> <p>16 Q. Did you ask how much the bar was paying in</p> <p>17 rent before you bought it?</p> <p>18 A. Ask who?</p> <p>19 Q. Mark Van Aken or anybody.</p> <p>20 A. No.</p> <p>21 Q. So you didn't know how much the bar was</p> <p>22 paying in rent before you decided to buy the bar?</p> <p>23 A. I did not ask Mark Van Aken.</p> <p>24 Q. Did you ask anybody?</p> <p>25 A. No.</p> |
| <p>1 at issue in this case is the lease from July 9, 1996,</p> <p>2 isn't it?</p> <p>3 A. It states on there, yes.</p> <p>4 Q. That is the lease that JSJBD was assigned</p> <p>5 when it bought the bar, right?</p> <p>6 A. What is the question?</p> <p>7 Q. The lease that we're talking about, the</p> <p>8 July 9, 1996, lease is the lease you were assigned when</p> <p>9 JSJBD bought the bar?</p> <p>10 A. I believe, yes.</p> <p>11 Q. So I'm asking you questions about this</p> <p>12 addendum to that lease. And you're telling me you</p> <p>13 don't know the answer to the question I was asking, and</p> <p>14 I'm simply trying to find out why you don't know the</p> <p>15 answer to that?</p> <p>16 MR. LOVATO: Objection, vague and confusing,</p> <p>17 argumentative.</p> <p>18 BY MR. MOORE:</p> <p>19 Q. And more to the point, do you have any</p> <p>20 reason, as the 30(b)(6) designee of JSJBD, to dispute</p> <p>21 that the amount of rents set forth in this addendum as</p> <p>22 Exhibit 2 were what JSJBD was paying when it bought the</p> <p>23 bar?</p> <p>24 MR. LOVATO: Objection, argumentative, asked</p> <p>25 and answered.</p> | <p>1 Q. How did you know how much the bar was paying</p> <p>2 in rent before buying the bar?</p> <p>3 A. His financials.</p> <p>4 Q. Mr. Van Aken's financials?</p> <p>5 A. Yes.</p> <p>6 Q. As you sit here today, do you remember how</p> <p>7 much that was?</p> <p>8 A. No.</p> <p>9 Q. So looking at this Lease Assignment and</p> <p>10 Modification, which is Exhibit 3, it indicates Mark Van</p> <p>11 Aken is the tenant and JSJ, LLC is the assignee under</p> <p>12 the very first paragraph. Do you see that?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Is that a yes?</p> <p>15 A. Yes, I see it.</p> <p>16 Q. I only ask because when you go uh-huh, it's</p> <p>17 hard for the court reporter to take that down.</p> <p>18 A. Yes.</p> <p>19 Q. And prior to today, you have seen this</p> <p>20 document, correct?</p> <p>21 A. Yes, I believe. I don't remember.</p> <p>22 Q. On the bottom paragraph on the first page,</p> <p>23 Whereas it is the desire of all parties to allow Tenant</p> <p>24 to assign the Lease Agreement, the Lease Amendment, and</p> <p>25 the Lease Addendum to the assignee under the terms and</p> |

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. 3)**

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

INDEX OF APPENDIX

| VOL. | TITLE | PAGE |
|-------------|--|-------------|
| 1 | Complaint 11/30/18 | 1 |
| 1 | Counterdefs.' (individual) Reply to Counterclaim 05/07/19 | 106 |
| 1 | Cover Sheet—Business Court 11/30/18 | 15 |
| 1 | Def.'s Answer & Counterclaim 01/09/18 | 19 |
| 12 | Def.'s Memorandum of Costs 12/10/19 | 2829 |
| 13 | Def.'s Mot. Alter Amend Judgment 12/27/19 | 3132 |
| 13 | Def.'s Mot. Attorney Fees & Costs 12/27/19 | 3099 |
| 3 | Def.'s Mot. Correct Order 10/01/19 | 726 |
| 12 | Def.'s Mot. Retax Costs 12/13/19 | 2974 |
| 3 | Def.'s Mot. Sanctions 10/01/19 | 584 |
| 1 | Def.'s MSJ 05/22/19 | 119 |
| 14 | Def.'s Not. Cross Appeal 03/25/20 | 3416 |
| 13 | Def.'s Opp'n Mot. Attorney Fees & Costs 01/09/20 | 3227 |
| 3 | Def.'s Opp'n Mot. Compel 09/30/19 | 574 |
| 13 | Def.'s Opp'n Mot. Retax Costs 12/27/19 | 3175 |
| 5 | Def.'s Pretrial Disclosures 10/21/19 | 1034 |
| 5 | Def.'s Pretrial Memorandum 11/08/19 | 1069 |
| 14 | Def.'s Reply Mot. Alter Amend Judgment 01/17/20 | 3296 |
| 14 | Def.'s Reply Mot. Attorney Fees & Costs 01/23/20 | 3307 |
| 13 | Def.'s Reply Mot. Retax Costs 01/09/20 | 3251 |
| 2 | Def.'s Reply MSJ & Opp'n Counter MSJ 07/01/19 | 438 |
| 14 | Final Judgment 02/25/20 | 3394 |
| 11 | Findings Fact & Conclusions Law 12/05/19 | 2735 |
| 14 | Not. Entry Order re Def.'s Mot. Alter Amend Judgment 02/25/20 | 3408 |
| 14 | Not. Entry Order re Def.'s Mot. Attorney Fees & Costs 02/13/20 | 3365 |
| 5 | Not. Entry Order re Def.'s Mot. in Limine 11/17/19 | 1093 |
| 14 | Not. Entry Order re Def.'s Mot. Retax Costs 02/25/20 | 3388 |
| 5 | Not. Entry Order re Def.'s Mot. Sanctions 11/08/19 | 1064 |
| 2 | Not. Entry Order re Def.'s MSJ & Pl.'s Counter MSJ 07/24/19 | 482 |
| 14 | Not. Entry Order re Final Judgment 02/25/20 | 3402 |
| 13 | Not. Entry Order re Findings Fact & Conclusions Law 12/27/19 | 3153 |
| 14 | Not. Entry Order re Pl.'s Mot. Attorney Fees & Costs 02/25/20 | 3397 |
| 4 | Not. Entry Order re Pl.'s Mot. Compel 10/09/19 | 826 |
| 14 | Not. Entry Order re Pl.'s Mot. Retax Costs 02/19/20 | 3374 |
| 14 | Order re Def.'s Mot. Alter Amend Judgment 02/24/20 | 3380 |
| 14 | Order re Def.'s Mot. Attorney Fees & Costs 02/13/20 | 3362 |
| 14 | Order re Def.'s Mot. Retax Costs 02/24/20 | 3385 |

| | | |
|----|--|------|
| 5 | Order re Def.'s Mot. Sanctions 11/08/19 | 1062 |
| 2 | Order re Def.'s MSJ & Pl.'s Counter MSJ 07/24/19 | 480 |
| 14 | Order re Pl.'s Mot. Attorney Fees & Costs 02/24/20 | 3382 |
| 4 | Order re Pl.'s Mot. Compel 10/09/19 | 824 |
| 14 | Order re Pl.'s Mot. Retax Costs 02/19/20 | 3371 |
| 14 | Order Setting Hearing 01/17/20 | 3306 |
| 1 | Pl.'s / Counterdef.'s Reply Counterclaim 01/31/19 | 95 |
| 12 | Pl.'s Memorandum of Costs 12/10/19 | 2754 |
| 12 | Pl.'s Memorandum of Costs—Amended 12/12/19 | 2893 |
| 13 | Pl.'s Mot. Attorney Fees & Costs 12/26/19 | 3075 |
| 3 | Pl.'s Mot. Compel 09/26/19 | 533 |
| 12 | Pl.'s Mot. Retax Costs 12/13/19 | 2987 |
| 14 | Pl.'s Notice of Appeal 03/16/20 | 3413 |
| 14 | Pl.'s Opp'n Mot. Alter Amend Judgment 01/10/20 | 3271 |
| 14 | Pl.'s Opp'n Mot. Attorney Fees & Costs 01/10/20 | 3277 |
| 4 | Pl.'s Opp'n Mot. Amend Order 10/08/19 | 765 |
| 13 | Pl.'s Opp'n Mot. Retax Costs 12/30/19 | 3205 |
| 4 | Pl.'s Opp'n Mot. Sanctions 10/08/19 | 797 |
| 4 | Pl.'s Opp'n Mot. Strike Expert & Countermot. Strike 10/16/19 | 830 |
| 1 | Pl.'s Opp'n MSJ & Counter MSJ 06/19/19 | 204 |
| 5 | Pl.'s Pretrial Disclosures 11/06/19 | 1052 |
| 5 | Pl.'s Pretrial Memorandum 11/18/19 | 1098 |
| 5 | Pl.'s Reply Countermot. Strike Expert Report 10/30/19 | 1045 |
| 2 | Pl.'s Reply Counter MSJ 07/03/19 | 452 |
| 14 | Pl.'s Reply Mot. Attorney Fees & Costs 01/24/20 | 3317 |
| 4 | Pl.'s Reply Mot. Compel 10/01/19 | 758 |
| 14 | Pl.'s Reply Mot. Retax Costs 01/09/20 | 3257 |
| 10 | Pl.'s Trial Exhibits 1-75 (trial concluding 11/22/19) | 2259 |
| 1 | Summons re Def. 12/11/18 | 16 |
| 2 | Tr. Dep. Jeff Vincent 09/19/19 | 486 |
| 5 | Tr. Hearing Def.'s Mot. Sanctions 10/18/19 | 1009 |
| 2 | Tr. Hearing Def.'s MSJ & Pl.'s Counter MSJ 07/08/19 | 463 |
| 14 | Tr. Hearing Post-Trial Motions 01/27/20 | 3345 |
| 5 | Tr. Trial Day One 11/18/19 | 1109 |
| 6 | Tr. Trial Day Two 11/19/19 | 1309 |
| 7 | Tr. Trial Day Three 11/20/19 | 1589 |
| 8 | Tr. Trial Day Four 11/21/19 | 1881 |
| 9 | Tr. Trial Day Five 11/22/19 | 2052 |

| | |
|---|--|
| <p>page 54</p> <p>1 conditions set forth in this Lease Assignment and 2 Modification. 3 Do you see that? 4 A. Yes, I see it. 5 Q. So what is your understanding of what that 6 paragraph means? 7 A. I don't know. 8 Q. Do you have an understanding of what that 9 means? 10 A. It's legal terminology, I don't know. 11 Q. When you bought the bar, were you assigned -- 12 was JSJBD assigned the lease? 13 A. I believe so, yes. 14 Q. Is this the document that effectuated that, 15 these four pages? 16 A. I really don't know, I'm not -- 17 Q. So turning to the second page, look at 18 Paragraph 4, No. 4, Assignment to Assignee. Do you see 19 that? 20 A. Yes. 21 Q. This says, On close of escrow of the sale of 22 the business currently conducted by Tenant at the 23 Premises (the Closing), the Lease shall be assigned by 24 Tenant to Assignee. Right? 25 A. That's what it says, yes.</p> | <p>page 56</p> <p>1 A. It was 2007, I don't know. 2 Q. Okay. Did you have -- did JSJ have an 3 attorney review this lease modification prior to 4 signing it? 5 A. I don't know. 6 Q. If you look down at Paragraph 8, see that? 7 A. Yes. 8 Q. Additional Terms. Tenant agrees to pay 9 landlord (Tropicana Investments, LLC) ten percent of 10 the total sales price of said business sales 11 transaction upon the closing. 12 Now if you look back at the very first page 13 of this exhibit. 14 A. Very first page? Yes. 15 Q. Who in the very first sentence is defined as 16 the tenant? 17 A. Mark Van Aken. 18 Q. That is who is defined as the tenant? 19 A. Yes. 20 Q. Going back to Paragraph 8, this provides that 21 Mark Van Aken agrees to pay landlord ten percent of the 22 total sales price of the sales transaction upon the 23 closing, right? 24 MR. LOVATO: Objection, argumentative, 25 misstates the lease.</p> |
| <p>page 55</p> <p>1 Q. JSJ is the assignee, right? 2 A. Yes, that's what it says. 3 Q. So is it fair to say -- so that we are on the 4 same page here -- by virtue of what Paragraph 4 here is 5 saying, that the lease was going to be assigned to JSJ, 6 right? 7 A. Yes. 8 Q. Okay. If you turn to the next page, look at 9 Paragraph 7 and in the middle of that paragraph, the 10 second sentence that starts with the word, Assignee 11 acknowledges. Do you see that? 12 A. Yes. 13 Q. It says, Assignee -- which we just confirmed 14 is JSJ -- acknowledges having had the opportunity to 15 inspect the Premises and perform its own due diligence, 16 and is taking the same in an As Is and Where-Is 17 condition. 18 So I'm going to stop there so I can ask you a 19 question. What due diligence did JSJ do as referenced 20 in that sentence? 21 A. I don't know. 22 Q. Were you involved in the due diligence that 23 JSJ did prior to deciding to buy the bar? 24 A. Yes. 25 Q. What due diligence did you do?</p> | <p>page 57</p> <p>1 THE WITNESS: I don't know. 2 BY MR. MOORE: 3 Q. Well, that's what it says though, right, that 4 the tenant is the person who is going to pay that 5 amount? 6 MR. LOVATO: Objection, that is not what it 7 says. It does say tenant, misleading. 8 THE WITNESS: I don't know. 9 BY MR. MOORE: 10 Q. Well, all right, in light of your counsel's 11 objection, what does the first sentence say in Section 12 8? 13 MR. LOVATO: You want him to read it? 14 BY MR. MOORE: 15 Q. Read that out loud. 16 A. Additional terms. Tenant agrees to pay 17 landlord (Tropicana Investments, LLC)ten percent of the 18 total sales price of said business sales transaction 19 upon the closing. 20 Q. So according to this sentence you just read, 21 who is the party that agreed to pay that ten percent? 22 MR. LOVATO: Objection, argumentative. 23 THE WITNESS: I don't know. 24 BY MR. MOORE: 25 Q. How do you not know that? I'm simply asking</p> |

| | |
|--|--|
| <p style="text-align: right;">page 58</p> <p>1 you to tell me what the document says. 2 MR. LOVATO: Objection, argumentative, 3 harassing. 4 THE WITNESS: I don't know. 5 BY MR. MOORE: 6 Q. How is it that you don't know that? 7 MR. LOVATO: Objection, argumentative, 8 harassing. 9 BY MR. MOORE: 10 Q. I'm trying to figure out what you don't know, 11 why you can't answer that question, Mr. Vincent. 12 A. Do you want me to read the document? 13 Q. No, I want you to answer the question. Who 14 is obligated to pay the ten percent of the total sales 15 price, according to Section 8? 16 MR. LOVATO: Objection, argumentative, 17 harassing. It has been asked and answered several 18 times. 19 MR. MOORE: Well, it hasn't been answered. 20 MR. LOVATO: It has been. You are literally 21 asking someone to read. He read it. 22 MR. MOORE: I'm asking him -- 23 MR. LOVATO: Now you are trying to get louder 24 with him, you are trying to intimidate him. It's 25 inappropriate.</p> | <p style="text-align: right;">page 60</p> <p>1 A. I don't know. 2 Q. But you know that JSJ did not? 3 A. Yes. 4 Q. Okay. Now if you go on to the second page or 5 the third page, I'm sorry -- I'm sorry, page 4 of the 6 document. You understand that this lease assignment 7 provided in this Section 8 for three five-year options, 8 correct? 9 A. Excuse me? 10 Q. You understand that this Section 8 provided 11 for three five-year options, correct? 12 A. Section 8 provided for three five -- the 13 landlord agrees to conditionally grant assignee three 14 additional five-year options, yes, I see that. 15 Q. Those were conditional options, correct? 16 A. States conditional, right, yes. 17 MR. LOVATO: Objection, misleading, calls for 18 a legal conclusion. 19 BY MR. MOORE: 20 Q. What do you understand the word conditional 21 to mean as it was used in that sentence? 22 A. I don't know. 23 MR. LOVATO: Objection, calls for a legal 24 conclusion, the document speaks for itself. 25 ///</p> |
| <p style="text-align: right;">page 59</p> <p>1 MR. MOORE: I'm not getting louder. You are 2 raising your voice, Counsel. 3 MR. LOVATO: I'm raising my voice a little 4 because you are raising your voice. 5 MR. MOORE: I'm not raising my voice. 6 MR. LOVATO: We have a record here. 7 MR. MOORE: We do. 8 MR. LOVATO: You have asked the same question 9 about a reading assignment several times. I don't 10 think that a court looking at this would be amused by 11 your questions. 12 MR. MOORE: And I don't think they would be 13 amused by your speaking objections either. 14 Q. So, Mr. Vincent, is it your contention that 15 JSJ paid the ten percent of the total sales price to 16 the landlord? 17 MR. LOVATO: Objection, argumentative 18 regarding contention, assumes facts regarding 19 contention. 20 THE WITNESS: I don't know. 21 BY MR. MOORE: 22 Q. Did JSJ pay ten percent of the sales price to 23 the landlord? 24 A. No. 25 Q. Do you know if Mark Van Aken paid that money?</p> | <p style="text-align: right;">page 61</p> <p>1 BY MR. MOORE: 2 Q. When the document states, Landlord agrees to 3 conditionally grant assignee, JSJ, LLC, three 4 additional five-year options to renew the terms of the 5 lease under terms and conditions, including but not 6 limited to, rental increases to be negotiated, what is 7 your interpretation of that? 8 A. The lease speaks for itself. 9 MR. LOVATO: Objection, calls for a legal 10 conclusion. 11 BY MR. MOORE: 12 Q. I'm simply asking for what your understanding 13 is. 14 A. The lease speaks for itself. 15 Q. So does that mean that -- 16 A. The lease speaks for itself. 17 Q. Terms and conditions including rental 18 increases speaks for itself? 19 MR. LOVATO: That is not what it says, he is 20 misstating the document. 21 BY MR. MOORE: 22 Q. When you say it speaks for itself, I'm trying 23 to understand what is your understanding of what that 24 means? 25 MR. LOVATO: Objection, calls for a legal</p> |

| | |
|---|---|
| <p style="text-align: right;">page 62</p> <p>1 conclusion, assumes an understanding. 2 THE WITNESS: I don't know. 3 BY MR. MOORE: 4 Q. That is a fair question. Do you have an 5 understanding as to what that sentence means? 6 A. I don't know. 7 MR. LOVATO: Same objections. 8 BY MR. MOORE: 9 Q. The next sentence indicates, That those 10 conditional options shall commence after August 31, 11 2016, provided assignee has timely complied with all 12 terms and conditions of the lease. 13 Do you see that? 14 A. Yes, I can read that. 15 Q. Is it JSJBD's contention that the assignee 16 had timely complied with all terms and conditions of 17 the lease? 18 MR. LOVATO: Objection, misleading regarding 19 contention, assumes facts. 20 THE WITNESS: I don't know. 21 BY MR. MOORE: 22 Q. Turn to the last page of this exhibit. 23 A. Oh, okay, sure. 24 MR. LOVATO: There are several guaranty 25 documents attached to the first four pages. So are you</p> | <p style="text-align: right;">page 64</p> <p>1 top. 2 MR. LOVATO: It doesn't. We might be looking 3 at two different -- 4 MR. MOORE: Are you on TROP 023? 5 MR. LOVATO: I'm on that, yeah. 6 MR. MOORE: The second line of the document 7 where it says date. 8 MR. LOVATO: There are a few other dates. 9 MR. MOORE: I'm going to get to that. 10 Q. Do you see where it says date at the top? 11 A. Yes. 12 Q. June 25, 2007, and below it it says tenant, 13 JSJ, LLC? 14 A. Yes. 15 Q. Does this help refresh your memory as to when 16 the sale was approximately consummated? 17 A. Yeah. 18 Q. Okay. Then as counsel indicates, the 19 guaranty, it says Guaranty of Lease, June 26, 2007, 20 right, the very first line? 21 A. June 26, 2007, that is what it says. 22 Q. And you are listed as a guarantor? 23 A. Yes. 24 Q. And on the second page of that document, TROP 25 024 Bate stamped, is that your signature?</p> |
| <p style="text-align: right;">page 63</p> <p>1 referring to the last of the guaranty pages? 2 MR. MOORE: No, the very last page. It is 3 Bate stamped on the bottom TROP 027. 4 MR. LOVATO: Says Addendum, sorry. 5 THE WITNESS: Yeah. 6 BY MR. MOORE: 7 Q. Have you ever seen this addendum? 8 A. I don't know. 9 Q. Do you recognize whose signature that is 10 under JSJ's signature block? 11 A. I don't know. 12 Q. Do you know whether JSJ deposited the 13 additional \$8000 security deposit referenced in this 14 addendum? 15 A. Yes, I believe it did. 16 Q. If you look at the document Bate stamped TROP 17 023 of this document, see that, a document entitled 18 Guaranty? 19 A. Yes. 20 Q. It's dated June 25 of 2007? 21 A. Uh-huh. 22 Q. It indicates the tenant is JSJ, LLC? 23 MR. LOVATO: That is not what it's dated, but 24 okay. 25 MR. MOORE: It says June 25, 2007, at the</p> | <p style="text-align: right;">page 65</p> <p>1 A. Yes. 2 Q. Did you sign that on June 26? 3 A. That's what the document says. 4 Q. Do you have any reason to disagree that you 5 signed that on June 26? 6 A. No. 7 Q. Do you recall signing the guaranty for the 8 lease? 9 A. No, I don't know. 10 Q. Who negotiated the purchase terms of the 11 purchase on behalf of JSJ? 12 A. I don't know. 13 Q. Shortly after JSJ bought the bar, is it fair 14 to say that the country and Las Vegas went into a 15 recession? 16 A. Dates? 17 Q. Shortly after they purchased the bar. 18 A. Dates? 19 Q. I don't know, 2008. 20 A. Till when? 21 Q. Till it ended, 2012, I don't know. I'm just 22 asking for your general knowledge. Are you aware there 23 was generally a recession that occurred shortly after 24 JSJ bought the bar? 25 A. I don't know really.</p> |

| | |
|--|--|
| <p style="text-align: right;">page 66</p> <p>1 Q. You don't believe we went into a recession?</p> <p>2 A. That's not what I said.</p> <p>3 Q. Well, I'm asking. Do you believe we went</p> <p>4 into a recession?</p> <p>5 A. Do I believe?</p> <p>6 Q. Yes, sir.</p> <p>7 A. I don't know.</p> <p>8 Q. How did the bar do from 2008 through 2013,</p> <p>9 financially, that is?</p> <p>10 A. I don't -- 2008, we struggled. Like any</p> <p>11 other opening business. Struggled a lot.</p> <p>12 Q. What about 2009?</p> <p>13 A. Struggled.</p> <p>14 Q. 2010?</p> <p>15 A. Struggled.</p> <p>16 Q. Is that the same through 2013?</p> <p>17 A. It is.</p> <p>18 Q. How would you describe the economic</p> <p>19 conditions in Las Vegas during that period of time?</p> <p>20 MR. LOVATO: Objection, lack of foundation.</p> <p>21 THE WITNESS: Everybody struggled.</p> <p>22 MR. MOORE: Why don't we take a break.</p> <p>23 (Whereupon, a recess was taken from</p> <p>24 11:02 a.m. to 11:13 a.m., and</p> <p>25 Defendant's Exhibit 4 was marked.)</p> | <p style="text-align: right;">page 68</p> <p>1 you or Stuart Vincent?</p> <p>2 A. I don't know.</p> <p>3 Q. What was Mr. White's role with the company in</p> <p>4 2011?</p> <p>5 A. He -- I don't remember. Might have -- he was</p> <p>6 president.</p> <p>7 Q. Did Mr. White negotiate the terms of this</p> <p>8 Addendum II?</p> <p>9 A. I don't know.</p> <p>10 Q. Did you?</p> <p>11 A. I don't know.</p> <p>12 Q. Would you recall if you had been the person</p> <p>13 who was negotiating with the landlord about these</p> <p>14 terms?</p> <p>15 A. I do not know.</p> <p>16 Q. Do you recall having any discussions amongst</p> <p>17 the shareholders about this addendum before it was</p> <p>18 signed in 2011?</p> <p>19 A. I would not remember.</p> <p>20 Q. I think I asked you a minute ago, how was the</p> <p>21 bar doing in 2011?</p> <p>22 A. Struggling.</p> <p>23 Q. What exactly do you mean by that?</p> <p>24 A. No profits, paying debt, struggling.</p> <p>25 Q. Was it able to pay its bills?</p> |
| <p style="text-align: right;">page 67</p> <p>1 BY MR. MOORE:</p> <p>2 Q. Mr. Vincent, I'm showing you what has been</p> <p>3 marked as Exhibit 4. This is Addendum II to Retail</p> <p>4 Building Lease, the lease dated July 9, 1996.</p> <p>5 Have you ever seen this document before?</p> <p>6 A. I don't know.</p> <p>7 Q. If you turn to the second page, it indicates</p> <p>8 it was signed by Jeff White. Do you recognize</p> <p>9 Mr. White's signature?</p> <p>10 A. I don't know.</p> <p>11 Q. So it purports that this was -- the addendum</p> <p>12 is dated on the first line of the first page on</p> <p>13 February 22, 2011. See that?</p> <p>14 A. It reads the addendum is made the 22nd day of</p> <p>15 February, 2011.</p> <p>16 Q. Do you have any reason to believe that this</p> <p>17 was not entered into in 2011?</p> <p>18 A. I don't know.</p> <p>19 Q. Is there somebody at JSJBD that would have</p> <p>20 more knowledge about this addendum than you?</p> <p>21 A. I don't know.</p> <p>22 Q. Is this one of the documents you reviewed</p> <p>23 prior to your deposition today?</p> <p>24 A. No.</p> <p>25 Q. Why was this signed by Jeff White instead of</p> | <p style="text-align: right;">page 69</p> <p>1 A. Yeah, well, they're still open.</p> <p>2 Q. How was the gaming revenue in 2011?</p> <p>3 A. I don't know.</p> <p>4 Q. How does the company make most of its money?</p> <p>5 Is it off gaming revenue or off food and beverage</p> <p>6 presently?</p> <p>7 A. Presently?</p> <p>8 Q. Yes, sir.</p> <p>9 A. How do we make our money?</p> <p>10 Q. Yes.</p> <p>11 A. Conglomerate of all.</p> <p>12 Q. Is there one that you receive a bigger share</p> <p>13 of than the other?</p> <p>14 A. I don't know.</p> <p>15 Q. Who would know the answer to that?</p> <p>16 A. I don't know.</p> <p>17 Q. According to Paragraph 3, No. 3 of this</p> <p>18 addendum, it sets forth the base rent for a five-year</p> <p>19 period. Correct?</p> <p>20 A. The base rent shall be changed and paid in</p> <p>21 accordance -- that's what it reads.</p> <p>22 Q. Do you have an understanding as to the reason</p> <p>23 this Addendum II was entered into in February of 2011?</p> <p>24 A. Whatever the document says it is.</p> <p>25 Q. Do you know if this was in response to JSJBD</p> |

| | |
|--|--|
| <p style="text-align: right;">page 70</p> <p>1 exercising an option to extend the term for another 2 five years? 3 A. Whatever the document says. 4 Q. I'm asking what your understanding of it is. 5 A. I don't know. 6 Q. You don't know why it was entered into in 7 February of 2011? 8 A. Whatever the document states, it speaks for 9 itself. 10 Q. So in the -- you see the second whereas 11 clause, Whereas the parties desire to amend the lease? 12 A. Yes, I read that. 13 Q. Do you know why JSJ desired to amend the 14 lease? 15 A. Amend the lease? 16 Q. Yeah, what it says. 17 A. I don't know. 18 Q. The first two years' worth of rent that are 19 specified in that Paragraph 3, how much is the amount 20 per month? 21 A. It reads 7560. 22 Q. Do you have an understanding as to how much 23 that equates to per square foot? 24 A. I don't know. 25 Q. Does \$1.80 per square foot sound fair?</p> | <p style="text-align: right;">page 72</p> <p>1 Q. Yeah. 2 A. How it states? The document states it 3 already, if you want to -- 4 Q. I'm just asking if you understand, what your 5 understanding is of how much it goes up? 6 A. I don't know. 7 Q. What does it say? 8 A. It says it goes from 7560 per month to 7770 9 per month. 10 Q. How much is that? 11 A. You can add it up. 12 Q. \$210? 13 A. Is that what you're saying? 14 Q. I'm asking you. Is that what it appears to 15 be? 16 A. Appears to be, yeah. It could appear to be 17 that, yes. 18 Q. If you look at Exhibit 3 -- I'm sorry, 19 Exhibit 2, which was the 2006 addendum, under the base 20 rent there, would you agree with me that the rent went 21 up \$210 per month as noted in that third paragraph per 22 year? 23 A. Are you comparing the total -- 24 Q. No. 25 A. 2011 to 2015 versus the 2006 to 2010</p> |
| <p style="text-align: right;">page 71</p> <p>1 A. It's whatever the document states, 7560 2 divided by 4200. You have a calculator. 3 Q. If you would like to do it, you can do the 4 math yourself. 5 A. No, it's your calculator, that's okay. 6 Q. Do you want to use your calculator? 7 A. I don't have one. 8 Q. You can use the one on your phone. 9 A. No, thank you. 10 Q. Well, if I just do the math, it comes out to 11 \$1.80 a square foot. Do you disagree with that? 12 A. 7560 and 1.80, by your calculations, if you 13 say it's 1.80, it's 1.80. 14 Q. Okay. The rent stayed the same at \$1.80 a 15 square foot for the first two years of this term, 16 correct? 17 A. That is what the document says. 18 Q. Do you know why that was negotiated? 19 A. I don't know. 20 Q. Do you know if it had anything to do with the 21 economic conditions in place at the time? 22 A. I don't know. 23 Q. Do you know how much the rent went up each 24 year after those first two years per month? 25 A. By the document?</p> | <p style="text-align: right;">page 73</p> <p>1 schedule? 2 Q. No, let me clarify. 3 A. They are different. 4 Q. They are different. Let me ask my question a 5 little clearer, I apologize for that. In Exhibit 2, in 6 the rent schedule there. 7 A. Uh-huh. 8 Q. The rent started at 6720 a month for the 9 first year, right? 10 A. That's what it says. That is what the 11 document says. 12 Q. Then it appears to go up \$210 per month per 13 year, correct? 14 A. That's what the document says. 15 Q. Okay. Do you have any reason to disagree 16 that is what the rent was? 17 A. That's what the document says. 18 Q. Then if you look at Exhibit 4, in the third, 19 fourth, and fifth year it appears to go up \$210 per 20 month per year, correct? 21 MR. LOVATO: Objection, misleading, third, 22 fourth, fifth. 23 BY MR. MOORE: 24 Q. The third, fourth, and fifth years under 25 Paragraph 3 in the rent schedule.</p> |

page 74

1 MR. LOVATO: Objection, vague and ambiguous.
2 BY MR. MOORE:
3 Q. Do you see what I'm asking you, sir?
4 A. **Let me see, 75 -- the document -- it's just**
5 **basically what the document states.**
6 Q. That it goes up 210 per month per year,
7 right?
8 A. **You're saying that is what the document**
9 **states?**
10 Q. I'm asking you if the document states that?
11 A. **It doesn't state that. It says it goes up**
12 **7560 to 7770.**
13 Q. And that is a difference of \$210, right?
14 A. **That is what the document states.**
15 Q. And then it goes up from \$7,770 to \$7,980,
16 right?
17 A. **It's in the document.**
18 Q. And that is a difference of \$210, right?
19 A. **That is not what the document states. It**
20 **goes from 7770 to 7980.**
21 Q. And that is \$210 difference, right?
22 A. **It states 7770 to 7980.**
23 Q. Okay. And the same thing from 7980 to 8190,
24 that is \$210, right?
25 A. **It states 7980 and goes up to 8190, that's**

page 75

1 **what the document states.**
2 Q. So in September 1, 2015, to August 31, 2016,
3 by my math, it appears that the bar was paying \$1.95 a
4 square foot. Does that sound about right to you?
5 A. **I don't know.**
6 Q. Well, before -- when you exercised the option
7 for the current term, how much was the bar paying per
8 square foot?
9 A. **What current term?**
10 Q. The option that we are currently in.
11 A. **I'm confused. Current term?**
12 Q. The option period that we are presently in
13 right now, September 1 --
14 A. **Presently we are in 2019, it's not even in**
15 **this.**
16 Q. I understand that. I'm asking you --
17 A. **I'm confused.**
18 Q. What was the bar paying -- so in Exhibit 4
19 the last year is September 1, 2015, to August 31, 2016,
20 right?
21 A. **Yes.**
22 Q. Was the bar paying 8190 per month during that
23 period of time?
24 A. **I'd have to check. I don't know. I'd have**
25 **to see what the checks were. I don't know.**

page 76

1 Q. Are you the person who cuts the checks?
2 A. **No.**
3 Q. Who does?
4 A. **Stuart does the day-to-day operations.**
5 Q. Well, if \$8190 per month divided by 4200
6 equals \$1.95 a square foot, would you disagree that the
7 bar was paying \$1.95 per square foot up through
8 August 31, 2016?
9 MR. LOVATO: Objection, misleading. If what
10 you say is true, or are you having him assume it is
11 true?
12 MR. MOORE: Well, I've offered him the
13 opportunity to do the math himself, and he has refused.
14 MR. LOVATO: No, he hasn't.
15 BY MR. MOORE:
16 Q. Would you like do the math on my calculator
17 to see if \$8190 divided by 4200 square feet equals
18 \$1.95 per square foot?
19 MR. LOVATO: He is here to answer questions.
20 I don't think it is appropriate to demand that he start
21 doing math problems for you.
22 BY MR. MOORE:
23 Q. So is it your testimony that Mr. Vincent
24 would have more knowledge regarding the amount of rent
25 that was being paid by the bar in 2016?

page 77

1 A. **Which Mr. Vincent?**
2 Q. Stuart, not you.
3 A. **I don't know. Yes, most likely he would.**
4 Q. Would he have more knowledge about the amount
5 of rent the bar was paying in the years set forth in
6 the schedule in Exhibit 4?
7 A. **I don't know.**
8 Q. So who other than you would have knowledge
9 regarding the amount of rent that was being paid?
10 A. **I don't know.**
11 Q. As the person who is designated as the
12 30(b)(6) designee of the company, is there a reason you
13 don't know who would know any more information about
14 that than you?
15 MR. LOVATO: Objection, argumentative.
16 **THE WITNESS: I don't know.**
17 BY MR. MOORE:
18 Q. Did JSJ, LLC, at the time this Addendum II
19 was entered into, agree to pay the rents set forth in
20 Section 3?
21 A. **Which exhibit?**
22 Q. I'm sorry, Exhibit 4.
23 A. **Exhibit 4?**
24 Q. Yes.
25 A. **As stated, whatever the document says.**

page 78

1 Q. That is the amount of rent that JSJ agreed to
2 pay?
3 **A. Whatever -- the document speaks for itself.**
4 Q. And I'm simply asking you, is that what JSJ
5 agreed to pay?
6 **A. The document states it.**
7 Q. And JSJ signed it, right?
8 **A. I don't know. It looks like it did.**
9 Q. Okay. Did the tenant disagree with paying
10 the amount of rent set forth in this Exhibit 4?
11 **A. I don't know.**
12 Q. Do you know if JSJ ever sent anything to the
13 landlord disagreeing with paying these amounts in
14 Exhibit 4?
15 **A. Exhibit 4? I don't know.**
16 (Defendant's Exhibit 5 was marked.)
17 BY MR. MOORE:
18 Q. Showing you what has been marked as
19 Exhibit 5. This is a letter to Jeff Chauncey that was
20 sent from Stuart Vincent. If you look on the second
21 page, you can see it is signed by Mr. Vincent. Are you
22 familiar with your brother's signature?
23 **A. Not really, no.**
24 Q. Does that, to the best of your knowledge,
25 appear to be his signature?

page 79

1 **A. I don't know.**
2 Q. Have you ever seen that letter before?
3 **A. I don't know.**
4 Q. Do you recall drafting this letter?
5 **A. I don't know.**
6 Q. Would drafting this letter be something you
7 would remember had you done it?
8 **A. I don't know.**
9 Q. Have you ever seen this letter prior to this
10 moment?
11 **A. I don't know.**
12 Q. Do you have any understanding as to when this
13 letter may have been sent?
14 **A. I do not.**
15 Q. Well, in this letter Mr. Vincent indicates
16 that he is the president on the signature line. Do you
17 know if that was true in 2016?
18 **A. Stuart Vincent?**
19 Q. Yes.
20 **A. States Stuart Vincent is the president.**
21 Q. Yes. Was he the president in 2016?
22 **A. Yes, I believe so.**
23 Q. Do you know if any other shareholder had
24 input into this letter before it was sent?
25 **A. I do not know.**

page 80

1 Q. Did you have any input?
2 **A. I do not know.**
3 Q. In the third paragraph on the first page it
4 indicates that Blue Dog's took over the property April
5 of 2008. Is that correct?
6 **A. Yes, I believe so.**
7 Q. Then it says the business opened in June of
8 2008. Is that correct?
9 **A. Yes.**
10 Q. It then says, This opening was followed by
11 the national recession.
12 Do you disagree with that?
13 **A. No.**
14 Q. Then in the next paragraph it indicates that
15 in addition to the \$400,000 note to Van Aken, Blue
16 Dog's borrowed an additional \$400,000 for renovation
17 and capital from Nevada Commerce Bank.
18 Do you agree with that?
19 **A. The document states it.**
20 Q. Do you have any independent knowledge about
21 those two things?
22 **A. I don't know the timing.**
23 Q. In the next sentence it says, Initially
24 business was slow and required further capital
25 investments from the owners.

page 81

1 Do you agree with that?
2 **A. I don't know.**
3 Q. Who would be able to -- who would know
4 information about that?
5 **A. I do not know.**
6 Q. Would Stuart Vincent likely know the
7 information about that more than you?
8 **A. I do not know.**
9 Q. The next sentence says, Business improved by
10 2011, and we were nearly able to achieve positive cash
11 flow.
12 Do you agree with that?
13 **A. We were struggling. I don't know. I haven't
14 seen these in a while.**
15 Q. The next paragraph starts with, In 2012 and
16 2013, Blue Dog's had marginal profits which were used
17 to reduce some of the debt.
18 Do you agree with that?
19 **A. Marginal profits? Where are you at right
20 now?**
21 Q. One, two, three, four, fifth paragraph down,
22 starting at --
23 **A. Page 1?**
24 Q. Yes. Starting with, In 2012.
25 **A. Oh.**

| page 82 | page 84 |
|---|--|
| <p>1 Q. Do you agree with that first sentence?</p> <p>2 A. I don't know.</p> <p>3 Q. How is it that you don't know whether you had</p> <p>4 marginal profits in 2012 and 2013?</p> <p>5 A. I haven't looked at those financials</p> <p>6 recently.</p> <p>7 Q. In the next paragraph it says, We attribute</p> <p>8 this reduced revenue to several factors, and you list</p> <p>9 five items.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you agree that those five items were</p> <p>13 factors in Blue Dog's having decreased revenue?</p> <p>14 A. Yes.</p> <p>15 Q. Then it indicates in the next paragraph,</p> <p>16 second sentence, The primary revenue source for Blue</p> <p>17 Dog's is slot revenue.</p> <p>18 Do you see that?</p> <p>19 A. That is what the document says. Where is it</p> <p>20 at?</p> <p>21 Q. Last paragraph on the first page, second</p> <p>22 sentence.</p> <p>23 A. Yes, that is what the document states.</p> <p>24 Q. Do you agree with that?</p> <p>25 A. I don't know.</p> | <p>1 figure?</p> <p>2 A. I do not.</p> <p>3 Q. Do you know what that \$2500 a month reduction</p> <p>4 would amount to in a dollar per square foot?</p> <p>5 A. No, I do not know off the top of my head.</p> <p>6 Q. So in 2015 to '16, according to Exhibit 4,</p> <p>7 the bar was paying 8190 a month, right?</p> <p>8 A. I do not know.</p> <p>9 Q. Look at Exhibit 4.</p> <p>10 A. Okay.</p> <p>11 Q. Right there.</p> <p>12 A. It states that.</p> <p>13 Q. So 8190 minus a 2500 month reduction would be</p> <p>14 \$5690, which if you divide that by 4200 square feet</p> <p>15 equals \$1.35. Is it JSJ's contention they were asking</p> <p>16 for the rent to be reduced to \$1.35 a square foot in</p> <p>17 this letter?</p> <p>18 A. I don't know.</p> <p>19 MR. LOVATO: Objection, argumentative,</p> <p>20 misleading regarding the contention.</p> <p>21 BY MR. MOORE:</p> <p>22 Q. I'm sorry, what was your answer?</p> <p>23 A. I don't know.</p> <p>24 Q. Who would know that?</p> <p>25 A. I don't know.</p> |
| page 83 | page 85 |
| <p>1 Q. Turn to the second page. In the fifth</p> <p>2 paragraph it indicates, Our experience is that the</p> <p>3 tavern/bar business in Las Vegas is not what it was ten</p> <p>4 years ago.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Revenues are significantly lower and costs</p> <p>8 have continued to increase.</p> <p>9 That is what it says, right?</p> <p>10 A. Yes.</p> <p>11 Q. It then says, In order for us to have a long</p> <p>12 term viable relationship, it's absolutely necessary to</p> <p>13 get a concession on our rent.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. If you go down two more paragraphs, it says,</p> <p>17 We have been a loyal tenant.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Then in the last sentence of that paragraph,</p> <p>21 In order for us to remain in business, Blue Dog's needs</p> <p>22 a \$2500 a month reduction in rent.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know how he came up with that \$2500</p> | <p>1 Q. Would Stuart Vincent know that?</p> <p>2 A. I don't know.</p> <p>3 Q. Have you ever discussed with Mr. Vincent this</p> <p>4 request to reduce the rent \$2500 a month? Stuart</p> <p>5 Vincent?</p> <p>6 A. I don't know.</p> <p>7 Q. Is that something you would remember had you</p> <p>8 done it?</p> <p>9 A. I do not know.</p> <p>10 Q. Was Stuart Vincent authorized to send this</p> <p>11 letter on behalf of JSJBD?</p> <p>12 A. I do not know.</p> <p>13 Q. As the 30(b)(6) designee for JSJBD, is there</p> <p>14 a reason why you do not know whether Stuart Vincent was</p> <p>15 authorized to send this letter?</p> <p>16 MR. LOVATO: Objection, argumentative.</p> <p>17 THE WITNESS: I do not know.</p> <p>18 BY MR. MOORE:</p> <p>19 Q. Do you know if the landlord responded to</p> <p>20 Mr. Stuart Vincent's letter, Exhibit 5?</p> <p>21 A. I do not know.</p> <p>22 Q. Do you know if in response to this letter,</p> <p>23 the landlord offered to reduce the rent to \$1.75 a</p> <p>24 square foot?</p> <p>25 A. I do not know that.</p> |

page 86

1 Q. Is there somebody at JSJBD that would know
2 that?
3 **A. I do not know.**
4 Q. Let's go ahead and mark these as next in
5 line.
6 (Defendant's Exhibits 6 and 7 were
7 marked.)
8 BY MR. MOORE:
9 Q. If you will look in reverse order on
10 Exhibit 7.
11 **A. Uh-huh.**
12 Q. This is an email from Joe Velarde to Stuart
13 Vincent sent on April 20, 2016. Have you ever seen
14 this email before?
15 **A. I don't know.**
16 Q. Do you recall if Stuart ever discussed the
17 contents of this email with you?
18 **A. I do not know.**
19 Q. In the body of the email it indicates, Hello,
20 Stuart, As discussed per our meeting earlier today,
21 attached is the landlord's lease addendum as well as
22 the lease guaranties for all the members of the new
23 corporation.
24 Are you aware of the meeting that he is
25 referring to in there?

page 87

1 **A. I am not.**
2 Q. The reason I do this in reverse order is if
3 you look at Exhibit 6 and you turn to the second page
4 of Exhibit 6, I'll represent to you that this is the
5 addendum that was attached to the email that was sent
6 to Stuart.
7 Have you ever seen that document?
8 **A. I don't know.**
9 Q. In the second page of that addendum, it
10 indicates the rent from 9/1/16 to 8/31/17 was going to
11 be 7350 per month.
12 Do you see that?
13 **A. These aren't initialed or signed.**
14 Q. No, no, this isn't signed, I understand, I'm
15 just asking you a question --
16 **A. I thought you were making reference to a**
17 **signed document.**
18 Q. No. But do you see that second page?
19 **A. Yes.**
20 Q. Where it says the rent was going to be 7350 a
21 month?
22 **A. Uh-huh.**
23 Q. Is that a yes?
24 **A. Yes. Sorry.**
25 Q. According to the math, that is \$1.75 a square

page 88

1 foot. Do you recall ever seeing this addendum before?
2 **A. I don't know.**
3 Q. Do you recall Stuart ever discussing this
4 addendum with you?
5 **A. I don't know.**
6 Q. Do you recall having any discussion amongst
7 the partners of JSJBD about the landlord's offer to
8 reduce the rent to \$1.75 a square foot?
9 **A. I do not know.**
10 Q. Is there anybody other than you who would
11 have knowledge of that?
12 **A. I do not know.**
13 Q. If you keep turning, you will see in Exhibit
14 6, if you turn one more page to TROP 047, this is a
15 secretary of state document called a Corporation
16 Charter, and it says, Conversion. Do you see that?
17 **A. Yes.**
18 Q. Then if you turn to the next page, TROP 048,
19 this is from the secretary of state's office in 2014,
20 Articles of Conversion. Do you see that?
21 **A. Yes.**
22 Q. This appears to say that JSJ, LLC is
23 converting to JSJBD Corporation. Does this change your
24 recollection from earlier where it was merely a name
25 change?

page 89

1 **A. No.**
2 MR. LOVATO: Objection, argumentative, calls
3 for a legal conclusion.
4 BY MR. MOORE:
5 Q. No, it doesn't. Is that --
6 MR. LOVATO: It does.
7 MR. MOORE: No, I was asking him if that is
8 what he just said.
9 **THE WITNESS: I don't know.**
10 BY MR. MOORE:
11 Q. Okay. If you turn to the document TROP 050,
12 these are guaranties of lease. The first one is for
13 Stuart Vincent, and if you turn to TROP 053, this
14 appears to be a guaranty of lease that was intended for
15 you to sign. Do you see that at the top?
16 MR. LOVATO: Objection, misleading.
17 BY MR. MOORE:
18 Q. Do you see your name at the top of that
19 guaranty?
20 **A. Yes, it's on there.**
21 Q. You didn't sign it, your signature is not on
22 the third page?
23 **A. No signature.**
24 Q. Were you aware this was sent to JSJBD?
25 **A. I don't know.**

page 90

1 Q. Do you recall if you ever signed another
2 guaranty for the company?
3 **A. I don't know. It has been a while.**
4 Q. Earlier you were saying that you had some
5 knowledge about the roof leaks in 2016. Do you recall
6 that?
7 **A. Yes.**
8 Q. Tell me specifically what you recall about
9 the roof leaks in 2016.
10 **A. What I recall. You mean when the water was**
11 **coming through the ceiling in buckets, sure.**
12 Q. I want to know everything you know about the
13 leak in 2016.
14 **A. Everything I know about it.**
15 Q. When did they start?
16 **A. When did they start?**
17 Q. Yes, sir.
18 **A. I don't have recollection exactly to tell you**
19 **the exact start date. It was in March, I believe, or**
20 **maybe February, February to March 2016.**
21 Q. And what do you know about the roof leaks
22 that started in March of 2016?
23 **A. About the roof?**
24 Q. Yes, sir, the roof leaks.
25 **A. The contractor left an opening in the roof, a**

page 91

1 storm came, water flowed through the -- within several
2 -- many, many gallons of water flowed through the roof.
3 It was not -- it was a repair at the time, a roof
4 repair. They were taking -- the only way water could
5 have leaked in had to be a roof repair. So and with
6 the roof repair, there was no -- they had a plastic
7 covering over the joists, and water went through the
8 joists in a big storm because they didn't cover it
9 completely and lack of due diligence. And probably --
10 so that would be it. And there is videos to prove it.
11 That's the best of my knowledge right now.
12 Q. You indicated earlier you were on the roof at
13 some point?
14 **A. Yes, a while ago.**
15 Q. Was that around the same time that this roof
16 leak happened?
17 **A. I don't know.**
18 Q. Was it before?
19 **A. I don't know.**
20 Q. Do you recall what you saw when you were on
21 the roof?
22 **A. I think we have already stated that. About**
23 **the swamp cooler, as we stated earlier.**
24 Q. Nothing else you want to add?
25 **A. No.**

page 92

1 Q. And it's your contention that the landlord
2 did not repair the roof; is that correct?
3 **A. We are still having leaks, yes.**
4 Q. But did the landlord respond to your -- well,
5 that is assuming -- let me back up.
6 Did you guys notify the landlord of the leaks
7 in 2016?
8 **A. I don't know.**
9 Q. Do you know if the landlord took any steps to
10 address the leaks?
11 **A. I don't know.**
12 Q. Who would know that?
13 **A. I don't know.**
14 Q. Would Stuart know that?
15 **A. I don't know. I don't...**
16 Q. Would Stuart have been the one that had the
17 interactions with the landlord on the day-to-day repair
18 issues?
19 **A. Interactions, you mean emails?**
20 Q. Any interactions. Calls, emails,
21 communications of any kind.
22 **A. To the landlord?**
23 Q. Or the building manager --
24 **A. The landlord doesn't respond to us.**
25 Q. Who does?

page 93

1 **A. I don't know, to be honest.**
2 Q. You don't know who responds to you?
3 **A. No.**
4 Q. Does Mr. Chauncey respond to you guys?
5 **A. He tells me that the Velardes handle all the**
6 **maintenance.**
7 Q. So is it your --
8 **A. The day-to-day operations is what he stated.**
9 Q. So is JSJBD's communication on maintenance
10 issues primarily with the Velardes then?
11 **A. I don't know who the Velardes are. They are**
12 **just leasing agents. I'm confused.**
13 Q. Well, I'm confused too.
14 **A. I'm confused too.**
15 Q. I'm trying to figure out who JSJBD
16 communicated with whenever they had a leak issue or a
17 maintenance issue?
18 **A. We communicated sometimes with the Velardes,**
19 **which sometimes they would and wouldn't. We tried --**
20 **we did send an email to the landlords, I believe, I**
21 **remember that one. So Mr. Chauncey, he told us that**
22 **Danny and Joe handle the day-to-day operations and not**
23 **to basically -- that everything goes to them, that he**
24 **doesn't basically respond to us.**
25 Q. About the roof in 2016, did you follow that

page 94

1 same pattern, that you communicated with the Velardes
2 and not the landlord?
3 **A. We had to communicate to get the roof -- that**
4 **is the only way they would have repaired the roof, I**
5 **think. To my best recollection.**
6 Q. Is it your recollection that those
7 communications were with the Velardes and not the
8 landlord or Mr. Chauncey?
9 **A. I'm not positive on that, no. I would have**
10 **to say I don't know.**
11 Q. Did JSJBD ever make an insurance claim
12 relating to roofing damage at some point?
13 **A. Why?**
14 Q. I'm asking if you made a claim?
15 **A. No.**
16 Q. Was the business interrupted because of the
17 roof leak?
18 **A. Yes.**
19 Q. Did they make a claim under business
20 interruption insurance?
21 **A. No.**
22 Q. Why not?
23 **A. Wasn't our fault.**
24 Q. Okay. That's why they didn't make a claim?
25 **A. It answered itself. It wasn't our fault.**

page 95

1 Q. Did JSJBD maintain business interruption
2 insurance in 2016?
3 **A. Yes.**
4 Q. Did they make any business -- did JSJBD make
5 any claims for business interruption losses related to
6 any maintenance-related issues?
7 **A. No.**
8 Q. Why not?
9 **A. I stated earlier.**
10 Q. Because it wasn't your fault?
11 **A. Yes, cost us money.**
12 Q. What cost you money?
13 **A. A claim. We would have to pay a deductible.**
14 Q. How much was your deductible?
15 **A. I don't know.**
16 Q. Do you know if JSJBD has ever received an
17 insurance payment for any claim it may have made for
18 damage to the bar?
19 **A. No.**
20 Q. So other than roof in 2016, were there other
21 maintenance issues that were not fixed by the landlord?
22 **A. Maintenance issues?**
23 Q. Yes, sir.
24 **A. That were not fixed. Electricity was 2009.**
25 **I don't know.**

page 96

1 Q. I believe I asked you this, and if I did, I
2 apologize. But are there any present pending
3 maintenance issues with the bar that have not been
4 addressed by the landlord other than the roof?
5 **A. I don't know.**
6 Q. Stuart would be able to answer that question?
7 **A. I don't know.**
8 Q. Is it Blue Dog's obligation to maintain the
9 HVAC system for the bar?
10 **A. Yes.**
11 Q. Does that include the swamp cooler?
12 **A. Excuse me?**
13 Q. Does that include the swamp cooler?
14 **A. The HVAC system?**
15 Q. Yeah.
16 **A. I don't know.**
17 Q. Is this a good time to break? Why don't we
18 take a break and get some lunch, come on back at 1:00.
19 Come back at 12:30, get you back earlier?
20 **A. 12:30 is fine.**
21 Q. Okay, let's do that.
22 (Whereupon, a recess was taken from
23 11:54 a.m. to 12:36 p.m. and
24 Defendant's Exhibit 8 was marked.
25 ///

page 97

1 BY MR. MOORE:
2 Q. Continuing with your deposition, I'm showing
3 you what has been marked as Exhibit 8. Have you ever
4 seen this document before?
5 **A. I don't know.**
6 Q. Take a moment, just look at it. Do you know
7 who drafted this?
8 **A. No, I don't know.**
9 Q. You see where it indicates in here on the
10 very first two lines, In response to your offer
11 concerning Blue Dog's Pub lease renewal option, we
12 cannot accept a rent above \$1.40 per square foot/5880
13 per month excluding CAM cost for Blue Dog's Pub.
14 Do you see that?
15 **A. Yes.**
16 Q. Are you aware of whether anyone on behalf of
17 Blue Dog's sent this correspondence to the landlord or
18 their representatives?
19 **A. I do not know.**
20 Q. Who would know that?
21 **A. I do not know.**
22 Q. Other than yourself, are you aware of anybody
23 at Blue Dog's who would know who sent this?
24 **A. I do not know.**
25 Q. Are you aware whether anyone at Blue Dog's

| | |
|--|---|
| <p style="text-align: right;">page 98</p> <p>1 ever offered to accept \$1.40 a square foot?</p> <p>2 A. I do not know.</p> <p>3 Q. Who would know that?</p> <p>4 A. I do not know.</p> <p>5 Q. You see down at the items numbered 1, 2, and</p> <p>6 3 at the bottom of the letter?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is that a yes?</p> <p>9 A. Yes. I'm sorry.</p> <p>10 Q. Item No. 2 is referencing damage caused by</p> <p>11 the roofing company to your equipment. Do you see</p> <p>12 that?</p> <p>13 A. Uh-huh. Yes.</p> <p>14 Q. Do you recall ever communicating these</p> <p>15 concerns to the landlord?</p> <p>16 A. I do not know.</p> <p>17 Q. See Item 3 where it talks about six reserved</p> <p>18 parking spaces?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall ever having that discussion</p> <p>21 with the landlord?</p> <p>22 A. I do not know.</p> <p>23 Q. Other than yourself, who would be the person</p> <p>24 who would know that?</p> <p>25 A. I do not know that either.</p> | <p style="text-align: right;">page 100</p> <p>1 Q. Mark this as next in line.</p> <p>2 (Defendant's Exhibit 9 was marked.)</p> <p>3 BY MR. MOORE:</p> <p>4 Q. You are being handed what has been marked as</p> <p>5 Exhibit 9. This is an email from Joe Velarde to Stuart</p> <p>6 Vincent that was sent on April 28, 2016, regarding a</p> <p>7 letter to Landlord, Blue Dog's Pub. At the bottom of</p> <p>8 this first page is an email from Stuart Vincent to Joe</p> <p>9 Velarde. Do you see that? I'm just asking if you see</p> <p>10 the bottom email?</p> <p>11 A. I don't.</p> <p>12 Q. Right there.</p> <p>13 A. Right here?</p> <p>14 Q. Yes, sir. See, from Stuart Vincent sent</p> <p>15 Wednesday, April 27, 2016, to Joe Velarde?</p> <p>16 A. But there is nothing on it.</p> <p>17 Q. I understand that. I'm just saying do you</p> <p>18 see where I'm pointing at?</p> <p>19 A. Yes.</p> <p>20 Q. In response at the top is Joe Velarde</p> <p>21 responding to Stuart saying, Attached is a letter from</p> <p>22 the landlord. Right? That is what the email says?</p> <p>23 A. Okay, Blue Dog's Pub. Okay, where is the</p> <p>24 letter though?</p> <p>25 Q. I'll represent to you that is what Exhibit 8</p> |
| <p style="text-align: right;">page 99</p> <p>1 Q. Would you have any reason to disagree that</p> <p>2 Stuart Vincent sent this?</p> <p>3 A. I do not know.</p> <p>4 Q. You can't say one way or the other, right?</p> <p>5 A. I don't know.</p> <p>6 Q. Have you had any internal discussions with</p> <p>7 JSJBD about paying \$1.40 a square foot?</p> <p>8 A. I do not know.</p> <p>9 Q. Why don't you know that?</p> <p>10 A. I don't know. I don't remember.</p> <p>11 Q. Do you know if JSJBD has ever offered to pay</p> <p>12 \$1.40 per square foot?</p> <p>13 A. It states on the paper, on this document it</p> <p>14 states we did.</p> <p>15 Q. Okay. Do you know if Stuart Vincent ever</p> <p>16 offered to pay \$1.40 a square foot?</p> <p>17 A. I don't know.</p> <p>18 Q. Have you ever offered to pay \$1.40 a square</p> <p>19 foot?</p> <p>20 A. I don't know. I don't remember.</p> <p>21 Q. Again, assuming, this is a hypothetical, if</p> <p>22 Stuart Vincent sent this letter to the landlord, is it</p> <p>23 fair to say that he was offering to pay \$1.40 a square</p> <p>24 foot on behalf of JSJBD?</p> <p>25 A. I do not know.</p> | <p style="text-align: right;">page 101</p> <p>1 was, his letter to the landlord.</p> <p>2 A. Okay.</p> <p>3 Q. Then page 2 of Exhibit 9 here is the</p> <p>4 landlord's response to Mr. Vincent. Have you ever seen</p> <p>5 this April 28, 2016, letter?</p> <p>6 A. I don't know.</p> <p>7 Q. Is there a reason you don't know if you have</p> <p>8 seen it?</p> <p>9 A. Honestly, I wouldn't remember. It has been</p> <p>10 quite a while.</p> <p>11 Q. Would Mr. Stuart Vincent have shared this</p> <p>12 with you when he received it? Is that the customary</p> <p>13 practice at JSJBD?</p> <p>14 A. Customary?</p> <p>15 Q. Usual.</p> <p>16 A. Usual practice is -- I don't know.</p> <p>17 Q. If the landlord sent Stuart a letter, would</p> <p>18 he typically show it to you or give it to you so you</p> <p>19 were aware of it?</p> <p>20 A. I don't know.</p> <p>21 Q. If you were sent a letter from the landlord,</p> <p>22 would you typically share it with your partners?</p> <p>23 A. I don't know.</p> <p>24 Q. Why is that something you don't know whether</p> <p>25 you would do?</p> |

| | |
|--|--|
| <p style="text-align: right;">page 102</p> <p>1 A. Well, our business practices, you're saying 2 usual, it's not usual. We don't do everything the same 3 every time. So I can't give you an answer, that 4 doesn't make any sense. You are saying everything is 5 usual, it's not usual, we do different things for 6 different reasons. 7 Q. Okay. So as you sit here today, do you know 8 if Mr. Stuart Vincent provided this letter to the other 9 shareholders? 10 A. To the other shareholders, I do not know. 11 Q. Do you know -- I think you already answered 12 this -- but in this letter Mr. Chauncey or Tropicana 13 Investments suggests that you make insurance claims for 14 any losses. That wasn't done, was it? 15 A. That was answered before. 16 Q. I just want to make sure your answer hasn't 17 changed. 18 A. It hasn't changed. 19 Q. Okay. And when he says in the third 20 paragraph, In regard to the lease, you have my best 21 offer. We are reducing the rent by a substantial 22 amount, and as you, we are not in business to lose 23 money. 24 Do you have an understanding what the offer 25 he is making there was?</p> | <p style="text-align: right;">page 104</p> <p>1 month or 20 cents per square foot over the next five 2 years equals a total sum of \$50,400. 3 Do you see that? 4 A. Yes. That is what it says. 5 Q. So is it fair to say that a rental reduction 6 of 20 cents per square foot would put the rent at about 7 \$1.75 per square foot in May of 2016? 8 MR. LOVATO: Objection, assumes facts. 9 THE WITNESS: I don't know. 10 BY MR. MOORE: 11 Q. Well, if the rent, according to Exhibit 4 -- 12 we talked about this -- if the rent was 8190 in May of 13 2016, that is \$1.95 a square foot. If they are saying 14 they are reducing it 20 cents a square foot, that would 15 make it a buck 75 a square foot, right? 16 MR. LOVATO: Objection, assumes facts. 17 THE WITNESS: I don't know. 18 BY MR. MOORE: 19 Q. Is there a reason you don't know what I'm 20 talking about there? 21 A. Well, if you want to read off the document, I 22 can read off the document. I'm just saying the paper 23 speaks for itself. There is no reason for me to answer 24 this unless -- if the paper speaks for it. I don't 25 understand what you are trying to get at with me when</p> |
| <p style="text-align: right;">page 103</p> <p>1 A. No, I do not. 2 Q. Who at JSJBD would be the person who would 3 have that knowledge? 4 A. I do not know. 5 (Defendant's Exhibit 10 was marked.) 6 BY MR. MOORE: 7 Q. I'm showing you a letter that has been marked 8 as Exhibit 10. This is a letter dated April 28, 2016, 9 -- I'm sorry, this is a letter dated May 19, 2016, and 10 it's addressed to you, and it was sent by Joe Velarde. 11 Have you seen this document before? 12 A. I don't know. 13 Q. Do you not know if you recall receiving it or 14 do you not know if it was ever even sent? 15 A. I don't remember. 16 Q. Is it fair to say you don't have any 17 recollection of providing this to your partners? 18 A. Yes. 19 Q. In this it says, Hello, Jeff. In followup to 20 our phone call yesterday. 21 Do you remember having a phone call with Joe 22 Velarde probably May 18, 2016? 23 A. No, I don't remember. 24 Q. See where it says in the first paragraph, it 25 says, The rental reduction in the amount of 840 per</p> | <p style="text-align: right;">page 105</p> <p>1 you know it's already on the paper. 2 Q. I'm trying to get you to confirm that is what 3 your understanding is. 4 A. My understanding, I do not know. But the 5 paper says this, it states itself. 6 Q. So you will defer to whatever the document 7 says? 8 A. Yes. The document speaks for itself. 9 Q. As you sit here today, you don't recall the 10 substance of the conversation with Joe Velarde in May 11 of 2016? 12 A. No. 13 Q. In the second paragraph, Mr. Velarde says, In 14 the past Stuart mentioned Blue Dog's has experienced a 15 significant reduction in gaming drop and bar sales over 16 the last two years. 17 Is that a fair statement? 18 A. The documents speaks for itself. You're 19 asking my opinion. The document -- 20 Q. I'm asking you, as the corporate 21 representative of JSJBD, is that an accurate statement? 22 MR. LOVATO: Objection, argumentative and 23 misleading. 24 THE WITNESS: This is the document. It 25 states it. Whatever I --</p> |

| | | | |
|---|---|---|---|
| <p>page 106</p> <p>1 BY MR. MOORE: 2 Q. And I'm asking do you disagree with that? 3 A. I don't know. 4 Q. Who would have the most knowledge about the 5 amount of gaming drop and bar sales? 6 A. I don't know. 7 Q. It says here, As a condition of the rental 8 reduction, the landlord is requesting you provide him 9 with a gaming report from your slot route operator as 10 well as your P&L statement for the previous 24 months 11 which would help substantiate your loss. 12 Was that information ever provided to the 13 landlord? 14 A. I don't know. 15 Q. Who would know that on behalf of JSJBD? 16 A. I don't know. 17 Q. In the third paragraph it says, As requested 18 in the previous correspondence from Tropicana 19 Investments, you have still not provided the landlord 20 with updated credit and financial information of all 21 the members of JSJBD Corp. 22 Was that information ever provided to the 23 landlord? 24 A. I don't know. 25 Q. Who at JSJBD would know whether that was</p> | <p>page 107</p> <p>1 provided? 2 A. I don't know. 3 (Defendant's Exhibit 11 was marked.) 4 BY MR. MOORE: 5 Q. Showing you what has been marked as 6 Exhibit 11, this is an email from you to Joe Velarde, 7 Danny Velarde, Bruno Mark, Stuart Vincent, dated 8 May 26, 2016. Do you recall sending this email? 9 A. No. 10 Q. Is that your email address Jbvin1@msn.com? 11 A. That is what it states on the document, yes, 12 it is. 13 Q. I'm just asking, is that your email address? 14 A. Yes. 15 Q. Did you, in fact, send this email to Mr. 16 Velarde? 17 A. I don't remember. 18 Q. Do you have any reason to dispute that this 19 is an authentic email that was sent from you? 20 A. It came -- no, I don't -- it came from my 21 account, I would say yes, it's authentic. 22 Q. At the bottom, it says Blue Dog's, then it 23 says Stuart Vincent. Why does it say that? 24 A. I don't know. 25 Q. Did you send this on behalf of Stuart?</p> | <p>page 108</p> <p>1 A. I don't know. 2 Q. Did you give Stuart access to your email and 3 have him send it? 4 A. I don't know. 5 Q. Okay. You see how it says, This is 6 responding to your -- to Jeff Chauncey's May 19 letter? 7 A. Yes. 8 Q. That would be Exhibit 10? 9 A. Yes. 10 Q. You state, We intend to exercise our five 11 year option effective September 1, 2016. And we 12 respectfully decline to provide the additional 13 information. 14 Right, that is what it says? 15 A. The document speaks for itself. 16 Q. So earlier when you testified that you didn't 17 recall if you provided the information the landlord 18 requested, does that refresh your memory that you 19 declined to provide it? 20 A. The documents speak for themselves. I don't 21 know. 22 Q. Mark this as next. 23 (Defendant's Exhibit 12 was marked.) 24 BY MR. MOORE: 25 Q. Showing you what has been marked as</p> | <p>page 109</p> <p>1 Exhibit 12, this is a letter dated June 15, 2016, from 2 Danny Velarde to Stuart Vincent. Have you ever seen 3 this letter before? 4 A. I don't know. 5 Q. Do you recall if Mr. Stuart Vincent shared 6 this with the partners in JSJBD when he received it? 7 A. I do not recall. 8 Q. Was that the sort of letter that Mr. Stuart 9 would have shared with the partners? 10 A. I do not know. 11 Q. You don't have any knowledge or information 12 about the contents of this letter either? 13 A. No, not right now, no. 14 Q. Do you recall having any discussion amongst 15 the partners about the substance of this letter? 16 A. Nope. 17 Q. Do you recall ever having any discussions 18 amongst the partners about the landlord requiring a new 19 lease as part of the granting of the option? 20 MR. LOVATO: Objection, argumentative, calls 21 for a legal conclusion. 22 THE WITNESS: I do not know. 23 BY MR. MOORE: 24 Q. Look at the third paragraph of the letter, it 25 starts with, In addition. Do you know if JSJBD</p> |
|---|---|---|---|

| | |
|--|--|
| <p style="text-align: right;">page 110</p> <p>1 provided the documentation showing the percentage of 2 ownership of each individual as well as updated credit 3 reports and financial statements -- 4 THE COURT REPORTER: Could you slow down, 5 please. 6 MR. MOORE: Sorry. 7 Q. In the third paragraph, where it says, In 8 addition, the landlord is requesting JSJBD Corp., a 9 Nevada corporation, to provide documentation showing 10 the percentage of ownership of each individual as well 11 as updated credit reports and financial statements for 12 all individuals in the corporation. 13 Do you know if that information was provided? 14 MR. LOVATO: Objection, misleading, 15 argumentative. 16 THE WITNESS: I do not know. 17 BY MR. MOORE: 18 Q. Who at JSJBD would know whether that 19 information was provided? 20 MR. LOVATO: Same objections. 21 THE WITNESS: I do not know. 22 MR. MOORE: Mark as next in order please. 23 (Defendant's Exhibit 13 was marked.) 24 BY MR. MOORE: 25 Q. Showing you what has been marked as</p> | <p style="text-align: right;">page 112</p> <p>1 Q. Do you disagree that they were counsel for 2 JSJBD? 3 A. I do not know. 4 Q. You don't know if you disagree? 5 A. The document speaks for itself. 6 Q. The next sentence also indicates that JSJBD 7 exercises its option to renew the lease pursuant to 8 Section 8 of the lease assignment and modification. 9 Do you see that? 10 A. Yes. 11 Q. Is that accurate? 12 A. The document speaks for itself. 13 MR. LOVATO: Misleading. 14 BY MR. MOORE: 15 Q. Do you agree that this letter was intending 16 to exercise the option to renew the lease? 17 MR. LOVATO: Objection, misleading, 18 argumentative. 19 THE WITNESS: The document speaks for itself. 20 BY MR. MOORE: 21 Q. So you don't dispute that this was sent on 22 behalf of JSJBD? 23 MR. LOVATO: Objection, argumentative and 24 misleading. 25 THE WITNESS: I do not know.</p> |
| <p style="text-align: right;">page 111</p> <p>1 Exhibit 13, have you ever seen this letter dated August 2 2, 2016? 3 MR. LOVATO: I get these documents well after 4 he gives it to the court reporter. Give me a second, 5 please, okay. 6 BY MR. MOORE: 7 Q. Have you ever seen that document? 8 A. I do not know. 9 Q. Is there someone else at JSJBD that would 10 have more knowledge about its receipt of this document? 11 A. I do not know that answer. 12 Q. Well, this letter purports to be from 13 Kaempfer Crowell to Jeff Chauncey, right? 14 A. The document states that. 15 Q. In it the document states that, Please be 16 advised that this firm is counsel to JSJBD Corp., a 17 Nevada corporation. 18 Do you see that in the first sentence? 19 A. Yes, it's stated there. 20 Q. Is that accurate? 21 A. It's stated on the document. 22 Q. Is that accurate? 23 A. It speaks for itself. 24 Q. Was Kaempfer Crowell counsel for JSJBD Corp.? 25 A. It speaks for itself, the document.</p> | <p style="text-align: right;">page 113</p> <p>1 BY MR. MOORE: 2 Q. What do you understand the purpose of this 3 letter to be? 4 A. I do not know. 5 Q. Do you agree that Ms. Miller and her firm had 6 the authority to act as counsel for JSJBD regarding the 7 matters addressed in this letter? 8 MR. LOVATO: Objection, argumentative, 9 misleading. 10 THE WITNESS: Can you restate that? 11 BY MR. MOORE: 12 Q. Do you agree that Ms. Miller and her firm had 13 the authority to act as counsel for JSJBD regarding the 14 matters that are addressed in this letter? 15 MR. LOVATO: Objection, argumentative, 16 misleading about the term authority. 17 THE WITNESS: I do not know. 18 MR. LOVATO: Also calls for a legal 19 conclusion. 20 BY MR. MOORE: 21 Q. When you read the first paragraph of this 22 letter, what is your understanding of what she is 23 intending to do with this letter? 24 MR. LOVATO: Objection, calls for 25 speculation, vague, argumentative.</p> |

| | |
|--|---|
| <p>page 114</p> <p>1 THE WITNESS: The document speaks for itself.</p> <p>2 BY MR. MOORE:</p> <p>3 Q. So if it says JSJBD is exercising its option,</p> <p>4 you are not disputing that, are you?</p> <p>5 MR. LOVATO: Same objections.</p> <p>6 THE WITNESS: The document speaks for itself.</p> <p>7 BY MR. MOORE:</p> <p>8 Q. Were you involved in the drafting of this</p> <p>9 letter?</p> <p>10 MR. LOVATO: Objection.</p> <p>11 Don't answer that. The basis is work product</p> <p>12 immunity, attorney/client privilege, and related</p> <p>13 documents -- related doctrines, excuse me.</p> <p>14 BY MR. MOORE:</p> <p>15 Q. Look at the second paragraph. It appears to</p> <p>16 be providing information related to the conversion of</p> <p>17 JSJ, LLC into JSJBD. Do you see that?</p> <p>18 A. Yes, that is what the document states.</p> <p>19 Q. Do you have any reason to disagree with the</p> <p>20 statements in that second paragraph?</p> <p>21 MR. LOVATO: Objection, misleading, calls for</p> <p>22 a legal conclusion.</p> <p>23 THE WITNESS: I don't know.</p> <p>24 BY MR. MOORE:</p> <p>25 Q. You don't know whether you have any reason to</p> | <p>page 116</p> <p>1 BY MR. MOORE:</p> <p>2 Q. So when it says JSJBD requests that the rent</p> <p>3 for the first year of the five-year renewal term remain</p> <p>4 the same, was Ms. Miller authorized to make that</p> <p>5 statement?</p> <p>6 MR. LOVATO: Objection, argumentative,</p> <p>7 misleading, calls for a legal conclusion. The judge</p> <p>8 has already ruled on this.</p> <p>9 THE WITNESS: I do not know.</p> <p>10 BY MR. MOORE:</p> <p>11 Q. You don't know whether she was authorized to</p> <p>12 make that request?</p> <p>13 MR. LOVATO: Same objections.</p> <p>14 BY MR. MOORE:</p> <p>15 Q. You can answer.</p> <p>16 A. I do not know.</p> <p>17 Q. You indicated previously at the beginning of</p> <p>18 the deposition you were the person who has the primary</p> <p>19 communication with Ms. Miller. Do you remember that?</p> <p>20 MR. LOVATO: I think that misstates</p> <p>21 testimony.</p> <p>22 MR. MOORE: It doesn't.</p> <p>23 Q. Do you recall me asking you that question?</p> <p>24 If you don't recall, you can tell me you don't recall.</p> <p>25 A. I don't recall.</p> |
| <p>page 115</p> <p>1 disagree with it? I'm not sure I understand what your</p> <p>2 answer means.</p> <p>3 MR. LOVATO: Objection, argumentative,</p> <p>4 misleading, calls for a legal conclusion.</p> <p>5 BY MR. MOORE:</p> <p>6 Q. To the best of your knowledge, as the</p> <p>7 corporate representative for JSJBD, is the information</p> <p>8 stated in that second paragraph accurate?</p> <p>9 MR. LOVATO: Objection, argumentative,</p> <p>10 misleading, calls for a legal conclusion.</p> <p>11 THE WITNESS: I do not know.</p> <p>12 BY MR. MOORE:</p> <p>13 Q. Look at the third paragraph. Ms. Miller</p> <p>14 indicates that JSJBD requests that the rent for the</p> <p>15 first year of the five-year renewal term remain the</p> <p>16 same as the previous year, 9/1/2015 to 8/31/16 as set</p> <p>17 forth in Mr. Chauncey's prior letter.</p> <p>18 Is that something you agree with or disagree</p> <p>19 with?</p> <p>20 MR. LOVATO: Objection, argumentative,</p> <p>21 misleading, calls for a legal conclusion. Also</p> <p>22 misstated what this letter states. Also the judge has</p> <p>23 already ruled on these issues.</p> <p>24 THE WITNESS: I do not know.</p> <p>25 ///</p> | <p>page 117</p> <p>1 Q. I specifically asked you, who with JSJBD was</p> <p>2 the primary person that communicated with Ms. Miller,</p> <p>3 and you said you. Do you remember that?</p> <p>4 A. If it's stated that way, yes.</p> <p>5 Q. So if you were the primary person that</p> <p>6 communicated with Ms. Miller, was she authorized to put</p> <p>7 this in here, that she requests the rent to be the</p> <p>8 same?</p> <p>9 MR. LOVATO: I would instruct the witness not</p> <p>10 to answer.</p> <p>11 MR. MOORE: On what basis?</p> <p>12 MR. LOVATO: Attorney/client privilege, and</p> <p>13 more so work product immunity and related doctrines.</p> <p>14 MR. MOORE: I'm not asking for the substance</p> <p>15 of the communications or the content of the</p> <p>16 communications. I'm asking whether she was authorized</p> <p>17 to make this representation.</p> <p>18 MR. LOVATO: Okay, so I have the same</p> <p>19 objection. I disagree.</p> <p>20 MR. MOORE: Let's get the judge on the phone.</p> <p>21 (Off-record discussion held.)</p> <p>22 BY MR. MOORE:</p> <p>23 Q. So, Mr. Vincent, if you look at the fourth</p> <p>24 paragraph of this letter, do you disagree with the</p> <p>25 statements she made in the fourth paragraph?</p> |

| | |
|---|--|
| <p style="text-align: right;">page 118</p> <p>1 A. I don't know.</p> <p>2 Q. Is there a reason you don't know whether you</p> <p>3 disagree with that? Is what she is saying accurate?</p> <p>4 A. The document speaks for itself.</p> <p>5 Q. Is there anything in this letter that is</p> <p>6 factually inaccurate to the best of your knowledge?</p> <p>7 A. I don't know.</p> <p>8 Q. Are you aware of whether anyone on behalf of</p> <p>9 JSJBD ever notified the landlord that there was</p> <p>10 anything inaccurate in this letter?</p> <p>11 A. I do not know that.</p> <p>12 Q. Is there anybody at JSJBD who would know</p> <p>13 that?</p> <p>14 A. I don't know.</p> <p>15 Q. Did you ever notify the landlord or their</p> <p>16 representative that anything Ms. Miller said in here</p> <p>17 was inaccurate?</p> <p>18 A. I do not know.</p> <p>19 Q. Do you know if any other officer or</p> <p>20 shareholder of JSJBD notified the landlord or their</p> <p>21 representatives that anything Ms. Miller said in here</p> <p>22 was inaccurate?</p> <p>23 A. I do not know.</p> <p>24 Q. Did you or anybody on behalf of JSJBD ever</p> <p>25 notify the landlord that Ms. Miller was not authorized</p> | <p style="text-align: right;">page 120</p> <p>1 MR. LOVATO: She rejected them.</p> <p>2 MR. MOORE: No, she didn't.</p> <p>3 MR. LOVATO: Yes, she did. She actually</p> <p>4 spoke with you on the record about this issue. And</p> <p>5 that this letter was specifically responded to by the</p> <p>6 landlord. And he rejected everything in this letter.</p> <p>7 MR. MOORE: That is not what we're asking</p> <p>8 about, and you don't get to dictate how I'm going to</p> <p>9 ask my questions.</p> <p>10 MR. LOVATO: I'm not dictating anything. The</p> <p>11 court already ruled on this. You are conducting</p> <p>12 discovery supposedly on completely irrelevant items</p> <p>13 that the court has already ruled on.</p> <p>14 MR. MOORE: You are entitled to your opinion,</p> <p>15 Mr. Lovato.</p> <p>16 MR. LOVATO: It has nothing to do with</p> <p>17 opinion. This is legal stuff.</p> <p>18 MR. MOORE: My question is simply --</p> <p>19 MR. LOVATO: And that is why we have orders</p> <p>20 in the case.</p> <p>21 BY MR. MOORE:</p> <p>22 Q. My question is simply, Mr. Vincent, did you</p> <p>23 or anybody else with JSJBD ever tell the landlord -- so</p> <p>24 that's not a protected communication -- did you</p> <p>25 communicate to the landlord that this letter was not</p> |
| <p style="text-align: right;">page 119</p> <p>1 to say anything she said in this letter?</p> <p>2 MR. LOVATO: Objection.</p> <p>3 Don't answer that.</p> <p>4 MR. MOORE: On what basis?</p> <p>5 MR. LOVATO: Same basis.</p> <p>6 MR. MOORE: Which is what?</p> <p>7 MR. LOVATO: You are trying to get into</p> <p>8 communications between attorneys and clients. You</p> <p>9 specifically started this out, for example, by saying</p> <p>10 that he is the contact for Ms. Miller for</p> <p>11 communicating. Now you are trying to move that towards</p> <p>12 whether he communicated something about not authorizing</p> <p>13 something. Yes, that starts to get into work product</p> <p>14 immunity, attorney/client privilege.</p> <p>15 BY MR. MOORE:</p> <p>16 Q. My question, Mr. Vincent, was did you or did</p> <p>17 any other shareholder of JSJBD ever notify the landlord</p> <p>18 that anything in this letter was not authorized to be</p> <p>19 sent?</p> <p>20 That's not an attorney/client privilege, that</p> <p>21 is -- I'm asking if he ever communicated with the</p> <p>22 landlord.</p> <p>23 MR. LOVATO: And it's argumentative. By the</p> <p>24 way, the court already ruled on these arguments.</p> <p>25 MR. MOORE: No, they didn't.</p> | <p style="text-align: right;">page 121</p> <p>1 authorized to be sent?</p> <p>2 MR. LOVATO: I'm instructing the witness not</p> <p>3 to answer. You are trying to incorporate</p> <p>4 attorney/client privilege and work product immunity</p> <p>5 into things that are supposedly being communicated to</p> <p>6 the landlord --</p> <p>7 MR. MOORE: We'll let the judge --</p> <p>8 MR. LOVATO: -- it is also completely</p> <p>9 irrelevant because the court has already ruled on your</p> <p>10 argument and that your argument has no merit.</p> <p>11 MR. MOORE: So we'll mark that in the</p> <p>12 deposition for the judge.</p> <p>13 Q. Did you ever send any communications to the</p> <p>14 landlord concerning this August 2nd letter?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know if any other shareholders at</p> <p>17 JSJBD sent it?</p> <p>18 A. I don't know.</p> <p>19 Q. You don't know?</p> <p>20 A. No, I do not.</p> <p>21 (Defendant's Exhibit 14 was marked.)</p> <p>22 BY MR. MOORE:</p> <p>23 Q. Before we get to the next exhibit, on</p> <p>24 August 2, 2016, was JSJBD agreeable to the first year</p> <p>25 of the five-year renewal term remaining the same as the</p> |

| | |
|--|---|
| <p style="text-align: right;">page 122</p> <p>1 previous year?</p> <p>2 (The phone rang and an off record</p> <p>3 discussion was held.)</p> <p>4 MR. MOORE: So my last question was -- can</p> <p>5 you repeat it please?</p> <p>6 (The record was read by the Court</p> <p>7 Reporter.)</p> <p>8 MR. LOVATO: Can you read that back again one</p> <p>9 more time?</p> <p>10 (The record was read by the Court</p> <p>11 Reporter.)</p> <p>12 MR. LOVATO: Objection, misleading with the</p> <p>13 use of the term agreeable. And the court has already</p> <p>14 ruled on this.</p> <p>15 THE WITNESS: I do not know.</p> <p>16 BY MR. MOORE:</p> <p>17 Q. You understand how email chains work, how the</p> <p>18 older email is towards the bottom and they work their</p> <p>19 way up?</p> <p>20 A. Yes, I think so.</p> <p>21 Q. On the bottom of this first page is an email</p> <p>22 sent by Rachel Sully, an attorney at Kaempfer Crowell,</p> <p>23 and she cc'd Stuart Vincent. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen that email before today?</p> | <p style="text-align: right;">page 124</p> <p>1 JUDGE GONZALEZ: All right, let's see here.</p> <p>2 THE COURT REPORTER: Excuse me, if you want</p> <p>3 this on the record, you are going to have to turn it</p> <p>4 up.</p> <p>5 MR. MOORE: Okay, sorry, your Honor, our</p> <p>6 court reporter can't hear. Let me try to move the</p> <p>7 phone.</p> <p>8 Presently, your Honor, we are taking</p> <p>9 questions, and one of the categories that I -- the</p> <p>10 witness is designated as the 30(b)(6) is on the</p> <p>11 communications with the landlord, and I'm asking him</p> <p>12 about -- questions about a letter that their lawyer,</p> <p>13 Lesley Miller, from Kaempfer Crowell sent to the</p> <p>14 landlord. And specifically I began to ask questions</p> <p>15 about whether Ms. Miller was authorized to send these</p> <p>16 letters on behalf of JSJBD, and Mr. Lovato will explain</p> <p>17 his objection, but he instructed the witness not to</p> <p>18 answer. And I'm asking for a ruling on the objection</p> <p>19 as I'm merely trying to find out whether or not she was</p> <p>20 authorized. I'm not trying to find out the substance</p> <p>21 of any communications or discussions, just to confirm</p> <p>22 that these letters weren't being sent without</p> <p>23 authority.</p> <p>24 JUDGE GONZALEZ: All right. Mr. Lovato?</p> <p>25 MR. LOVATO: Yes, so this August 2, 2016,</p> |
| <p style="text-align: right;">page 123</p> <p>1 A. I don't know.</p> <p>2 Q. Do you know if Mr. Stuart Vincent ever shared</p> <p>3 this with you?</p> <p>4 A. I do not know.</p> <p>5 Q. Is that Stuart Vincent's email address?</p> <p>6 A. I think so.</p> <p>7 Q. Is there anything factually inaccurate in</p> <p>8 this email to the best of your knowledge?</p> <p>9 A. I do not know.</p> <p>10 Q. In the fourth paragraph Ms. Sully is saying,</p> <p>11 In reliance on past negotiations and dealings between</p> <p>12 the parties, JSJBD again requests that Tropicana</p> <p>13 Investments continue with the current rent increase</p> <p>14 rate of 210 per month for the option term rather than</p> <p>15 the 3 percent increase proposed.</p> <p>16 (The telephone rang, and a conference</p> <p>17 call was held with Judge Elizabeth</p> <p>18 Gonzalez.)</p> <p>19 MR. MOORE: Terry Moore on behalf of</p> <p>20 Tropicana Investments.</p> <p>21 MR. LOVATO: And this is Mario Lovato on</p> <p>22 behalf of plaintiffs, JSJBD, Corp.</p> <p>23 JUDGE GONZALEZ: What deposition is this?</p> <p>24 MR. MOORE: The deposition of the 30(b)(6)</p> <p>25 designee for JSJBD, your Honor.</p> | <p style="text-align: right;">page 125</p> <p>1 letter was the subject of a motion for partial summary</p> <p>2 judgment filed by defendant with a claim that this</p> <p>3 represents an agreement that was accepted. The court</p> <p>4 rejected that. The very next day the landlord rejected</p> <p>5 every point in this. At the hearing, the court</p> <p>6 specifically stated that the landlord wanted entirely</p> <p>7 new lease documents instead of these 25-year old</p> <p>8 documents. And I believe even Mr. Moore agreed with</p> <p>9 the court on that. So that is the background of it.</p> <p>10 But the questioning today is again going over</p> <p>11 a letter that is completely irrelevant. Earlier in the</p> <p>12 deposition he asked this witness, Were you the primary</p> <p>13 contact for Lesley Miller. And he said yes, he was.</p> <p>14 Now he is asking something that tries to go up and</p> <p>15 incorporate attorney/client privilege, work product</p> <p>16 immunity issues, and completely irrelevant issues. So</p> <p>17 he asks a question along the lines -- I don't have the</p> <p>18 transcript -- did you communicate to the landlord after</p> <p>19 this letter was sent regarding what Lesley Miller was</p> <p>20 authorized to say in this letter or not authorized to</p> <p>21 say. That whole authorized to say where he has already</p> <p>22 established that this is the primary contact or</p> <p>23 communicator with Lesley Miller is trying to</p> <p>24 incorporate attorney/client privilege, work product</p> <p>25 immunity issues, and, again, it is completely</p> |

| | |
|--|--|
| <p style="text-align: right;">page 126</p> <p>1 irrelevant, and it's something the court already ruled 2 on. This letter is not an agreement. 3 So I instructed the witness -- 4 JUDGE GONZALEZ: If Mr. Moore is asking the 5 30(b)(6) witness if Ms. Miller was authorized to send 6 that letter, the witness will answer the question yes 7 or no. However, the substance of the communication 8 with Ms. Miller remains privileged. 9 MR. MOORE: Absolutely, your Honor. If I 10 may, the other question I asked was, did you, 30(b)(6) 11 designee, or did any other member of the company ever 12 communicate to the landlord whether or not Ms. Miller 13 was authorized or unauthorized to make that 14 representation. 15 JUDGE GONZALEZ: Well, that is a different 16 issue, and that is not privileged. 17 I'm concerned about the relevance objection, 18 Mr. Lovato, though I understand the nature of the 19 issue, I ruled on something, that does not eliminate 20 this letter from the discovery process. 21 Anything else? 22 MR. MOORE: No. The only other -- I'm going 23 to keep my questions, this same issue may arise, so 24 because there was another attorney involved, and I'm 25 going to ask the same question of whether he was</p> | <p style="text-align: right;">page 128</p> <p>1 Q. She said you were going to answer the 2 question. 3 MR. LOVATO: Well, not exactly. We have a 4 record of what the judge said. 5 THE WITNESS: That is why I want to know -- 6 MR. LOVATO: But we now have a new question. 7 The question has to do with whether this letter was 8 authorized. I'm not trying to speak for your question, 9 you can restate it, I'm just trying to correct what the 10 witness believes. 11 THE WITNESS: And I have to answer it yes or 12 no? 13 BY MR. MOORE: 14 Q. Yeah, we are talking about this exhibit here. 15 Yes. 16 A. And the question is? 17 Q. Was Ms. Miller authorized to send this letter 18 on behalf of JSJBD? 19 A. I don't know -- I never gave the -- 20 THE COURT REPORTER: Pardon me? You're going 21 to have to speak up. 22 THE WITNESS: I'm sorry, I'm just talking to 23 myself. 24 I don't believe she was. I don't remember 25 seeing it.</p> |
| <p style="text-align: right;">page 127</p> <p>1 authorized to send his letters. 2 JUDGE GONZALEZ: As long as it's just a yes 3 or no, was there authority, that's okay, but not the 4 substance. 5 MR. LOVATO: When there are questions about 6 authority, when there is questions about whether a 7 simple communication was made, I understand how it all 8 works on that. He is mixing a lot of these into really 9 long questions which is starting to be the problem, 10 they start to incorporate attorney/client privilege. 11 And that is where my objection lies. 12 JUDGE GONZALEZ: Well, then perhaps Mr. Moore 13 will rephrase his questions going forward. 14 MR. MOORE: I will do my best, your Honor. 15 JUDGE GONZALEZ: Anything else, gentlemen? 16 MR. MOORE: No, thank you, your Honor. 17 JUDGE GONZALEZ: That is my decision. 18 MR. MOORE: Thank you. 19 (The telephone conference with Judge 20 Gonzalez ended.) 21 BY MR. MOORE: 22 Q. So going back to my question. Was Ms. Miller 23 authorized to send this letter, this August 2, 2016, 24 letter on behalf of JSJBD? 25 A. I'm sorry, I didn't hear what the judge said.</p> | <p style="text-align: right;">page 129</p> <p>1 BY MR. MOORE: 2 Q. So I want to be clear here. Is it your 3 testimony that she was not authorized to send this 4 letter on behalf of JSJBD? 5 A. My testimony is I don't remember it as being 6 sent, and I don't remember it, to be honest, I don't 7 remember it. I don't believe I authorized it. I'm not 8 sure or any of us have authorized it. I don't -- 9 basically I really wouldn't know. 10 Q. So who else other than you would know on 11 behalf of the company? 12 A. I don't know. It could be Stuart Vincent, it 13 could be Bruno Mark. I don't know. 14 Q. Again, earlier you indicated and you 15 confirmed that you were the primary person speaking 16 with Ms. Miller on behalf of the company. Do you know 17 if Mr. Stuart Vincent or Mr. Mark spoke with her in 18 relation to this letter? 19 I just want to know if he knows. 20 MR. LOVATO: I'm objecting. I want Mr. Moore 21 to be able to conduct his deposition. He is purposely 22 getting as close as he can to attorney/client 23 privilege. He is actually asking if there were 24 discussions, claiming that he is not getting into the 25 content of it. But asking about discussions is</p> |

| | | | |
|--|---|---|---|
| <p>page 130</p> <p>1 different than asking about whether something was 2 authorized. Now he is getting into something that 3 involves work product immunity. If you want to ask 4 what is authorized, that's what the judge addressed. 5 MR. MOORE: I already asked that. 6 Q. Do you know if Mr. Stuart authorized -- 7 Stuart Vincent authorized this letter? 8 A. I do not know. 9 Q. Do you know if Bruno Mark authorized this 10 letter? 11 A. I do not know. 12 Q. Do you know if you ever communicated to the 13 landlord that she was not authorized to send this? 14 MR. LOVATO: Objection, argumentative, 15 irrelevant. 16 THE WITNESS: I don't know. 17 BY MR. MOORE: 18 Q. Do you know if any of the other shareholders 19 communicated that she wasn't authorized? 20 MR. LOVATO: Same objections. 21 THE WITNESS: I do not know. 22 BY MR. MOORE: 23 Q. Since you don't recall if you approved or saw 24 this letter, what -- strike that. 25 Let's go back to Exhibit 14. You see in the</p> | <p>page 131</p> <p>1 third -- well, I'll ask this. Do you know, was 2 Ms. Sully was authorized to send this email on behalf 3 of JSJBD? 4 A. No, I don't believe so. 5 Q. Did you ever communicate to the landlord that 6 Ms. Sully was not authorized to send this letter -- 7 email? 8 A. Excuse me? 9 Q. Did you ever communicate to the landlord that 10 Ms. Sully was not authorized to send this email? 11 A. I do not know. 12 Q. Do you know if Mr. Vincent ever communicated 13 to the landlord or their representative that Ms. Sully 14 was not authorized to send this email? 15 A. I do not know. 16 Q. Do you know if anyone associated with JSJBD 17 communicated to the landlord or their representative 18 that Ms. Sully was not authorized to send this email? 19 A. I do not know. 20 Q. On August 11, 2016, was JSJBD willing to 21 continue with the current rent increase of 210 per 22 month for this option term rather than the 3 percent 23 increase proposed as she stated in this email? 24 MR. LOVATO: Objection, vague, ambiguous, 25 confusing, calls for a legal conclusion, and</p> | <p>page 132</p> <p>1 misleading. 2 THE WITNESS: I do not know. 3 BY MR. MOORE: 4 Q. In August 11, 2016, what was JSJBD willing to 5 agree to when it came to the rent? 6 MR. LOVATO: Same objections. 7 THE WITNESS: I don't know. 8 BY MR. MOORE: 9 Q. You testified earlier when I asked you about 10 whether JSJBD -- if you recalled if JSJBD had retained 11 Kaempfer Crowell, what was the purpose for retaining 12 Kaempfer Crowell? 13 MR. LOVATO: Don't talk about any 14 communications with the attorneys. He is asking about 15 purpose. 16 THE WITNESS: Purpose? 17 BY MR. MOORE: 18 Q. Yes, sir. Why did you hire them? 19 A. Draft documents and communicate. 20 Q. With the landlord? 21 MR. LOVATO: Slow it down. I don't want you 22 to start talking about attorney/client communications. 23 BY MR. MOORE: 24 Q. I'm trying to figure out why you hired them. 25 You said to draft documents and communicate?</p> | <p>page 133</p> <p>1 A. Yes. 2 Q. To communicate with the landlord? 3 A. To draft documents and communicate. 4 Q. With who? 5 A. Other -- what would be the best way to put 6 it -- what would be the best way to say it -- the 7 landlord's counsel. 8 Q. Exhibit 13 was sent by Ms. Sully directly to 9 Mr. Chauncey. Do you know why that was, why she sent 10 it to him as opposed to his counsel? 11 A. I do not. 12 Q. So you hired Kaempfer Crowell to draft 13 documents and communicate with landlord's counsel; is 14 that your testimony? 15 A. Yes. 16 Q. Concerning what? 17 A. Excuse me? 18 Q. Concerning what? To draft documents 19 concerning what? Communicate with the landlord's 20 counsel concerning what? 21 A. The lease. 22 Q. In renewing the lease or exercising the 23 option? 24 MR. LOVATO: Objection, misleading, compound. 25 MR. MOORE: I'm trying to ask this.</p> |
|--|---|---|---|

| | |
|--|--|
| <p>page 134</p> <p>1 THE WITNESS: I don't know. 2 BY MR. MOORE: 3 Q. Well, you said -- 4 A. I said the lease. 5 Q. What about the lease? 6 A. We are talking about the lease. I'll leave 7 it with the lease. That is the answer, the lease. 8 Q. And you realize that you were trying to -- 9 she indicates you are trying to exercise an option? 10 A. That is part of the lease process, the lease. 11 Q. And that included exercising the option, 12 right? 13 A. The lease. 14 MR. LOVATO: Objection, misleading. 15 MR. MOORE: Okay. 16 (Defendant's Exhibit 15 was marked.) 17 BY MR. MOORE: 18 Q. I'm showing you what has been marked as 19 Exhibit 15. This is a letter dated August 31, 2016, 20 from Kaempfer Crowell to Jeff Chauncey. Have you ever 21 seen this letter before? 22 A. I don't know. 23 Q. Were you aware that this letter was sent on 24 August 31, 2016? 25 A. I do not know.</p> | <p>page 136</p> <p>1 is what it says, right. It says, Enclosed herewith for 2 your review and comment is a proposed amendment to the 3 existing lease. Okay. 4 Q. That is what it says. 5 A. Okay, just make sure I got it right. 6 Q. And then like I said, then you turn and you 7 see two pages over, you see the amendment to the lease. 8 This is the proposed lease she is referring to, right? 9 MR. LOVATO: Objection, misleading regarding 10 proposed. 11 BY MR. MOORE: 12 Q. You don't have any reason to think this isn't 13 what she is referring to, right? 14 A. I don't know. 15 Q. Okay. Was Ms. Miller authorized to send this 16 letter on behalf of JSJBD? 17 A. I don't know. 18 Q. Why do you not know that? 19 A. It's dated August 31 of 2016. I don't 20 remember some of this stuff, to be honest. 21 Q. Well, look at the second paragraph of the 22 letter. 23 A. As you're aware? 24 Q. Yes. Do you disagree with the accuracy -- 25 strike that.</p> |
| <p>page 135</p> <p>1 Q. Do you know if any of the other shareholders 2 were aware that this letter was sent on August 31, 3 2016? 4 A. I do not know. 5 Q. Who other than you would know that? 6 A. I do not know. 7 Q. Do you recall when the first time you ever 8 saw this document was? 9 A. No. 10 Q. You have seen it before today? 11 A. I don't remember. 12 Q. So attached to this is a proposed amendment 13 to lease. Do you see that? 14 A. Yes, amendment to lease. 15 Q. If you look on the first page of the 16 document, I'm sorry, the entire -- the exhibit, in the 17 first paragraph, Ms. Miller indicates, second sentence, 18 Enclosed herewith for your review and comment is a 19 proposed amendment to the existing lease. 20 Do you see that? 21 A. Proposed amendment -- where? 22 Q. The first paragraph, second sentence. 23 A. Proposed herewith for your review and comment 24 -- and comment -- enclosed herewith for your review and 25 comments proposed amendment. So to comment, okay, that</p> | <p>page 137</p> <p>1 Is anything she stated in that second 2 paragraph inaccurate? 3 MR. LOVATO: Objection, calls for a legal 4 conclusion. 5 THE WITNESS: I don't know. 6 BY MR. MOORE: 7 Q. Do you see down at the bottom paragraph it 8 starts with, Further? 9 A. Yes. 10 Q. It says, Further the principals of JSJBD are 11 willing to sign guaranties of the lease. 12 See that? 13 A. Yes. 14 Q. Is that accurate? 15 MR. LOVATO: Objection, misleading. 16 THE WITNESS: Of the lease to the extent of 17 and in proportion to each principal's respective 18 ownership, for the total base rental of \$1 per square 19 foot in accordance with the current advertised shopping 20 center rate. I don't know. 21 BY MR. MOORE: 22 Q. Do you recall having any discussions amongst 23 the principals of JSJBD about that? 24 A. I don't know. 25 Q. Turn to the sheet attached. Do you recall</p> |

| | |
|---|--|
| <p style="text-align: right;">page 138</p> <p>1 having any discussions amongst the principals of JSJBD</p> <p>2 about this amendment before this letter was sent?</p> <p>3 A. I do not.</p> <p>4 Q. Do you recall having discussions about the</p> <p>5 amount of rent that is proposed in this amendment prior</p> <p>6 to this letter being sent?</p> <p>7 MR. LOVATO: Discussions with who?</p> <p>8 BY MR. MOORE:</p> <p>9 Q. Internal discussions with JSJBD.</p> <p>10 A. I do not.</p> <p>11 Q. Was Ms. Miller authorized to send this</p> <p>12 proposed amendment to the landlord for review and</p> <p>13 comment, by JSJBD?</p> <p>14 A. I really don't know. I don't remember it</p> <p>15 being sent.</p> <p>16 Q. Do you know if you ever communicated to the</p> <p>17 landlord that Ms. Miller was not authorized to send</p> <p>18 this proposed amendment?</p> <p>19 MR. LOVATO: Objection, misleading and</p> <p>20 argumentative.</p> <p>21 THE WITNESS: I do not know.</p> <p>22 BY MR. MOORE:</p> <p>23 Q. Do you know if any principal of JSJBD, other</p> <p>24 than yourself, communicated to the landlord that Ms.</p> <p>25 Miller was not authorized to send this proposed</p> | <p style="text-align: right;">page 140</p> <p>1 A. \$9030 per month.</p> <p>2 Q. Do you have an understanding how much 8400</p> <p>3 per month equals per square foot?</p> <p>4 A. I don't know.</p> <p>5 Q. The space is 4200 square feet, right?</p> <p>6 A. Yes, it is.</p> <p>7 Q. So is it fair to say that is \$2 a square</p> <p>8 foot?</p> <p>9 A. By my math, yes.</p> <p>10 Q. As you sit here today, is there anything</p> <p>11 factually inaccurate in this letter?</p> <p>12 A. I don't know.</p> <p>13 Q. Is there anything in this letter that</p> <p>14 indicates that Ms. Miller was not authorized to</p> <p>15 communicate the amendment to the landlord?</p> <p>16 A. I do not know.</p> <p>17 Q. The amount in the fourth paragraph, it is</p> <p>18 talking about the \$1 per square foot plus 25 percent</p> <p>19 premium in the fourth paragraph. What is your</p> <p>20 understanding as to what those amounts are referring</p> <p>21 to?</p> <p>22 A. What are you talking about?</p> <p>23 Q. The fourth paragraph on page 1, first page.</p> <p>24 A. Oh, this isn't signed either, is it?</p> <p>25 Q. No, it was a proposed amendment.</p> |
| <p style="text-align: right;">page 139</p> <p>1 amendment?</p> <p>2 MR. LOVATO: Same objections.</p> <p>3 THE WITNESS: I do not know.</p> <p>4 BY MR. MOORE:</p> <p>5 Q. Do you know who drafted that amendment?</p> <p>6 A. No.</p> <p>7 Q. How much is the amount of rent Ms. Miller --</p> <p>8 I'm sorry, let me back up.</p> <p>9 How much is the amount of rent the proposed</p> <p>10 amendment proposed to pay for the first year?</p> <p>11 A. You can read it.</p> <p>12 Q. I'm asking you, sir.</p> <p>13 A. Do you want me to read it?</p> <p>14 Q. Yes.</p> <p>15 A. I'll read it for you. Where is it?</p> <p>16 Q. On TROP 703 at the bottom, the first year on</p> <p>17 Section 5.</p> <p>18 A. The document states that it's 8400 per month.</p> <p>19 Q. What about the next year?</p> <p>20 A. 8400 per month.</p> <p>21 Q. Then the next year?</p> <p>22 A. 8610 per month.</p> <p>23 Q. Then the next year?</p> <p>24 A. 8820 per month.</p> <p>25 Q. Then the next year?</p> | <p style="text-align: right;">page 141</p> <p>1 A. Oh, it was proposed, so nobody signed.</p> <p>2 Q. I'm talking about page 1.</p> <p>3 A. Page 1.</p> <p>4 Q. Page 1 of the document.</p> <p>5 A. Page 1, I'm getting tired, I'm sorry. What</p> <p>6 now?</p> <p>7 Q. The fourth paragraph.</p> <p>8 A. Okay.</p> <p>9 Q. That \$1 per square foot plus a 25 percent</p> <p>10 premium, do you see that reference in the fourth</p> <p>11 paragraph?</p> <p>12 A. What about it?</p> <p>13 Q. Well, first off, do you see what I'm talking</p> <p>14 about?</p> <p>15 A. Yes.</p> <p>16 Q. That language in that paragraph pertained to</p> <p>17 the guaranties, correct?</p> <p>18 A. The document speaks for itself.</p> <p>19 Q. You didn't disagree this is limited to just</p> <p>20 the guaranties, do you?</p> <p>21 A. The document speaks for itself.</p> <p>22 Q. You don't have a different understanding as</p> <p>23 to what that meant than what the document says, right?</p> <p>24 A. The document speaks for itself.</p> <p>25 Q. Okay. On August 31, 2016, was JSJBD willing</p> |

page 142

1 to pay \$2 a square foot for this space?
2 **A. I do not know.**
3 Q. Who other than yourself would know the answer
4 to that question?
5 **A. I do not know.**
6 Q. Is there somebody with more knowledge or
7 information than you?
8 **A. I do not know.**
9 Q. Let's mark this as next in line.
10 (Defendant's Exhibit 16 was marked.)
11 BY MR. MOORE:
12 Q. I'm showing you a letter that is dated
13 December 7, 2016, from John Sacco of this law firm to
14 Lesley Miller at Kaempfer Crowell. Have you ever seen
15 this letter?
16 **A. I do not know.**
17 Q. Is there something that you could look at
18 that would refresh your memory as to whether or not you
19 had seen this letter?
20 **A. I do not know.**
21 Q. Is today the first time you have seen this
22 letter?
23 **A. I don't know.**
24 Q. Do you see any discussion of the rent in this
25 letter?

page 143

1 **A. I don't know.**
2 Q. Take a moment and look at it and tell me if
3 you see any discussion about the rent in this letter.
4 **A. The document states what the document states,**
5 **what does it matter?**
6 Q. It's simply a question, sir.
7 **A. What the document says.**
8 MR. LOVATO: Objection, argumentative.
9 **THE WITNESS: Whatever the document says.**
10 BY MR. MOORE:
11 Q. If it doesn't reference rent, you don't
12 disagree with that, right?
13 MR. LOVATO: Same objection.
14 **THE WITNESS: Excuse me?**
15 BY MR. MOORE:
16 Q. I said if it doesn't mention rent, you don't
17 disagree with that, you are just saying the document
18 says what it says?
19 MR. LOVATO: Objection, argumentative.
20 **THE WITNESS: You're putting words in my**
21 **mouth.**
22 BY MR. MOORE:
23 Q. Sorry, I truly am not.
24 **A. Whatever the document says.**
25 Q. And if the document doesn't reference rent,

page 144

1 you don't disagree with that?
2 MR. LOVATO: Objection, argumentative.
3 **THE WITNESS: The document says what it says.**
4 BY MR. MOORE:
5 Q. How much rent did Blue Dog's begin paying on
6 September 1, 2016?
7 **A. The statement was I believe we were paying**
8 **8400 a square foot -- not a square foot, 8400.**
9 Q. And that is consistent with the amount that
10 Blue Dog's offered to pay in this amendment attached to
11 Exhibit 15, right?
12 MR. LOVATO: Objection, argumentative
13 regarding the word consistent, and misleading.
14 **THE WITNESS: I don't know.**
15 BY MR. MOORE:
16 Q. Well, look at Exhibit 15 again, the proposed
17 lease, the one document, TROP 703 in the bottom right
18 corner, second page of the proposed lease amendment.
19 **A. Which one, second page?**
20 Q. You are right. The amount of rent that was
21 being proposed to be paid is 8400 per month beginning
22 September 1, 2016, right?
23 **A. Proposed.**
24 Q. That is the amount, right?
25 **A. It's not the same document.**

page 145

1 Q. I understand that. My question is that is
2 the amount she was proposing Blue Dog's to pay, right?
3 MR. LOVATO: Objection, argumentative,
4 misleading.
5 **THE WITNESS: I don't know.**
6 BY MR. MOORE:
7 Q. Look at the lease, look at page 2 of the
8 proposed amendment.
9 **A. Okay, I'm just confused. You are putting --**
10 **yes, it says 8400 here, but it is an unsigned lease,**
11 **there is no agreement, it's just negotiations.**
12 Q. Mr. Vincent, my question is, she in the
13 proposed amendment provided for 8400 a month beginning
14 9/1/16, right?
15 **A. Where is that at? Oh, in there, it states it**
16 **on the documents, whatever the document -- if that is**
17 **what the proposed document says, it states it, yes.**
18 Q. That is all I want you to do is just confirm
19 that is what it states.
20 **A. Okay.**
21 Q. Right?
22 **A. Yeah, unsigned document, yeah.**
23 Q. On September 1, 2016, Blue Dog's began paying
24 that amount, 8400 a month, right?
25 MR. LOVATO: Objection, misleading,

page 146

1 argumentative especially regarding the exact amount.
2 BY MR. MOORE:
3 Q. The \$8400 a month, that is what Blue Dog's
4 began to pay?
5 MR. LOVATO: Same objections.
6 **THE WITNESS: It's \$8400 is what we paid**
7 **2016.**
8 BY MR. MOORE:
9 Q. Thank you. That was all I needed. Do you
10 know if the landlord refused to accept Blue Dog's rent
11 payments beginning in September 2016?
12 **A. Did he cash the checks?**
13 Q. Yeah.
14 **A. I know that he cashed some checks, yes.**
15 Q. I missed that answer.
16 **A. He cashed some checks.**
17 Q. Are there some he didn't cash?
18 **A. He hasn't cashed the last two.**
19 Q. Okay, other than the last two? Are there
20 any --
21 **A. The lower amount checks.**
22 Q. Other than the last two, are there any that
23 he didn't cash?
24 **A. He cashed all those.**
25 Q. Okay. Did Blue Dog's ever indicate that it

page 147

1 was paying the rent under protest from September 1,
2 2016, to July 2019?
3 **A. I don't know.**
4 Q. Who would know that, whether or not Blue
5 Dog's did that?
6 **A. I don't know that either.**
7 Q. Who writes the checks?
8 **A. Stuart would write the checks.**
9 Q. Do you know as you sit here today whether he
10 wrote anything on the checks indicating these were
11 being paid under protest?
12 **A. Under protest, I don't know.**
13 Q. Do you know if anything was sent to the
14 landlord between September 1, 2016, and July 2019
15 indicating that the rent was being paid under protest?
16 MR. LOVATO: Objection, misleading,
17 argumentative.
18 **THE WITNESS: I don't know.**
19 MR. MOORE: Next in line please.
20 (Defendant's Exhibit 17 was marked.)
21 BY MR. MOORE:
22 Q. Mr. Vincent, this is a letter dated
23 September 16, 2016, from Lesley Miller to John Sacco.
24 Have you ever seen this letter before today?
25 **A. I don't know.**

page 148

1 Q. Were you customarily copied on letters from
2 your lawyers to the landlord's lawyer?
3 MR. LOVATO: Hold on. You're not asking what
4 it says on the cc. You're actually asking whether
5 Lesley Miller is sending documents to the client. That
6 is a communication, you know that.
7 MR. MOORE: Okay.
8 BY MR. MOORE:
9 Q. But as you sit here today, you have no
10 recollection of the first time you saw this letter?
11 **A. I don't know.**
12 Q. Do you have any reason to believe you
13 wouldn't have seen it in September, around September 6,
14 2016?
15 **A. I don't know.**
16 Q. Do you see any discussion of the amount of
17 the rent in this letter?
18 **A. The document speaks for itself.**
19 Q. Was Ms. Miller authorized to send this letter
20 to the landlord's attorney?
21 MR. LOVATO: Objection, misleading,
22 argumentative.
23 **THE WITNESS: I really don't know.**
24 BY MR. MOORE:
25 Q. Who other than yourself would know whether

page 149

1 she was authorized to send this?
2 **A. I don't know.**
3 Q. Next exhibit.
4 (Defendant's Exhibit 18 was marked.)
5 BY MR. MOORE:
6 Q. I'm showing you what has been marked as
7 Exhibit 18. This is a letter dated September 23, 2016,
8 from John Sacco to Lesley Miller. Have you ever seen
9 this letter before?
10 MR. LOVATO: I need a minute to look at this.
11 This looks like it's 40 pages because it's attached to
12 an unsigned document. Go ahead.
13 BY MR. MOORE:
14 Q. Have you ever seen that document before
15 today, Mr. Vincent?
16 **A. Did I see this one, yes.**
17 Q. When did you see this?
18 **A. I don't know.**
19 Q. Was it around September 23, 2016?
20 **A. I don't know.**
21 Q. Do you have any reason to believe it wasn't
22 around that period of time?
23 **A. I do not know.**
24 Q. In this letter it indicates the landlord's
25 attaching an updated lease form. Do you see that third

page 150

1 paragraph?
2 **A. An updated lease form.**
3 Q. Attached herewith is an execution copy of the
4 Tropicana Plaza Shopping Center lease.
5 MR. LOVATO: Did you say execution copy?
6 MR. MOORE: I did.
7 MR. LOVATO: Do you see that?
8 **THE WITNESS: Executed copy.**
9 BY MR. MOORE:
10 Q. Execution copy. Do you see where I'm talking
11 about, on the third paragraph?
12 **A. Yes.**
13 Q. Okay. This is basically attaching a copy of
14 a lease, a proposed lease that he is sending to Ms.
15 Miller, right, that is what it says?
16 **A. The document speaks for itself.**
17 Q. Okay. If you will turn to the document that
18 says TROP 153 in the bottom right corner -- actually,
19 I'm sorry, TROP 151. That is the start of the proposed
20 leasing document. Then if you go to 152, the next
21 page, it starts with Section 3, Rent. Down at the
22 bottom.
23 **A. Yes.**
24 Q. Then it goes over into the next page.
25 **A. 153.**

page 151

1 Q. Yes. It sets forth a schedule of rent. See
2 that?
3 **A. Yes.**
4 Q. Now I'm going to show you Exhibit 15 and the
5 proposed lease amendment that was attached to
6 Ms. Miller's -- I'm sorry, yeah, Ms. Miller's August 31
7 letter.
8 **A. The unsigned one?**
9 Q. Yeah. The rent schedule that is set forth in
10 that proposed lease amendment, take a minute and look
11 and compare it to the one on Exhibit 18. Are they the
12 same, the amounts?
13 MR. LOVATO: Objection, the document speaks
14 for itself. This is misleading and argumentative.
15 **THE WITNESS: The document speaks for itself.**
16 BY MR. MOORE:
17 Q. I'm asking you to confirm that the amounts
18 are the same.
19 MR. LOVATO: Same objections.
20 **THE WITNESS: I don't know.**
21 BY MR. MOORE:
22 Q. It is an easy question.
23 MR. LOVATO: Same objections.
24 **THE WITNESS: I can read the document. It**
25 **states 9/1/16 is 8400, the same thing on that one, it**

page 152

1 **states the same. They are unsigned documents.**
2 BY MR. MOORE:
3 Q. I'm merely asking you whether or not the
4 schedule here is the same on the two documents?
5 MR. LOVATO: Same objections.
6 **THE WITNESS: Yes, they have the same**
7 **schedule, similar, yes.**
8 MR. MOORE: Okay, thank you.
9 Q. How much did Blue Dog's pay in monthly rent
10 during the second year of 9/1/17 to 8/31/2018, do you
11 know?
12 **A. It paid the same amount since 2016.**
13 Q. Since September 2016?
14 **A. Uh-huh, 8400.**
15 Q. That is consistent with the amounts that we
16 were just looking at?
17 MR. LOVATO: Objection, argumentative,
18 misleading regarding the use of the word consistent.
19 BY MR. MOORE:
20 Q. Do you understand what the word consistent
21 means?
22 **A. I do not know.**
23 (Defendant's Exhibit 19 was marked.)
24 BY MR. MOORE:
25 Q. This is an email chain similar to what we

page 153

1 looked at earlier. Down at the bottom email on the
2 first page there is an email from Rachel Sully to John
3 Sacco dated November 7, 2016. See that?
4 **A. Which one?**
5 Q. The bottom one.
6 **A. The bottom one, To provide a brief update?**
7 Q. Yes, sir.
8 **A. Uh-huh.**
9 Q. Is that a yes?
10 **A. Yes, I see it. Mr. Sacco to provide a brief**
11 **update Blue Dog's Pub lease matter, and we anticipate**
12 **having a response to you by the end of next week, and**
13 **will be in touch further at that time.**
14 Q. And if you go up to the first email at the
15 top of the page, another email from Rachel Sully to
16 John Sacco, it appears you are cc'd on that, correct?
17 **A. Yes.**
18 Q. At your email address?
19 **A. Yes.**
20 Q. Do you recall receiving that email on
21 November 22, 2016?
22 **A. I don't remember.**
23 Q. Do you have any reason to dispute that you
24 did receive it on that date?
25 **A. I do not know.**

| | | | |
|--|---|--|---|
| <p>page 154</p> <p>1 Q. In that email Ms. Sully indicates, Our client 2 is still in the process of reviewing the lease in 3 detail. Due to the substantial differences from the 4 prior lease, JSJBD is ensuring that the terms comport 5 with its specific use and existing business. We 6 apologize for the delay and will have a substantive 7 response to you as soon as possible. 8 Do you see that? 9 A. Yes. 10 Q. Was that accurate? 11 MR. LOVATO: Objection, argumentative. 12 THE WITNESS: I don't know. 13 MR. LOVATO: Misleading. 14 BY MR. MOORE: 15 Q. Was JSJBD reviewing the lease in detail in 16 November of 2016? 17 A. I don't know. 18 Q. Who was tasked at JSJBD with reviewing the 19 proposed lease that was sent over in Mr. Sacco's 20 September 23, 2016, letter? 21 A. I was. 22 Q. Only you? 23 A. I am not sure. Yes, I think so. 24 Q. So were you in the process of still reviewing 25 the lease in November 22, 2016?</p> | <p>page 155</p> <p>1 A. Yes. 2 Q. Were you doing that to insure that its terms 3 comported with JSJBD's specific use and existing 4 business? 5 A. Say that again? 6 Q. Were you doing that to ensure that the terms 7 of the lease comported with JSJBD's specific use and 8 existing business? 9 A. Comported -- help me out with that one. 10 Q. I'm just reading what she said. 11 A. Oh, I don't know, to be honest. 12 Q. What were you reviewing the lease to -- to 13 look at? 14 A. I haven't seen this. 15 Q. What do you mean you haven't seen this? 16 A. I haven't seen -- I never saw this email. 17 Q. It was sent to your email address, you just 18 confirmed that, right? 19 A. Yes. I don't remember seeing it. 20 Q. Do you recall whether Ms. Sully was 21 authorized to send that email to Mr. Sacco? 22 A. I do not. 23 Q. Did you ever send an email to Mr. Sacco or 24 anybody on this email chain other than your counsel, 25 indicating that Ms. Sully wasn't authorized to send</p> | <p>page 156</p> <p>1 this? 2 A. I do not know. 3 Q. How long did it take you to review the lease? 4 A. I don't know. 5 Q. Did there come a point when you made a bunch 6 of redline changes to the lease? 7 A. Yes, redline changes, yes, I did. 8 Q. Okay. Mark this as next in order. 9 (Defendant's Exhibit 20 was marked.) 10 BY MR. MOORE: 11 Q. Were you the only one making the redline 12 changes? 13 A. I believe so, yes. 14 MR. LOVATO: You are asking about Exhibit 20? 15 MR. MOORE: It was a followup to my prior 16 question. 17 Q. So Exhibit 20 is a copy of the lease with 18 redline changes. Take a look through this briefly and 19 tell me if this reflects your redline changes. 20 A. I couldn't -- there's -- I don't know. 21 Q. Did anybody other than you make redline 22 changes to this lease? 23 A. I don't know. 24 Q. Do you know when your redline changes were 25 sent to the landlord?</p> | <p>page 157</p> <p>1 A. I do not know. 2 Q. Does spring of 2017 sound fair? 3 A. I really don't know. 4 Q. If you will take the document in front of you 5 and turn to TROP 242, in the middle of the page, 6 Section 3, Rent, there is a change made on the first 7 year schedule for the 2016/2017 year. Do you see that 8 redline interlineation on the amount of rent? 9 A. Redline, no. That's -- 10 Q. I'm referring to right here. On the schedule 11 of rent there is an interlineation on the first 8400, 12 and it's replaced with 8190? 13 A. Yes. 14 Q. Did you make that change? 15 A. I don't know. 16 Q. If you didn't make that change, who would 17 have made the change? 18 A. I would not know. 19 Q. Is it you don't remember making the change or 20 you don't know who made the change? 21 A. I don't remember. 22 Q. Okay. Do you recall if any of your partners 23 provided any input into the revisions? 24 A. I don't know. 25 Q. Next in order please.</p> |
|--|---|--|---|

page 158

1 (Defendant's Exhibit 21 was marked.)
2 BY MR. MOORE:
3 Q. I'm showing you what has been marked as
4 Exhibit 21. This is a letter dated August 7, 2017,
5 from Lucas Grower to John Sacco. Have you ever seen
6 this letter before?
7 A. No.
8 Q. Were you aware in August of 2017 that Lucas
9 Grower had been retained to represent Blue Dog's Pub?
10 A. Yes.
11 Q. I believe when I asked you earlier you said
12 you were the person who was the primary contact for
13 communicating with Mr. Grower; is that correct?
14 A. Yes.
15 Q. Were you the one who made the decision to
16 hire Mr. Grower and terminate Kaempfer Crowell?
17 A. A joint decision.
18 Q. Joint amongst who?
19 A. I'm sure the partners.
20 Q. All of the partners?
21 A. I would think. I really don't know.
22 Q. In this letter Mr. Grower indicates that his
23 client had provided him with the most recent draft of
24 the lease.
25 Do you see that?

page 159

1 A. Yes.
2 Q. Is that to the best of your knowledge Exhibit
3 20? Do you know?
4 A. I don't know.
5 Q. Do you know what you provided him?
6 A. No, no, I don't. Lots of documents.
7 (Defendant's Exhibit 22 was marked.)
8 BY MR. MOORE:
9 Q. This is a letter dated August 31, 2017, from
10 Mr. Grower to Mr. Sacco. Do you see that?
11 A. Yes.
12 Q. Have you ever seen this letter before today?
13 A. I don't know.
14 Q. What was the purpose for retaining
15 Mr. Grower?
16 A. Also to write letters and to basically
17 communicate.
18 Q. With who?
19 A. The opposing counsel.
20 Q. In order to negotiate the lease?
21 MR. LOVATO: Objection, misleading.
22 MR. MOORE: I'm asking.
23 THE WITNESS: I don't know.
24 BY MR. MOORE:
25 Q. Well, you hired him to communicate and write

page 160

1 letters to opposing counsel. What was the purpose of
2 writing the letters and communicating with opposing
3 counsel?
4 A. To help us basically communicate with you on
5 the lease issues, yes, that would be the best way to do
6 it.
7 Q. In this letter he indicates he has spoken
8 with my client -- I have spoken with my client at
9 length regarding the current status of negotiations and
10 terms proposed in the most recent lease agreement that
11 you forwarded to me on August 18, 2017.
12 Are you the person he is referring to there
13 that he spoke with?
14 A. It's whatever the document says.
15 Q. I'm just asking if you are the client he is
16 referring to?
17 A. No, I don't remember. I don't know.
18 Q. He says in the third sentence, My client
19 purchased the \$50,000 option based on the understanding
20 that doing so would grant my client the right to
21 participate in negotiations regarding the terms and
22 conditions of the new lease agreement.
23 Do you see that?
24 A. Yes.
25 Q. What \$50,000 option is he referring to that

page 161

1 his client purchased?
2 A. The \$50,000 option?
3 Q. Yeah. I just read the first sentence, that
4 sentence, you followed along with me while I read it,
5 right?
6 A. Uh-huh.
7 Q. What is he referring to? What \$50,000 option
8 is he referring to?
9 A. I really don't know on that one --
10 Q. Did JSJ or -- I'm sorry, I spoke over you.
11 What did you say, sir?
12 A. No, that's fine, no.
13 Q. Did JSJ or JSJBD purchase a \$50,000 option as
14 he states in there?
15 A. It was part of the purchase price.
16 Q. So you are saying the purchase price was
17 originally \$450,000 and then it went up to \$500,000?
18 A. This is without extra options. It has to
19 have options. It wouldn't exist.
20 Q. Was that specified in your purchase
21 agreement?
22 A. That was specified -- in our purchase
23 agreement? I don't know.
24 Q. When you started to say it was specified,
25 where do you think it was specified?

| | |
|---|--|
| <p style="text-align: right;">page 162</p> <p>1 A. I didn't say it was specified. The only way 2 we purchase a business would be to have options. And 3 the only way we were going to get options is basically 4 as part of the purchase price. So, yeah. 5 Q. Is this the same \$50,000 that we were talking 6 about earlier today? I know it was a long time ago, in 7 the lease option -- the lease modification, lease 8 assignment modification? 9 A. I don't know, that was quite a while ago. 10 Q. Sure, I understand. Well, in Exhibit 3, we 11 were talking about how as the additional terms, the 12 tenant agreed to pay landlord ten percent of the sales 13 price. Do you remember that discussion? 14 A. Yes. 15 Q. Is that the \$50,000 that Mr. Grower is 16 referring to? 17 A. Yes. 18 Q. Okay. Was Mr. Grower authorized to send this 19 letter on behalf of JSJBD? 20 A. I don't know. 21 Q. Do you have any reason to believe he wasn't 22 authorized? 23 A. I do not know. 24 Q. In the third paragraph of this letter, 25 Mr. Grower states, At this time my client is offering</p> | <p style="text-align: right;">page 164</p> <p>1 A. Yes. 2 Q. When? 3 A. Decreased the last two months. 4 Q. Are those the only time that the rent has 5 decreased? 6 MR. LOVATO: Objection, argumentative and 7 calls for a legal conclusion. 8 THE WITNESS: I don't know. 9 BY MR. MOORE: 10 Q. Who would know whether the amount of rent you 11 paid has decreased? 12 MR. LOVATO: Objection, argumentative, calls 13 for a legal conclusion. 14 THE WITNESS: I do not know. 15 BY MR. MOORE: 16 Q. As you sit here today, are you aware of any 17 specific month that the rent decreased other than the 18 last two months? 19 MR. LOVATO: Objection, argumentative and 20 calls for a legal conclusion. 21 THE WITNESS: I do not know. 22 BY MR. MOORE: 23 Q. As the 30(b)(6) designee relating to JSJBD's 24 lease of the premises, is there a provision in the 25 lease agreement or in any of the addendums that makes</p> |
| <p style="text-align: right;">page 163</p> <p>1 to pay base rent in the amount of a \$1.45 per square 2 foot. 3 Do you see that? 4 A. Yes. 5 Q. Is that true? 6 MR. LOVATO: Objection, argumentative and 7 misleading. 8 THE WITNESS: I don't know. 9 BY MR. MOORE: 10 Q. On August 31, 2017, was JSJBD offering to pay 11 base rent in that amount? 12 MR. LOVATO: Objection, misleading and 13 argumentative. 14 THE WITNESS: I don't know. 15 BY MR. MOORE: 16 Q. He then states, My client asserts that this 17 price accurately reflects the rental value of the 18 property in light of the current condition of the 19 subject property. 20 Do you see where he says that? 21 A. Yes. 22 Q. Was that accurate? 23 A. I don't know. 24 Q. Has the amount of rent that JSJBD has paid 25 decreased?</p> | <p style="text-align: right;">page 165</p> <p>1 the amount of rent that it pays contingent upon its 2 profit and losses? 3 MR. LOVATO: Objection, argumentative. 4 THE WITNESS: Huh? What was the question? 5 MR. MOORE: Repeat that, please. 6 (The record was read by the Court 7 Reporter.) 8 THE WITNESS: I do not know. 9 MR. MOORE: Mark this as next in order, 10 please. 11 (Defendant's Exhibit 23 was marked.) 12 BY MR. MOORE: 13 Q. Showing you what are Plaintiff JSJBD Corp.'s 14 Response to Request for Admissions in this case. I 15 would like you to turn to page 4. On Request No. 11 it 16 says, Admit that you have paid defendant \$8400 in rent 17 for the premises every month since September 1, 2016, 18 without protest. The answer was denied. 19 Do you know why that was denied? 20 MR. LOVATO: Objection, misleading. 21 Go ahead. 22 THE WITNESS: I don't know. 23 BY MR. MOORE: 24 Q. Look at the next request. Admit that from 25 September 1, 2016, through August 31, 2017, you did not</p> |

| | |
|---|---|
| <p style="text-align: right;">page 166</p> <p>1 inform defendant that you disputed the amount of rent 2 you were paying -- 3 MR. LOVATO: Objection. 4 Go ahead. 5 BY MR. MOORE: 6 Q. The response was denied. 7 MR. LOVATO: Objection, argumentative, and 8 creating a false record here. 9 Go ahead. 10 THE WITNESS: I do not know. 11 MR. MOORE: I didn't ask you a question yet. 12 THE WITNESS: Oh, sorry. 13 BY MR. MOORE: 14 Q. Why did you deny that? 15 A. I do not know. 16 Q. Did you inform the defendant Tropicana 17 Investments that JSJBD was disputing the amount of rent 18 it was paying from September 1, 2016, to August 31, 19 2017? 20 MR. LOVATO: Objection, misleading, creating 21 a false record here. There are a lot of documents on 22 all of this. 23 THE WITNESS: I don't remember. I do not 24 know. 25 (Defendant's Exhibit 24 was marked.)</p> | <p style="text-align: right;">page 168</p> <p>1 Tropicana Investments has failed and refused to repair 2 the damage to the roof and the related damage to the 3 HVAC system and premises in breach of its obligations. 4 Are you referring to 2016 and the issues that 5 we have discussed about the roof and the HVAC system, 6 or are you referring to something that is still 7 ongoing? 8 A. 2016. 9 Q. Okay. If you turn to page 11, in the middle 10 of the page where it references Footnote 8, do you see 11 that? 12 A. Which number? 13 Q. Line 8. 14 A. Okay. 15 Q. That is the same \$50,000 that we were just 16 talking about that is referred to in the lease 17 assignment and modification, right? 18 A. Yes. 19 Q. What does JSJBD -- you can put that aside, we 20 are done with that -- what does JSJBD contend its 21 damages are in this case? 22 MR. LOVATO: Asks for a legal conclusion. 23 Go ahead and answer. 24 THE WITNESS: The damages for what? 25 Everything?</p> |
| <p style="text-align: right;">page 167</p> <p>1 MR. MOORE: Do you need to take a break? 2 THE WITNESS: Let's take a break. 3 (Whereupon, a recess was taken from 4 2:22 p.m. to 2:25 p.m.) 5 BY MR. MOORE: 6 Q. So, Mr. Vincent, in front of you is 7 Exhibit 24. Those are Answers to Interrogatories. I 8 believe at the beginning of this morning you said you 9 looked at these prior to your deposition? 10 A. Yes, I browsed them. 11 Q. If I could get you to turn to page 2, the 12 answer -- or Interrogatory No. 2 asked you to describe 13 in detail the conduct which you allege in your 14 affirmative defenses constitutes a breach of the 15 contract by the counterclaimant. 16 Then there is a very long answer. If you 17 turn to page 9, it's all still the same answer to that 18 same interrogatory. Are you on page 9, sir? 19 A. Yes. 20 Q. In the middle of the paragraph -- you see the 21 numbered lines on the left-hand side? 22 A. Uh-huh. 23 Q. On line 18 see where it says, Despite? 24 A. Yes. 25 Q. Despite repeated requests and demands,</p> | <p style="text-align: right;">page 169</p> <p>1 BY MR. MOORE: 2 Q. Yes, sir. You're the plaintiff in this case. 3 Part of your claim is for damages. 4 A. Yes. 5 Q. What damages are you claiming? How much? 6 Tell me, describe them for me. 7 A. What do you mean exactly? It's a very 8 general question. Damages for what? The CAMs? 9 Damages for the restitution, damage for CAMs, 10 restitution. We haven't seen anything, so we haven't 11 seen a detailed accounting of that. So I can't really 12 make a fair estimate on that. Overpaid rent, 13 destroying our swamp cooler. That would be restitution 14 for -- yes, that and fair market value and reasonable 15 rent. 16 Q. So do you have a number in your head? 17 MR. LOVATO: Do you want him to do a 18 calculation here? 19 MR. MOORE: No, I just want to know if he has 20 a damages number. 21 THE WITNESS: No. 22 BY MR. MOORE: 23 Q. No, you don't? 24 A. No. 25 Q. You indicated you think you have overpaid on</p> |

| | |
|--|---|
| <p>page 170</p> <p>1 CAMs, right?</p> <p>2 A. Yes.</p> <p>3 Q. How much do you think the CAMs should be for</p> <p>4 the center?</p> <p>5 A. I need an accounting to find that out. I</p> <p>6 need an actual accounting.</p> <p>7 Q. Well, you have been provided yearly with the</p> <p>8 CAM summary.</p> <p>9 A. It's not actual accounting. That is not</p> <p>10 truthful.</p> <p>11 Q. Why isn't it truthful?</p> <p>12 A. Where is the journal entries? Where is the</p> <p>13 detailed accounting? Where is the canceled checks?</p> <p>14 Where is the 1099s?</p> <p>15 Q. The fact that you don't have that doesn't</p> <p>16 necessarily mean it's not truthful, does it?</p> <p>17 MR. LOVATO: Objection, argumentative.</p> <p>18 THE WITNESS: It doesn't mean it's not. I</p> <p>19 don't understand what you are asking. I don't know</p> <p>20 what they are is what I'm saying.</p> <p>21 BY MR. MOORE:</p> <p>22 Q. Well, you have received CAM summaries each</p> <p>23 year you have been in this premises, right?</p> <p>24 A. No, we haven't.</p> <p>25 Q. You haven't?</p> | <p>page 172</p> <p>1 A. I'm pretty positive I would see these</p> <p>2 documents. They were never given to us. I'm pretty</p> <p>3 positive. They weren't given the year preceding the</p> <p>4 document, so 2018, we should have received this in</p> <p>5 2019, we did not receive that. No, we did not receive</p> <p>6 this.</p> <p>7 Q. Like the one that was for 2017, you would</p> <p>8 have received that in 2018?</p> <p>9 A. Yes.</p> <p>10 Q. Are you saying you didn't?</p> <p>11 A. No.</p> <p>12 Q. Same thing for each of the other years, you</p> <p>13 are saying you didn't receive them in the following</p> <p>14 year?</p> <p>15 A. No.</p> <p>16 Q. So the first time you have ever seen these</p> <p>17 documents as Exhibit 25 was when we produced them in</p> <p>18 this litigation?</p> <p>19 A. All these documents, yes.</p> <p>20 Q. Are you aware of whether certain of these</p> <p>21 were previously given to Mr. Grower?</p> <p>22 A. To Mr. Grower?</p> <p>23 Q. Yeah.</p> <p>24 A. I don't know.</p> <p>25 Q. You are not aware of that?</p> |
| <p>page 171</p> <p>1 A. No.</p> <p>2 Q. Well, let's take a quick break.</p> <p>3 (Whereupon, a recess was taken from</p> <p>4 2:31 p.m. to 2:35 p.m., and Defendant's</p> <p>5 Exhibit 25 was marked.)</p> <p>6 BY MR. MOORE:</p> <p>7 Q. You indicated you don't believe you received</p> <p>8 CAMs. These are documents that have been produced in</p> <p>9 this case. Did you receive these documents in 2018,</p> <p>10 '17, '16, '15, the years indicated at the top of the</p> <p>11 documents?</p> <p>12 A. Did they send me each adjoining year or they</p> <p>13 sent them -- these were just sent, what, just a month</p> <p>14 or two ago.</p> <p>15 Q. These were produced in this litigation. My</p> <p>16 question is were you given this summary annually?</p> <p>17 A. No.</p> <p>18 Q. So your testimony is you didn't get these --</p> <p>19 A. No.</p> <p>20 Q. -- in each year?</p> <p>21 A. No.</p> <p>22 Q. How are you certain of that?</p> <p>23 A. How am I certain of it?</p> <p>24 Q. Yeah, could Stuart have received it and not</p> <p>25 given it to you?</p> | <p>page 173</p> <p>1 A. I don't believe they were. I've never seen</p> <p>2 anything that was given to Mr. Grower.</p> <p>3 Q. Now JSJBD contends that the rent should be</p> <p>4 reduced, right?</p> <p>5 A. Yes.</p> <p>6 Q. What is the amount you believe it should be</p> <p>7 reduced to?</p> <p>8 A. Reasonable market rate.</p> <p>9 Q. What do you believe that to be?</p> <p>10 A. As it states on our appraisal, 1.05.</p> <p>11 Q. You have an interest in another bar in town</p> <p>12 right, Chaser's Pub?</p> <p>13 A. Yes.</p> <p>14 Q. What are you paying in rent for that?</p> <p>15 A. That's personal. That is not part of this,</p> <p>16 sorry.</p> <p>17 Q. You are refusing to answer?</p> <p>18 A. I don't agree. It's not part of this</p> <p>19 business.</p> <p>20 Q. Well, I believe it's relevant because you're</p> <p>21 saying what market rent is for a bar. I'm curious what</p> <p>22 your other bar is paying for --</p> <p>23 MR. LOVATO: Okay, he's making a legal</p> <p>24 argument to you, and he is arguing with you about</p> <p>25 something. His argument about relevance is a bad one</p> |

page 174

1 just because you are suing for reasonable market rent.
2 He has asserted something in this case about financial
3 documents and rules that the Nevada Supreme Court has.
4 I've done it for certain things that he has asked for.
5 It may be that a judge decides that this falls within a
6 doctrine saying that some documents cannot just be had
7 for the asking when they have to do with finances. I
8 don't want to sit here and instruct you not to answer.
9 I think you're a businessman and you know how to
10 respond to certain questions on your own. So I leave
11 it to you.
12 **THE WITNESS: I refuse to answer.**
13 BY MR. MOORE:
14 Q. Okay.
15 **A. Nothing to do with it.**
16 Q. Is it JSJBD's contention that the rent should
17 not go up if it eventually gets reduced?
18 MR. LOVATO: Objection, vague and confusing.
19 BY MR. MOORE:
20 Q. Do you understand what I'm asking?
21 **A. No, I don't know.**
22 Q. What I'm asking is if the judge agrees with
23 you and says it should be \$1.05.
24 **A. We are making make-believe here.**
25 Q. It's a hypothetical. If the rent is \$1.05,

page 175

1 is it your contention that the rent should not go up
2 each year after that?
3 **A. I don't know. I don't want to answer, I**
4 **don't know.**
5 Q. Do you think the rent should stay at 1.05 in
6 perpetuity?
7 **A. I don't know.**
8 Q. Is it your contention that the rent, the
9 amount of rent that should be set by the court should
10 go back to September 1, 2016?
11 MR. LOVATO: Objection, argumentative,
12 misleading.
13 **THE WITNESS: I don't know.**
14 BY MR. MOORE:
15 Q. You were talking about restitution for the
16 rent earlier when I asked you what your damages are.
17 What do you mean by that?
18 MR. LOVATO: Objection, calls for a legal
19 conclusion.
20 **THE WITNESS: Overpayment of rent.**
21 BY MR. MOORE:
22 Q. Overpayment of rent starting when?
23 **A. That is for the judge to decide.**
24 Q. You don't have an opinion?
25 **A. (No audible response.)**

page 176

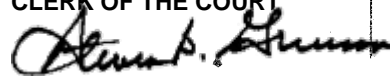
1 Q. Okay. The witness is shaking his head no.
2 **A. I'm sorry. No.**
3 Q. How do you think the rent should be
4 calculated for the next option period?
5 MR. LOVATO: Objection, calls for a legal
6 conclusion.
7 **THE WITNESS: I don't know.**
8 MR. MOORE: Okay, I'm done.
9 MR. LOVATO: Just so I have it on the record,
10 I'm not going to make this long. But I move to exclude
11 most of the questions and answers for today's
12 deposition. That's based upon an order from the court,
13 the transcripts of the hearing, and the pleadings that
14 were already provided to the court in a motion for
15 partial summary judgment filed by defendant and
16 plaintiff's countermotion for partial summary
17 adjudication. The court ruled on it, and it rejected
18 the arguments that are again being raised as part of
19 this deposition. And it really I think concerned most
20 of the questions that were posed here. None of this is
21 relevant, and it's not relevant for discovery purposes
22 anymore because of the court's ruling. So I move to
23 exclude those portions and substantially most of the
24 deposition testimony here today and the questions
25 eliciting that testimony.

page 177

1 MR. MOORE: I don't think it's an appropriate
2 venue for a motion, but, okay. Thanks.
3 THE COURT REPORTER: Mr. Lovato, would you
4 like a copy?
5 MR. LOVATO: Just send me what you normally
6 send with the costs.
7 (Thereupon, the deposition
8 concluded at 2:44 p.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| DECLARATION OF DEPONENT | | | | page 178 | page 180 | | | |
|-------------------------|------|------|--------|----------|----------|--|--|--|
| 1 | PAGE | LINE | CHANGE | REASON | 1 | in the proceeding, nor a person financially interested | | |
| 2 | | | | | 2 | in the proceeding. | | |
| 3 | | | | | 3 | IN WITNESS WHEREOF, I have set my hand in my | | |
| 4 | | | | | 4 | office in the County of Clark, State of Nevada, this | | |
| 5 | | | | | 5 | 24th day of September, 2019. | | |
| 6 | | | | | 6 | | | |
| 7 | | | | | 7 | | | |
| 8 | | | | | 8 | | | |
| 9 | | | | | 9 | | | |
| 10 | | | | | 10 | Mary Dane McCoy, RCR | | |
| 11 | | | | | 11 | | | |
| 12 | | | | | 12 | | | |
| 13 | | | | | 13 | | | |
| 14 | | | | | 14 | | | |
| 15 | | | | | 15 | | | |
| 16 | | | | | 16 | | | |
| 17 | | | | | 17 | | | |
| 18 | | | | | 18 | | | |
| 19 | | | | | 19 | | | |
| 20 | | | | | 20 | | | |
| 21 | | | | | 21 | | | |
| 22 | | | | | 22 | | | |
| 23 | | | | | 23 | | | |
| 24 | | | | | 24 | | | |
| 25 | | | | | 25 | | | |

| CERTIFICATE OF REPORTER | | | | page 179 |
|-------------------------|---|--|--|----------|
| 1 | STATE OF NEVADA) | | | |
| 2 | SS: | | | |
| 3 | COUNTY OF CLARK) | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | I, Mary Dane McCoy, a Certified Court | | | |
| 7 | Reporter, duly licensed by the State of Nevada, do | | | |
| 8 | hereby certify: | | | |
| 9 | That I reported the deposition of Jeffrey | | | |
| 10 | Vincent, commencing on September 19, 2019. | | | |
| 11 | That prior to being deposed, the witness was | | | |
| 12 | duly sworn by me to testify to the truth; | | | |
| 13 | That I thereafter transcribed my said | | | |
| 14 | stenographic notes into written form; | | | |
| 15 | That the typewritten transcript is a | | | |
| 16 | complete, true, and accurate transcription of my said | | | |
| 17 | stenographic notes; | | | |
| 18 | I further certify that pursuant to NRCP Rule | | | |
| 19 | 30(e)(1) that the signature of the deponent: | | | |
| 20 | XXXX was requested by the deponent or a party | | | |
| 21 | before the completion of the deposition; | | | |
| 22 | _____ was not requested by the deponent or a | | | |
| 23 | party before the completion of the deposition; | | | |
| 24 | I further certify that I am not a relative or | | | |
| 25 | employee of counsel or of any of the parties involved | | | |



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 Dogs Pub and Counterdefendants

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

AND COUNTERCLAIMS.

Case No.: A-18-785311-B

Dept. No.: **XI**

BUSINESS COURT

HEARING REQUESTED

Hearing Date: 10/2/19
Time: 9:00 a.m.

**PLAINTIFF JSJBD CORP'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

(MOTION FOR ORDER SHORTENING TIME)

Plaintiff JSJBD Corp dba Blue Dogs Pub, through counsel, moves to compel the production of documents. Specifically, JSJBD Corp moves to have common area maintenance documents produced by Defendant-Landlord Tropicana Investments, LLC.

The motion to compel is based on the pleadings and papers on file, the attached Memorandum and any oral argument that may be heard.

DATED: September 25, 2019.

LOVATO LAW FIRM, P.C.



MARIO P. LOVATO

Nevada Bar No. 7427

Attorney for Plaintiff JSJBD Corp and
Counterdefendants

1
2 **MOTION FOR ORDER SHORTENING TIME**

3 Plaintiff JSJBD Corp, through counsel, and based on the Declaration of Mario P. Lovato,
4 Esq., below, moves to have the following Motion to Compel Production of Documents heard in
5 an expedited manner on shortened time.

6 DATED: September 25, 2019.

7 LOVATO LAW FIRM, P.C.

8 
MARIO P. LOVATO

9 Nevada Bar No. 7427

10 Attorney for Plaintiff JSJBD Corp and
Counterdefendants

11
12 **ORDER SHORTENING TIME**

13 For good cause shown, Plaintiff JSJBD Corp's Motion for Order Shortening Time is hereby
14 GRANTED; accordingly, a hearing shall take place on shortened time for PLAINTIFF JSJBD
15 CORP'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS before the above-entitled
16 Court on 2 October, 2019, at the hour of 9 a.m. or
17 as soon thereafter as the parties may be heard.

18 DATED: September 26, 2019.

19 
20 DISTRICT COURT JUDGE

21 Submitted by:

22 LOVATO LAW FIRM, P.C.

23 
MARIO P. LOVATO, ESQ.

24 Nevada Bar No. 7427

25 7465 W. Lake Mead Blvd Ste. 100

26 Las Vegas, Nevada 89101

27 Attorney for Plaintiff JSJBD Corp
28 and Counterdefendants

**DECLARATION OF MARIO P. LOVATO, ESQ.
IN SUPPORT OF MOTION FOR ORDER SHORTENING TIME**

Mario P. Lovato, Esq., states and declares:

1. I am counsel for Plaintiff JSJBD Corp dba Blue Dogs Pub (“Blue Dogs Pub”), and Counterdefendants, in the above-referenced case. I have personal knowledge of the matters stated in this Declaration and am competent to testify as to such matters, except where the given statement is made upon information and belief.

2. On July 26, 2019, Blue Dogs Pub served 11 document requests on Defendant that sought receipts, documents, bookkeeping and other documents showing the common area maintenance (“CAM”) costs that Blue Dogs Pub has asserted were overcharged to it by Defendant-Landlord Tropicana Investments, LLC. *See* Pl.’s Request Prod. Docs., attached as **Ex. 1**.

3. Landlord delayed in serving any response to the document requests, waiting 44 days to serve a response. The response was served at the end of a Friday, before a Monday status check on September 9, 2019 at 9:00 a.m. *See* Def.’s Response, attached as **Ex. 2**.

4. At the September 9, 2019 status check hearing, after the issue of requested CAM documents was raised, the Court made statements about the CAM documents it ordinarily requires to be disclosed and produced. At such hearing, Landlord’s counsel presented no objection to producing the CAM documents.

5. After the September 9, 2019 hearing, it was discovered by Blue Dogs Pub’s counsel that two items were served at the end of the prior business day by Landlord’s counsel: (a) Responses to the document requests that asserted objections; and (b) An email from Landlord’s counsel that stated that Landlord would produce the documents, but that an “Act of God,” i.e., Hurricane Dorian made it impossible for Landlord to produce the documents. *See* 09/06/19 Email from defense counsel, attached as **Ex. 3**.

///

1 6. Specifically, the September 6, 2019 email from Landlord's counsel stated:

2 ***My client resides on the east coast of Florida and due to Hurricane***
3 ***Dorian, he has not been able to return home. He anticipates being***
4 ***able to return to his home within the next 2 weeks*** at which time he
5 will determine whether there are any other documents relating to
6 CAM expenses and invoices and ***if any are located, we will***
7 ***promptly supplement our responses.***

8 *See id.* (emphasis added).

9 7. At an in-person meeting on September 18, 2019 between counsel, Blue Dogs Pub's
10 counsel inquired of Landlord's counsel regarding the basis of any objections and/or when the
11 requested CAM documents would be produced. In response, Landlord's counsel stated that the
12 requested documents were not subject to objection and were not "financial documents" protected
13 from disclosure. He stated that Landlord would be producing the CAM documents. Yet,
14 Landlord's counsel stated that the documents could not be produced because of Hurricane Dorian
15 supposedly making it impossible for Landlord to obtain the documents from a location in the State
16 of Florida.

17 8. Blue Dogs Pub has allowed Landlord's counsel to conduct depositions after the
18 discovery deadline in order to complete the requested depositions, has granted extensions for
19 Landlord to prepare and produce an expert report, and has generally granted courtesies on other
20 matters. Yet, Landlord still has not produced the requested CAM documents to which Landlord's
21 counsel asserts no objection is being made.

22 9. While Landlord has asserted that Hurricane Dorian has made it impossible to
23 produce the requested documents, the documents were due prior to the date of such hurricane. It
24 is not known to Blue Dogs Pub what, if any, effect such hurricane has allegedly had on the
25 production of the requested CAM documents. To the extent that an "Act of God" has purportedly
26 made the production impossible, Blue Dogs Pub seeks appropriate relief. It does not appear,
27 however, from media reports that the hurricane actually closed offices in coastal Florida for such
28 a lengthy period, and no evidence has been provided of the hurricane making the production of

1 CAM documents impossible.

2 10. It appears that Landlord may be seeking to delay the production of documents in
3 order to obtain improper advantage in this case and to interfere with Blue Dogs Pub's ability to
4 obtain evidence of overcharges for CAM expenses.

5 11. It also appears that Landlord may be requiring the filing of a motion in light of the
6 deadline for filing dispositive motions, September 27, 2019, and the date currently set for trial,
7 November 18, 2019. That is, Landlord may be seeking to effectively preclude the obtaining of
8 CAM documents by introducing as much delay as possible—while concurrently promising to
9 provide the documents—and thereby cause unfair prejudice in that relief cannot be sought until
10 after the expiration of key deadlines in this case.

11 12. In light of these deadlines, the hearing for the Motion to Compel should be
12 expedited.

13 13. The hearing should also be expedited in light of this Court's Order and because
14 Landlord's conduct, absent an expedited hearing, may render the relief accorded by such Order
15 meaningless.

16 14. Based on the above, Blue Dogs Pub requests that its Motion to Compel be heard on
17 shortened time and the Motion for Order Shortening Time be granted.

18 15. In light of the lack of continuing objection to the production of CAM documents,
19 there does not appear to be reason for a substantial period of time for Landlord to respond to the
20 motion to compel, which also supports the setting of an expedited hearing.

21 16. I state under penalty of perjury, under the laws of the State of Nevada, that the
22 above and foregoing is true and correct.

23 DATED: September 25, 2019.

24
25
26
27
28

MARIO P. LOVATO

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

Among Plaintiff Blue Dogs Pub's claims is that Landlord Tropicana Investments, LLC has breached the parties' Lease by overcharging for common area maintenance ("CAM") costs.

Recently in the case, the parties each filed a motion for partial summary adjudication addressing claims regarding the amount of rent for the current five-year option period. On July 8, 2019, the Court conducted a hearing wherein it granted Blue Dogs Pub's motion for partial summary adjudication. The Order was entered on July 24, 2019.

Two days later, on July 26, 2019, Blue Dogs Pub served a set of Requests for Production of Documents seeking documents in support of its claim that Landlord has overcharged for CAM costs. The discovery was served via the Court's system of electronic service.

In summary, the Requests sought the following CAM documents:

NO.

DOCUMENTS REQUESTED

2. "Receipts, invoices, billing statements, cost documents" relating to CAM expenses.
3. "[E]lectronic copy of the bookkeeping / accounting files" relating to CAM expenses.
4. "[A]ll documents wherein Defendant calculated the" CAM expenses.
7. "[D]ocuments stating the calculation [of] a 'property management fee'" in CAM charges.
8. "[D]ocuments stating the calculation [of] a 'parking lot reserve'" in CAM charges.
9. "[D]ocuments stating the calculation [of] a 'porter service'" in CAM charges.
10. "[D]ocuments stating the calculation [of] a 'painting reserve'" in CAM charges.
11. "[D]ocuments stating the calculation [of] a 'roof reserve'" in CAM charges.

The Requests also sought more generalized documents, which would provide information in the event that incomplete, or inconsistent, documentation: (a) "United States Income Tax Return for all years from 2012-2019, including any and all portions referring to business expense and

1 related cost amounts for the Tropicana Plaza shopping center at issue,” (Request No. 1); (b)
2 “[B]ank statements . . . from which any payment was made for” CAM expenses (Request No. 5);
3 and (c) “[A]ccount statements of any type or kind of Defendant that identify payee, amount, and
4 proof of payment/funds transferred for any common area maintenance expenses” (Request No. 6).

5 On August 26, 2019, Landlord’s response to the request for documents came due. Landlord
6 did not serve a response on that date.

7 On September 9, 2019, a status check hearing occurred, during which the issue of the lack
8 of response regarding CAM documents was discussed.

9 When Blue Dogs Pub’s counsel returned to the office on September 9, 2019, it was
10 discovered that responses had been served by Landlord’s counsel at the end of the day the prior
11 Friday. The responses each objected to serving the requested documents, with most asserting that
12 they were financial documents protected from discovery.

13 At approximately the same time that the responses were produced, Landlord’s counsel sent
14 an email that asserted that Hurricane Dorian interfered with producing the documents. The email
15 contained language about a supplemental production being made within two weeks. No such
16 supplementation has occurred.

17 Approximately a dozen pages of documents were cited as allegedly being responsive to the
18 requests. The referenced documents consist of a one-page summary per year of alleged CAM
19 costs. Second, Landlord produced an alleged Profit and Loss printout for Tropicana Investments,
20 LLC as a whole, rather than producing documents showing the actual CAM costs incurred. These
21 are not the source documents, or other documents, that were requested in the document requests.

22 On September 18, 2019, Blue Dogs Pub’s counsel conducted an in-person meet-and-confer
23 with Landlord’s counsel. The documents were promised to be produced by Landlord at an
24 unspecified future date. No such documents have been produced.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

ARGUMENT

Under NRCP 37(a)(1) and (3), “any other party may move to compel disclosure and for appropriate sanctions.” Blue Dogs Pub’s counsel has engaged in in-person meetings and discussions on September 9 and September 18, to no avail. The documents have been promised, but none of the requested documents have been produced.

Further, NRCP 37(a)(4) permits the Court, where the responses are evasive, to treat the response as a failure to respond. The rule states:

Evasive or Incomplete Disclosure, Answer, or Response. For purposes of Rule 37(a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond. A party’s production of documents that is not in compliance with Rule 34(b)(2)(E)(i) may also be treated as a failure to produce documents.

NRCP 37(a)(4).

A. CAM TERMINOLOGY UNDER THE PARTIES’ COMMERCIAL LEASE.

The parties’ Lease dates back to 1996. Walter Schwartz was the original Landlord. Over time, both the Landlord and the Tenant changed, with each succeeding to the rights of their predecessors under the 1996 Lease.

Under the parties’ Lease, Landlord is obligated to keep “common areas in a neat, clean, and orderly condition, properly lighted and landscaped, and shall improve and repair any damage to the facilities. Lease ¶ 7, attached as **Ex. 4**.

Roof expenses are carved-out and made the sole obligation of the Landlord. The Lease states: “Landlord shall at his sole cost and expense, keep and maintain in good repair, (excluding painting) of extension walls and roof repairs” Lease ¶ 9.

“[A]ll expenses in connection with said automobile parking and common areas shall be charged and prorated in the manner herein after [sic] set forth.” Lease ¶ 7.

///

1 The CAM costs are defined in the Lease:

2 to include but not limited to all upgrading, general maintenance and
3 repairs, resurfacing, rubbish removal, painting, restripping,
4 cleaning, sweeping and janitorial services, personel to implement
5 such services including property management fees for the entire
6 parcel and to police the automobile parking and common areas: real
7 and personal property taxes and assessment thereon, Water.
8 Insurance, including but not limited to General Liability and
9 Property Damages, Fire Hazard on Demised Premises, Building.
10 Common Areas and Parking Lot. A reasonable allowance to
11 Landlord for Landlord's administrative expenses of said automobile
12 parking and common areas no to excess in any calendar year fifteen
13 percent of the total of the aforementioned expenses for said calendar
14 year.

15 *Id.* (various errors in original). "Quarterly tenant shall be given an accounting of expenses and the
16 balance of the account shall be paid within 10 days." *Id.*

17 During the course of the Lease, Blue Dogs Pub has inquired about the CAM costs because,
18 for example, Landlord has stated that it is charging for roof repairs and even a "roof reserve."
19 Further, Landlord repeatedly charges for items that have impossibly "round" numbers, such as
20 \$25,000.00. Landlord's charging for various "reserves" are not trued-up or otherwise charged
21 against over the course of time.

22 **B. PRIMARY DOCUMENTS REQUESTED REGARDING CAM COSTS.**

23 The Requests sought, for years 2012 to 2019, the following documents, which have not
24 been produced. The key requests, and responses thereto state the following. As described above,
25 Landlord does not assert any continuing objection to the Requests, but rather, asserts that
26 Hurricane Dorian has interfered with his ability to disclose and produce the documents.

27 **REQUEST NO. 2:**

28 Produce a copy of all named Plaintiffs' receipts, invoices, billing
statements, cost documents for, or similar documentation relating to, any business
expenses that qualify as common area maintenance expenses incurred during all
years from 2012-2019 by Defendant for the Tropicana Plaza shopping center at
issue in this case.

RESPONSE TO REQUEST NO. 2:

Objection. This Request is overly broad, unduly burdensome, and calls for
information that is not proportional to the needs of the case. Without waiving said
objection, please refer to TROP 859-570 previously produced in this litigation.

1 **REQUEST NO. 3:**

2 Produce an electronic copy of the bookkeeping / accounting files of
3 Defendant, whether in Defendant's possession and/or the possession of
4 Defendant's bookkeeping / accounting service provider, including production of
5 the original QuickBooks or other electronic file if such was used, for all years from
6 2012-2019 as to all common area maintenance expenses shown therein that was
7 incurred by Defendant for the Tropicana Plaza shopping center at issue in this case.

8 **RESPONSE TO REQUEST NO. 3:**

9 [same objection / response as No. 2]

10 **REQUEST NO. 4:**

11 Produce a copy of all documents wherein Defendant calculated the amount
12 of business expenses and costs that qualified as common area maintenance
13 expenses incurred by Defendant for all years from 2012-2019 for the Tropicana
14 Plaza shopping center at issue in this case.

15 **RESPONSE TO REQUEST NO. 4:**

16 [same objection / response as No. 2]

17 Blue Dogs Pub requests an Order compelling production of the requested documents, along
18 with any appropriate sanctions and other relief.

19 **C. DOCUMENTS REQUESTED IN REGARD TO VARIOUS "RESERVE"**
20 **AMOUNTS.**

21 In addition, Blue Dogs Pub seeks the following documents that each relate to various
22 "reserve" amounts that Landlord has charged and which do not appear to be valid amounts.

23 Landlord's Responses to these Requests are the same as to each.

24 **REQUEST NO. 7:**

25 Produce any and all documents stating the calculation, tabulation, and/or
26 any amounts whatsoever for a property management fee that was included in
27 operating expenses or common area maintenance costs allegedly incurred by
28 Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center
at issue in this case, as well as all documents showing payouts from such property
management fee.

RESPONSE TO REQUEST NO. 7:

 Objection. This Request is vague, ambiguous, overly broad, unduly
burdensome, and calls for information that is not proportional to the needs of the
case. Without waiving said objection, please refer to the TROP 859-870 previously
produced in this litigation.

REQUEST NO. 8:

 Produce any and all documents stating the calculation, tabulation, and/or
any amounts whatsoever for a "parking lot reserve" or related fee that was included
in operating expenses or common area maintenance costs allegedly incurred by
Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center
at issue in this case, as well as all documents showing payouts from such parking

lot reserve or related fee.

RESPONSE TO REQUEST NO. 8:

[same objection / response as No. 7]

REQUEST NO. 9:

Produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a “porter service” or related fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts from such porter service or related fee.

RESPONSE TO REQUEST NO. 9:

[same objection / response as No. 7]

REQUEST NO. 10:

Produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a “painting reserve” or related fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts from such painting reserve or related fee.

RESPONSE TO REQUEST NO. 10:

[same objection / response as No. 7]

REQUEST NO. 11:

Produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a “roof reserve” or related fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts from such roof reserve or related fee.

RESPONSE TO REQUEST NO. 11:

[same objection / response as No. 7]

Blue Dogs Pub requests an Order compelling the production of documents. In addition, to the extent permitted, Blue Dogs Pub seeks sanctions permitted under Rule 37. Blue Dogs Pub also requests that any relief be permitted that would allow a reasonable time to review ordered documents prior to trial, and, if necessary, relief to address possible spoliation by Landlord.

Blue Dogs Pub requests attorney fees and costs incurred in drafting and arguing the present motion.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

CONCLUSION

Blue Dogs Pub requests that its motion be granted. It requests the relief, and attorney fees,
requested above.

LOVATO LAW FIRM, P.C.


MARIO P. LOVATO, ESQ.

Nevada Bar No. 7427

Attorney for Plaintiff JSJBD Corp
dba Blue Dogs Pub and Counterdefendants

EXHIBIT 1

MARIO P. LOVATO, ESQ.
Nevada Bar No. 7427
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd. Ste. 100
Las Vegas, Nevada 89128
TEL: (702) 979-9047
mpl@lovatolaw.com
Attorney for Plaintiff / Counterdefendant
JSJBD Corp dba Blue Dogs Pub and
the individual Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|---|---|-------------------------|
| JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada corporation, |) | |
| |) | Case No.: A-18-785311-B |
| Plaintiff, |) | |
| |) | BUSINESS COURT |
| vs. |) | |
| |) | |
| TROPICANA INVESTMENTS, LLC, a California limited liability company, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |
| AND COUNTERCLAIMS. |) | |
| |) | |

**PLAINTIFF JSJBD CORP'S
REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: Defendant Tropicana Investments, LLC and its counsel.

Plaintiff JSJBD Corp, by and through its counsel, pursuant to Rules 26 and 34, submits and serves this Request for Production of Documents, responses to which are due 30 days after service of same.

PRELIMINARY STATEMENT

The following preliminary statement and definitions apply to each of the Requests for Production set forth hereinafter and are deemed to be incorporated herein:

1. The term "DOCUMENT" as used herein, includes, and is not limited to all originals or copies where originals are unavailable, nonidentical copies (whether different from originals by

1 a reason of notation made on such copies or otherwise) of all written, recorded, or graphic matter,
2 however produced or reproduced, whether or not now in existence, of agreements,
3 communications, memorandum, correspondence (including communications, memorandum,
4 and/or correspondence from attorneys), telegrams, summaries of records of telephone
5 conversations, summaries of personal conversations or interviews, diaries, graphs, reports,
6 notebooks, note charts, drawings, sketches, summaries or records of meetings or conferences,
7 opinions or reports of consultants, photographs, motion picture films, studies, analyses, reports,
8 contracts, agreements, working papers, tax returns, fiscal records, ledgers, books of account,
9 vouchers, bank checks, bank statements, invoices, receipts, computer data, stenographers
10 notebooks, desk calendars, appointment books, any marginal comments appearing on any
11 documents, billings, x rays, and all other writings and documents.

12 2. If any document is withheld under claim of privilege, identify the document for
13 which there is a claim of privilege as follows:

- 14 a. A full description thereof, including without limitation, the date it bears.
15 b. The name of each person who prepared it or participated in any way in its
16 preparation.
17 c. The name of each person who signed it.
18 d. The name of each person to whom it or a copy of it was addressed.
19 e. The name of each person who presently has custody of it or a copy of it.
20 f. Its subject matter and its substance.
21 g. What basis there is for this claim of privilege.

22 3. If no date limitations or instruction is given with a given request, then such request
23 seeks documents created or otherwise used in the five years preceding the filing of the complaint
24 in this case to present.

25 DEFINITIONS:

26 1. "You," "your," "yours," "Defendant" refers to Tropicana Investments, LLC, as
27 well as the Tropicana Plaza shopping center at issue in this case, which is located at the northeast
28

1 quadrant at or about the intersection of E. Tropicana Avenue and S. Pecos Road in Las Vegas,
2 Nevada.

3 2. "Present" includes, and in no respect precludes, the continuing obligation to provide
4 documents as this case continues.

5 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

6 **REQUEST NO. 1:**

7 Produce a copy of the United States Income Tax Return for all years from 2012-2019,
8 including any and all portions referring to business expense and related cost amounts for the
9 Tropicana Plaza shopping center at issue in this case that is owned and operated by Defendant,
10 including all Statements and supporting documentation for such Income Tax Returns.

11 **REQUEST NO. 2.**

12 Produce a copy of all named Plaintiffs' receipts, invoices, billing statements, cost
13 documents for, or similar documentation relating to, any business expenses that qualify as common
14 area maintenance expenses incurred during all years from 2012-2019 by Defendant for the
15 Tropicana Plaza shopping center at issue in this case.

16 **REQUEST NO. 3.**

17 Produce an electronic copy of the bookkeeping / accounting files of Defendant, whether in
18 Defendant's possession and/or the possession of Defendant's bookkeeping / accounting service
19 provider, including production of the original QuickBooks or other electronic file if such was used,
20 for all years from 2012-2019 as to all common area maintenance expenses shown therein that was
21 incurred by Defendant for the Tropicana Plaza shopping center at issue in this case.

22 **REQUEST NO. 4.**

23 Produce a copy of all documents wherein Defendant calculated the amount of business
24 expenses and costs that qualified as common area maintenance expenses incurred by Defendant
25 for all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case.

26 **REQUEST NO. 5.**

27 Produce a copy of all monthly bank statements of any account of Defendant and/or any
28

1 entity used by Defendant for managing the Tropicana Plaza shopping center at issue in this case
2 from which any payment was made for any business expenses that qualified as common area
3 maintenance expenses during all years from 2012-2019 for the Tropicana Plaza shopping center
4 at issue in this case.

5 **REQUEST NO. 6.**

6 Produce the account statements of any type or kind of Defendant that identify payee,
7 amount, and proof of payment/funds transferred for any common area maintenance expenses
8 incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center
9 at issue in this case.

10 **REQUEST NO. 7:**

11 Produce any and all documents stating the calculation, tabulation, and/or any amounts
12 whatsoever for a property management fee that was included in operating expenses or common
13 area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the
14 Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts
15 from such property management fee.

16 **REQUEST NO. 8:**

17 Produce any and all documents stating the calculation, tabulation, and/or any amounts
18 whatsoever for a “parking lot reserve” or related fee that was included in operating expenses or
19 common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019
20 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing
21 payouts from such parking lot reserve or related fee.

22 **REQUEST NO. 9:**

23 Produce any and all documents stating the calculation, tabulation, and/or any amounts
24 whatsoever for a “porter service” or related fee that was included in operating expenses or common
25 area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the
26 Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts
27 from such porter service or related fee.
28

1 **REQUEST NO. 10:**

2 Produce any and all documents stating the calculation, tabulation, and/or any amounts
3 whatsoever for a “painting reserve” or related fee that was included in operating expenses or
4 common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019
5 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing
6 payouts from such painting reserve or related fee.

7 **REQUEST NO. 11:**

8 Produce any and all documents stating the calculation, tabulation, and/or any amounts
9 whatsoever for a “roof reserve” or related fee that was included in operating expenses or common
10 area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the
11 Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts
12 from such roof reserve or related fee.

13 DATED: July 29, 2019.

14 LOVATO LAW FIRM, P.C.

15 /s/ Mario Lovato

16 MARIO P. LOVATO

17 Nevada Bar No. 7427

18 Attorney for Plaintiff / Counterdefendant

19 JSJBD Corp dba Blue Dogs Pub
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED that, on July 26, 2019, the above and foregoing **PLAINTIFF**
3 **JSJBD CORP'S REQUEST FOR PRODUCTION OF DOCUMENTS** was served via the
4 Court's system of electronic service, upon all persons or parties registered for such service,
5 including upon the following:
6

7
8 Terry A. Moore
9 Marquis Aurbach Coffing
10 10001 Park Run Dr.
11 Las Vegas, NV 89145
12 Attorneys for Defendant / Counterclaimant
13 Tropicana Investments, LLC
14

15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Mario Lovato

EXHIBIT 2

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

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

**TROPICANA INVESTMENTS, LLC'S RESPONSE TO JSJBD CORP'S REQUEST FOR
PRODUCTION OF DOCUMENTS**

In accordance with NRCP 34, Tropicana Investments, LLC, by and through their
attorneys, Marquis Aurbach Coffing, hereby responds to JSJBD Corp's Request for Production
of Documents as follows:

GENERAL DEFINITIONS AND OBJECTIONS

Tropicana Investments, LLC incorporates each of the following general objections into its Responses to each and every Request for Production (“Request”), regardless of whether the objection is also stated specifically in Tropicana Investments, LLC’s responses.

1. Tropicana Investments, LLC objects to each Request, including the instructions and definitions contained therein, to the extent that it attempts or purports to impose requirements or obligations on Tropicana Investments, LLC beyond those imposed by the NRCP, to the extent that any Request seeks discovery that is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, or to the extent that the burden or expense of the proposed discovery outweighs its likely benefit (“calls for information that is not proportional to the needs of the case”).

2. Tropicana Investments, LLC objects to each Request, including the instructions and definitions contained therein, to the extent that any Request is vague, ambiguous, and fails to describe the information or documents sought with reasonable particularity as to meaning, scope, or application (“vague and ambiguous”).

3. Tropicana Investments, LLC objects to each Request, including the instructions and definitions contained therein, to the extent that any Request calls for information or documents which are unreasonable in scope and not justified by the issues presented in this action (“overly broad”).

4. Tropicana Investments, LLC objects to each Request, including the instructions and definitions contained therein, to the extent that any Request calls for information that is cumulative or duplicative of other Requests (“duplicative”).

5. Tropicana Investments, LLC objects to each Request, including the instructions and definitions contained therein, to the extent that any Request is so broad and uncertain that it creates an unreasonable and undue burden upon Tropicana Investments, LLC and that the burden or extent of the Request outweighs its likely benefit taking into account the needs of the case and

1 the importance of the Request in resolving the issues in the litigation, and/or the information
2 sought is more readily obtainable through other, more convenient, less burdensome, and less
3 expensive sources or discovery procedures (“unduly burdensome”).

4 6. Tropicana Investments, LLC objects to each Request, including the instructions
5 and definitions contained therein, to the extent that any Request requires disclosure of
6 information protected by the attorney-client privilege, attorney work-product doctrine, trial
7 preparation materials, materials that may be used solely for impeachment, or other materials
8 protected under the NRCP. Among the Requests to which this objection applies are those that
9 Request information which may reveal counsel’s mental impressions, legal reasoning, legal
10 theories, and other confidential attorney work product. Tropicana Investments, LLC reserves the
11 right to withhold any such privileged information (“calls for privileged information”).

12 7. Tropicana Investments, LLC objects to each Request, including the instructions
13 and definitions contained therein, to the extent that any Request seeks information and requires
14 the disclosure of information that is confidential and proprietary and may otherwise be subject to
15 confidentiality obligations with a non-party restricting the disclosure of such information (“calls
16 for confidential information”).

17 8. Tropicana Investments, LLC objects to each Request, including the instructions
18 and definitions contained therein, to the extent that any Request calls for information not
19 actually, or not reasonably or logically expected to be, in Tropicana Investments, LLC’s
20 possession, custody, or control (“calls for information not within Tropicana Investments, LLC’s
21 possession, custody, or control”).

22 **REQUEST NO. 1:**

23 Produce a copy of the United States Income Tax Return for all years from 2012-2019,
24 including any and all portions referring to business expense and related cost amounts for the
25 Tropicana Plaza shopping center at issue in this case that is owned and operated by Defendant,
26 including all Statements and supporting documentation for such Income Tax Returns.

RESPONSE TO REQUEST NO. 1:

Objection. This Request is overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Additionally, the information sought is irrelevant and consists of confidential financial information that is not related to the subject matter of this lawsuit. Without waiving said objection, please refer to the TROP 859-870 previously produced in this litigation.

REQUEST NO. 2:

Produce a copy of all named Plaintiffs' receipts, invoices, billing statements, cost documents for, or similar documentation relating to, any business expenses that qualify as common area maintenance expenses incurred during all years from 2012-2019 by Defendant for the Tropicana Plaza shopping center at issue in this case.

RESPONSE TO REQUEST NO. 2:

Objection. This Request is overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Without waiving said objection, please refer to TROP 859-570 previously produced in this litigation.

REQUEST NO. 3:

Produce an electronic copy of the bookkeeping / accounting files of Defendant, whether in Defendant's possession and/or the possession of Defendant's bookkeeping / accounting service provider, including production of the original QuickBooks or other electronic file if such was used, for all years from 2012-2019 as to all common area maintenance expenses shown therein that was incurred by Defendant for the Tropicana Plaza shopping center at issue in this case.

RESPONSE TO REQUEST NO. 3:

Objection. This Request is overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Without waiving said objection, please refer to TROP 859-570 previously produced in this litigation.

REQUEST NO. 4:

Produce a copy of all documents wherein Defendant calculated the amount of business expenses and costs that qualified as common area maintenance expenses incurred by Defendant for all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case.

RESPONSE TO REQUEST NO. 4:

Objection. This Request is overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Without waiving said objection, please refer to TROP 859-570 previously produced in this litigation.

REQUEST NO. 5:

Produce a copy of all monthly bank statements of any account of Defendant and/or any entity used by Defendant for managing the Tropicana Plaza shopping center at issue in this case from which any payment was made for any business expenses that qualified as common area maintenance expenses during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case.

RESPONSE TO REQUEST NO. 5:

Objection. This Request is overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Additionally, the information sought is irrelevant and consists of confidential financial information that is not related to the subject matter of this lawsuit. Without waiving said objection, please refer to the TROP 859-870 previously produced in this litigation.

REQUEST NO. 6:

Produce the account statements of any type or kind of Defendant that identify payee, amount, and proof of payment/funds transferred for any common area maintenance expenses incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case.

RESPONSE TO REQUEST NO. 6:

Objection. This Request is vague and ambiguous as to what “account statements” is intended to refer to as well as what “proof of payment/funds transferred” is intended to refer to. Furthermore, this Request is overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Additionally, the information sought is irrelevant and consists of confidential financial information that is not related to the subject matter of this lawsuit. Without waiving said objection, please refer to the TROP 859-870 previously produced in this litigation.

REQUEST NO. 7:

Produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a property management fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts from such property management fee.

RESPONSE TO REQUEST NO. 7:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Without waiving said objection, please refer to the TROP 859-870 previously produced in this litigation.

REQUEST NO. 8:

Produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a “parking lot reserve” or related fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts from such parking lot reserve or related fee.

RESPONSE TO REQUEST NO. 8:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Without waiving said objection, please refer to the TROP 859-870 previously produced in this litigation.

REQUEST NO. 9:

Produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a “porter service” or related fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts from such porter service or related fee.

RESPONSE TO REQUEST NO. 9:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Without waiving said objection, please refer to the TROP 859-870 previously produced in this litigation.

REQUEST NO. 10:

Produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a “painting reserve” or related fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts from such painting reserve or related fee.

RESPONSE TO REQUEST NO. 10:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Without waiving said objection, please refer to the TROP 859-870 previously produced in this litigation.

REQUEST NO. 11:

Produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a “roof reserve” or related fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant during all years from 2012-2019 for the Tropicana Plaza shopping center at issue in this case, as well as all documents showing payouts from such roof reserve or related fee.

RESPONSE TO REQUEST NO. 11:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome, and calls for information that is not proportional to the needs of the case. Without waiving said objection, please refer to the TROP 859-870 previously produced in this litigation.

Dated this 6th day of September, 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 **TROPICANA INVESTMENTS, LLC'S
RESPONSE TO JSJBD CORP'S REQUEST FOR PRODUCTION OF DOCUMENTS**
was submitted electronically for filing and/or service with the Eighth Judicial District Court on
the 6th day of September, 2019. Electronic service of the foregoing document shall be made in
accordance with the E-Service List as follows:¹

mpl@lovatolaw.com

/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 3

Mario Lovato

From: Terry Moore <tmoore@maclaw.com>
Sent: Friday, September 6, 2019 4:29 PM
To: 'Mario Lovato'
Subject: RE: JSJBD Corp v. Trop Invest.--responses

Mario,

Our responses to requests for production will be served shortly. My client resides on the east coast of Florida and due to Hurricane Dorian, he has not been able to return home. He anticipates being able to return to his home within the next 2 weeks at which time he will determine whether there are any other documents relating to CAM expenses and invoices and if any are located, we will promptly supplement our responses.



Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](#)
maclaw.com



Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]
Sent: Thursday, September 5, 2019 12:19 PM
To: Terry Moore
Subject: JSJBD Corp v. Trop Invest.--responses

Terry,

About two weeks ago, responses to requests for admissions were served. About 10 days ago, approximately 400 pages of documents were served.

Attached are answers to contention interrogatories, which ordinarily are not due until discovery has closed. These are subject to supplementation, including when documents requested by JSJBD Corp relating to CAM costs are served by Tropicana Investments.

There are largely identical interrogatories to counterdefendants, which will be served within the next day, as well as responses to “contention” document requests. As stated above, the documents were served approximately 10 ago (and earlier in the case).

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

EXHIBIT 4

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

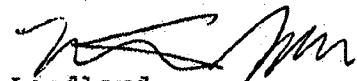
Tenant


Mark S. Van Aken

OPTION AGREEMENT

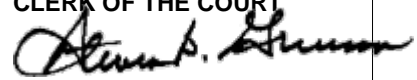
In the event Mark S. Van Aken has fully complied with all the terms, covenants condition of this lease and provided the Tenant gives the Landlord at least ninety (90) days notice in writing, in advance of the lease expiration the tenant shall have the option to renew this lease for a period of five years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



**Marquis Aurbach Coffing**

Terry A. Moore, Esq.

Nevada Bar No. 7831

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

tmoore@maclaw.com

Attorneys for Tropicana Investments, LLC

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

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

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**DEFENDANT/COUNTERCLAIMANT
TROPICANA INVESTMENTS LLC'S
OPPOSITION TO PLAINTIFF JSJBD
CORP'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS****(MOTION FOR ORDER SHORTENING
TIME)**

**DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS LLC'S
OPPOSITION TO PLAINTIFF JSJBD CORP'S MOTION TO COMPEL PRODUCTION
OF DOCUMENTS**

(MOTION FOR ORDER SHORTENING TIME)

Defendant/Counterclaimant Tropicana Investments, LLC (hereinafter "Tropicana") by and through its attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submits their Opposition to JSJBD Corp's Motion to Compel Production of Documents on an Order Shortening Time. This Opposition is made and based upon all papers, pleadings and records on file herein, the following Memorandum of Points and Authorities, and any oral argument allowed by the Court as the time of hearing in this matter.

Dated this 30th day of September, 2019.

MARQUIS AURBACH COFFING

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The reality is that the Motion to Compel was completely unnecessary. Defendant initially produced the CAM reconciliations for 2013, 2014, 2015, 2016, 2017 and 2018 along with the Defendant's Profit & Loss statements for each of those years on July 31, 2019. Those are the documents that Plaintiff was referred to in the Response to Requests for Production. Defendant produced today its most recent supplement which contains 1198 pages of CAM documents for 2016, 2017, and 2018.

When this issue was first brought up by Plaintiff's counsel, the undersigned advised Plaintiff's counsel during the first week of September that the Defendant's principal, Jeff Chauncey, lives in eastern Florida and had been forced to evacuate his boat up the East Coast to

1 avoid Hurricane Dorian. I further advised Plaintiff's counsel that as soon as Mr. Chauncey could
2 get back to his home, he would endeavor to locate CAM documents responsive to the legitimate
3 requests, however, due to the fact that those documents were largely in storage and that the
4 Defendant was not aware of the condition of the storage unit following the hurricane, there might
5 be a delay in providing the documents.

6 The issue was again raised by Plaintiff's counsel during the September 18th deposition of
7 Bruce Eisman. Prior to the start, Plaintiff's counsel asked if the documents were confidential,
8 and the undersigned told him "no" they were not confidential and that the Defendant would
9 provide the documents he could find as soon as he returned home, which was anticipated to
10 occur that same week.

11 True to that point, Mr. Chauncey was able to locate the 1200 pages of documents for
12 2016, 2017 and 2018 that following weekend and he then fedexed the documents to the
13 undersigned's office. Unfortunately, the box was directed to the attention of John Sacco. Mr.
14 Sacco was out of the office all last week and unfortunately the box was delivered to his darkened
15 office on Tuesday, September 23 and it sat there until it was discovered on Thursday, September
16 25th. The undersigned's staff immediately began scanning and bates stamping the 1200 pages,
17 however, later that same day, without any further communication from Plaintiff, the instant
18 Motion to Compel was filed.

19 **II. LEGAL ARGUMENT**

20 "Parties may obtain discovery regarding any matter, not privileged, which is relevant to
21 the subject matter involved in the pending action," related to the claims and defenses of the
22 parties. NRCP 26(b)(1). The discovered materials need not be admissible, but must be
23 "reasonably calculated to lead to the discovery of admissible evidence." Id. Requests for
24 production of documents are authorized By NRCP 34, subject to the limitations of NRCP 26(b).
25 The Court "*shall*" limit discovery that is

- 26 (i) . . . unreasonably cumulative or duplicative, or is obtainable from some other
27 source that is more convenient, less burdensome, or less expensive; (ii) the party
28 seeking discovery has had ample opportunity by discovery in the action to obtain
the information sought; or (iii) the discovery is unduly burdensome or expensive,

1 taking into account the needs of the case, the amount in controversy, limitations
2 on the parties' resources, and the importance of the issues at stake in the litigation.

3 NRCP 26(b)(2).

4 A party may move to compel responses under NRCP 37(a). If the Motion is denied, the
5 Court may enter a protective order pursuant to NRCP 26(c) and order the moving party to pay
6 the opposing party's fees and costs in defending against the Motion. NRCP 37(a)(4)(B). If the
7 Motion is granted in part and denied in part, the Court may issue a protective order and apportion
8 fees and costs. NRCP 37(a)(4)(C); Kerley v. Aetna Cas. & Sur. Co., 94 Nev. 710, 711, 585 P.2d
9 1339, 1340 (1978).

10 Additionally, the discovery sought must be relevant and proportional to the case.
11 Proportionality is the fundamental standard for determining how much discovery is appropriate.
12 Proportionality in discovery has been required since at least 1983 under former Federal Rule of
13 Civil Procedure 26(b)(2)(c)(iii), which directed the court to limit the frequency or extent of use
14 of discovery if it determined that "the discovery... [was] unduly burdensome or expensive, taking
15 into account the needs of the case, the amount in controversy, limitations on the parties'
16 resources, and the importance of the issues at stake in the litigation." Former FRCP
17 26(b)(2)(C)(iii) was virtually identical to former NRCP 26(b)(2)(iii). And "[f]ederal cases
18 interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the
19 Nevada Rules of Civil Procedure are based in large part upon their federal counter-parts.'" Executive Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting
20 Las Vegas Novelty v. Fernandez, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)). Accordingly,
21 lawyers in Nevada, whether in state or federal court, have had a duty since at least 1983 "to
22 request proportional discovery." John L. Carroll, Proportionality in Discovery: A Cautionary
23 Tale, 32 CAMPBELL L. REV. 455, 458 (2010) (citing FRCP 26(g)(1)(B)(iii)).

24 The recent amendments to the FRCP and NRCP merely "relocate[] the proportionality
25 factors to Rule 26(b)(1) to 'encourage judges to *27 be more aggressive in identifying and
26 discouraging discovery overuse' and to make proportionality consideration unavoidable." U.S.
27 ex rel. Shamesh v. CA, Inc., 314 F.R.D. 1, 8 (quoting FRCP 26(b)(1) advisory committee's notes
28

to 2015 amendment); see also Advisory Committee Note to 2019 Amendments to NRCP (stating that amendments were “[m]odeled in part on the 2018 version of the Federal Rules of Civil Procedure”).¹

A. MOST OF THE DISCOVERY REQUESTS SOUGHT BY PLAINTIFF ARE IRRELEVANT AND NOT PROPORTIONAL GIVEN THE NATURE OF THE CASE.

Given the matters at issue in this case, most of the document requests sought by the Plaintiff are irrelevant and not proportional. Indeed, it appears that the Plaintiff’s motivation in requesting much of the documentation is to require Defendant to go back years and years to produce documents that Plaintiff has never questioned or disputed before and/or which have no relevance to the claims in this case.

1. The First Request

Plaintiff has repeatedly stated that it wants to see the CAM documents, but then in its first request it demands production of 8 years of Tropicana Investments, LLC’s tax returns:

Produce a copy of the United States Income Tax Return for all years from 2012-2019, including any and all portions referring to business expense and related cost amounts for the Tropicana Plaza shopping center at issue in this case that is owned and operated by Defendant, including all Statements and supporting documentation for such Income Tax Returns.

No matter how it attempts to craft the request, Defendant’s tax returns have no relevance to the CAM documents or legitimate purpose.

Moreover, it bears noting that one of the issues that was raised in this case is that Plaintiff changed its corporate structure and brought in new shareholders. When the Landlord requested Plaintiff to provide financial information for those new shareholders, that request was refused. Accordingly, Defendant submitted its own Requests for Production of Documents to Plaintiff and the Counterdefendants seeking production of those financial records and the Plaintiff/Counterdefendants refused to provide such documentation for the following reason:

Due to privacy concerns and the potential for abuse and harassment, a [party]’s personal financial information cannot be had for the mere asking. *Cain v. Price*,

¹ While the Advisory Committee Note to the 2019 amendment to Rule 26 calls this a “change,” the change is structural rather than substantive: proportionality is now considered in the definition of the scope of discovery rather than as a limit on discovery.

1 134 Nev. 193, 198, 415 P.3d 25, 20 (Nev. 2018), *citing Hetter v. District Court*,
2 110 Nev. 513, 520, 874, P.2d 762, 766 (Nev. 1994). To discover that information
3 a [discovering party] must demonstrate some factual basis for such discovery. *Id.*
Here, no such predicate has been provided in the Request or otherwise, and no
such predicate has been satisfied.

4 The Plaintiff/Counterdefendants cannot refuse to provide their financials while
5 simultaneously trying to force Defendant to.

6 **2. The Second Request**

7 The second request seeks copies of the receipts and invoices and related documents
8 relating to the CAM expenses for the 8 years from 2012 to 2019. Plaintiff did not even raise an
9 issue about CAMs until 2016 and so this request is overbroad in time.

10 As mentioned above, Defendant has produced 1200 pages of documents responsive to
11 this request for the years 2016, 2017, and 2018. Gathering and providing those documents has
12 required considerable time and effort on the part of the Defendant as those documents were
13 stored away in offsite storage. If Plaintiff wants to go to Plaintiff's main office in Florida and go
14 through storage boxes of documents to try and find additional documents for earlier years, then
15 arrangements can be made for them to do so, but to force Defendant to produce 8 years of CAM
16 documents when Plaintiff never objected to any such issues until 2016, further demonstrates that
17 the production of the 2016, 2017 and 2018 documents should be sufficient.

18 **3. The Third Request**

19 The general ledgers documenting the CAM expenses has been produced for 2016, 2017
20 and 2018 have been produced. Plaintiff has not demonstrated any need for electronic copies of
21 accounting files maintained by Defendant's accountants. Moreover, Plaintiff has not presented
22 any evidence to documentation why such documentation is not protected by the NRS 49.125
23 accountant-client privilege.

24 Plaintiff has made it clear, without any basis, that they think they were overcharged for
25 CAMs. Therefore, without any basis, they have sent the Requests for Production to engage in a
26 fishing expedition even though they have failed to articulate any legitimate basis for their belief.
27 Indeed, what is apparent from the documents recently produced is that the CAMs for the center
28

are far below the average of the other shopping centers in the southeast part of Clark County. This request should therefore be denied.

4. The Fourth Request

This request seeks all documents wherein Defendant calculated the amount of business expenses and costs that qualified as common area maintenance expenses incurred by Defendant. Documents responsive to this request have been produced for 2016, 2017 and 2018 in the most recent 1200 page supplement served concurrently herewith.

5. The Fifth Request

This request seeks copies of all monthly bank statements of any account of Defendant and/or any entity used by Defendant for managing the Tropicana Plaza shopping center at issue in this case from which any payment was made for any business expenses that qualified as common area maintenance expenses.

This request is absolutely irrelevant and not proportional to the needs of this case. There has been no showing by the Plaintiff as to why it needs to see the Defendant's bank statements. If it wants to see the documents that support the amount of CAMs being charged, then that is what has been produced for 2016, 2017 and 2018. Plaintiff has not articulated any basis for why it should otherwise have unfettered access to Defendant's confidential financial information and bank account statements and the Court should deny this Request.

6. The Sixth Request

This request asks Defendant to produce the account statements of any type or kind of Defendant that identify payee, amount, and proof of payment/funds transferred for any common area maintenance expenses incurred by Defendant. The General Ledgers for 2016, 2017 and 2018 providing the requested information have been produced in the most recent 1200 page supplement served concurrently herewith.

7. The Seventh Request

This request asks Defendant to produce any and all documents stating the calculation, tabulation, and/or any amounts whatsoever for a property management fee that was included in operating expenses or common area maintenance costs allegedly incurred by Defendant. The

Profit & Loss reports as well as the General Ledgers documenting the amounts paid for management fees have been produced for 2016, 2017 and 2018 in the most recent 1200 page supplement served concurrently herewith.

8. The Eight Request

This request seeks documents pertaining to the parking lot reserve. All of the documents which may be responsive to this request for the years 2016, 2017 and 2018 have been produced in the most recent 1200 page supplement served concurrently herewith.

9. The Ninth Request

This request seeks documents pertaining to the porter service for the property. Any documents responsive to this request for the years 2016, 2017 and 2018 have been produced in the most recent 1200 page supplement served concurrently herewith.

10. The Tenth Request

This request seeks documents pertaining to the painting reserve for the property. Any documents responsive to this request for the years 2016, 2017 and 2018 have been produced in the most recent 1200 page supplement served concurrently herewith.

11. The Eleventh Request

This request seeks documents pertaining to the roof reserve for the property. Any documents responsive to this request for the years 2016, 2017 and 2018 have been produced in the most recent 1200 page supplement served concurrently herewith.

III. CONCLUSION

This motion seeks to compel Defendant to produce the documents supporting the CAMs that have been charged for the premises for the past several years. Defendant has consistently agreed to provide the relevant documentation in Defendant's possession documenting the amounts paid related to the common area maintenance charges for the property for a reasonable period of time. Instead of narrowly tailoring its discovery requests to obtain those CAM documents, Plaintiff improperly sought Defendant's tax returns, bank account statements and confidential accountant-client documentation for the past 8 years.

1 In July, 2019, Plaintiff was provided with copies of the CAM reconciliation summaries
2 that were sent out to tenants each year from 2013-2018, along with copies of the Defendant's
3 Profit & Loss reports for those same years which documented the CAM expenses.
4 Notwithstanding those documents, Plaintiff now seeks to obtain thousands of other pages of
5 documents. In an effort to accommodate Plaintiff, Defendant located and has produced 1200
6 pages documenting the past 3 years of CAM documentation and the general ledgers identifying
7 how the amounts were compiled and calculated. Under principles of proportionality, fairness
8 and the burden related thereto, the documents produced should be deemed to be sufficient.

9 Dated this 30th day of September, 2019.

10 MARQUIS AURBACH COFFING
11

12 By /s/ Terry A. Moore
13 Terry A. Moore, Esq.
14 Nevada Bar No. 7831
15 10001 Park Run Drive
16 Las Vegas, Nevada 89145
17 Attorney(s) for Tropicana Investments,
18 LLC
19
20
21
22
23
24
25
26
27
28

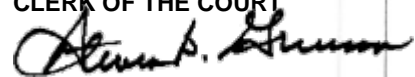
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS LLC'S OPPOSITION TO PLAINTIFF JSJBD CORP'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS (MOTION FOR ORDER SHORTENING TIME)** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 30th day of September, 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

/s/ Cally Hatfield
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).



1 **Marquis Aurbach Coffing**

2 Terry A. Moore, Esq.

3 Nevada Bar No. 7831

4 10001 Park Run Drive

5 Las Vegas, Nevada 89145

6 Telephone: (702) 382-0711

7 Facsimile: (702) 382-5816

8 tmoore@maclaw.com

9 Attorneys for Defendant/Counterclaimant,

10 Tropicana Investments, LLC

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

Case No.: A-18-785311-B

Dept. No.: XI

16 vs.

17 **HEARING REQUESTED**

18 TROPICANA INVESTMENTS, LLC, a
19 California limited liability company,

20 Defendant.

21 TROPICANA INVESTMENTS, LLC, a
22 California limited liability company,

23 Counterclaimant,

24 vs.

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

Counterdefendants.

**DEFENDANT/COUNTERCLAIMANT
TROPICANA INVESTMENTS, LLC'S
MOTION FOR SANCTIONS FOR (I)
JSJBD CORP'S FAILURE TO PRESENT
A KNOWLEDGEABLE DESIGNEE AND
(II) JSJBD CORP'S FAILURE TO
APPEAR AND (III) FOR LEAVE TO
TAKE DEPOSITION ON ORDER
SHORTENING TIME**

Hearing Date: 10/9/19
Time: 9:00 a.m.

Defendant/Counterclaimant Tropicana Investments, LLC ("Tropicana"), by and through the law firm of Marquis Aurbach Coffing, respectfully submit its Motion for Sanctions for (i) JSJBD Corp's Failure to Present a Knowledgeable Designee, (ii) JSJBD Failure to Appear, and (iii) for Leave to take the deposition of Leslie Miller, Esq. and Lucas Grower, Esq. on Order

1 Shortening Time ("Motion"). This Motion is made and based on the papers on file herein and
2 any oral argument the Court may choose to entertain at the time of hearing.

3 Dated this 30th day of September, 2019.

4 MARQUIS AURBACH COFFING

5
6 By 

7 Terry A. Moore, Esq.
8 Nevada Bar No. 7831
9 10001 Park Run Drive
10 Las Vegas, Nevada 89145
11 Telephone: (702) 382-0711
12 Facsimile: (702) 382-5816
13 tmoore@maclaw.com
14 Attorneys for Defendant/Counterclaimant,
15 Tropicana Investments, LLC
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER SHORTENING TIME

Upon the Declaration of Terry A. Moore, Esq., and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the time for hearing of the above-entitled matter will be shortened and will be heard on the 9 day of Oct, 2019, at the hour of 9:00 a.m. in Department XI in the above-referenced court.


DISTRICT COURT JUDGE

Submitted by:

MARQUIS AURBACH COFFING

By 

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

DECLARATION OF TERRY A. MOORE, ESQ.
IN SUPPORT OF ORDER SHORTENING TIME AND FOR MEET AND CONFER

Terry A. Moore, Esq. declares as follows:

1. Your Declarant is a shareholder with the law firm of Marquis Aurbach Coffing, counsel for Defendant/Counterclaimant Tropicana Investments, LLC in the above-stated action.
2. Your Declarant is duly licensed to practice law in the State of Nevada and has personal knowledge of, and, is competent to testify concerning the facts herein.
3. Your Declarant provides this declaration in support of Tropicana's motion for sanctions.
4. On August 15, 2019, prior to the close of discovery in this matter, the undersigned

1 noticed the depositions of three individuals: Jeff Vincent, Bruce Eisman, and the 30(b)(6)
2 designee of JSJBD, Corp. The Notices of Deposition were served on Plaintiff's counsel as
3 Plaintiff's NRCP 16.1 Initial Disclosure of Witnesses and Documents identified the address for
4 all three parties as being "c/o" the Lovato Law Firm.

5 5. Initially, the schedule of depositions was as follows:

6 a. Bruce Eisman – August 30, 2019 at 8:30 a.m.

7 b. Jeff Vincent - August 30, 2019 at 9:30 a.m.

8 b. 30(b)(6) Designee of JSJBD – Sept. 3, 2019 at 1:30 p.m.

9 6. Deposition notices for all 3 were hand delivered to Plaintiff's counsel on August
10 15, 2019.

11 7. The deposition of Leslie Miller, Esq. was also noticed and scheduled for
12 September 3, 2019 at 9:30 a.m. The notice for that deposition was served on Ms. Miller on
13 August 16th, but as was previously stated to the Court, due to a clerical oversight by the
14 undersigned's assistant, the deposition notice was inadvertently not served on Plaintiff's counsel.
15 That deposition did not end up going forward due to that oversight.

16 8. On August 22, 2019, Mr. Lovato emailed the undersigned to advise that the date
17 proposed for Jeff Vincent's deposition did not work as he was not in town. He then proposed
18 dates that work for him and the deponent of September 17-19. No mention was made in that
19 email about Mr. Eisman not being available for the date and time scheduled for his deposition.

20 **Exhibit 1.**

21 9. On August 27, 2019, the undersigned responded to Mr. Lovato's email by calling
22 and leaving him a message asking Mr. Lovato to call to discuss the scheduling and other matters.
23 The undersigned also sent Mr. Lovato an email that same day advising that I had just left a
24 voicemail and asked him to please call me back. **Exhibit 2.**

25 10. Plaintiff's counsel did not respond to the phone call or to the email.

26 11. On Friday, August 30, 2019, Bruce Eisman did not appear for his deposition and
27 neither did Mr. Lovato. **Exhibit 3.** The undersigned sent an email to Mr. Lovato that day
28 inquiring why neither he nor the deponent appeared. **Exhibit 4.** Mr. Lovato responded to that

1 email and contended, in part, that since no subpoena was served on Mr. Eisman, his failure to
2 appear was justified. Id.

3 12. That same day, during email exchanges, Mr. Lovato confirmed that Jeff Vincent
4 was also the 30(b)(6) designee for JSJBD. Id.

5 13. Due to the fact that Jeff Vincent was the 30(b)(6) Designee and was unavailable
6 until the September 17-19 dates proposed by Plaintiff's counsel, on August 30, 2019, the
7 undersigned renoticed both the deposition of the JSJBD 30(b)(6) Designee and for Jeff Vincent's
8 individual deposition for September 17, 2019. See Exhibits 5 and 6.

9 14. On September 6, 2019, the undersigned sent Plaintiff's counsel an email inquiring
10 about combining the depositions of Jeff Vincent in his individual capacity with his deposition as
11 the 30(b)(6) designee. **Exhibit 7.**

12 15. Following the status check with the Court on September 9, 2019, wherein the
13 parties advised the Court that we still had some depositions to finish up the following week,
14 Plaintiff's counsel responded that he did not agree to combine the depositions. **Exhibit 8.**

15 16. The parties were subsequently able to agree upon rescheduling the deposition of
16 Bruce Eisman for September 18, 2019.

17 17. The undersigned responded to Plaintiff's counsel's 9/9 email at 2:13 pm on
18 September 9, 2019 and advised that, given their refusal to combine the depositions, I would be
19 taking the deposition of the 30(b)(6) designee first and would then decide whether to take Jeff
20 Vincent's individual deposition after that. I then advised that I would move Mr. Vincent's
21 deposition to 9/19 and would keep the 30(b)(6) deposition scheduled for 9/17. **Exhibit 9.**

22 18. Plaintiff's counsel did not respond to that email nor did he indicate that the
23 30(b)(6) Designee would not be appearing for the previously noticed deposition on 9/17.

24 19. On 9/17, neither the 30(b)(6) designee nor Plaintiff's counsel appeared for the
25 deposition. The undersigned did a notice of non-appearance¹. **Exhibit 10.**

26 20. Counsel then exchanged emails about the failure to appear. The chain of those

27 ¹ We are still waiting on the certificate of non-appearance to be provided by the court reporter but
28 attached is the invoice for same.

1 emails is attached as **Exhibit 11**.

2 21. Following the 9/18 deposition of Bruce Eisman, counsel discussed and confirmed
3 that Jeff Vincent would appear on 9/19 for the 30(b)(6) deposition.

4 22. Jeff Vincent appeared as the designee for JSJBD, Corp. on September 19th.

5 23. Mr. Vincent is the Secretary for JSJBD.

6 24. More specifically, Jeff Vincent was identified as the 30(b)(6) Designee for each
7 of the 8 topics in the deposition notice. Those topics were as follows:

8 a. JSJBD Corp.'s Lease for the premises at issue in this litigation;

9 b. JSJBD Corp.'s communications with the Defendant and/or Defendant's
10 agents during the term of the Lease at issue in this litigation;

11 c. JSJBD Corp.'s compliance with the obligations imposed by the Lease for
12 the premises at issue in this litigation;

13 d. JSJBD Corp.'s alleged damages;

14 e. The Defendant's alleged breaches of the Lease at issue in this litigation as
15 alleged by Plaintiff in this litigation;

16 f. JSJBD Corp.'s lease payments pursuant to the Lease for the premises at
17 issue in this litigation;

18 g. Any issues involving maintenance of the premises at issue in this
19 litigation; and

20 h. JSJBD Corp.'s corporate structure, members and officers and conversion
21 into the current corporate entity.

22 25. As shown in Mr. Vincent's deposition transcript, JSJBD's 30(b)(6) Designee
23 knew very little about the topics he was designated as the 30(b)(6) Designee for. See generally
24 Deposition of Jeff Vincent, **Exhibit 12**.

25 26. During the 5 hour deposition, Mr. Vincent stated that he did not know or could
26 not recall answers to questions approximately 306 times.

27 27. During his deposition, it was abundantly clear that the witness was not properly
28 prepared to answer questions on the above topics.

28. For example, the following is a breakdown of the number of times the witness indicated that he did not know or did not remember the answer to questions pertaining to each topic:

| | |
|---|-----------|
| Topic #1 (the Lease) | 56 times |
| Topic #2 (communications with landlord) | 177 times |
| Topic #3 (compliance with the lease) | 5 times |
| Topic #4 (Plaintiff's damages) | 4 times |
| Topic #5 (LL's alleged breaches) | 0 times |
| Topic #6(JSJBD's payments under Lease) | 29 times |
| Topic #7 (Maintenance of the Premises) | 15 times |
| Topic #8 (JSJBD corporate structure/conversion) | 6 times |

29. The witness also had approximately 14 times where he did not know the answer to general questions about JSJBD's procedures and customary practices.

30. Furthermore, following various speaking objections of Plaintiff's counsel, the deponent refused to answer questions about various documents and instead responded approximately 34 times that "The document speaks for itself."

31. The deposition was further complicated by Plaintiff's counsel asserting approximately 175 largely improper objections, the bases for which were as follows: Argumentative (61), Misleading (56), Calls for a Legal Conclusion (25), Vague (10), Confusing (7), Assumes Facts (5), Asked and Answered (2), Harassing (2), Misstates (2), Speculation (2), Foundation (1), Compound (1), Failing to Identify (1).

32. If Your Honor has an opportunity, it is worthwhile to read the deposition transcript of JSJBD's 30(b)(6) designee, **Exhibit 12**, to get a sense of the manner in which the speaking objections were made and asserted. In particular, the objections made on pages 13-14, 34, 40-41, 51, 57, 58-59, 60, 61, 62, 76, 119-120, 128, 129-130, and 152 significantly impeded the deposition. Given the tenor, good cause exists to hear this matter on shortened time.

**10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816**

Dated this 30th day of September, 2019.

~~Terry A. Moore, Esq.~~

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Taking depositions of the Plaintiff's principals and 30(b)(6) Designee has not been an
4 easy task in this case. In fact, Plaintiff's counsel and the deponents have failed to appear for 2
5 depositions and then when the deposition of the 30(b)(6) Designee for Plaintiff did occur, the
6 deponent was grossly unprepared to talk about even the most basic of issues involved in this
7 lawsuit. Indeed, as detailed below, the NRCP 30(b)(6) Designee indicated he "didn't know" as
8 the answer to approximately 306 questions. The deposition only went for 5 hours and it became
9 clear that the 30(b)(6) Designee was deliberately unprepared, simply refused to answer
10 questions, and made little to no attempt to be knowledgeable enough on the topics identified to
11 comply with NRCP 30(b)(6). As such, the Court should enter an order that Plaintiff is precluded
12 from offering substantive testimony and evidence at the time of trial concerning the substance of
13 the questions asked about the eight topics identified in the NRCP 30(b)(6) deposition notice
14 which Plaintiff failed to provide adequate, knowledgeable testimony on.

15 Moreover, the entirety of the deposition was obstructed by Plaintiff's counsel's
16 approximate 175 improper objections, which included numerous speaking objections. The
17 objections and instructions to the deponent not to answer reached such a point that the Court was
18 called and had to intervene and directed the party to answer "yes or no" to the questions about
19 whether their first counsel, Kaempfer Crowell, or its second counsel, Lucas Grower, had
20 authority to send the communications they sent on behalf of JSJBD. Although it is discussed
21 more fully below, after tepidly answering the question in the negative, the witness then continued
22 to equivocate on that and similar questions by refusing to provide a simple yes or no answer.

23 Based on the foregoing misconduct, appropriate sanctions are warranted. Given the
24 testimony concerning whether or not Kaempfer Crowell and Lucas Grower were authorized to
25 send the 2016 and 2017 letters of behalf of JSJBD, Defendant requests leave of court to depose
26 Lesley Miller, Esq. and Lucas Grower as to those communications and a determination that the
27 attorney-client privilege as to those communications has been waived.
28

Alternatively, the Court should enter an order that all communications sent by JSJBD's lawyers were duly authorized to be sent by JSJBD and that it is bound by the representations made in those communications. Monetary sanctions for the foregoing misconduct should also be entered.

II. FACTUAL BACKGROUND RELATED TO THE DEPOSITIONS.

On August 15, 2019, the undersigned noticed the depositions of Bruce Eisman, one of the 4 owners of JSJBD, Jeff Vincent, another of the 4 owners, the 30(b)(6) designee of JSJBD as to 8 specific topics, and Leslie Miller, Esq. The depositions were scheduled to occur on August 30th and September 3rd, respectively, prior to the close of discovery.

In JSJBD's initial disclosure of witnesses and documents, disclosed on July 26, 2019, Plaintiff identified Bruce Eisman as follows:

4. Bruce Eisman
c/o Mario P. Lovato
Lovato Law Firm, P.C.
7465 W. Lake Mead Blvd. Ste. 100
Las Vegas, NV 89128

Bruce Eisman is a principal owner of Plaintiff. and has appeared in-person at proceedings in this case. He is able to testify about the facts and circumstances of this case.

The identification of Jeffrey Vincent was identical and the identification of "Persons with knowledge, JSJBD Corp." was also made c/o the Lovato Law Firm. See Exhibit 13.

Defendant hand delivered the Notices of Subpoena and Depositions for Eisman, Vincent and the 30(b)(6) Designee on the Lovato Law Firm on August 15, 2019. **Exhibit 14.** Defendant hand delivered the Notice of Subpoena and Deposition for Ms. Miller on her but inadvertently did not deliver a copy to Plaintiff's counsel. **Exhibit 15.**

The 30(b)(6) deposition notice listed 8 topics for JSJBD's designee to appear and testify about:

1. JSJBD Corp.'s Lease for the premises at issue in this litigation;
2. JSJBD Corp.'s communications with the Defendant and/or Defendant's agents during the term of the Lease at issue in this litigation;
3. JSJBD Corp.'s compliance with the obligations imposed by the Lease for the premises at issue in this litigation;

1 4. JSJBD Corp.'s alleged damages;

2 5. The Defendant's alleged breaches of the Lease at issue in this litigation as
3 alleged by Plaintiff in this litigation;

4 6. JSJBD Corp.'s lease payments pursuant to the Lease for the premises at
5 issue in this litigation;

6 7. Any issues involving maintenance of the premises at issue in this
7 litigation; and

8 8. JSJBD Corp.'s corporate structure, members and officers and conversion
9 into the current corporate entity.

10 Plaintiff never served an objection to the 30(b)(6) topics and did not object to the topics
11 (or to scope) at the commencement of the deposition.

12 On August 22, 2019, Mr. Lovato, having received the notices of deposition, emailed the
13 undersigned to advise that the date proposed for Jeff Vincent's deposition did not work as Mr.
14 Vincent was not in town. He then proposed dates of September 17-19 that worked for him and
15 the deponent. No mention was made in that email about Mr. Eisman not being available for the
16 date and time scheduled for his deposition. Exhibit 1.

17 On August 27, 2019, the undersigned responded to Mr. Lovato's email by calling and
18 leaving him a message asking Mr. Lovato to call to discuss the scheduling and other matters.
19 The undersigned also sent Mr. Lovato a follow up email immediately after that call advising that
20 I had just left a voicemail and asked him to please call me back. Exhibit 2. Plaintiff's counsel
21 did not respond to the phone call or to the email.

22 On Friday, August 30, 2019, Bruce Eisman did not appear for his deposition and neither
23 did Mr. Lovato. See Certificate of Non-Appearance attached as Exhibit 3.² The undersigned
24 sent an email to Mr. Lovato that day inquiring why neither he nor the deponent appeared.
25 Exhibit 4. Mr. Lovato responded to that email and contended, in part, that since no subpoena
26 was served on Mr. Eisman, his failure to appear was justified. Id.

27 That same day, during email exchanges, Mr. Lovato confirmed that Jeff Vincent was also
28 the 30(b)(6) designee for JSJBD. Id. Due to the fact that Jeff Vincent was the 30(b)(6) Designee

² The Defendant incurred \$323.95 in costs associated with the deponent's nonappearance. Id.

1 and was unavailable until the September 17-19 dates proposed by Plaintiff's counsel, on August
2 30, 2019, Defendant renoticed the depositions of the JSJBD 30(b)(6) Designee and Jeff Vincent
3 individually for September 17, 2019. See Exhibit 5 and 6.

4 On September 6, 2019, the undersigned sent Plaintiff's counsel an email inquiring about
5 combining the depositions of Jeff Vincent in his individual capacity with his deposition as the
6 30(b)(6) designee. Exhibit 7. Mr. Lovato did not respond that day.

7 The parties then had a status check with the Court on September 9, 2019, wherein the
8 parties advised the Court that we still had some depositions to finish up the following week. In
9 the afternoon following the status check with the Court, Plaintiff's counsel sent an email stating
10 that he did not agree to combine the depositions. Exhibit 8.³

11 The undersigned then responded to Plaintiff's counsel's email that same day at 2:13 pm
12 and advised that, given Plaintiff's counsel's refusal to combine the depositions, the undersigned
13 preferred to taking the deposition of the 30(b)(6) designee first and would then decide whether to
14 take Jeff Vincent's individual deposition after that. The undersigned then advised Plaintiff's
15 counsel that Mr. Vincent's individual deposition would be moved to 9/19 and the 30(b)(6)
16 deposition would remain scheduled for 9/17. Exhibit 9.

17 Plaintiff's counsel did not respond to that email nor did he indicate that the 30(b)(6)
18 designee would not be appearing for the previously noticed deposition on 9/17. Consequently,
19 on 9/12, Defendant renoticed the individual deposition of Jeffrey Vincent for 9/19 and left the
20 previously noticed deposition for the 30(b)(6) designee scheduled for 9/17.

21 On 9/17, neither the 30(b)(6) designee nor Plaintiff's counsel appeared for the deposition.
22 The undersigned waited a half hour and then did a notice of non-appearance. See Exhibit 10.⁴

23
24
25
26 ³ The parties were subsequently able to agree upon rescheduling the deposition of Bruce Eisman for
September 18, 2019.

27 ⁴ Defendant incurred \$321.60 in costs associated with the Certificate of Non-Appearance due to the
28 deponent's failure to appear. Id.

1 Counsel then exchanged emails about the failure to appear. The chain of those emails is
2 attached as Exhibit 11. Following the 9/18 deposition of Bruce Eisman, counsel discussed and
3 confirmed that Jeff Vincent would appear on 9/19 for the 30(b)(6) deposition.

4 **A. THE 30(B)(6) DEPOSITION**

5 Jeff Vincent appeared as the designee for JSJBD, Corp. Counsel started the deposition
6 like any 30(b)(6) deposition – by giving the witness a full and fair opportunity to review the
7 topics, and after the witness had sufficient time to review the topics, he confirmed that he was
8 the 30(b)(6) designee as to the 8 topics set forth in the 30(b)(6) deposition notice and that he had
9 “knowledge” regarding those 8 topics. See Exhibit 12, pgs:8:8-13. When asked if there was
10 anybody else with JSJBD that had more knowledge than him he stated “I don’t know.” Id., 8:18.
11 When pressed further, Mr. Vincent acknowledged he had been designated by the company to
12 come in and talk about those 8 topics as the 30(b)(6) designee. Id., 9:3-8. Notably, when asked
13 if he knew why he was designated as the 30(b)(6) designee as opposed to anyone else at JSJBD,
14 Mr. Vincent didn’t know why. Id., 9:13-16. He also did not know if there was anyone more
15 knowledgeable on those topics than him. Id., 9:17-20.

16 **1. The Witness Was Not Prepared to Testify as the 30(b)(6) Designee**

17 To prepare for the 30(b)(6) deposition, the deponent stated that his preparation consisted
18 of looking at the 30(b)(6) deposition notice (Id., pg 9:21-22), that he did not meet with anybody
19 (Id., 9:24-25), that he looked at a “variety of documents” which he could not identify over
20 “lengths of time” (Id., 10:12-14), and that he looked at JSJBD’s answers to interrogatories (Id.,
21 10:20-23).

22 The amount of preparation (of lack thereof) that the witness undertook was evidenced
23 throughout the entire deposition. The witness testified “I don’t know” or “I don’t remember”
24 approximately 306 times, quite often to the most basic of questions. For example, Topic #8 of
25 the 30(b)(6) topics pertained to JSJBD’s corporate structure, members, and officers and
26 conversion into the current corporate entity. Early in the deposition the following exchange
27 occurred:
28

1 Q. Are you aware that there were articles of conversion filed with the
2 secretary of state's office for the company?

3 MR. LOVATO: Objection, assumes facts. You don't have to agree with
4 his representations, testify from your knowledge.

5 THE WITNESS: No.

6 Id., pg 17:13-19.

7 This absurdity of this testimony is that it is actually contradicted by the fact that JSJBD
8 produced (1) the Articles of Conversion filed with the Nevada Secretary of State's office, (2) the
9 Plan of Conversion signed by Jeff Vincent, and (3) the Articles of Incorporation in its First
10 Supplement to its NRCP 16.1 List of Witnesses and Documents. See documents bates stamped
11 BDP 199-203 attached as **Exhibit 16**.

12 Furthermore, pursuant to Topic #1, the deponent was to be prepared to discuss the Lease
13 documents at issue in this case. As the Court is well aware, the lease in this case started in 1996
14 and has been amended and had various addendums executed in order for the various options to
15 be exercised leading up to the rent dispute at issue here. Indeed, notwithstanding the fact that
16 JSJBD bought the Blue Dogs Pub in 2007, and has executed several lease addendums and related
17 documents, the 30(b)(6) designee repeatedly could not testify as to any knowledge about those
18 documents. For example, when presented with a copy of a lease addendum, the following
19 exchange was typical of the deponent's "knowledge" concerning the lease documents:

20 Q. I'm showing you what has been marked as Exhibit 3. This is a Lease
21 Assignment Modification. Have you ever seen this document?

22 ...

23 Q. Have you seen that, the first four pages? Have you ever seen that
24 document before, the first four pages?

25 A. I'm reviewing it. Yes.

26 Q. This document was signed apparently by Jeff White on behalf of JSJ. Is
27 that his signature on the fourth page?

28 A. I don't know.

Q. Does that appear to be his signature to the best of your knowledge.

A. Appeared, I don't know.

1 Q. This document was signed by the parties it appears in June of 2007. Does
2 that refresh your memory as to when you consummated your purchase of the bar?

3 A. I don't know.

4 Q. Is there something that would refresh your memory other than this
5 document as to when you purchased the bar?

6 A. I don't know.

7 Q. Well, if you look on the first page, it indicates under the Recitals, Whereas
8 Mark s. Van Aken (Tenant) desires to assign all of its rights, title and interests in
9 the lease unto J.S.J. LLC (Assignee) for the premises located at 3430 East
10 Tropicana Avenue, Suites 27, 28, and 29, Las Vegas, Nevada 89121 (Premises) as
11 further described in said lease.

12 Does that refresh your memory that this relates to when JSJ was being
13 assigned the lease as part of this purchase?

14 A. I don't know.

15 Q. When was the first time you saw this document?

16 A. I don't remember.

17 See Exhibit 12, pgs. 46:16-48:8.

18 This sort of obfuscation continued as it relates to nearly every other 30(b)(6) topic. Here
19 is another example of the deponent's deliberate unwillingness to answer questions about an
20 email that the deponent actually sent on behalf of JSJBD.

21 Q. Showing you what has been marked as Exhibit 11, this is an email from
22 you to Joe Velarde, Danny Velarde, Bruno Mark, Stuart Vincent, dated May 26,
23 2016. Do you recall sending this email?

24 A. No.

25 Q. Is that your email address Jbvin1@msn.com?

26 A. That is what it states on the document, yes, it is.

27 Q. I'm just asking, is that your email address?

28 A. Yes.

Q. Did you, in fact, send this email to Mr. Velarde?

A. I don't remember.

Q. Do you have any reason to dispute that this is an authentic email that was
sent from you?

1 A. It came - - no, I don't - - it came from my account, I would say yes, it's
2 authentic.

3 Q. At the bottom, it says Blue Dog's, then it says Stuart Vincent. Why does
4 it say that?

5 A. I don't know.

6 Q. Did you send this on behalf of Stuart?

7 A. I don't know.

8 Q. Did you give Stuart access to your email and have him send it?

9 A. I don't know.

10 Q. Okay. You see how it says, This is responding your - - Jeff Chauncey's
11 May 19 letter?

12 A. Yes.

13 Q. That would be Exhibit 10?

14 A. Yes.

15 Q. You state, We intend to exercise our five year option effective September
16 1, 2016. And we respectfully decline to provide the additional information.

17 Right, that is what it says.

18 A. The document speaks for itself.

19 Q. So earlier when you testified that you didn't recall if you provided the
20 information the landlord requested, does that refresh your memory that you
21 declined to provide it?

22 A. The documents speak for themselves. I don't know.

23 Id., pg. 107:5-108:21.

24 **2. The Witness Refused to Answer Direct Questions.**

25 In addition to the hundreds of "I don't know" answers to questions about the Lease
26 documents, communications, payments, maintenance, and the corporate structure, on at least 34
27 occasions, the deponent also refused to answer direct questions about the documents and instead,
28 would just repeat that "the document speaks for itself."

For example, in response to questions about a letter sent by JSJBD's attorney to the
Landlord, the following exchange occurred:

Q. Well, first off, do you see what I'm talking about?

1 A. Yes.

2 Q. That language in the paragraph pertained to the guaranties, correct?

3 A. The document speaks for itself.

4 Q. You didn't disagree this is limited to just the guaranties, do you?

5 A. The document speaks for itself.

6 Q. you don't have a different understanding as to what that meant than what
7 the document says, right?

8 A. The document speaks for itself.

9 Id., pg. 141:16 – 24.

10 This sort of answer is routinely determined to be inappropriate by Courts.

11 A Rule 30(b)(6) deponent must explain the organization's interpretation of the
12 documents, give the reasons for the interpretation, and stand subject to cross-
13 examination. [Internal cite omitted] The [deponent] may not relieve itself from
14 that obligation by merely pointing to legal briefs prepared by counsel or by stating
15 that documents speak for themselves.

16 F.D.I.C. v. 26 Flamingo, LLC, No. 2:11-CV-01936-JCM, 2013 WL 3975006, at *6 (D. Nev.
17 Aug. 1, 2013) *citing* Louisiana Pacific Corp. v. Money Market 1 Inst. Inv. Dealer, 285 F.R.D.
18 481, 486–87 (N.D. Cal. 2012).

19 **3. The Constant, Speaking Objections**

20 In conjunction with the deponent's lack of knowledge, after nearly every question,
21 JSJBD's counsel stated improper objections and/or speaking objections. These objections
22 generally were cues for the witness to then claim that he did not know the answer to the question
23 or for him to parrot the "document speaks for itself" response to avoid answering the question.
24 The following exchanges are examples of the improper objections and the witness then refusing
25 to answer:

26 Q. You understand that that this Section 8 provided for three five-year
27 options, correct?

28 A. Section 8 provided for three five - - the landlord agrees to conditionally
grant assignee three additional five-year options, yes, I see that.

Q. Those were conditional options, correct?

1 A. States conditional, right, yes.

2 MR. LOVATO: Objection, misleading, calls for a legal conclusion.

3 Q. What do you understand the word conditional to mean as it is used in that
4 sentence?

5 A. I don't know.

6 MR. LOVATO: Objection, calls for a legal conclusion, the
7 document speaks for itself.

8 Q. When the document states, Landlord agrees to conditionally grant
9 assignee, JSJ, LLC, three additional five-year options to renew the terms of the
10 lease under terms and conditions, including but not limited to, rental increases to
11 be negotiated, what is your interpretation of that?

12 A. The lease speaks for itself.

13 MR. LOVATO: Objection, calls for a legal conclusion.

14 Q. I'm simply asking for what your understanding is.

15 A. The lease speaks for itself.

16 Q. So does that mean that - -

17 A. The lease speaks for itself.

18 Id., pg. 60:10-61:16.

19 Q. Read that out loud.

20 A. Additional terms. Tenant agrees to pay landlord (Tropicana Investments,
21 LLC) ten percent of the total sales price of said business sales transaction upon
22 the closing.

23 Q. So according to this sentence you just read, who is the party that agreed to
24 pay that ten percent?

25 MR. LOVATO: Objection, argumentative.

26 THE WITNESS: I don't know.

27 Q. How do you not know that? I'm simply asking you to tell me what the
28 document says.

MR. LOVATO: Objection, argumentative, harassing.

THE WITNESS: I don't know.

Q. How is that you don't know that?

1 MR. LOVATO: Objection, argumentative, harassing.

2 Q. I'm trying to figure out why you don't know, why you can't answer that

3 question, Mr. Vincent.

4 A. Do you want me to read the document?

5 Q. No, I want you to answer the question. Who is obligated to pay the ten

6 percent of the total sales price, according to Section 8?

7 MR. LOVATO: Objection, argumentative, harassing. It has been

8 asked and answered several times.

9 MR. MOORE: Well, it hasn't been answered.

10 MR. LOVATO: It has been. You are literally asking someone to

11 read. He read it.

12 MR. MOORE: I'm asking him - -

13 MR. LOVATO: Now you are trying to get louder with him, you are

14 trying to intimidate him. It's inappropriate.

15 MR. MOORE: I'm not getting louder. You are raising your voice,

16 Counsel.

17 MR. LOVATO: I'm raising my voice a little because you are raising

18 your voice.

19 MR. MOORE: I'm not raising my voice.

20 MR. LOVATO: We have a record here.

21 MR. MOORE: We do.

22 MR. LOVATO: You have asked the same question about a reading

23 assignment several times. I don't think that a court looking at this would be

24 amused by your questions.

25 MR. MOORE: And I don't think they would be amused by your

26 speaking objections either.

27 Q. So, Mr. Vincent, is it your contention that JSJ paid the ten percent of the

28 total sales price to the landlord?

MR. LOVATO: Objection, argumentative regarding contention,

assumes facts regarding contention.

THE WITNESS: I don't know.

Id., pg 57:15-59:20.

There are numerous other examples of improper speaking objections on pages 34, 41, 51, 76, and 97-98 just to name a few. The transcript is attached for the Court to review and fully

1 appreciate the fact that Plaintiff's counsel made objections as to approximately 175 different
2 bases during a 5 hour deposition.

3 4. **The Alleged Lack of Knowledge About Attorney Authorization**

4 As the Court will recall, the parties had to call the Court to have her rule on attorney-
5 client privilege objections and instructions not to answer questions by Plaintiff's counsel.
6 Specifically, the issue focused on whether Lesley Miller, Esq. and the law firm of Kaempfer
7 Crowell, the attorneys that first represented JSJBD in 2016, were authorized to send the letters
8 that they did to the Landlord and to Landlord's counsel.

9 During that telephonic discussion, the court ruled as follows:

10 JUDGE GONZALEZ: If Mr. Moore is asking the 30(b)(6) witness if Ms. Miller
11 was authorized to send that letter, the witness will answer the question yes or no.
12 However, the substance of the communication with Ms. Miller remains
13 privileged.

14 Id., Pg 126:4 - 126:8.

15 Following that order, the following exchange occurred with Plaintiff's counsel and the
16 witness. As a result of Plaintiff's counsel's improper speaking objections, which he stated was
17 done to get the witness to say the "correct" answer, the 30(b)(6) witness changed his answer to
18 yet another series of "I don't know" responses:

19 Q. So going back to my question. Was Ms. Miller authorized to send this letter,
20 this August 2, 2016, letter on behalf of JSJBD?

21 A. I'm sorry, I didn't hear what the judge said.

22 Q. She said you were going to answer the question.

23 MR. LOVATO: Well, not exactly. We have a record of what the judge said.

24 THE WITNESS: That is why I want to know --

25 MR. LOVATO: But we now have a new question. The question has to do with
26 whether this letter was authorized. I'm not trying to speak for your question, you
27 can restate it, **I'm just trying to correct what the witness believes.**

28 THE WITNESS: And I have to answer it yes or no?

BY MR. MOORE:

Q. Yeah, we are talking about this exhibit here. Yes.

A. And the question is?

1 Q. Was Ms. Miller authorized to send this letter on behalf of JSJBD?

2 A. I don't know -- I never gave the --

3 THE COURT REPORTER: Pardon me? You're going to have to speak up.

4 THE WITNESS: I'm sorry, I'm just talking to myself. I don't believe she was. I
5 don't remember seeing it.

6 BY MR. MOORE:

7 Q. So I want to be clear here. Is it your testimony that she was not authorized to
8 send this letter on behalf of JSJBD?

9 A. My testimony is I don't remember it as being sent, and I don't remember it, to
10 be honest, I don't remember it. I don't believe I authorized it. I'm not sure or any
11 of us have authorized it. I don't -- basically I really wouldn't know.

12 Q. So who else other than you would know on behalf of the company?

13 A. I don't know. It could be Stuart Vincent, it could be Bruno Mark. I don't
14 know.

15 Q. Again, earlier you indicated and you confirmed that you were the primary
16 person speaking with Ms. Miller on behalf of the company. Do you know if Mr.
17 Stuart Vincent or Mr. Mark spoke with her in relation to this letter? I just want to
18 know if he knows.

19 MR. LOVATO: I'm objecting. I want Mr. Moore to be able to conduct his
20 deposition. He is purposely getting as close as he can to attorney/client privilege.
21 He is actually asking if there were discussions, claiming that he is not getting into
22 the content of it. But asking about discussions is different than asking about
23 whether something was authorized. Now he is getting into something that
24 involves work product immunity. If you want to ask what is authorized, that's
25 what the judge addressed.

26 MR. MOORE: I already asked that.

27 Q. Do you know if Mr. Stuart authorized -- Stuart Vincent authorized this letter?

28 A. I do not know.

Q. Do you know if Bruno Mark authorized this letter?

A. I do not know.

Q. Do you know if you ever communicated to the landlord that she was not
authorized to send this?

MR. LOVATO: Objection, argumentative, irrelevant.

THE WITNESS: I don't know.

Q. Do you know if any of the other shareholders communicated that she wasn't
authorized?

1 MR. LOVATO: Same objections.

2 THE WITNESS: I do not know.

3 Id., pgs 127:22 - 130:21 (emphasis added).

4 The foregoing is nothing short of discovery abuse. The Court instructed the 30(b)(6)
5 witness to answer a simple question, yes or no, and after equivocating, the witness initially said
6 Ms. Miller was not authorized to send the August 2, 2016 letter. Plaintiff's counsel then engaged
7 in improper speaking instructions to coach the witness and then, unsurprisingly, the witness
8 began to equivocate further and then changed his answer to "I don't know" responses. The
9 deponent repeated this same lack of knowledge and "I don't know" to the numerous other
10 question about letters and emails sent by Kaempfer Crowell and JSJBD's second lawyer, Lucas
11 Grower, Esq..

12 Furthermore, in light of the 30(b)(6) Designee's initial answer that Kaempfer Crowell
13 was not authorized to send the August 2, 2016 letter (and his subsequent attempt to assert "I
14 don't know" answers as to the authorizations for the subsequent communications sent by its
15 lawyers), Defendant submits that the attorney-client privilege concerning those communications
16 has now been put at issue and should be deemed waived. The Nevada Supreme Court has long
17 refused to allow parties to use the attorney-client privilege as both a shield and a sword in these
18 types of circumstances.

19 "It has become a well-accepted component of waiver doctrine that a party waives
20 his privilege if he affirmatively pleads a claim or defense that places at-issue the
21 subject matter of privileged material over which he has control." Developments in
the Law-Privileged Communications, 98 Harv.L.Rev. 1450, 1637 (1985).

22 The doctrine of waiver by implication reflects the position that the attorney-client
"privilege 'was intended as a shield, not a sword.'" *GAB Business Services, Inc.*
23 *v. Syndicate* 627, 809 F.2d 755, 762 (11th Cir.1987) (quoting *Pitney-Bowes, Inc.*
v. Mestre, 86 F.R.D. 444, 446 (S.D.Fla.1980)). In other words, where a party
24 seeks an advantage in litigation by revealing part of a privileged communication,
the party shall be deemed to have waived the entire attorney-client privilege as it
25 relates to the subject matter of that which was partially disclosed. *United States v.*
Jones, 696 F.2d 1069, 1072 (4th Cir.1982).

26 The great weight of authority holds that the attorney-client privilege is waived
27 when a litigant places information protected by it in issue through some
affirmative act for his own benefit, and to allow the privilege to protect against
the disclosure of such information would be manifestly unfair to the opposing
28 party. [internal citation omitted].

1 Additionally, selective use of privileged information by one side may “garble” the
2 truth. The privilege “suppress[es] the truth, but that does not mean that it is a
3 privilege to garble it; ... it should not furnish one side with what may be false
4 evidence and deprive the other of the means of detecting the imposition.” *United*
5 *States v. St. Pierre*, 132 F.2d 837, 840 (2nd Cir.1942), cert. dismissed as moot,
6 319 U.S. 41, 63 S.Ct. 910, 87 L.Ed. 1199 (1943). In other words, “where a party
7 injects part of a communication as evidence, fairness demands that the opposing
8 party be allowed to examine the whole picture.” *Remington Arms Co. v. Liberty*
9 *Mut. Ins. Co.*, 142 F.R.D. 408, 413 (D.Del.1992) (emphasis added).

10 Wardleigh v. Second Judicial Dist. Court In & For Cty. of Washoe, 111 Nev. 345, 354–
11 55, 891 P.2d 1180, 1185–86 (1995).

12 This is precisely what is occurring here. Both Lesley Miller, Esq. and Lucas Grower,
13 Esq. made representations on behalf of JSJBD in their communications with the Landlord and its
14 counsel. Their authority to make those representations was never disputed by JSJBD until after
15 this lawsuit was filed 2 years later, when Plaintiff is now attempting to disavow the authority of
16 those attorneys to make the identified representations. In order to do so, it first attempted to
17 avoid answering the questions about authorization by claiming attorney-client privilege and then
18 when forced to answer by the Court, Mr. Vincent initially stated that he did not believe that Ms.
19 Miller was authorized to send her August 2, 2016 letter. If JSJBD’s position is that Ms. Miller
20 and her law firm, Kaempfer Crowell, and Lucas Grower, Esq. were not authorized to send the
21 various communications they sent on behalf of JSJBD, Defendant should be allowed to depose
22 those attorneys to determine the truth of those allegations as it is manifestly unfair to allow
23 JSJBD to allow its attorneys to send letters on its behalf in 2016 and 2017 and then attempt to
24 disavow the authority of those same attorneys in 2019. JSJBD simply cannot have it both ways.

25 Furthermore, “facts communicated to an attorney are not protected by the attorney-client
26 privilege.” Great American v. Vegas Const. Co. Inc., 251 F.R.D. at 541. “Moreover, clients
27 cannot refuse to disclose facts which their attorneys conveyed to them and which the attorneys
28 obtained from independent sources.” Id. citing Hickman v. Taylor, 329 U.S. 495, 508, 67 S.Ct.
385 (1947).

26 **III. LEGAL ARGUMENT**

27 Sanctions are required. Here, JSJBD’s principals twice failed to appear for properly
28 noticed depositions. Then, when JSJBD’s 30(b)(6) Designee finally did appear, JSJBD

1 knowingly, willfully, and intentionally brought a witness who did virtually nothing to prepare for
2 the deposition and who lacked the requisite knowledge on the topics identified. Under the rules
3 governing 30(b)(6) designees, an unprepared witness is considered a non-appearance. Here, Mr.
4 Vincent was either (at best) not prepared at all or (at worst) testified that JSJBD has little to no
5 knowledge about the operative facts and documents involved in this lawsuit.

6 Snubbing your nose at a deposition is not a joke. Defendant submits that the appropriate
7 sanction is to strike Plaintiff's complaint and the answer to Defendant's counter-claim. After
8 initially failing to appear, JSJBD showed up knowing nearly nothing about the lease documents,
9 its addendums (some of which were signed by JSJBD), JSJBD's communications with the
10 landlord (some of which were written by the deponent), rents being paid, or even information
11 about JSJBD's corporate structure. For these reasons, and those set forth, the Court should
12 sanction Plaintiff as follows:

- 13 • Strike the Plaintiff's Complaint and Answer under Rule 37.

14 If the Court is not inclined to impose that sanction, then the following sanctions should be
15 entered:

- 16 • Enter an order that Plaintiff is precluded from offering substantive testimony and
17 evidence at the time of trial concerning the substance of the questions asked concerning the eight
18 topics identified in the NRCP 30(b)(6) deposition notice which Plaintiff failed to provide
19 adequate, knowledgeable testimony on;

- 20 • Sanction Plaintiffs in the amount of (i) the Court Reporter fees, (ii) Defendant's
21 attorney fees and costs in preparing for the JSJBD deposition, (iii) the attorney fees and costs
22 incurred in this motion practice,

- 23 • Enter an order that by virtue of Plaintiff's answers (and subsequent non-answers)
24 to the issue of whether or not its prior attorney's were authorized to send their communications
25 to the Landlord and its counsel, the attorney-client privilege as to those lawyers has been waived
26 and provide Defendant with leave of Court to depose Lesley Miller, Esq. and Lucas Grower,

1 • Alternatively, enter an order that all communications sent by JSJBD's lawyers
2 were duly authorized to be sent by JSJBD and that it is bound by the representations made in
3 those communications, and lastly,

4 • Enter an appropriate sanction for Plaintiff's counsel's interference in the
5 deposition process as a result of the numerous speaking objections and improper objections.

6 **A. LEGAL STANDARD FOR SANCTIONS**

7 1. **Legal Standard for Failing to Comply with a Discovery Order**

8 Under NRCP 37(b)(2), a court has discretion to sanction a party for its failure to comply
9 with a discovery order. See Clark County Sch. Dist. v. Richardson Constr., Inc., 123 Nev. 382,
10 391, 168 P.3d 87, 93 (2007). The court has wide discretion for imposing sanctions and may
11 enter an order imposing a number of sanctions, including but not limited to, designating facts be
12 taken as established, refusing to allow the disobedient party to support or oppose designated
13 claims or defenses, prohibiting the party from introducing matters into evidence, dismissing the
14 action, or rendering default judgment. See NRCP 37(b).

15 2. **Standard for Failing to Appear at a Deposition**

16 "NRCP 37(d) specifically provides that the court may strike a party's pleadings if that
17 party fails to attend his own deposition." Foster v. Dingwall, 126 Nev. 56, 65, 227 P.3d 1042,
18 1048 (2010). "In addition, this court has upheld entries of default where litigants are
19 unresponsive and engage in abusive litigation practices that cause interminable delays." Id.

20 3. **The Court's Inherent Power to Sanction**

21 Courts have "inherent equitable powers to dismiss actions or enter default judgments
22 for . . . abusive litigation practices. Litigants and attorneys alike should be aware that these
23 powers may permit sanctions for discovery and other litigation abuses not specifically proscribed
24 by statute." Young v. Johnny Ribiero Building, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).
25 "[W]hile dismissal need not be preceded by other less severe sanctions it should be imposed only
26 after thoughtful consideration of all the factors involved in a particular case." Id. at 92, 787 P.2d
27 at 780.

B. THE PLAINTIFF FAILED TO APPEAR FOR ITS DEPOSITION

JSJBD effectively failed to appear for its deposition, as further explained herein. JSJBD's deposition was set as a NRCP 30(b)(6) deposition. As to 30(b)(6) depositions:

Rule 30(b)(6) imposes burdens on both the discovery party and the designating party. The party seeking discovery through a Rule 30(b)(6) deposition is required to describe 'with reasonable particularity the matters on which examination is requested.' Fed. R. Civ. Pro. 30(b)(6). Once served with the deposition notices under Rule 30(b)(6), the responding party is required to produce one or more witnesses knowledgeable about the subject matter of the noticed topics.

Great American Ins. Co. of N.Y. v. Vegas Const., 251 F.R.D. 534, 538 – 40 (D. Nev. 2008) (citing Marker v. Union Fidelity Life Ins. Co., 125 F.R.D. 121, 126 (M.D.N.C. 1989)).

The testimony of a 30(b)(6) designee represents the knowledge of the corporation. The entity has a duty to provide a witness who is knowledgeable in order to provide "binding answers on behalf of the [entity]." Id. at 538 (citing Starlight Int'l Inc. v. Herlihy, 186 F.R.D. 626, 638 (D. Kan. 1999)). The entity is obligated to make a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them fully. Id. at 539. The designee need not have personal knowledge – they can be trained as to the subject matter set forth in a notice.

It matters not if the information comes from a lawyer to the designee for the purpose of preparation. The designee must be prepared and must testify as to the facts of the case when the topics require so: "When a corporation produces an employee under Fed. R. Civ. Pro. 30(b)(6) to testify to corporate knowledge, the employee must provide responsive underlying factual information even though such information was transmitted through a firm's corporate lawyers." Id. at 541.

a. An Unprepared Witness is the Same as a Non-Appearance

Failing to produce a designee who is adequately educated and prepared to testify on designated topics to bind the entity amounts to a nonappearance which could and should warrant the imposition of sanctions. Id. at 542 (citing Bank of New York v. Meridien Bio Bank Tanzania, Ltd., 171 F.R.D. 135, 151 (S.D.N.Y.)). This rule has been affirmed again and again in

the Federal District Courts of this jurisdiction. See, e.g., FDIC v. 26 Flamingo, LLC, 2013 WL 3975006 at *4 (D. Nev. Aug. 1, 2013).

During the 30(b)(6) deposition, JSJBD repeatedly confirmed that it had little to no knowledge about (a) the leasing documents, amendments, and addendums, (b) did not know information about the company's communications with the Landlord and its attorney and did not know who else at JSJBD would know that information, (c) did not know information about JSJBD's corporate structure, (d) did not know information about the amount of rent JSJBD paid to the Landlord, (e) had minimal knowledge about any maintenance issues with the property and (f) repeatedly refused to answer questions about documents concerning the foregoing. JSJBD refused to articulate its understanding of the leasing documents and instead simply kept stating that the "documents speak for themselves."

Thus, at best, JSJBD was not prepared to answer questions about the facts of this case. At worst, JSJBD admitted it has no knowledge about the documents and facts. Due to the foregoing, JSJBD did not appear for its deposition as a matter of law.

C. PLAINTIFF MUST BE SANCTIONED

Because the Plaintiff did not appear for its depositions in violation of the rules of civil procedure, it must be sanctioned.

1. **The Complaint and the Answer to the Counter-Claim Should Be Stricken Because the Discovery Violation is Willful, Intentional, and in Disrespect of the Court, its Order and Defendants**

Striking the Complaint and Answer to the Counter-Claim is not the most drastic remedy available to this Court. Entering a default is. Other courts that have considered a corporate officer's failure to appear at the corporate designation have entered defaults. The facts of Riverside Casino Corp. are very similar to this case, and urge a similar result here. 80 Nev. 153, 156-57, 390 P.2d 232, 234 (1964). In that case, corporate officer depositions were set. Like here, the corporate officers no-showed. That court then entered default. In affirming that default, our Supreme Court said as follows:

The actions of the appellant were more flagrant than those of the appellant who failed to appear for the taking of her deposition in Schatz v. Devitte, 75 Nev. 124, 335 P.2d 783, in which case the trial court concluded that the failure to appear

1 was willful and this court held there was no abuse of discretion in entering
2 default. Here the appellant willfully and persistently evaded all of respondent's
3 efforts under discovery procedures authorized by the rules. As to the four officers
4 of the corporation, the taking of whose depositions was duly noticed and later
5 continued by order of the court, it should be noted that no objection had been
6 made to the taking of the deposition of one of the officers who, it appears, resided
7 in Sparks, Washoe County, Nevada. The failure of the officers to appear cannot
8 be considered other than willful.

9 Id. Thus, the sanction sought by Defendants is not as draconian as other remedies they are
10 entitled to request.⁵

11 Here, the following leads to the conclusion that striking Plaintiff's operative pleadings is
12 appropriate:

- 13 • One of the 4 owners of JSJBD, Bruce Eisman, failed to appear for his deposition
14 on August 30, 2019 with no call or communication indicating there was any concern over lack of
15 a subpoena being served on Plaintiff's counsel's office as the deponent's address for service was
16 listed "c/o Lovato Law Firm" thus requiring the cost and expense of taking a non-appearance;
- 17 • Plaintiff failed to appear for the 30(b)(6) deposition on September 17, 2019
18 without a call or communication thus requiring the cost and expense of taking a non-appearance;
- 19 • No objection was ever filed to the 30(b)(6) notice;
- 20 • Jeff Vincent, who was designated as the 30(b)(6) Designee weeks earlier,
21 eventually appeared at JSJBD's deposition and testified that he "did not know" answers to
22 approximately 306 questions about the 8 topics identified in the 30(b)(6) deposition notice;
- 23 • The deposition was obstructed by approximately 175 baseless and improper
24 objections including numerous speaking objections;
- 25 • At other points, Mr. Vincent refused to answer simple questions about the
26 documents in the case and would merely parrot his counsel's objection that "the document
27 speaks for itself";

28 This case has been ongoing for nearly 1 year. Plaintiff waited until roughly 1 month
before the end of discovery to do its initial production of documents. The failures to appear, the
lack of communication, the gamesmanship and efforts to obfuscate during the 30(b)(6)

⁵ If the Court feels a default is more appropriate, then Defendant also seeks that relief.

1 deposition all demonstrate a lack of good faith by the Plaintiff in this matter. Indeed, one need
2 only consider the sorts of speaking objections placed on the record, and then the responses by the
3 witness that fed off those speaking objections to see proof of this.

4 To put it very simply, parties must participate in discovery (and in litigation) in good
5 faith. They cannot engage in chicanery. They cannot play games. They cannot present a
6 30(b)(6) designee to talk about the leasing documents and then have that witness refuse to
7 answer questions about those same documents. That, however, is what occurred here. Plaintiff's
8 pleadings should therefore be stricken.

9 2. **Alternatively, Plaintiff Should be Prohibited from Supporting its**
10 **Claims and Defenses**

11 The purpose of a deposition is to determine the facts giving rise to a party's claims and/or
12 defenses. Depositions are perhaps the most precarious of all court proceedings. It is the only
13 time the parties are face to face with one another, without the presence of the Court to control
14 decorum and the nature of the proceedings.

15 A deposition, however, is the only time in discovery that the opposing party is subject to
16 questioning without the ability to craft answers with the assistance of their lawyer. See Coyote
17 Springs Investment, LLC v. Eight Jud. Dist. Ct. 131 Nev. 140, 347 P.3d 267 (2015). NRCP
18 30(b)(6) depositions are the only method to obtain testimony that unquestionably binds the
19 entity. Great American Ins. Co. of N.Y., 251 F.R.D. 538.

20 Here, Mr. Vincent testified that he had little to no understanding or familiarity as to the
21 facts, documents, communications, rents, payments, and related matters at issue in this lawsuit.
22 Mr. Vincent provided this testimony after confirming he was the NRCP 30(b)(6) designee for all
23 of the topics. If Mr. Vincent could not or would not answer questions during his deposition, then
24 JSJBD should be prohibited from explaining its positions at trial. The Court should, therefore,
25 enter an order that Plaintiff is precluded from offering testimony or evidence at the time of trial
26 concerning the eight topics which Plaintiff failed to provide adequate, knowledgeable testimony
27 on.
28

3. **A Monetary and Compulsory Discovery Sanctions Should Also be Applied**

In addition to the foregoing, Defendant submits that the following monetary sanctions are appropriate and should be imposed:

Sanction Plaintiff in the amount of (i) the Court Reporter for each of the non-appearances, (ii) Defendant's attorney fees and costs in preparing for the JSJBD deposition, (iii) the attorney fees and costs incurred in this motion practice.

IV. **CONCLUSION**

The discovery abuse demonstrated by JSJBD cannot be tolerated. Defendant submits that the facts and case law all demonstrate that the following sanctions are appropriate and should be entered:

1. Sanction Plaintiff in the amount of (i) the Court Reporter for each of the non-appearances, (ii) Defendant's attorney fees and costs in preparing for the JSJBD deposition, (iii) the attorney fees and costs incurred in this motion practice,

2. Enter an order that Plaintiff is precluded from offering substantive testimony and evidence at the time of trial concerning the substance of the questions asked concerning the eight topics identified in the NRCP 30(b)(6) deposition notice which Plaintiff failed to provide adequate, knowledgeable testimony on,

3. Deem that by virtue of Plaintiff's answers (and subsequent non-answers) to the issue of whether or not its prior attorney's were authorized to send their communications to the Landlord and its counsel, the attorney-client privilege as to those lawyers has been waived and provide Defendant with leave of Court to depose Lesley Miller, Esq. and Lucas Grower,

4. Alternatively, enter an order that all communications sent by JSJBD's lawyers were duly authorized to be sent by JSJBD and that it is bound by the representations made in those communications, and lastly,

5. Enter an appropriate sanction for Plaintiff's counsel's interference in the deposition process as a result of the numerous speaking objections and improper objections.

///

///

///

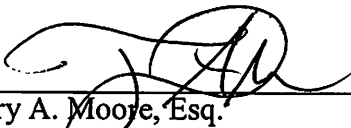
///

///

1 For the foregoing reasons, the Court should grant Defendant's Motion.

2 Dated this 30th day of September, 2019.

3 MARQUIS AURBACH COFFING

4
5 By 
6 Terry A. Moore, Esq.
7 Nevada Bar No. 7831
8 10001 Park Run Drive
9 Las Vegas, Nevada 89145
10 Telephone: (702) 382-0711
11 Facsimile: (702) 382-5816
12 tmoore@maclaw.com
13 Attorneys for Defendant/Counterclaimant,
14 Tropicana Investments, LLC
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR SANCTIONS FOR (I) JSJBD CORP'S FAILURE TO PRESENT A KNOWLEDGEABLE DESIGNEE AND (II) JSJBD CORP'S FAILURE TO APPEAR AND (III) FOR LEAVE TO TAKE DEPOSITION ON ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 1st day of October, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁶

mpl@lovatolaw.com

/s/ Cally Hatfield

An employee of Marquis Aurbach Coffing

⁶ 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

Terry Moore

From: Mario Lovato [mpl@lovatolaw.com]
Sent: Thursday, August 22, 2019 2:31 PM
To: Terry Moore
Subject: Blue Dog's, TI--dep. of Jeff Vincent

Terry,

The date that you proposed for Jeff Vincent's deposition does not work. He normally is not in Las Vegas, although he regularly returns for business, etc.

I have checked with him regarding available dates, which currently also work for me. The dates that currently work are **September 17-19**.

As we reach some of the deadlines in the case, I am willing to work with you to schedule matters even if the dates come after the deadline.

Let me know what works. If you need alternative dates, let me know as well. Thanks.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

Exhibit 2

Cally Hatfield

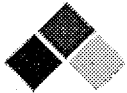
Subject: Rescheduling of Depositions [IWOV-iManage.FID1065003]

From: Terry Moore
Sent: Tuesday, August 27, 2019 10:00 AM
To: 'Mario Lovato'
Subject: RE: Blue Dog's, TI--dep. of Jeff Vincent

Mario,

Good morning. I just left you a voicemail. Can you please call me today so we can discuss this and a couple of other issues.

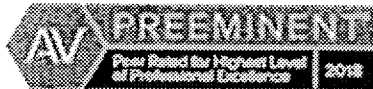
Thanks,
Terry



MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](#)
maclaw.com

Martindale-Hubbell



 Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]
Sent: Thursday, August 22, 2019 2:31 PM
To: Terry Moore
Subject: Blue Dog's, TI--dep. of Jeff Vincent

Terry,

The date that you proposed for Jeff Vincent's deposition does not work. He normally is not in Las Vegas, although he regularly returns for business, etc.

I have checked with him regarding available dates, which currently also work for me. The dates that currently work are **September 17-19**.

As we reach some of the deadlines in the case, I am willing to work with you to schedule matters even if the dates come after the deadline.

Let me know what works. If you need alternative dates, let me know as well. Thanks.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

Exhibit 3

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs. Case No.: A-18-785311-B

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.

STATEMENT FOR THE RECORD

Taken on Friday, August 30, 2019

At 9:04 a.m.

At Marquis Aurbach Coffing
10001 Park run Drive
Las Vegas, Nevada 89145

Reported by: Cari M. Inkenbrandt, RPR, CCR #939

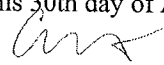
| | |
|--|---|
| <p>1 APPEARANCES page 2</p> <p>2</p> <p>3 ON BEHALF OF THE DEFENDANT/COUNTERCLAIMANT:</p> <p>4 TERRY A. MOORE, ESQUIRE</p> <p>5 MARQUIS AURBACH COFFING</p> <p>6 10001 Park Run Drive</p> <p>7 Las Vegas, Nevada 89145</p> <p>8 (702) 382-0711</p> <p>9 tmoore@maclaw.com</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 CERTIFICATE OF REPORTER page 4</p> <p>2</p> <p>3 STATE OF NEVADA)</p> <p>4) SS.</p> <p>5 COUNTY OF CLARK)</p> <p>6</p> <p>7 I, Cari M. Inkenbrandt, a Certified</p> <p>8 Court Reporter duly licensed by the State of</p> <p>9 Nevada, do hereby certify:</p> <p>10 That I reported the statement for the</p> <p>11 record, commencing on August 30, 2019;</p> <p>12 That I thereafter transcribed my said</p> <p>13 stenographic notes into written form;</p> <p>14 That the typewritten transcript is a</p> <p>15 complete, true, and accurate transcription of my</p> <p>16 said stenographic notes;</p> <p>17 I further certify that I am not a</p> <p>18 relative or employee of counsel or of any of the</p> <p>19 parties involved in the proceeding.</p> <p>20 IN WITNESS WHEREOF, I have hereunto set</p> <p>21 my hand in my office in the County of Clark, State</p> <p>22 of Nevada, this 30th day of August 2019.</p> <p>23 </p> <p>24</p> <p>25 Cari Michele Inkenbrandt, RPR, CCR #939</p> |
| <p>1 LAS VEGAS, NEVADA; FRIDAY, AUGUST 30, 2019 page 3</p> <p>2 9:04 A.M.</p> <p>3 -000-</p> <p>4 MR. MOORE: This is the time and place</p> <p>5 set for the deposition of Bruce Eisman. The</p> <p>6 deposition was previously noticed and served upon</p> <p>7 counsel for plaintiffs and counterdefendants,</p> <p>8 setting the time for 8:30 a.m., on August 30th.</p> <p>9 It is now 9:04 a.m. My office has attempted to</p> <p>10 call counsel's office, to no avail. We have not</p> <p>11 been able to reach them, nor have I received any</p> <p>12 communication as to any problem with Mr. Eisman</p> <p>13 appearing. Therefore, we're taking the</p> <p>14 certificate of nonappearance.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | |

Exhibit 4

Cally Hatfield

From: Terry Moore [tmoore@maclaw.com]
Sent: Friday, August 30, 2019 2:05 PM
To: 'Mario Lovato'
Subject: RE: Rescheduling of Depositions [IWOV-iManage.FID1065003]

Mario,

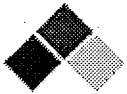
You can also expose yourself and client to sanctions by failing to appear at properly noticed depositions. And notably, I tried calling you and then emailed you this past Tuesday, and you didn't respond to either of those efforts to speak with you about the depositions.

You received the notice of Bruce Eisman's deposition and you failed to appear or advise me that he was unavailable. Yet you had no problem advising me that Mr. Vincent was unavailable. My client has now incurred the cost of the court reporter for the certificate of non-appearance.

Since you indicate that Jeff Vincent is the 30(b)(6) designee, and he is unavailable until September 17-19, I will continue the 30(b)(6) deposition scheduled for next Tuesday until September 17th. And unless you would prefer otherwise, I will just consolidate Mr. Vincent's personal deposition with the 30(b)(6) deposition.

Please let me know.

Terry



**MARQUIS AURBACH
COFFING**

Terry A. Moore, Esq.

10001 Park Run Drive

Las Vegas, NV 89145

t | 702.942.2168

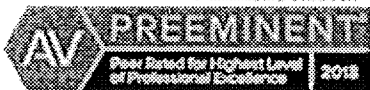
c | 702.278.3259

f | 702.856.8968

tmoore@maclaw.com | [vcard](#)

maclaw.com

Martindale-Hubbell



Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [mailto:mpl@lovatolaw.com]

Sent: Friday, August 30, 2019 1:56 PM

To: Terry Moore

Subject: RE: Rescheduling of Depositions [IWOV-iManage.FID1065003]

Terry,

You are supposed to arrange for setting deposition with the other side, as you well know. Unilaterally setting a date, without any attempt to arrange mutually-convenient dates, can expose you and your client to sanctions.

I am always cooperative in setting dates for deposition, but that does not mean that I am able to obtain dates right away. I have provided possible dates for Jeffrey Vincent. He is also the representative for the Rule 30(b)(6) deposition you have purported to set.

I do not recall any phone call from you wherein you attempted to obtain dates for deposition.

I currently have not obtained dates as to Bruce Eisman. You and I have not agreed on dates for Bruce Eisman. You would already know that there is no agreement as to the date for his deposition since you made no attempt to discuss such dates.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

From: Terry Moore <tmoore@maclaw.com>
Sent: Friday, August 30, 2019 12:58 PM
To: 'Mario Lovato' <mpl@lovatolaw.com>
Cc: Cally Hatfield <chatfield@maclaw.com>
Subject: Rescheduling of Depositions [IWOV-iManage.FID1065003]

Mario,

I sent you the below email on Tuesday and never received any response. Then this morning, neither you nor Bruce Eisman showed up for his scheduled deposition. My assistant called your office twice and spoke with a lady who put my assistant on hold while she attempted to contact you. I waited 35 minutes and then did a certificate of non-appearance when we did not hear from you and no one appeared.

I scheduled the depositions in a specific order and consequently, I now need to reschedule them. Specifically, I will renotice Jeff Vincent's deposition for September 17th. That is one of the dates you previously indicated he was available. Please provide me with a date for Bruce Eisman's deposition within the next 10 days. Once I have their depositions scheduled, I'll reschedule the deposition of Lesley Miller so that it occurs immediately thereafter.

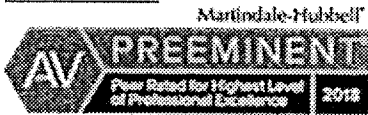
Given what happened today, please confirm that the deposition of JSJD's 30(b)(6) designee is still going to proceed on 9/3 at 1:30 pm?

Thanks,


MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.

10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](#)
maclaw.com



Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Terry Moore
Sent: Tuesday, August 27, 2019 10:00 AM
To: 'Mario Lovato'
Subject: RE: Blue Dog's, TI--dep. of Jeff Vincent

Mario,

Good morning. I just left you a voicemail. Can you please call me today so we can discuss this and a couple of other issues.

Thanks,
Terry



Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](#)
maclaw.com



Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]
Sent: Thursday, August 22, 2019 2:31 PM
To: Terry Moore
Subject: Blue Dog's, TI--dep. of Jeff Vincent

Terry,

The date that you proposed for Jeff Vincent's deposition does not work. He normally is not in Las Vegas, although he regularly returns for business, etc.

I have checked with him regarding available dates, which currently also work for me. The dates that currently work are **September 17-19**.

As we reach some of the deadlines in the case, I am willing to work with you to schedule matters even if the dates come after the deadline.

Let me know what works. If you need alternative dates, let me know as well. Thanks.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

Exhibit 5

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **Marquis Aurbach Coffing**
2 Terry A. Moore, Esq.
3 Nevada Bar No. 7831
4 10001 Park Run Drive
5 Las Vegas, Nevada 89145
6 Telephone: (702) 382-0711
7 Facsimile: (702) 382-5816
8 tmoore@maclaw.com
9 Attorneys for Tropicana Investments, LLC

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

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

15 vs.

16 TROPICANA INVESTMENTS, LLC a
17 California limited liability company,

18 Defendant.

19 TROPICANA INVESTMENTS, LLC, a
20 California limited liability company,

21 Counterclaimant,

22 vs.

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

28 Counterdefendants.

**NOTICE OF CONTINUANCE OF DEPOSITION OF NRCP 30(B)(6) DESIGNEE OF
JSJBD CORP**

PLEASE TAKE NOTICE that pursuant to Rule 30 and 45 of the Nevada Rules of Civil Procedure, Defendant/Counterclaimant, Tropicana Investments, LLC, by and through its attorneys, Marquis Aurbach Coffing, hereby continues the deposition of NRCP 30(b)(6) Designee for JSJBD previously scheduled to be held on September 3, 2019 at 1:30 p.m. at Marquis Aurbach Coffing.

1 The deposition will be continued to **September 17, 2019 at 9:30 a.m.** at the law firm of
2 Marquis Aurbach Coffing located at 10001 Park Run Drive, Las Vegas, Nevada 89145, as
3 previously noticed by Defendant/Counterclaimant.

4 Dated this 30th day of August, 2019.

5 MARQUIS AURBACH COFFING
6

7
8 By /s/ Terry A. Moore
9 Terry A. Moore, Esq.
10 Nevada Bar No. 7831
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 Attorney(s) for Tropicana Investments, LLC
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that the foregoing NOTICE OF CONTINUANCE OF DEPOSITION
3 OF NRCP 30(B)(6) DESIGNEE OF JSJBD CORP was submitted electronically for filing
4 and/or service with the Eighth Judicial District Court on the 30th day of August, 2019.
5 Electronic service of the foregoing document shall be made in accordance with the E-Service
6 List as follows:¹

7 mpl@lovatolaw.com

8
9
10 /s/ Cally Hatfield
An employee of Marquis Aurbach Coffing

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

21
22
23
24
25
26
27 ¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
28 consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 6

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **Marquis Aurbach Coffing**

Terry A. Moore, Esq.

2 Nevada Bar No. 7831

10001 Park Run Drive

3 Las Vegas, Nevada 89145

Telephone: (702) 382-0711

4 Facsimile: (702) 382-5816

tmoore@maclaw.com

5 Attorneys for Tropicana Investments, LLC

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

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

9 Plaintiff,

Case No.: A-18-785311-B

Dept. No.: XI

10 vs.

11 TROPICANA INVESTMENTS, LLC a
12 California limited liability company,

13 Defendant.

14 TROPICANA INVESTMENTS, LLC, a
15 California limited liability company,

16 Counterclaimant,

17 vs.

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

21 Counterdefendants.

22 **AMENDED NOTICE OF CONTINUANCE OF DEPOSITION OF JEFFREY B.**
VINCENT.

23 PLEASE TAKE NOTICE that pursuant to Rule 30 of the Nevada Rule of Civil
24 Procedure, Defendant/Counterclaimant, Tropicana Investments, LLC, by and through its
25 attorneys, Marquis Aurbach Coffing, hereby continues the deposition of JEFFREY B. VINCENT
26 previously scheduled to be held on September 17, 2019 at 9:30 a.m. at Marquis Aurbach
27 Coffing.

1 The deposition will be continued to September 19, 2019 at 9:30 a.m. at the law firm of
2 Marquis Aurbach Coffing located at 10001 Park Run Drive, Las Vegas, Nevada 89145, as
3 previously noticed by Defendant/Counterclaimant.

4 Dated this 12th day of September, 2019.

5
6 MARQUIS AURBACH COFFING

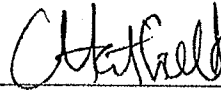
7
8 By 

9 Terry A. Moore, Esq.
10 Nevada Bar No. 7831
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 Attorney(s) for Tropicana Investments, LLC
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AMENDED NOTICE OF CONTINUANCE OF DEPOSITION OF JEFFREY B. VINCENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 12th day of September, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

mpl@lovatolaw.com



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 7

Cally Hatfield

From: Terry Moore
Sent: Friday, September 6, 2019 3:23 PM
To: 'Mario Lovato'
Cc: Cally Hatfield
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman

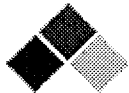
Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Blue Category, Yellow Category, Red Category

Mario,

Previously, you indicated Stuart Vincent was available Sept. 17-19. I noticed his and the PMK of JSJBD's deposition for the 17th. Do you have a problem combining those two depositions since you indicated he was the 30(b)(6) designee?

And given your email below, I would like to schedule Mr. Eisman's deposition for September 18th starting at 1 pm. I'll send out a new notice. Are you going to voluntarily produce Mr. Eisman or do I need to serve your office with a subpoena?



MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.

10001 Park Run Drive
Las Vegas, NV 89145

t | 702.942.2168

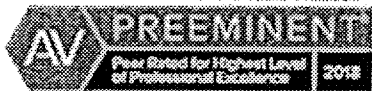
c | 702.278.3259

f | 702.856.8968

tmoore@maclaw.com | [vcard](#)

maclaw.com

Martindale-Hubbell



 Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]
Sent: Thursday, September 5, 2019 12:24 PM
To: Terry Moore
Subject: JSJBD Corp. v. Trop Invest--Bruce Eisman

Terry,

You requested information regarding availability of Bruce Eisman, a non-party in the case who is involved in JSJBD Corp.

My information is that Tuesday, September 17 is a day that Bruce Eisman is off work and available for deposition. On September 18 and 19, he is scheduled to work until 11 a.m. His deposition could be taken from 12 noon to 5 pm each of those days.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

Exhibit 8

Cally Hatfield

Subject: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

From: Mario Lovato [mailto:mpl@lovatolaw.com]
Sent: Monday, September 9, 2019 1:43 PM
To: Terry Moore
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman

Terry,

I believe your emails is meant to refer to Jeff Vincent, not Stuart Vincent.

I do not agree to "combining" depositions. It may be that you see no need for a Rule 30(b)(6) deposition of JSJBD Corp after taking Jeff Vincent's deposition, but I leave that to you.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

From: Terry Moore <tmoore@maclaw.com>
Sent: Friday, September 6, 2019 3:23 PM
To: 'Mario Lovato' <mpl@lovatolaw.com>
Cc: Cally Hatfield <chatfield@maclaw.com>
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman

Mario,

Previously, you indicated Stuart Vincent was available Sept. 17-19. I noticed his and the PMK of JSJBD's deposition for the 17th. Do you have a problem combining those two depositions since you indicated he was the 30(b)(6) designee?

And given your email below, I would like to schedule Mr. Eisman's deposition for September 18th starting at 1 pm. I'll send out a new notice. Are you going to voluntarily produce Mr. Eisman or do I need to serve your office with a subpoena?


MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | vcard



Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]
Sent: Thursday, September 5, 2019 12:24 PM
To: Terry Moore
Subject: JSJBD Corp. v. Trop Invest--Bruce Eisman

Terry,

You requested information regarding availability of Bruce Eisman, a non-party in the case who is involved in JSJBD Corp.

My information is that Tuesday, September 17 is a day that Bruce Eisman is off work and available for deposition. On September 18 and 19, he is scheduled to work until 11 a.m. His deposition could be taken from 12 noon to 5 pm each of those days.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

Exhibit 9

Cally Hatfield

From: Terry Moore [tmoore@maclaw.com]
Sent: Monday, September 9, 2019 2:13 PM
To: 'Mario Lovato'
Cc: Cally Hatfield
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

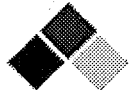
Mario,

I would prefer to do the reverse and take the 30(b)(6) deposition on 9/17 and then decide whether I need to take Jeff Vincent's individual deposition. You previously mentioned that Mr. Vincent was available September 17-19. If that time frame still works, please let me know if Mr. Vincent's individual deposition can be moved 9/19. We can keep the 30(b)(6) deposition on 9/17.

So with the above (pending confirmation) presently the schedule is:

JSJBD 30(B)(6) 9/17/19 at 9:30 a.m.
Eisman 9/18/19 at 1:00 p.m.
Jeff Vincent 9/19/19 at 9:30 a.m.

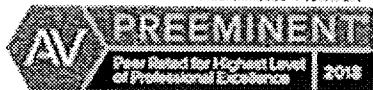
Let me know if these dates and times work.



MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](#)
maclaw.com

Martindale-Hubbell



 Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [mailto:mpl@lovatolaw.com]
Sent: Monday, September 9, 2019 1:43 PM
To: Terry Moore
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman

Terry,

I believe your emails is meant to refer to Jeff Vincent, not Stuart Vincent.

I do not agree to "combining" depositions. It may be that you see no need for a Rule 30(b)(6) deposition of JSJBD Corp after taking Jeff Vincent's deposition, but I leave that to you.

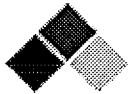
Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

From: Terry Moore <tmoore@maclaw.com>
Sent: Friday, September 6, 2019 3:23 PM
To: 'Mario Lovato' <mpl@lovatolaw.com>
Cc: Cally Hatfield <chatfield@maclaw.com>
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman

Mario,

Previously, you indicated Stuart Vincent was available Sept. 17-19. I noticed his and the PMK of JSJBD's deposition for the 17th. Do you have a problem combining those two depositions since you indicated he was the 30(b)(6) designee?

And given your email below, I would like to schedule Mr. Eisman's deposition for September 18th starting at 1 pm. I'll send out a new notice. Are you going to voluntarily produce Mr. Eisman or do I need to serve your office with a subpoena?




MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](http://vcard.maclaw.com)
maclaw.com

Martindale-Hubbell



 **Please consider the environment before printing this e-mail!**

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]
Sent: Thursday, September 5, 2019 12:24 PM
To: Terry Moore
Subject: JSJBD Corp. v. Trop Invest--Bruce Eisman

Terry,

You requested information regarding availability of Bruce Eisman, a non-party in the case who is involved in JSJBD Corp.

My information is that Tuesday, September 17 is a day that Bruce Eisman is off work and available for deposition. On September 18 and 19, he is scheduled to work until 11 a.m. His deposition could be taken from 12 noon to 5 pm each of those days.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

Exhibit 10



Rocket Reporters
4495 South Pecos Road, Suite B
Las Vegas, Nevada 89121
702.876.2538 (702.8Rocket)
Payments@RocketReporters.com

INVOICE

Marquis Aurbach Coffing
ATTN: Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145

Invoice Number: 203876
Invoice Date: 09/27/2019
Job Number: 103425

In Re: JSJBD Corp. v Tropicana Investments
Case Number: A-18-785311-B
Witness(s): 30(b)(6) Designee of JSJBD Corp Jeffrey Vincent
Attendance Date: 09/17/2019, 9:30 a.m.

Description

Nonappearance of 30(b)(6) Designee of JSJBD Corp Jeffrey Vincent

Invoice Total: 321.60

Tax ID: 20-8955398
Invoice disputes must be made within 30 days.

Please remit to
Rocket Reporters, LLC
4495 South Pecos Road, Suite B
Las Vegas, NV 89121

INVOICE DUE WITHIN 30 DAYS.
18.00% APR FINANCE CHARGES WILL BE APPLIED TO ALL INVOICES NOT PAID WITHIN TERMS.

Tax ID: 20-8955398

No credit is extended to attorney's clients or other third parties.
In accepting performance of our services, attorney acknowledges
and agrees to pay all costs of collection, including attorney's fees and court costs.

Exhibit 11

Terry Moore

From: Mario Lovato [mpl@lovatolaw.com]
Sent: Wednesday, September 18, 2019 10:46 AM
To: Terry Moore
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

Terry,

I disagree with your email. Your email does not contradict or refute anything in my email sent earlier today.

You served a notice of subpoena regarding a non-party Bruce Eisman without ever serving a subpoena. You also did not seek any agreement from me regarding the date and/or that he would appear without need for subpoena.

You served a secret subpoena on an attorney without providing notice of the subpoena or any other notice.

You moved a deposition set for this week without obtaining any agreement regarding the new date. This was done in the middle of discussions about your unusual request to "combine" depositions and my suggestion that you take Jeff Vincent's deposition first. You still are seeking to take two of the same real person's deposition—and after trying to make him appear on two different dates.

As to each of these, I have not had any conference from you to actually obtain agreement on any given date and time. We will be at your office at 1 p.m. today, at which time you and I can have our first actual discussion on these matters.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

From: Terry Moore <tmoore@maclaw.com>
Sent: Wednesday, September 18, 2019 10:35 AM
To: 'Mario Lovato' <mpl@lovatolaw.com>
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

Mario,

I have no idea how you are reaching the conclusions you are coming to about the email chains.

I'll try and lay this out succinctly. On 8/22 you emailed and stated:

"The date that you proposed for Jeff Vincent's deposition does not work. He normally is not in Las Vegas, although he regularly returns for business, etc.

I have checked with him regarding available dates, which currently also work for me. The dates that currently work are **September 17-19."**

On August 30th, I moved the 30(b)(6) deposition to 9/17 based on the availability you provided. You were properly served with that notice. I also had Jeff Vincent's individual deposition set for that same day. You then advised me that Jeff Vincent would be the 30(b)(6) designee. I then asked you if we could just combine Jeff Vincent's personal

deposition with the 30(b)(6) deposition. You refused to agree to that. You then stated on 9/9 that I may decide not to take the 30(b)(6) deposition after I take Jeff Vincent's deposition.

I then responded 30 minutes later to your email on 9/9 (which is again included in the email chain below) telling you that I would prefer to take the deposition of the 30(b)(6) designee first and then decide whether I needed to take Mr. Vincent's individual deposition. I then stated that I would move Jeff Vincent's personal deposition to 9/19 and then I very clearly stated the following:

"I would prefer to do the reverse and take the 30(b)(6) deposition on 9/17 and then decide whether I need to take Jeff Vincent's individual deposition. You previously mentioned that Mr. Vincent was available September 17-19. If that time frame still works, please let me know if Mr. Vincent's individual deposition can be moved 9/19. We can keep the 30(b)(6) deposition on 9/17.

So with the above (pending confirmation) presently the schedule is:

JSJBD 30(B)(6) 9/17/19 at 9:30 a.m.
Eisman 9/18/19 at 1:00 p.m.
Jeff Vincent 9/19/19 at 9:30 a.m.

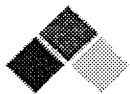
Let me know if these dates and times work."

You never responded to that email. If you have a response please share it with me.

So, based on the fact that you previously said the September 17-19 days work for the deponent and for you, there is no improper conduct on my part. You and your clients, however, have failed to appear twice for depositions that you knew about. You indicate that you have cooperated in scheduling, but if you knew Bruce Eisman was not going to show up for the first time I noticed his deposition, you should have said something instead of just not showing up. Indeed, you sent me the email telling me that J. Vincent wasn't available so I'm at a loss why you would not have done the same for Bruce Eisman at the same time.

Moreover, to refute the numbered points you state in your email (1) I set the depositions on the dates you provided me so there was discussion between us, (2) I already stated in court the failure to serve you with the notice was an oversight by my staff and it's a moot point as the deposition did not proceed; and (3) you listed Bruce Eisman c/o your office in your disclosures, so I believe it was fair to serve your office with the notice of deposition on his behalf and that if he was not available on that date, you would advise me like you subsequently ended upon doing after you didn't appear the first time.

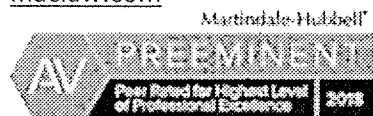
And while we can discuss it later today at the deposition, I want to take the 30(b)(6) deposition first. I very well may decide that I don't need to take Jeff Vincent's individual deposition after that, but it depends on the testimony. Indeed, I wanted to combine his individual deposition with the 30(b)(6) deposition to make it more convenient for everyone, and obviating the need for a second deposition, however, you were the one who refused to agree to that.



MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145

t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](#)
maclaw.com



Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]
Sent: Wednesday, September 18, 2019 9:46 AM
To: Terry Moore
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

Terry,

Looking at this again, it appears that I responded to an older email about your request to "combine" depositions. Later, I looked through a number of emails and documents that you served at the end of the day on a Friday and the following Monday and it appeared that your responding email was an old, outdated email.

Then, you served an amended notice of deposition without communicating with me, which sought to move a deposition that you already requested "combining" with another and which I suggested that you take prior to any Rule 30(b)(6) deposition. Needless to say, there is no good reason for you to have moved the Jeff Vincent deposition just so you could take his deposition on two separate days (since I already let you know that he was the real person appearing for any Rule 30(b)(6) deposition.

This follows other improper conduct relating to depositions, including: (1) your setting of other depositions without any discussion seeking agreement on dates; (2) your subpoenaing an attorney without ever providing notice; and (3) your setting of a non-party's deposition without ever serving a subpoena or obtaining any agreement for him to appear without need for a subpoena.

Jeff Vincent is here for this week and then must return out-of-state where he lives. We can discuss at today's deposition if you still want to take two of his depositions, one of him and another as with him as the real person appearing for a Rule 30(b)(6) deposition. I think most judges would find that wasteful, but I have nevertheless cooperated in scheduling, extensions, and the like.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

From: Terry Moore <tmoore@maclaw.com>
Sent: Tuesday, September 17, 2019 2:17 PM
To: 'Mario Lovato' <mpl@lovatolaw.com>
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

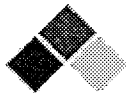
Mario,

You must be joking. I did respond to your prior email on September 9th. In fact, I responded less than 30 minutes after you sent your email refusing to combine the depositions. That email is actually set forth below if you scroll down. It was also below the earlier email I sent you today so I'm perplexed how you can claim I never responded to you or that you did not receive my email.

I don't know how much clearer I can be than I was in my 9/9 email responding to you where I indicated that I preferred to take the 30(b)(6) deposition first and then decide whether to take Jeff Vincent's deposition afterward. That email was sent to your email address and I cc'd my assistant so I have confirmation that it was sent to your email on 9/9. Moreover, you clearly received the notice continuing the 30(b)(6) deposition to today at 9:30 as it was e-served on August 30th. You even acknowledged knowing about the depositions when we were in court last week and that was when they were scheduled for today. I didn't move Vincent's individual deposition until after you and I spoke the afternoon of 9/9. And more to the point, you know that I did not move the 30(b)(6) deposition so there is no excuse for you not appearing today. Your prior email confirmed that you knew that I had scheduled the 30(b)(6) and Jeff Vincent's individual depositions for today, as you confirmed that you would not agree to "combine" them. Given that refusal, I only moved Vincent's individual deposition to Thursday, thereby leaving the 30(b)(6) deposition properly noticed for today. You simply failed to show up.

It appears that you are the one who is doing this intentionally. You have now claimed to apparently not receive emails even though they were sent and have ignored deposition notices that were properly served. I am entitled to take the 30(b)(6) deposition of JSJBD as noticed. Given your refusal to combine the depositions, I elected to proceed with doing the 30(b)(6) deposition first. Please immediately provide me with dates that the 30(b)(6) deposition can occur in the next 10 days. I will be continuing Mr. Vincent's individual deposition until after the 30(b)(6) deposition is scheduled and conducted.

Alternatively, we can proceed with the 30(b)(6) deposition on this Thursday at 9:30 am. Please advise.



MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.

10001 Park Run Drive
Las Vegas, NV 89145

t | 702.942.2168

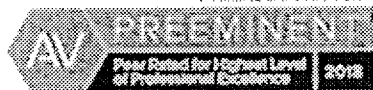
c | 702.278.3259

f | 702.856.8968

tmoore@maclaw.com | [vcard](#)

maclaw.com

Martindale-Hubbell



Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]

Sent: Tuesday, September 17, 2019 10:32 AM

To: Terry Moore

Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

Terry,

You already know that you moved Jeff Vincent's deposition to Thursday. You did so without even discussing the matter.

You also sent correspondence about "combining" his deposition with the Rule 30(b)(6) deposition. I responded that is not agreeable, but that you might decide not to take the Rule 30(b)(6) deposition after taking Jeff Vincent's deposition. You did not respond to that email.

You really need to be clear about depositions. I do not know why you would believe it is appropriate to move depositions, including what you now claim would be two depositions of the same real person.

You are obviously doing this intentionally. You need to confirm deposition dates and times with me, as you clearly have more interest in creating disputes than in actually taking depositions.

I currently have Bruce Eisman set for tomorrow at 1 p.m. Jeff Vincent is set for Thursday—although you did not even seek consent to such time before re-setting it.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com

From: Terry Moore <tmoores@maclaw.com>

Sent: Tuesday, September 17, 2019 10:00 AM

To: 'Mario Lovato' <mpl@lovatolaw.com>

Cc: Cally Hatfield <chatfield@maclaw.com>

Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

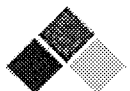
Mario,

It is now 10:00 a.m. The deposition of JSJBD's 30(B)(6) designee was set to begin today at 9:30 a.m. You are not here nor is JSJBD's 30(b)(6) designee. I sent you a follow up email on Monday 9/9 (below) confirming the dates for all of the depositions this week and previously e-served the notices of depositions on 8/30 and never heard back from you indicating otherwise.

What is going on here? This is the second time that I've noticed a deposition and you and the deponent have not shown up.

Because of the failure to appear, I just did a certificate of non-appearance for the 30(b)(6) designee.

As far as I'm concerned we are still scheduled for tomorrow for Bruce Eisman at 1 pm.




MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](#)
maclaw.com

Martindale-Hubbell



 Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Terry Moore
Sent: Monday, September 9, 2019 2:13 PM
To: 'Mario Lovato'
Cc: Cally Hatfield
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman [IWOV-iManage.FID1065003]

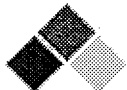
Mario,

I would prefer to do the reverse and take the 30(b)(6) deposition on 9/17 and then decide whether I need to take Jeff Vincent's individual deposition. You previously mentioned that Mr. Vincent was available September 17-19. If that time frame still works, please let me know if Mr. Vincent's individual deposition can be moved 9/19. We can keep the 30(b)(6) deposition on 9/17.

So with the above (pending confirmation) presently the schedule is:

JSJBD 30(B)(6) 9/17/19 at 9:30 a.m.
Eisman 9/18/19 at 1:00 p.m.
Jeff Vincent 9/19/19 at 9:30 a.m.

Let me know if these dates and times work.



MARQUIS AURBACH
COFFING

Terry A. Moore, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2168
c | 702.278.3259
f | 702.856.8968
tmoore@maclaw.com | [vcard](#)
maclaw.com

Martindale-Hubbell





Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [mailto:mpl@lovatolaw.com]
Sent: Monday, September 9, 2019 1:43 PM
To: Terry Moore
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman

Terry,

I believe your emails is meant to refer to Jeff Vincent, not Stuart Vincent.

I do not agree to "combining" depositions. It may be that you see no need for a Rule 30(b)(6) deposition of JSJBD Corp after taking Jeff Vincent's deposition, but I leave that to you.

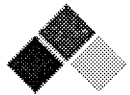
Mario P. Lovato, Esq.
 LOVATO LAW FIRM, P.C.
 7465 W. Lake Mead Blvd., Ste. 100
 Las Vegas, NV 89128
 TEL: 702-979-9047
 FAX: 702-554-3858
mpl@lovatolaw.com

From: Terry Moore <tmoore@maclaw.com>
Sent: Friday, September 6, 2019 3:23 PM
To: 'Mario Lovato' <mpl@lovatolaw.com>
Cc: Cally Hatfield <chatfield@maclaw.com>
Subject: RE: JSJBD Corp. v. Trop Invest--Bruce Eisman

Mario,

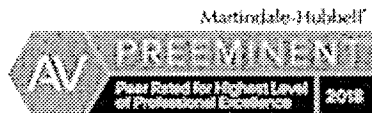
Previously, you indicated Stuart Vincent was available Sept. 17-19. I noticed his and the PMK of JSJBD's deposition for the 17th. Do you have a problem combining those two depositions since you indicated he was the 30(b)(6) designee?


And given your email below, I would like to schedule Mr. Eisman's deposition for September 18th starting at 1 pm. I'll send out a new notice. Are you going to voluntarily produce Mr. Eisman or do I need to serve your office with a subpoena?



MARQUIS AURBACH
 COFFING

Terry A. Moore, Esq.
 10001 Park Run Drive
 Las Vegas, NV 89145
 t | 702.942.2168
 c | 702.278.3259
 f | 702.856.8968
tmoore@maclaw.com | vcard
maclaw.com



 Please consider the environment before printing this e-mail!

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys at Law

From: Mario Lovato [<mailto:mpl@lovatolaw.com>]

Sent: Thursday, September 5, 2019 12:24 PM

To: Terry Moore

Subject: JSJBD Corp. v. Trop Invest--Bruce Eisman

Terry,

You requested information regarding availability of Bruce Eisman, a non-party in the case who is involved in JSJBD Corp.

My information is that Tuesday, September 17 is a day that Bruce Eisman is off work and available for deposition. On September 18 and 19, he is scheduled to work until 11 a.m. His deposition could be taken from 12 noon to 5 pm each of those days.

Mario P. Lovato, Esq.
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd., Ste. 100
Las Vegas, NV 89128
TEL: 702-979-9047
FAX: 702-554-3858
mpl@lovatolaw.com